

Appeal Decision

Inquiry held on 31 May and 1, 2 and 7 June 2016

Site visit made on 2 June 2016

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 26 July 2016

Appeal Ref: APP/D3125/W/16/3143885

Land south of High Street, Milton-under-Wychwood OX7 6ET

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Sharba Homes Ltd against the decision of West Oxfordshire District Council.
 - The application Ref 15/03128/OUT, dated 21 August 2015, was refused by notice dated 17 November 2015.
 - The development proposed is the erection of up to 62 dwellings, landscaping including change of use, formation of footpath and creation of ecological enhancement area, earthworks to facilitate surface water drainage and all other ancillary infrastructure and enabling works.
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Decision

1. The appeal is allowed and outline planning permission is granted for the erection of up to 62 dwellings, landscaping including change of use, formation of footpath and creation of ecological enhancement area, earthworks to facilitate surface water drainage and all other ancillary infrastructure and enabling works on land south of High Street, Milton-under-Wychwood in accordance with the terms of the application Ref 15/03128/OUT, dated 21 August 2015, subject to conditions set out in a schedule attached to this decision.

Procedural matters

2. The application was submitted in outline form with all matters except for access reserved for future consideration. The appeal will be determined on the same basis.

3. At the Inquiry an application for costs was made by Sharba Homes Ltd against West Oxfordshire District Council. This application is the subject of a separate Decision.

The appeal site and its surroundings

4. The main part of the site is the north-east part of an arable field and is about 3.15 hectares. Along the south boundary of the main part of the site is a hedgerow beyond which is a similar field. To the north-east of the site are residential properties on the south-west side of Jubilee Lane beyond which is the built up area of the large village of Milton-under-Wychwood. To the north-west of the site is High Street, which extends out from the village to the south-west, beyond which is a ribbon of housing development alongside the road. Along the frontage to High Street is a dilapidated stone wall on a short bank up to the site. Otherwise the main

part of the site is virtually flat. There is an existing access into the field off High Street at the west corner of the main part of the site.

5. The appeal site also includes two other elements; a strip of land, nominally about 0.1 hectares, alongside the north-east boundary of the field to the south of the main part of the site, and a triangular area of scrubby unused land, about 1.33 hectares, to the south of similar land on the south side of the village.

6. The appeal site, the adjoining village and the surrounding countryside are within the Cotswolds Area of Outstanding Natural Beauty (CAONB).

The proposed development

7. The main part of the site would be developed for up to sixty-two 2, 3 and 4 bedroom dwellings, 50% of which would be affordable housing units, in accordance with a schedule of a signed and dated Section 106 Unilateral Undertaking. Within this part of the site there would be three areas of public open space; a triangular area in the south corner of the site and two narrow areas along the frontage to High Street and alongside the north-east boundary to existing development. The existing farm access off High Street would be upgraded to provide vehicular access into the development. The landscape masterplan for the proposed development indicates that a footpath would pass through the two narrow areas of public open space from the access off High Street to the east corner of the main part of the site.

8. From the east corner of the main part of the site the narrow strip of land referred to above would be used to create a public footpath link from the main part of the site to a network of existing public footpaths in countryside to the south of the village. One of these existing footpaths, which starts at the end of Jubilee Lane, passes alongside the triangular element of the site which would, in accordance with a schedule of the Section 106 Unilateral Undertaking, become an 'ecological area'. This area would be created in accordance with an ecological area strategy approved by the Council and would be maintained in the future by a management company.

9. The Appellants control the remainder of the field to the south-west of the main part of the site and the field to the south. The landscape masterplan includes off-site woodland copse planting in these two fields; two triangular areas in the north corners of the fields and tree planting alongside the remainder of the south-west and south-east boundaries of the main part of the site.

Planning policy

10. The development plan, for the purposes of the appeal, is saved policies of the West Oxfordshire Local Plan 2011 (LP).

11. LP policy BE2 states that a development proposal will only be permitted if, amongst other things, the landscape surrounding and providing a setting for an existing village is not adversely affected and, in the open countryside, any appropriate development will be easily assimilated into the landscape. LP policy BE4 states that a proposal for development adjoining a built up area should not result in the loss or erosion of an open area which makes an important contribution to the distinctiveness of a settlement and/or the visual amenity or character of the locality. LP policy NE1 seeks to safeguard the countryside from development that would detract from its beauty, local character and distinctiveness, and LP policy NE3 states that development will not be permitted if it would harm the local landscape character of the District and that proposals should respect the intrinsic character, quality and distinctive features of the individual landscape character types.

12. LP policy NE4 states that the conservation and enhancement of the natural beauty of the landscape and countryside of the CAONB will be given great weight and that major development will not be permitted in the CAONB unless it is in the public interest in terms of national considerations and the impact on the local economy, and the lack of alternative sites outside the CAONB and of means of meeting the need in any other way justifies an exception being made. LP policy H2 states, amongst other things, that proposals for additional dwellings should not create unacceptable living conditions for existing residents. LP policy BE2 also states that a development proposal should retain a satisfactory environment for people living in the area. LP policy BE19 states that planning permission will not be granted for development if, because of the noise it will create, it would result in significant noise disturbance for the occupants of housing.

13. Local planning policy is currently under review and a draft West Oxfordshire District Council Local Plan (the emerging LP) was submitted for examination, which commenced in November 2015. The examination has been suspended by the Inspector and it is anticipated that it will not resume until February 2017. Paragraph 216 of the NPPF states that decision takers may give weight to relevant policies in emerging plans according, amongst other things, to its stage of preparation. The emerging LP has yet to be submitted in final draft form for consultation and has yet to be fully examined. In accordance with paragraph 216 of the NPPF the emerging LP is therefore afforded virtually no weight. Weight is attributed to it but only with regard to the spatial strategy for housing over the plan period of 2011 to 2031; which indicates that the Council intends to deliver 10,500 dwellings at a rate of 525 per annum. The District is divided into five sub-areas; Milton-under Wychwood being in the Burford-Charlbury Sub Area.

14. Paragraph 49 of the NPPF states that relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. Paragraph 215 of the NPPF states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF.

15. Paragraph 115 of the NPPF states that great weight should be given to conserving landscape and scenic beauty in, amongst other areas, AONBs, which have the highest status of protection in relation to landscape and scenic beauty. Paragraph 116 of the NPPF states that planning permission should be refused for major developments in these designated areas except in exceptional circumstances and where it can be demonstrated they are in the public interest.

Reasons

16. The main issues are; first, the effect of the proposed development on the character and visual amenity of the area; second, the effect of the proposed development on the amenities of local residents, in particular the amenities of residents of The Cottage on High Street; and third, in terms of the NPPF, with regard to paragraphs 7 and 116 in particular, whether the proposed housing scheme would be sustainable development.

The first issue – the character and visual amenity of the area

17. The appeal site is, with regard to paragraph 109 of the NPPF, part of a valued landscape, the CAONB. The main parties agree that the sensitivity of the CAONB to development is very high. The Management Plan for the CAONB identifies special qualities of the designated area and the Council maintains that the site has three of

these special qualities; the stone retaining wall along the frontage to High Street, a degree of tranquillity, and it is a well-managed arable field. The proposed development would include improvement of the stone wall and the effect on this special quality of the site would be positive. However, the open arable field would be replaced by a housing scheme and the traffic and activity associated with the development would undermine the tranquillity of the site and the surrounding area.

18. The Council accepts that "The scale of the proposed development is modest in comparison to the size of the CAONB and is insufficient to compromise the overall integrity or purpose of the designation". Notwithstanding the very high sensitivity of the CAONB to development the Council also accepts, with regard to the special qualities and landscape character of the designated area, after fifteen years, that the magnitude of impact of the development would be negligible and its significance of effect would be minor. Even on completion the Council's assessment is that the magnitude of impact of the development would be low and its significance of effect would be moderate. The Appellant's assessment of the effect of the development on the landscape character of the CAONB is similar.

19. The appeal site is within, in terms of a local landscape assessment, the Semi-enclosed Clay Wolds landscape type of the Upper Evenlode Valley character area as identified in the West Oxfordshire Landscape Character Assessment (LCA), and within the Farmed Slopes character type of the Vale of Moreton Farmed Slopes character area as identified in the Cotswolds AONB LCA. The important characteristics of these areas include softly rolling farmland predominantly in arable cultivation, large scale rectilinear fields mainly bounded by walls and hawthorn hedges, and small woodlands and tree belts combining to give the impression of a well-wooded landscape that provides some visual containment. The arable field of which the main part of the appeal site is a part is a large scale rectilinear field bounded by walls and hawthorn hedges and it is part of softly rolling farmland. The field and the surrounding farmland are typical of the landscape character types.

20. The proposed development would have a profound effect on the character of the site, irrespective of its disputed sensitivity; its rural character would be replaced by a residential development of decidedly urban character. The development would also have an adverse effect on the landscape character of the wider area. Fifteen years after completion the Council accepts that the magnitude of impact of the development would be negligible and its significance of effect would be minor. Even on completion the Council considers that the magnitude of impact of the development would only be low and its significance of effect would only be moderate. The Appellant's assessment of the effect of the development on the landscape of the aforementioned character areas is similar.

21. Ground levels rise gradually through the village from east to west and the main part of the appeal site is slightly above the level of existing development on Jubilee Lane and High Street. The field to the south of the site slopes gradually down to a stream alongside a hedgerow. In the field beyond the stream a public footpath extends from the footpaths in the vicinity of the proposed ecological area towards the hamlet of Upper Milton to the south-west of the site. About one kilometre to the south of the site a country lane crosses the landscape to the east from Upper Milton. Milton-under-Wychwood is in a bowl in the landscape and is surrounded on almost all sides by high ground.

22. There are views of the site from the country lane to the south. From here, and from the site itself, the bowl in the landscape is clearly apparent with Milton-

under-Wychwood in the relative foreground and higher ground to the west and north in the distance. Other principal views of the site are from a vantage point on the lane that passes through Upper Milton, from High Street to the south-west of the site, and from the footpaths to the south and in the vicinity of the proposed ecological area. There are glimpses of the site from public vantage points further to the south-west and from the north but the impact of the proposed development in these views is inconsequential given either distance or intervening development.

23. The site itself, as opposed to the surrounding landscape, does not make an important contribution to the distinctiveness of the village or to the visual amenity or character of the area. The impact of the proposed development on the visual amenity of the area would clearly be different after the proposed copse and tree planting has reached maturity than it would be on completion. If the development was to be judged only on its initial impact then the developer would not have proposed a tree planting scheme that would be costly to implement. All developments mature and become assimilated into their surroundings and the proposed development would be no different. The proposed development will, principally, be assessed on its impact after fifteen years, particularly as the copses and tree belts proposed would be typical of, and would contribute to the visual amenity, of the area.

24. From the footpaths in the vicinity of the proposed ecological area and to the south of the site the upper floors and rooftops of the proposed houses would be glimpsed, just as houses on Jubilee Lane are currently glimpsed through trees, through the proposed tree belt. In addition, from these vantage points, the proposed copse in the south corner of the site would terminate the built up area of the village just as trees in the gardens of dwellings on Jubilee Lane do at present. From the vantage point on the lane through Upper Milton the village and the trees that screen it would simply be closer than at present in the view. The two copses in the south and west corners of the site, and the tree belt planting along its south-west boundary, would also provide effective screening of the development in this view and in the views from High Street.

25. In views from the country lane to the south the proposed development would be about one kilometre away and would be seen in the context of the existing village. In these views dwellings on The Sands, a road off Jubilee Lane on the south-east side of the village, which are not screened to any significant degree, are clearly visible. These dwellings would be, given the extent of proposed copse and tree belt planting, more prominent in the views than the proposed dwellings on the appeal site. In these views, which are of a wide panorama with higher ground to the north and west in the distance, the proposed development would be a natural extension of the village and the proposed copses and tree planting would contribute to its successful assimilation into its surroundings.

26. In conclusion, the site does not make an important contribution to the distinctiveness of the village or to the visual amenity or character of the area. Furthermore, the proposed copse and tree planting would contribute to the character of the area and would provide adequate mitigation for the effect of the development on the visual amenity of the area, the effect of which would be, overall, neutral. The proposed development does not thus conflict with LP policies BE2 and BE4. The magnitude of impact of the development on the character of the CAONB would be negligible and its significance of effect would be minor. Setting aside the profound effect of the proposed development on the character of the site, which is to be expected, fifteen years after completion the magnitude of its impact

on the character of the surrounding area would be negligible and its significance of effect would be minor. Even on completion the magnitude of impact of the development would only be low and its significance of effect would only be moderate. The effect of the proposed development on the character of the CAONB and the surrounding area would be less than significant but there would be, in this regard, some conflict with LP policies NE1, NE3 and NE4.

The second issue – the amenities of local residents

27. The Cottage is a small two-storey detached dwelling on the north-west side of High Street; it is the last dwelling on this road before it passes into open countryside from the village. It is set down slightly from the road and is within a triangular plot, and its south-west elevation is about two metres from and parallel to a hedge along the road frontage. The garden area is principally to the south-west and north-west of the dwelling. The proposed access into the housing development would be opposite the part of the garden area to the south-west of the dwelling. The Council's concern for the amenities of residents of The Cottage is with regard to the noise of traffic associated with the development and with regard to the light of headlamps of cars, turning right out of the development towards the village, passing across the front elevation of the dwelling.

28. The Council has provided no evidence to support their concerns and rely wholly on a subjective assessment by their planning witness. This assessment and the representations by the current owner and resident of The Cottage, Mr Loader, and the evidence put forward by the Appellant's witnesses, have been taken into account in consideration of this issue. The current situation is that traffic travels along High Street passing The Cottage in both directions, and there is a lamppost in close proximity to the dwelling. The village 30 mph limit boundary is in close proximity to the dwelling and vehicles are likely to be either speeding up or slowing down when they pass The Cottage. This may result in higher levels of traffic noise than might prevail if the speed of traffic is constant.

29. The proposed development would include highway alterations including the relocation of the speed limit boundary to a position further south-westwards. Existing traffic would be less likely, if this were to occur, to be speeding up past The Cottage. However, the development would result in an increase in traffic movements in the vicinity of the dwelling which would include vehicles accelerating, from the access off High Street, towards the village. Evidence indicates that the level of traffic passing the dwelling towards the village would increase by about 25%. Traffic noise, given the rural location of the site on the edge of a village, is the predominant background noise in the vicinity of the site and it is likely that the residents of The Cottage would notice the increase in traffic passing the dwelling. This increase in traffic in the vicinity of The Cottage might cause greater noise disturbance but this would not be so great as to be significant. The proposed development would not result in significant noise disturbance for residents of The Cottage and would not thus be in conflict with saved LP policy BE19.

30. The light of the headlights of a vehicle turning right out of the proposed access towards the village would pass over the front elevation of The Cottage for only a brief moment. This would only occur at times when vehicles are required to have headlights on and in this location there would be no reason for headlights to be on full beam. The light of dipped headlights would be below the top of a hedgerow along the frontage of the property though there might be some 'spillage' of light onto the front elevation. However, this would occur at times when the

residents of The Cottage would be likely to have closed their curtains, and if they hadn't done so and were disturbed by the slight light of headlights entering their windows they could use this remedy to the problem, as they might already do to keep out the light of the existing nearby lamppost. The light of headlights of vehicles leaving the proposed development and turning right out of the access towards the village would not cause any light pollution at The Cottage.

31. The proposed access into the proposed development is opposite the 'side' garden at The Cottage. Drivers and passengers in vehicles exiting the development would have a view into the garden area over a boundary hedge that has been reduced in height. The hedge could be allowed to grow in height to screen these views and there are other substantial parts of the garden, at the rear of the dwelling, that would remain private. The privacy of residents of The Cottage would be affected but not to any significant degree.

32. 95 High Street and its long rear garden adjoin the north-east boundary of the main part of the site. The dwelling has a blank south-west gable elevation and there are only oblique views over the site from upper floor windows in the rear elevation of the dwelling. The dwelling is set down slightly from the site and the most used part of its rear garden, the part closest to the dwelling, is screened from the site by dense boundary vegetation. There are views across the site from other parts of the rear garden but the masterplan for the proposed development includes the provision of a public open space alongside the boundary so there would be the opportunity to provide further appropriate screening alongside the garden. The outlook from the dwelling and its garden area, and from the garden areas of other dwellings on Jubilee Lane such as Swannington and Dorrington House, would change but would not be unacceptable or harmful to residential amenity. There would be more than adequate space between existing dwellings on the north-west side of High Street and the nearest proposed dwellings for there to be no concerns regarding overlooking of or loss of privacy at existing residential properties. The proposed development does not conflict with saved LP policies H2 and BE2.

33. The proposed development would not be harmful to residential amenity other than to the amenities of the residents of The Cottage, and in this regard only as a result of the noise of traffic passing the dwelling and through loss of privacy. But the harm to residential amenity would not be significant and, most importantly, The Cottage would not, as a result of the proposed development, be an unattractive or unpleasant place to live.

The third issue – sustainable development

34. Paragraph 14 of the NPPF states that there is a presumption in favour of sustainable development and that, for decision-taking, this means, where relevant policies of the development plan are out-of-date, granting planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. Whether policies of the development plan are out-of-date depends, with reference to paragraph 49, on whether the local planning authority, as required by paragraph 47, can demonstrate a five-year supply of deliverable housing sites.

35. The Appellant would not have submitted the application if the Council can demonstrate a supply of specific deliverable sites sufficient to provide five years' worth of housing. The Council accepts that they cannot do so, though the extent of the shortfall is disputed. The Council has not submitted any evidence in this case on this topic but relies on the conclusion of an Inspector who held an Inquiry into a

recent appeal relating to a proposed housing development in the District, at Eynsham (APP/D3125/W/15/3019438). She was persuaded by the evidence put forward by the Appellant in that case who claimed that the Council, at that time, could demonstrate only 3.21 years of housing land supply. She did, however, in the overall planning balance, state that the shortfall in housing land supply "...is serious and not marginal...".

36. The Appellant in this case claims that the Council has less than 2 years of housing land supply. It is necessary to reach a conclusion on the extent of the housing land shortfall because, as stated by Mr Justice Lindblom in *Phides Estates (Overseas) Ltd v SSCLG [2015] EWHC 827 (Admin)*, "...the weight given to a proposal's benefit...will depend...on the extent of the shortfall, how long the deficit is likely to persist, what steps the authority could readily take to reduce it, and how much of it the development would meet. So the decision maker must establish not only whether there is a shortfall but also how big it is, and how significant".

37. The extent of the housing land shortfall was fully debated in the Eynsham Inquiry. In this case the evidence put forward by the Appellant has not been challenged and their witness was not cross-examined on housing land supply at the Inquiry. There is no reason therefore not to accept, as the Inspector did in the Eynsham Inquiry, the evidence put forward by the Appellant on the extent of the shortfall in housing supply. Housing land supply in the District is less than 2 years. Such a shortfall must be regarded to be severe.

38. The main parties agree that the principal consideration in this issue is paragraph 116 of the NPPF; exceptional circumstances must be demonstrated to justify allowing, what is accepted to be, a major development in the CAONB. This paragraph states that consideration of such applications should include an assessment of the need for the development and its impact on the local economy, the cost of, and scope for, developing elsewhere outside the designated area, or meeting the need for it in some other way, and any detrimental effect on the environment and the landscape.

39. The emerging LP, with regard to the planned supply of housing, requires the construction of 800 dwellings over the plan period in the Burford-Charlbury Sub Area, 400 of which would be windfall developments, though the Objectively Assessed Need (OAN) for the District is set to increase so the requirement is also likely to increase when the emerging LP examination is concluded. Evidence indicates that there are, at present, more than seventy households who would qualify for affordable housing in Milton-under-Wychwood. Traditionally windfall developments are small and it is only developments of six dwellings or more that would, in accordance with policy, include any affordable housing units. If 400 windfall dwellings were to be constructed over the plan period, in the housing sub-area, all in developments of less than six dwellings, then no affordable housing units would be provided by windfall developments. The proposed development is a windfall development, it has not come forward by allocation through the emerging LP process, and it would include the provision of up to 31 affordable housing units.

40. Given the severe shortfall in the supply of housing land in the District there is an unarguable need for the proposed development of up to 62 dwellings. Furthermore, there is a significant need for affordable housing units in Milton-under-Wychwood which would not be met unless windfall developments of more than six dwellings, such as that proposed in this case, come forward. The cost of developing outside the CAONB is not relevant to consideration of housing developments but the

scope to do so is, and has been considered. Almost all of the Burford-Charlbury Sub Area is within the CAONB and the Council accepts that there is no scope for meeting the emerging LP requirement for the construction 800 dwellings in the sub-area on sites outside the CAONB. In this regard it is worth noting that in a recent 'call for 'sites'' process only one in the sub-area is outside the CAONB.

41. The proposed development would have a positive effect on the local economy; about 60 direct and indirect construction jobs would be created, direct and indirect construction gross value added (GVA) to the economy would be about £8 million, an economically active development population of about 78 persons would generate GVA of about £3.7 million per annum, there would be a New Homes Bonus of £0.6 million, and the Council would receive about £115,800 per annum from the payment of Council Tax. There is no evidence to indicate that there would be any loss of local revenue resulting from the proposed development.

42. The Council, through their witness Mr Smith, suggested at the Inquiry that there are other sites in Milton-under-Wychwood and elsewhere that could be developed to meet the need for housing in the Burford-Charlbury Sub Area. It was not suggested that any of these sites are outside the CAONB, they would therefore be subject to the same critical assessment of their effect on the character of the designated area as has been applied in this case, and they have not been subject to any assessment of their suitability and deliverability or to any sustainability appraisal. No evidence of their development credentials was submitted prior to the Inquiry, for scrutiny and challenge by the Appellant, and Mr Smith simply sought to offer his own verbal assessment of their suitability. Meeting the need for housing in the Burford-Charlbury Sub Area will inevitably require the development of land in the CAONB and, in this regard, there are no other ways of meeting the need. There is no reason not to consider the proposed development on its merits.

43. With regard to paragraph 116 of the NPPF the proposed development would have a positive effect on the local economy and there is no scope for developing to fulfil overall housing need in the Burford-Charlbury Sub Area outside the designated area. As concluded above the proposed development would have a less than significant effect on the character and visual amenity of the CAONB and this effect would be moderated by proposed landscaping. The severe shortfall in housing land supply in the District and the need to deliver market and affordable housing in the Burford-Charlbury Sub Area that is almost wholly within the CAONB combine to be the exceptional circumstances that justify major development of land in the CAONB. Meeting housing need is, fundamentally, in the public interest.

44. Paragraph 7 of the NPPF states that there are three roles of sustainable development; economic, social and environmental. The effect of the proposed development on the local economy has already been considered and has been found to be positive. The development would contribute to the supply of housing required to meet the needs of present and future generations and there is no reason to suppose that the scheme, the design of which would be developed at reserved matters stage, would not be a high quality built environment. Furthermore, in terms of locational sustainability, the Council's Settlement Sustainability Report, which ranks the District's settlements based on the availability of services and facilities and access to higher order settlements via sustainable modes of transport, concludes that the linked Wychwood villages of Milton and Shipton have a higher sustainability score than the service centres of Bampton and Long Hanborough. The proposed scheme meets the economic and social roles of sustainable development.

45. With regard to the environmental role of sustainable development the proposed housing scheme would not have any significant adverse effect on the character or visual amenity of the area, other than of the site itself which is to be expected. Concerns have been raised with regard to the effect of the development on badgers that have setts on and close to the site, and on the ability of the mains drainage system to accommodate the scheme and therefore to the effect of the development on the water environment. These are matters that can be addressed at reserved matters stage, when up-to-date and detailed information can be prepared, and are not reasons to prevent the grant of outline permission. All other matters raised by local residents and by Milton-under-Wychwood Action Group regarding the proposed development have been considered, including concerns regarding congestion and traffic safety in the village, but they do not, either individually or collectively, alter the conclusion that the proposed housing scheme meets the environmental role of sustainable development.

46. Taking all the aforementioned factors into account and the conclusions on the first and second main issues, and taking account of the NPPF as a whole, the proposed housing scheme would satisfy the three roles as set out in paragraph 7 of the NPPF and would thus be sustainable development. Paragraph 14 of the NPPF states that there is a presumption in favour of sustainable development.

Conditions and Section 106 Unilateral Undertaking

47. At the Inquiry the Council and the Appellants submitted an agreed list of 15 conditions. All the conditions are necessary and otherwise meet the tests set out in the Planning Practice Guidance. They have been imposed though they have been simplified or amended where necessary, in the interests of clarity and precision. The reasons for the conditions are set out in the schedule.

48. A signed and dated Section 106 Unilateral Undertaking, in favour of WODC, was submitted at the close of the Inquiry. Schedule 1 of the Undertaking covers the provision of at least 50% affordable housing units and the transfer of these units to an affordable housing provider. Schedule 2 of the Undertaking covers the provision and future maintenance of public open space, the provision and future maintenance of the ecological area, and the provision and future maintenance of tree copse and hedgerow areas. Schedule 3 of the Undertaking provides for the payment of a £6,510 art contribution to be used to enhance the interpretation of public spaces on the land and for the enhancement of public information.

49. The obligations of the Undertaking are all related to requirements of development plan policies and are all necessary to make the development acceptable in planning terms. They are all, furthermore, directly related to the development, are fairly and reasonably related in scale and kind to the development, and are in place to mitigate the effects of the development. The Legal Agreement therefore complies with the tests set out in the Planning Practice Guidance and with Regulation 122 of the CIL Regulations 2010 (CIL) and, with regard to clause 4 of the Undertaking, is required if planning permission is granted for the development. WODC has confirmed, in a note submitted at the Inquiry (Document 21), that there is no conflict with CIL Regulation 123(3).

The planning balance and overall conclusions

50. Section 38(6) of the Planning and Compulsory Purchase Act 2004 (the 2004 Act) requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate

otherwise. This requirement of planning law is at the heart of the balancing exercise. The planning balance requires planning judgement to be exercised.

51. With regard to paragraph 49 of the NPPF, given that there is no five year supply of housing land, saved LP policies for the supply of housing are not up to date; these include saved LP policies BE2, BE4, NE1, NE3 and NE4. This does not mean that they should be afforded no weight, just that they should be afforded reduced weight when applying Section 38(6) of the 2004 Act. In this regard policies that seek to protect the character and visual amenity of the countryside are consistent with one of the core planning principles of the NPPF and must therefore, in the light of paragraph 215 of the NPPF, be afforded more than just limited weight.

52. The proposed development would not be harmful to residential amenity other than to the amenities of the residents of The Cottage, but the harm would not be significant. For this and other stated reasons the proposed development does not conflict with saved LP policies H2, BE2, BE4 and BE19. The effect of the proposed development on the character of the CAONB and the surrounding area would be less than significant but there would be, in this regard, some conflict with saved LP policies NE1, NE3 and NE4. But material considerations, those that combine to be the exceptional circumstances that justify major development of land in the CAONB, in particular the severe shortfall of housing land in the District, indicate that determination of the appeal, in this case, must be made other than in accordance with the development plan.

53. The appeal is allowed and outline planning permission is granted for 'the erection of up to 62 dwellings, landscaping including change of use, formation of footpath and creation of ecological enhancement area, earthworks to facilitate surface water drainage and all other ancillary infrastructure and enabling works' on land south of High Street, Milton-under-Wychwood.

John Braithwaite

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr M Westmoreland Smith Of Counsel instructed by Mrs B Patel, Head of
Legal and Property Services at West Oxfordshire
District Council

He called

Mr P Radmall MA BPhil Principal of Peter Radmall Associates
CMLI

Mr P Smith BA(Hons) Planning Consultant
BSc(Hons) DipDBE MRTPI

FOR THE APPELLANT:

Mr J Cahill Queens Counsel instructed by Mrs G James of
Sharba Homes Ltd

He called

Mr B Wright BA(Hons) Director of Aspect Landscape Planning Ltd
DipLA CMLI

Mr J Hurlstone BSc(Hons) Managing Director of The Hurlstone Partnership
CMILT MCIHT

Ms R Canham BEng MSc Partner at WBM Acoustic Consultants
CEng FIOA

Mrs K Ventham BSc(Hons) Planning Partner at Barton Willmore
MSc MRTPI

INTERESTED PERSONS:

Mr G Hain District Councillor for Milton-under-Wychwood
Mrs R Lane Local resident
Mr M Askew Local resident
Mrs C Hale Local resident
Mr P White Local resident
Mr C Loader Local resident
Mr M Hallam Local resident
Mr H Cox Local resident
Mrs E Naish Chair of Milton-under-Wychwood Parish Council
Ms Lawrence Oxfordshire Badger Group
Mr J Pratt Local resident
Mr O Chapple Local resident and Chair of Milton-under-Wychwood Action Group

DOCUMENTS

- 1 Council's letter of notification of the Inquiry and list of those notified.
- 2 Opening statement on behalf of the Appellant.
- 3 Opening statement on behalf of the Council.
- 4 Statement of Common Ground.
- 5 Policy saving letter dated 2 June 2009.
- 6 Hedgerow removal notice.
- 7 Agreed conditions.
- 8 Landscape Masterplan - Drawing no. 5435/LM01.
- 9 Note of historic population and housing data.
- 10 Section through access off High Street.
- 11 Comparison of effects from the evidence of Ben Wright and Peter Radmall.
- 12 Extract from IEMA Guidelines.
- 13 Representation by Mr M Hallam.
- 14 Representation by Mr P White.
- 15 Representation by Mr C Loader.
- 16 Representation by Mrs R Lane.
- 17 Representation by Mr H Cox.
- 18 Representation by Mr M Askew.
- 19 Representation by Mrs C Hales.
- 20 Section 106 Unilateral Undertaking.
- 21 Council's compliance note on the Section 106 Unilateral Undertaking.
- 22 Application for costs by the Appellant.
- 23 Council's response to the application for costs.
- 24 Representation by Mr J Pratt.
- 25 Appellants' summary response to third party comments.
- 26 Appellants' response to MuWAG's representations.
- 27 E-mail from K Butler to C Tetlow dated 6 June 2016.
- 28 E-mail from J Westerman to A Fettes dated 7 May 2014.
- 29 E-mails between K Ventham and C Tetlow dated 6 June 2016.
- 30 E-mail from D Usher to G Johnson dated 6 June 2016.
- 31 E-mail from C Tetlow to K Ventham dated 6 June 2016.
- 32 Suggested conditions.
- 33 Wainhomes Ltd v SoSCLG and Others [2013] EWHC 597 (Admin).
- 34 Wychavon DC v SoSCLG and Others [2008] EWCA Civ 692.
- 35 Luton BC v Central Bedfordshire Council [2014] EWHC 4325 (Admin).
- 36 Cheshire East BC v SoSCLG and Renew Land Dev. Ltd [2016] EWHC 571 (Admin).
- 37 Closing submissions on behalf of West Oxfordshire District Council.
- 38 Closing submissions on behalf of the Appellant.

SCHEDULE OF CONDITIONS FOR PLANNING PERMISSION 15/03128/OUT

1. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.

Reason: Section 91 of the Town and Country Planning Act 1990 as amended.

2. Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.

Reason: Section 91 of the Town and Country Planning Act 1990 as amended.

3. Details of the appearance, landscaping, layout and scale of the development (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.

Reason: Section 91 of the Town and Country Planning Act 1990 as amended.

4. No development shall commence until detailed plans (including sections) of the vehicular access to High Street (including amendments to speed limit signing and road markings), and the pedestrian access to High Street, have been submitted to and approved in writing by the local planning authority. Both the pedestrian and vehicular accesses shall be constructed in accordance with the approved details prior to first occupation of any part of the development.

REASON: In the interests of highway and pedestrian safety.

5. No development shall commence until details of roads, footpaths, vehicular accesses, driveways, turning areas, car and cycle parking spaces have been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the roads, footpaths, vehicular accesses, driveways, turning areas, car and cycle parking spaces that serve that dwelling have been constructed in accordance with the approved details.

REASON: In the interests of highway safety.

6. No part of the development shall be occupied until a Travel Plan Statement and a Travel Information Pack have been produced in accordance with Oxfordshire County Council guidance and have been submitted to and approved in writing by the Travel Plans Team at Oxfordshire County Council. The Travel Information Pack shall be provided to all new residents of the development.

REASON: In the interests of sustainability.

7. No development shall commence, including site clearance, until an Ecological Method Statement (to include full badger mitigation details) and a Ten Year Ecological Management Plan have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved Method Statement and Management Plan and with the recommendations and ecological enhancements detailed in Section 6 of the Ecological Appraisal by Aspect Ecology dated January 2015 and referenced ECO3756.EcoAppvf1, Plan 3756/ECO4 Rev B, and Addendum by Aspect Ecology dated July 2015. All ecological works carried out shall thereafter be permanently maintained.

REASON: In the interests of the ecology of the area.

8. No development shall commence until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority. The scheme shall include details of a programme and methodology of site investigation and recording, a programme for post investigation assessment, the analysis of site investigation and recording, the publication and dissemination of the analysis and records of the site investigation, the archive deposition of the analysis and records of the site investigation, and the competent person or organisation to undertake the works set out within the written scheme of investigation. The scheme of archaeological investigation shall be carried out as approved.

REASON: In the interests of the archaeology of the area.

9. Development shall be carried out in accordance with the approved Flood Risk Assessment (FRA) (Hydrock ref. R/C14344/001.02) and the mitigation measures detailed within the FRA. The mitigation measures shall be fully implemented prior to occupation of any part of the development and shall be subsequently maintained in accordance with the timing/phasing arrangements embodied within the scheme.

REASON: To reduce the risk of flooding to the proposed development.

10. No development shall commence until a surface water drainage scheme has been submitted to and approved in writing by the local planning authority. The scheme shall include details of the size, position and construction of the drainage scheme and results of percolation tests carried out at the site to demonstrate infiltration rates. Where appropriate the details shall include a management plan setting out the maintenance of the drainage asset. The surface water drainage scheme shall, where possible, incorporate Sustainable Drainage Techniques in order to ensure compliance with the Flood and Water Management Act 2010. Development shall be carried out in accordance with the approved scheme before any part of the development is occupied and shall be maintained in accordance with the approved scheme thereafter.

REASON: To comply with The Water Act 2010.

11. No development shall commence until details of fire hydrants, including the phasing of their installation, have been submitted to and approved in writing by the local planning authority. Fire hydrants shall be installed in accordance with the approved details.

REASON: In the interests of fire safety.

12. No development shall commence until a strategy to facilitate the delivery of superfast broadband to all dwellings has been submitted to and approved in writing by the local planning authority. The strategy shall ensure that either a landline or ducting to facilitate the provision of the service (>24mbs) to each dwelling from a site-wide network, is in place and provided as part of the initial highway works, unless evidence is put forward and agreed in writing by the local planning authority that technological advances for the provision of a superfast broadband service will no longer require below ground infrastructure. Development of the site shall be carried out in accordance with the approved strategy.

REASON: In the interest of improving broadband connectivity in rural areas.

13. The reserved matters submission shall include a comprehensive landscaping scheme, including land within and adjoining the site, in general accordance with the Landscape Masterplan 5435/LM01 Rev N and the ecological plan 3756/ECO4 Rev B. The scheme shall include the location and details of trees and hedgerows to be retained (within or adjoining the site) together with details for their protection

during construction (in accordance with BS 5837:2012), details of the retention and repair of existing natural dry stone walls, except where removal is necessary to facilitate the means of access, details of all proposed planting areas and plant species, numbers and sizes, details of all proposed boundary treatments, details of all surfacing materials, and details of any mounding or other landscape features to be introduced. The scheme shall be fully implemented as approved by the end of planting season immediately following completion of the development or the development being brought into use, whichever is the sooner. In the event that any of the trees or shrubs planted in accordance with the scheme die or become seriously damaged or destroyed within 5 years of the completion of the development, trees or shrub of equivalent number and species, shall be planted in the same positions and thereafter maintained.

REASON: In the interests of the visual amenity of the development and the surrounding area.

14. No development shall commence until plans of the site showing existing and proposed ground levels and finished floor levels of all proposed buildings have been submitted to and approved in writing by the local planning authority. The levels shall be shown in relation to a fixed and known datum point. Development shall be carried out in accordance with the approved plans.

REASON: To ensure the satisfactory development of the application site.