

Appeal Decision

Inquiry held on 14 January 2014

Site visit made on 15 January 2014

by **Jean Russell MA MRTPI**

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

Decision date: 3 March 2014

Appeal Ref: APP/C3105/A/13/2203995

Land West of Warwick Road, Banbury, Oxfordshire

- 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 Miller Strategic Land against the decision of Cherwell District Council
- The application ref. 13/00656/OUT, dated 2 May 2013, was refused by notice dated 9 August 2013.
- The development proposed is 'up to 300 dwellings, with access from Warwick Road together with associated open space, allotments and a 500sqm retail store'.

Summary of Decision: The appeal is allowed and planning permission is granted subject to conditions as set out below in the Formal Decision.

Preliminary Matters

1. In this decision, 'the Council' is a reference to Cherwell District Council and 'OCC' is a reference to Oxfordshire County Council.
2. The outline application was made with details of the access arrangements for the proposed development. The matters of appearance, landscaping, layout and scale were reserved for future consideration
3. The appellant submitted an Environmental Statement (ES) under the *Town and Country Planning (Environmental Impact Assessment) Regulations 2011*. The ES comprises three volumes dated March 2013: Volume 1 – Non-Technical Summary; Volume 2 – Technical Assessment, and Volume 3 – Technical Reports and Appendices. I consider that the contents of the ES meet the requirements of the Regulations. I have taken them into account in this decision.
4. Revised plans were submitted to the Council while the planning application was under consideration. The Council's decision was made with reference to drawings CSa/1986/110H, 111, 112A, 114C and 115, and JNW7101-01B. I have considered this appeal on the same basis. I have also had regard to the later plans submitted with Mr Self's proof of evidence CSa/1986/116, 121A and 122A – and to other documents and correspondence listed in the Statement of Common Ground.
5. The parties have cited other appeal decisions relating to proposals for housing on the following sites in Cherwell: Milton Road, Bloxham; Bloxham Road, Banbury, Barford Road, Bloxham, and Bourne Lane, Hook Norton. The decisions on those cases were all made by the Secretary of State on 23 September 2013 and full appeal references are given below.¹ A further appeal relating to Banbury Road, Deddington was determined on 18 December 2013.²

¹ APP/C3105/A/12/2189191, APP/C3105/A/12/2178521, APP/C3105/A/13/2189896 & APP/C3105/A/12/2184094

² APP/C3105/A/13/2201339

6. The duration of the inquiry was reduced after the Council withdrew objections to the proposed development. I heard that the Council sent a letter notifying local residents of the change by email where possible or otherwise by post. Either way, the letter should have been received before the inquiry opened. Representatives of local residents participated in the inquiry and I have also had regard to their written representations. I am satisfied that their interests were not prejudiced.

Main Issues

- 7 Following discussions with the appellant and the receipt of additional information, the Council withdrew its first two reasons for refusing permission, which related to the impact of the proposed development on the countryside and its relationship with the adjacent land use. However, there are outstanding objections from local residents on those and other planning matters.
8. The Council also accepts that its third reason for refusal, relating to provision of infrastructure, could be overcome through planning obligations made under s106 of the *Town and Country Planning Act 1990*. The appellant submitted a planning agreement to the inquiry but disputes the need for or scale of some obligations.
9. Accordingly, I consider that the main issues are
- Whether the proposed development is acceptable in principle, with regard to national and local planning policies, and the Council's housing land supply,
 - The effect of the proposed development on the character and appearance of the surrounding area, with regard to the setting of nearby heritage assets,
 - The relationship of the proposed development to the adjacent Drayton Leisure Golf Centre and the implications for the living conditions of future occupiers,
 - The effect of the development on highway safety; and
 - Whether the proposed development should provide contributions towards local infrastructure and whether the proposed contributions would meet the tests set out under Regulation 122 of the *Community Infrastructure Levy (CIL) Regulations 2010*

Planning Policy

- 10 The development plan comprises saved policies of the *Cherwell Local Plan* (LP), adopted in 1996 with an end-date of 2001.³ In accordance with paragraph 215 of *National Planning Policy Framework* (the Framework), I attach weight to the relevant LP policies according to their degree of consistency with the Framework
11. The *Non-Statutory Cherwell Local Plan* (NSLP) was approved by the Council in 2004 as interim planning policy for decision-making purposes. However, the NSLP was never adopted and the end-date of 2011 has also passed, so it carries limited weight as a material consideration.
12. The Council is preparing a replacement development plan. The *Pre-Submission LP October 2013* (PSLP) has been subject to public consultation but it had not been submitted for Examination by the date of the inquiry, and there are unresolved objections to it. At this stage, it carries little weight.
13. Paragraph 14 of the Framework sets a presumption in favour of sustainable development. This means approving proposals that accord with the development plan without delay. Where the plan is absent or silent, or relevant policies are out

³ The Oxfordshire Structure Plan and South East Plan have been revoked and no policies have been saved that are relevant to this appeal

of date, permission should be granted for development unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

Reasons

Principle of Development

- 14 The appeal site is an agricultural field of some 12ha. It adjoins the development boundary of Banbury which is formed by Warwick Road. It is in the countryside for planning policy purposes and not allocated as a development site. LP Policy H18 indicates that planning permission will only be granted for the construction of new dwellings beyond built-up limits where they would be essential for agriculture or other undertakings, or they would comprise a small scale low cost housing development.⁴ The proposed development would conflict with Policy H18.
15. The Framework seeks to boost significantly the supply of housing and it requires housing applications to be considered in the context of the presumption for sustainable development. Local planning authorities (LPAs) should identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their requirements, with an additional buffer of 5% to ensure choice and competition in the market. Where there has been a record of persistent under-delivery of housing, the buffer should be increased to 20%. If there is no demonstrated five year supply of deliverable sites, relevant policies for the supply of housing should not be considered up to date.
16. The Council and the appellant agree that the base housing land supply requirement for 2013-18 should be 3350 dwellings, based on requirements in the PSLP that were derived from the now revoked South East Plan. The Council also accepts that it has a record of persistent under-delivery, and the five year requirement should be increased to 5472, to make up the shortfall that has already accrued over the PSLP period from 2006, and to provide a buffer of 20%.
17. The four appeals determined by the Secretary of State, as described above, were all allowed, even where the schemes would be contrary to certain LP policies, on the basis that the LP is out of date and the Council could not demonstrate a five year supply of housing land. The Deddington appeal was allowed for similar reasons. The Council has resolved to permit, subject to a planning obligation, residential development on land north of Hanwell Fields to the east of the site. These planning decisions will have served to increase housing land availability, but the Council accepts that it still cannot demonstrate a five year supply.
18. The parties dispute the extent of the housing land shortfall but it is not necessary for me to adjudicate on this. The 'best case scenario' is that the Council can provide 4.7 years worth of housing against its requirements, meaning that there would be a need of some 357 dwellings. The appellant disputes the deliverability of some sites which are relied upon by the Council as components of the housing land supply. Either way, the proposed development would help to reduce but not fully redress the shortage of housing in the area.
- 19 In my view, the Council's failure to demonstrate a five year supply of deliverable sites and the housing contribution offered by the proposed development are material considerations of significant weight in this appeal. The LP passed its end-date more than a decade ago and it does not allocate land for housing in line with current needs. This means that, although Policy H18 is not directly concerned with the supply of housing, the restrictions that it imposes and the existing boundaries

⁴ NSLP Policy H19 is similarly restrictive

of Banbury impede the delivery of the housing now required. The LP is out of date, Policy H18 carries limited weight and paragraph 14 of the Framework is engaged. Planning permission could only be refused if the adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

20. LP Policy C8 resists sporadic development in the countryside. The aim of this policy is to maintain the attractive, open, rural character of the countryside. The aim of Policy H18 is also to protect the countryside from sporadic development.⁵ I assess the impact of the proposed development on the local landscape as a separate issue, but I note here that the site is not within an area such as Green Belt or Area of Outstanding Natural Beauty, where the Framework indicates that development should be restricted. I also consider it would be difficult to describe the proposed housing as 'sporadic' when it would adjoin the settlement boundary. I would not dismiss this appeal simply because the site is outside of the built-up area when there is an undisputed housing shortage and the LP is out of date.
21. The site lies between Banbury and the nearby village of Drayton, and it is thus included in a Green Buffer proposed to be designated in PSLP Policy ESD15. The purpose of the Green Buffer would be to maintain the distinctive identity and setting of Banbury and its neighbouring settlements, prevent coalescence, and protect the identity of valued features of landscape and historic value and important views. However, the Council accepts that, since it is far from being adopted, Policy ESD15 carries little weight at this stage.
22. Moreover, the *Final Draft Green Buffer Report* (GBR) of March 2013 found that the site is not integral to the Green Buffer and would have potential to meet longer term development needs. The *Draft Banbury Peripheral Development Sites Analysis* (PDSA) proposed that the site be excluded from the Green Buffer, as it is within the 'environmental limits' of Banbury. The GBR included the site within the Green Buffer 'for logical boundary reasons' and because the land was not then considered to be required for housing. But there is now a recognised need to release the site – and I concur with the GBR and PDSA that the development would not unacceptably erode the strategic gap between Banbury and Drayton.
23. The Council accepts that the site is a sustainable location for new housing. Being on the edge of Banbury, it is within walking and cycling distance of – or connected by bus service to – shops, services and areas of employment. The development would also be sustainable in that there would be no loss of high grade farmland and it would not be subject to any environmental constraints. The scheme would offer social and economic benefits, including that 30% of the dwellings would be affordable and there would be a mix of house types, so as to address local needs and to create a mixed and inclusive community.⁶ With a new convenience store, allotments, open space and play facilities, the development would meet some day-to-day needs of nearby and future residents, and so reduce the need to travel.
24. The Framework does not prohibit new housing on greenfield sites and PSLP Policy BSC2 indicates that 50% of new housing in Cherwell will need to be on greenfield land.⁷ The site was identified as a first reserve strategic housing allocation site in the February 2010 *Draft Core Strategy* (CS). Draft CS Policy BAN4 indicated that the site had capacity for up to 400 homes and associated services and facilities, and would be released for development if required to meet housing needs. The proposed development could not be justified simply on that basis, since the draft CS has been superseded by the PSLP. However, draft Policy BAN4 adds a little

⁵ NSLP Policies EN30 and EN31 also resist sporadic development in the countryside and development beyond the built-up limits of Banbury that is incompatible with a rural location

⁶ In accordance with LP Policy H5, NSLP Policy H4 and PSLP Policies BSC3 and BSC4

⁷ Inquiry document 7

weight to my view that the site is sustainable and suitable for release to address the now recognised housing deficit.

- 25 The PDSA suggested that the site has capacity for up to 238 dwellings on a net housing area of some 6.6ha. It is not clear how that assessment was made – or why Draft CS Policy BAN4 referred to 400 homes. However, the Council does not object in principle to the proposed construction of up to 300 dwellings – and it is also accepted that the scheme is deliverable. The illustrative Masterplan shows that 300 houses could be built at a moderate density of 35 dwellings per hectare across some 8.6ha of the site⁸. If any constraints to delivering this quantum of development emerged, they could be considered at the reserved matters stage.
26. I conclude that the proposed development would be sustainable and is acceptable in principle, in accordance with the Framework. The conflict with the outdated LP Policies H18 and C8, with NSLP Policies H19, EN30 and EN31 and with PSLP Policy ESD15 is outweighed by the need for and benefits of providing market and affordable housing with associated amenities on this site

Character and Appearance

Landscape Impact

27. The site marks the start of an area of open countryside west of Warwick Road. The landscape has an open and undulating character, which is dominated by arable fields but also includes pockets of woodland. The site itself slopes slightly from north east to south west, while the land to the west falls to a valley and Sor Brook. I accept that the proposed development would urbanise the site and encroach upon the countryside – but it does not follow that there would be unacceptable harm
28. The site is within the Ironstone Downs Area of High Landscape Value (AHLV) designated by the LP. However, the *Cherwell District Landscape Assessment* (1995) identified the site as lying within an area for restoration, where there is some degradation to the character of the landscape – and capacity for change, including by integrating new development within a strong landscape framework. The *Cherwell Landscape Sensitivity and Capacity Assessment* (CLSCA) carried out in 2010 identified that the site had a low sensitivity to development. The Banbury Landscape Sensitivity and Capacity Assessment (2013) similarly suggested that the site would be a natural extension to the western boundary of the town.
29. I saw that the site has a clear relationship with Banbury, since it faces Hanwell Fields on the eastern side of Warwick Road – and Warwick Road itself is a key route into town. The site adjoins North Oxfordshire Academy and a small housing area at Ludlow Drive and Warkworth Close to the south of the site – and these form part of the character of the area, even if the dwellings were approved in exceptional circumstances as I heard at the inquiry. The site also adjoins Drayton Leisure Golf Centre (DLGC) to the north and west, a typical urban fringe land use. The presence of the school, housing and golf course on its western side means that Warwick Road does not appear as a distinct boundary between town and country.
30. As well as this suburban context, the site has limited intrinsic scenic value. It mainly comprises intensively managed grassland. Its key landscape features are boundary trees and hedgerows, which are sparse in places and varied in terms of species, maturity, density and height. The PDSA found that the site plays a minor role in the landscape setting of the town, I agree and would say the same in respect of the AHLV. Given the lack of a five year supply of housing land, the site represents a logical and suitable location for an urban extension.

⁸ PSLP Policy BSC2 seeks the efficient use of land with housing built to a density of least 30 dwellings per hectare

31. The development would be accessed from and orientated to address Warwick Road. The illustrative Masterplan suggests that the housing area on the site would not extend north of Dukes Meadow Drive, the northern boundary to Hanwell Fields. The plan also shows that the estate would be both well-contained and sympathetic in layout and density to nearby residential areas. These details and the design of buildings could be controlled at reserved matters stage, but a condition could be imposed now to restrict the height of buildings. There would be green spaces within the 'development area' on the site, including private gardens and areas of public open space. The site would also be laid out with landscape belts and ponds to the southern and western boundaries and with allotments to the north.
32. The existing landscape features on the site would largely be retained; some trees and hedgerows would be removed to create the site accesses but most would be kept with space to grow. There would be a substantial amount of new planting, especially along the site boundaries. The vegetation would include native and ornamental trees, hedgerows and thicket, wetland scrub and wildflower grassland. A planning condition can be imposed to afford the Council control over the landscaping scheme. There would still be a loss of open land, but the development would conserve and enhance features of landscape value on the boundaries, so that the development could integrate with the adjoining countryside.
33. The proposed development would be visible from Warwick Road to the east, public rights of way to the west, adjacent dwellings and DLGC. From most vantage points, however, the site is already seen in context with adjacent development. Set back behind landscaped belts and with restricted heights, the proposed buildings would be generally well-screened and not unacceptably prominent even when trees are not in leaf. There is no escaping the fact that views of the site would change – but I am satisfied that the development would assimilate into the landscape and it would not unacceptably detract from the overall character and appearance of the surrounding area or AHLV.
34. The appellant proposes to erect a ball-stop netting fence along a 200m stretch of the western boundary of the site, to prevent golf ball escape from DLGC into the proposed development. The fence would be 10-20m in height and I consider below whether or not it would be effective for its purpose. At this stage, I note that the fence would likely be formed of fine mesh netting, designed to be unobtrusive. Supplementary landscaping on the western boundary would help screen the netting and supporting columns. Even if the fence was visible from nearby vantage points, it would appear functionally related to DLGC. The Council accepts that it need not cause unacceptable harm to the landscape, subject to the approval of details.
35. The Milton Road appeal mentioned above related to residential development on a 'rural field'. The Inspector advised – and the Secretary of State agreed – that changing the field to a housing estate would cause some harm to the character and appearance of the immediate landscape, in conflict with LP Policy C7, which does not permit development that would cause 'demonstrable' harm to the topography and character of the landscape. However, it was also found that the change would be localised and no greater than would be caused by any greenfield development. This appeal concerns a different site and area, but I reach the same conclusion. The proposed development would cause limited harm to the countryside, but not to the extent that permission could be reasonably refused.
36. Similarly, the proposed development could be said to conflict with LP Policy C13, which seeks to conserve or enhance the environment of the AHLV. However, the AHLV designation is not proposed to be carried forward into the PSLP and Policy C13 is not consistent with the Framework, which expects local plans to give protection to landscape areas commensurate with their status through criteria-

based policies against which development is judged. The Council's Landscape Officer found that the landscape impact of the development would be marginal if the principle is accepted⁹. I attach little weight to any conflict with LP Policy C13.

Impact on Heritage Assets

37. The south western corner of the site adjoins the Drayton Conservation Area (DCA), which covers the historic village of Drayton and its rural hinterland. The western boundary of the DCA, at Sor Brook, also marks the eastern edge of the Wroxton Conservation Area (WCA). Both conservation areas include a number of listed buildings, with WCA covering Wroxton Abbey and a Registered Park and Garden. However, the GBR found the site does not have a critical role in protecting the setting of the DCA or WCA. The CLSCA noted that the gap between Drayton and Banbury is already affected by North Oxfordshire Academy and DLGC.
38. I saw that the site is visible from the DCA, but it appears contained, distant from Drayton village and more closely related to the adjacent golf course and school. The topography is such that houses to the east of Warwick Road are seen to form a backdrop to the site. The proposed development would serve to bring the urban area closer to the DCA – but it would still be sufficiently far away as not to compromise the identity of Drayton. It would still be separated from the village by arable land. The development would appear orientated towards and connected to Banbury, and it would be set within deep and heavily planted boundaries. I am satisfied that it would preserve the setting and character of DCA.
39. The site is and appears more distant from WCA. The Council's committee report on the proposed development refers to the *Wroxton and Drayton Strategic Heritage Assessment* (2013) which found that, with appropriate mitigation measures, adverse effects on heritage assets could be reduced and positive outcomes achieved. With the proposed landscaping, the development would preserve the setting of WCA – and of nearby listed buildings and the Registered Park and Garden. I also find that the proposed development would not harm the setting of Hanwell Conservation Area, which is some distance to the north and on the opposite side of Warwick Road. The CLSCA noted that the site is well-screened by landform and planting from Hanwell.

Conclusion

40. I conclude that the proposed development would cause a degree of harm to the character and appearance of the area, by encroaching upon the countryside – but the harm would be limited and not unacceptable. The impact of the development on the landscape would be adequately mitigated by new and retained open spaces and planting. The setting of heritage assets would be preserved. The adverse impacts of development would not significantly and demonstrably outweigh the benefits outlined in relation to the first main issue.
41. The proposed development would not conflict with LP Policies C14, C15, C17, C28, C30 or C33, or NSLP Policies EN1, EN32, EN34, EN40, D1 or D3, which seek amongst other matters to prevent the coalescence of settlements and undue visual intrusion into the countryside; to retain trees and provide new planting; enhance the urban fringe, ensure that development would be sympathetic to its context and of a high standard in an AHLV, retain undeveloped gaps important to preserving the character of settlements or the setting of listed buildings; and to preserve or enhance the character and appearance of conservation areas. It would comply with the Framework, which expects development to respond to local character and

⁹ As stated in the Council's committee report

conserve heritage assets. The policy accord on these counts and the benefits of the proposed development override any conflict with LP Policies C7 and C13.

Future Occupiers and Drayton Leisure Golf Centre

42. DLGC includes a 9-hole golf course, club house, small camp site and 18-bay driving range. The nearest bay is some 20m from and angled at 90-100° from the appeal site boundary. The proprietor of DLGC, Cllr Turner, suggests that golf balls from the driving range are already hit some 100m into the site. He fears that they could damage the proposed houses, threaten the safety of future residents – and lead to complaints that would jeopardise his business. Cllr Turner gave evidence to the inquiry about his family's investment in DLGC. I understand his apprehension and also note that Sport England objected to the proposed development.
43. The appellant has provided legal advice that balls hit outside of DLGC could already be deemed a nuisance for which DLGC is responsible. It would be unreasonable to refuse permission for an acceptable use of land because of irresponsible actions by an adjacent landowner – and it is irrelevant that the nuisance would only become an issue if the proposed housing is built. The appellant also argues that DLGC could implement simple measures to reduce golf ball escape. re-orientating the bays or at least the slip mats in the driving range; restricting use of the bays nearest to the site, and/or using low spin rating golf balls.
44. I accept these points, but I shall consider the issue further because it is necessary to ensure the safety of future occupiers of the proposed development. The appellant commissioned a survey from GRN Consulting (GRNC) in April 2013 to assess the impact of DLGC on the proposed development and vice versa, the potential for golf ball escape, and mitigation measures that could be carried out. GRNC is an independent organisation comprising a professional golfer and golf course designer. They reviewed the proposed development, visited the site and DLGC, and met Cllr Turner to discuss his business operations. I am satisfied that GRNC prepared an objective and evidence-based report.
45. The GRNC report acknowledged that a significant number of golf balls are currently hit out of the driving range into *part* of the site – an area of some 1.5ha. The affected land is intended to include 44 houses – but these could be deleted from the scheme.¹⁰ Since this is an outline application for 'up to' 300 dwellings, I could not refuse permission for the entire development even if it was found at reserved matters stage that a part could not be safely built. I also consider that some balls would enter the site now because there is no effective boundary treatment at present. The existing trees and shrubs on the western boundary of the site are sparse towards the north and the existing fence is low
46. GRNC found that mitigation measures could be provided to prevent unacceptable risk of injury and damage in the affected area. The report showed that ball escape could be significantly reduced by the installation of appropriate height ball-stop netting along the relevant part of the boundary, even if DLGC took no steps to address the issue. GRNC advised that the erection of 20m high netting would be effective 'under normal circumstances', but it might not exclude shots 'maliciously aimed' at the site. There is no evidence that malicious behaviour occurs and this could not be a reason to dismiss the appeal.
47. As noted above, the appellant proposes to erect – and would maintain – a 20m high ball-stop netting fence as recommended by GRNC. Cllr Turner queries whether the fence would suffice given the speed and height at which balls may be

¹⁰ The affected area is shown shaded in pink on drawing CSa/1986/116

hit from the driving range. He submitted information from the Range Automation Systems website, which states that ball flight graphs show a maximum height of 110 feet [33.5m] for all clubs some 180-200 yards [165-183m] from the tee line. This information does not help me calculate the typical or maximal heights of balls hit from the driving range where they cross the site boundary

48. Thomas Jones, a golf professional who teaches at DLGC, wrote to Cllr Turner that a golfer of average ability could drive a ball some 210 yards [192m], and it would be some 100 feet [30.5m] in the air around 190 yards [174m] from where it is struck. Mr Jones stated that it 'would be highly irresponsible to build a housing estate adjacent to a golf driving range and protect it with a stop net that stands only 60 feet [18m] high'. This evidence is strongly worded – but it carries limited weight because Mr Jones has no experience to my knowledge of designing driving ranges. Moreover, Mr Jones' letter does not assess the actual likely relationship between DLGC and the proposed development with reference to the plans.
49. I heard that, following a grant of planning permission, a development of 200 new homes near to Exeter Golf and Country Club was found to be too close to the boundary. In order to retain insurance against claims for injury or damage, the club had to seek permission for a 30m high protective fence. However, I am not aware of key details of that case – including the proximity of the approved houses. The information from Range Automation Systems confirms that the need for and height of ball-stop netting is a site-specific question.
50. The appellant commissioned Pegasus Environmental Planning (PEP) to provide additional evidence for the inquiry, on safety and management issues arising from the operation of DLGC and in relation to mitigation measures. The PEP report was again prepared by professionals, including golf course architects, after carrying out desktop studies and a site visit. It is more detailed than the GRNC report, particularly in its assessment of potential ball dispersal based on the alignment of the driving range bays and golf ball trajectory.
51. PEP considered that the nature of the driving range is such that it is likely to appeal the broader family market and less serious golfer, so the majority of the clientele would have a medium-high handicap. This means that, although learners may hit errantly, most patrons of DLGC would generally hit balls to a lower maximum height over shorter distances. Nevertheless, PEP recommended that the golf safety netting should be designed to accommodate low-medium handicap ball trajectories – and on this cautionary basis, PEP supported the GRNC view that the maximum height of ball stop netting need only be 20m.
52. Cllr Turner suggests that he may have a case for an easement over the appeal site. This is a separate legal matter but, in any event, I find the appellant's evidence comprehensive and convincing. The erection of 20m high ball-stop netting, supplemented by new tree and shrub planting along the western site boundary, would prevent unacceptable risk of ball escape from DLGC into the proposed development. Cllr Turner's fears that this would not be the case are misplaced
53. Cllr Turner is also concerned that living conditions at the proposed development would be affected by floodlighting and noise at DLGC. The existing floodlights fixed to the front of the driving range would be at least 60m from and orientated away from the proposed houses. They are at a level where they would be screened by the proposed boundary planting and they are turned off at 21.30 hours. The same time restriction would apply to additional lighting columns permitted for the golf course at DLGC, which is further from the site. Future occupiers of the proposed development would not be subject to unacceptable light pollution.

- 54 In relation to noise, DLGC is used as a venue for events such as concerts and weddings, and it is licensed for the playing of music outside 24 times a year until 00.30 hours. Cllr Turner told the inquiry that the stage is usually placed by the site boundary– but it has been located elsewhere on his land in the past. In my view, there is ample open space at DLGC to position the stage well away from the proposed development. There need not be any unacceptable disturbance to future occupiers of the appeal site or disruption to the operation of DLGC.
55. I conclude that the proposed development, subject to the full approval of the ball-stop netting, would be compatible with DLGC. There would be no unacceptable threat to the living conditions of future occupiers or the operations of DLGC. The proposed development would accord with LP Policy C30, which seeks to ensure that new housing provides adequate standards of amenity.¹¹

Highway Safety

56. The Council did not object to the proposed development on highway grounds, but local residents raised concerns about access and safety issues in their written representations and at the inquiry. Vehicular access to the development would be provided by two roads into the site leading from Warwick Road. The northern access would be constructed as a fourth arm to the Warwick Road/Dukes Meadow Drive roundabout. The southern access would have a priority-controlled junction to Warwick Road located about halfway down the eastern boundary of the site.
57. The Transport Assessment (TA) provided with the ES indicates that levels of traffic generated by the proposed development would not create unacceptable congestion at the junctions between the site accesses and Warwick Road. This is undisputed. However, Warwick Road is a key route into Banbury and it also provides access to the M40. Local residents object that traffic from the proposed development would seriously exacerbate congestion which already occurs on the local road network.
58. Following a query from the Highways Authority (HA), the appellant revised the trip generation analysis set out in the TA. The HA accepts the amended figures.¹² The indicative schedule of accommodation suggests that the development would include 90 affordable homes – but given the distance from the site to the town centre, the revised trip generation analysis assumes that the whole development would generate private housing trip rates, so as to increase the predicted number of journeys that would be made by car.
59. The appellant's evidence is also based on a recent traffic survey – and it predicts the likely directions of traffic movements from the proposed development. It takes account of other new developments in the area for which planning permission is granted, and likely general traffic growth up to 2022. On this basis, it is shown that traffic from the appeal site would lead to some increased queuing at nearby roundabouts during peak hours but not so as to compromise operational capacity.
60. Measures to mitigate the traffic impacts would be secured via the planning obligation discussed below. These would include improvements to the highway network, including a ghost island along Warwick Road to ease turning movements into the site and Firtree Close – and a Traffic Regulation Order to reduce the speed limit from 40-30mph along the site frontage. New crossing points along Warwick Road and separate accesses into the site would encourage future occupiers to walk, cycle or use public transport, rather than use the car for all journeys. The appellant would fund improvements to the local bus service and bus stops. I find that the development would be unlikely to cause unacceptable traffic congestion.

¹¹ LP Policy C31 cited by the Council concerns the introduction of incompatible uses into residential areas

¹² Memo from RPS Group for the appellant to Michael Deadman at OCC, dated 22 July 2013, inquiry document 14

61. Local residents have queried why the proposed southern access would not connect to the Warwick Road/Highlands roundabout. The location of the access was chosen in part to avoid felling trees – but local residents suggest that that was the wrong priority. I understand their perception that a direct access to the roundabout would simplify traffic movements. However, it does not seem in fact that any such layout would reduce queuing or risk of accident. *Design Manual for Roads and Bridges* recommends the use of ghost islands as proposed to segregate turning and flowing traffic, because they are effective at reducing delays and improving safety.
62. Personal Injury Accident (PIA) records show that in the five years from 1 January 2007, two PIAs occurred at each of the roundabouts to the north and south of the site, these were related to driver error rather than road conditions. No PIAs occurred along the site frontage. The location and design of the southern site access was agreed with the HA and I am satisfied that it would not undermine the free flow of traffic or safety of highway users. I also find that, with all of the safety measures proposed, particularly to reduce speeds and improve pedestrian and cyclist facilities, the development would be more likely to reduce than increase danger on Warwick Road for children walking to nearby schools.
63. I conclude that the proposed development would cause no unacceptable loss of highway safety. It would provide highway works and transport facilities required, and safe and suitable access, in accordance with LP Policy TR1 and the Framework

Infrastructure Provision

64. The submitted planning agreement is made between the appellant and the landowner, and the Council and OCC. I shall consider whether the contributions proffered would meet the tests set out under Regulation 122: be necessary for the development to proceed; directly related to the development, and fairly and reasonably related in scale and kind to the development. The agreement makes provision for all contributions sought by the Council and OCC, but also that the obligations would cease to have effect if they would not comply with the tests
65. In support of the contributions sought, OCC and the Council have referred to various LP, NSLP and PSLP policies – and to the *Draft Supplementary Planning Document. Planning Obligations* (DSPD). The SPD offers guidance on what new infrastructure and facilities will need to be provided as a result of development, and how to assess the requirements for in-kind provision or financial contributions.
66. I have had regard to the SPD, particularly where its relevance is not disputed. However, it carries limited weight since it was not subject to public consultation. *National Planning Practice Guidance* (NPPG) advises that policies for seeking obligations should be set out in a development plan document (DPD) to enable fair and open testing of the policy at examination. SPDs should not be used to add unnecessarily to the financial burdens on development, or to set rates or charges not established through development plan policy. The NPPG was in beta mode at the time of the inquiry but the Council did not contest the point.
67. Where appropriate, contributions are indicative and related to the likely number of homes or residents at the development. The sums could change depending on the quantum and mix of dwellings approved at reserved matters stage.

Public Transport, Highways Infrastructure and Public Right of Way

68. I have already summarised the contributions proffered towards public transport and highways infrastructure improvements. The measures would be necessary to ensure that the development does not place undue pressure on local transport services or the road network, and to encourage use of sustainable modes of

transport. The contributions would be directly and fairly related to the development, being based on formulae related to the number of dwellings

69. A contribution is required towards improvement and maintenance of nearby public rights of way, which future occupiers of the development could be expected to use. The funding would again be directly and fairly related to the development. The transport, highways and rights of way contributions comply with the CIL tests.

Primary, Secondary and Special Needs Education

70. OCC seeks contributions towards primary, secondary and special needs education in relation to the increased demand for such services likely to be generated. NSLP Policy OA1 seeks provision for education and other community services and facilities. PSLP Policy BSC7 similarly seeks provision for schools, community and other learning facilities.
71. Assuming 300 homes, the proposed development would generate an increased demand for 91 places in the catchment area of William Morris primary school, which is operating close to capacity. It is forecasted that there will be an overall deficiency of primary school places in Banbury by 2015 unless schools expand. The contribution sought in respect of primary education is based on a Government cost multiplier for a school extension. It meets the CIL tests.
72. OCC estimate that the development would generate a requirement for up to 69 secondary school places. Banbury secondary schools currently have spare capacity but it is estimated that this will disappear by 2019/20. The contribution sought is to support school capacity expansion, on the basis of a cost multiplier per child and with an allowance for the existing surplus places. Again the contribution accords with the tests and can be taken into account.
73. Similarly, the contribution sought in respect of Special Education Needs (SEN) is based on the likely increased demand for places at the special school which serves this area and is in need of expansion. The obligation is necessary and directly and fairly related to the development

Adult Learning, Adult Day Care and Integrated Youth Support

74. OCC seeks contributions towards the delivery of improved adult learning facilities in Banbury – since the existing centre is in a relatively inaccessible location – and to improve or expand day care facilities for elderly adults. The contributions sought are based on estimates of the adult and elderly populations of the proposed development and the 'likely proportionate level of need'. The SPD describes how new development generates proportionate demand for adult learning and day care services, and how contributions are calculated. The appellant does not dispute the obligations. They would comply with the CIL tests as well as NSLP Policy OA1 and PSLP Policies BSC7 and INF1.
75. OCC also seeks a contribution towards the integrated youth support service, which runs services for young people through multi-use centres. The Banbury Early Intervention Hub is operating at capacity, and the proposed development would add to the need for provision. The contribution sought is based on the cost per user of expanding the service. Again the appellant accepts the need for and scale of the contribution and I find that it meets the CIL tests

Banbury Library and the Museum Resource Centre

76. OCC seeks a contribution towards new library provision being planned in Banbury, which would serve the proposed development. The contribution is based on the

likely population of the development and reading requirements per resident. A contribution is also sought for an extension to the county's Museum Resource Centre on the basis of the cost per dwelling. The appellant does not dispute the obligations, which would comply with NSLP Policy OA1 and PSLP Policy INF1 as well as the CIL tests. I take them into account in my decision.

Strategic Waste Management and Refuse Bins

77. The supporting text to NSLP Policy OA1 indicates the policy would cover provision for waste management facilities. The household waste recycling centre closest to the site at Alkerton has limited capacity and its current permission will expire in 2014. OCC is working on a future programme to address strategic residential waste management needs in and around Banbury – and the initial proposal is to deliver a new service at Alkerton. OCC seeks a contribution towards the cost of provision, based on the scale of demand arising from the population of the development.
78. OCC was criticised in the Milton Road and Barford Road appeals for providing insufficient information on the proposed new waste facility. However, those appeals related to sites further from Alkerton – and the SPD gives an estimate of the cost of the works, which is used to calculate the formula for contributions per dwelling. I have noted that the SPD carries little weight, but the appellant does not dispute the contribution sought. I am satisfied that it would be necessary and directly and fairly related to the development.
79. The Council has not shown why it is necessary to secure a contribution towards the provision of refuse bins. Such a contribution was upheld in Bourne Lane appeal, but the evidence before me does not demonstrate compliance with the CIL tests.

Outdoor Sports Pitches, Indoor Sports Facilities and Community Centre

80. NSLP Policy R10A and PSLP Policies BSC10, BSC11 and BSC12 seek the provision of sport and recreation facilities. The Council seeks contributions towards the provision of a floodlit synthetic pitch at North Oxfordshire Academy, improvements to Woodgreen Leisure Centre, the closest such centre to the site; and the construction of a mezzanine floor at Hanwell Fields Community Centre, which is operating at capacity. The development would increase demand for sports and community facilities in the area. The SPD demonstrates how the Council derived the contributions sought, which are based on the expected population of the development. The contributions meet the tests and may be taken into account.

Public Art

81. The Council seeks the provision of public art within the proposed development, to add visual interest and quality. It is suggested that artwork would be incorporated into 'functional elements' such as seating and lighting. However, the Council has not shown why such a contribution would be necessary for planning permission to be granted. I find no justification for the obligation in any local planning policy document except for the SPD. There is no mention of public art in LP Policy C28. I take no account of the obligation.

Open Space

82. The planning agreement contains obligations to provide areas of open space on the site – namely the allotments, balancing ponds, ditches/watercourses, hedgerows, a Local Area of Play, a Local Equipped Area of Play, mature trees and woodland, a pond and public amenity space. Such provision would accord with LP Policy R12, NSLP Policies R8 and R9, PSLP Policies BSC10 and BSC11 and the Framework, and it complies with the CIL tests.

83. The Council requires commuted sums for maintenance to accompany the adoption of the open spaces. The planning agreement provides that open spaces may be transferred to the Council or a private management company, the appellant could opt for the latter if it considers the sums excessive. However, I find it reasonable for the Council to seek adoption, to ensure retention of and control the amenities in perpetuity¹³. Although it carries limited weight, NSLP Policy R8 seeks secure arrangements for the long-term maintenance of play space, and the supporting text indicates a preference for adoption. The Council indicates that the commuted sums sought are based on actual maintenance costs calculated over a notional 15 year period, with a discount for the payment of a lump sum upfront; this evidence has not been discredited. The contributions meet the CIL tests.
84. In the event that play areas are transferred to a private management company, the Council seeks to procure a bond to secure costs that may be incurred in remedying any breach by the company of its obligations to maintain the land or facilities. However, the planning agreement includes separate provision for the Council to enforce any breach or failure to comply with obligations. Even if the play areas are not adopted, payment of the bond would be unnecessary.
85. The Council seeks an additional 10% management fee for the commuted sums. I heard that this relates to the cost of managing the competitive tender process for the maintenance contract. In the Milton Road, Bloxham Road and Barford Road appeals, the Secretary of State agreed with the Inspector that the Council had not shown a need to recruit staff to carry out open space management. The Council has again failed to provide such evidence. As the appellant suggests, management costs should be regarded as falling within the substantive commuted sum or as part of the general duties of the LPA. The fee is not necessary or taken into account in this decision.
86. Finally, the appellant objects that the Council requires maintenance of open spaces in accordance with its *Technical Specifications: Contract for the Provision of Landscape Management Services*. If references to the document are discounted, the planning agreement would fail to define standards of maintenance, and there would be no guarantee that alternative standards could be agreed. If some of the Technical Specifications are not pertinent, this is of little consequence.
87. The appellant argues that some of the Technical Specifications are unrealistic, but it has not been shown that they are unduly onerous. The document refers to good practice and statutory standards, and I am not persuaded that the proposed open spaces would require anything more bespoke. The requirements for maintenance in accordance with the Technical Specifications are necessary and reasonable.

Affordable Housing

88. The planning agreement provides for the construction of affordable homes. There is no dispute that such provision is necessary for permission to be granted, in accordance with LP Policy H5, NSLP Policies H4 and H7, PSLP Policy BSC3 and the Framework. The appellant and the Council resolved differences relating to the phasing of development before the obligation was completed and signed. I concur that it is unnecessary to require all affordable housing to be ready for completion before the occupation of less than 75% of the market housing in any phase. These aspects of the agreement meet the CIL tests.

¹³ The planning agreement provides that any transfer to a private management company would be subject to a covenant ensuring retention and maintenance of the open and play spaces, but not that the Council would be party to the covenant. A memo from the Landscape Officer dated 25 July 2013 also objected that a private management company could ask residents to contribute sums to cover the cost of maintenance.

89. Clause 1.3 of Part 2 of the Second Schedule of the planning agreement obliges the appellant to transfer the affordable housing site to a Registered Provider (RP) for £1. The appellant points out that RPs bid on the open market for land and the right to deliver affordable housing. It is said that specifying the cost of the transfer is not necessary to achieve planning objectives and is anti-competitive – if not at odds with State Aid regulations
90. The Council told the inquiry that the primary reason for the £1 clause is to minimise the public subsidy required to deliver affordable housing. As the appellant suggests, however, it is not necessary to specify the cost of the transfer to ensure that development is viable to a RP. The value of the land would be less than the market residential value because affordable housing must ultimately be offered at reduced cost to the occupier. Other clauses in the planning agreement would prevent development from proceeding without affordable housing and so the appellant would be required, in practice, to agree terms with the RP.
91. The SPD expects developers to agree a transfer to a RP within the terms of s106 – and if agreement is not reached or no RP is found, for the land to be transferred to the Council for a sum of £1. The SPD does not require that land is transferred at £1 in the first instance, and I have said in any event that it carries little weight. I find that the provisions of Clause 1.3 are not necessary to make the development acceptable in planning terms, or fairly and reasonably related in scale and kind.¹⁴

Police Equipment

92. The Council seeks a contribution for the provision to Thames Valley Police (TVP) of Automatic Number Plate Recognition (ANPR) cameras, remote IT facilities and two bicycles. The capital costs of this equipment would not be met by existing sources of funding. The Framework seeks to ensure that crime and fear of crime do not undermine quality of life. TVP has legal advice that policing contributions may be required by s106 and this was indeed the outcome of two appeal decisions brought to my attention. I accept the points, but it does not follow that the contribution sought would pass the CIL tests.
93. The ANPR cameras sought would be located at or close to the site and there is no existing coverage in the area. I appreciate that ANPR cameras are important tools in the prevention and detection of crime, but it has not been shown that they would be necessary to police the proposed development. I also note that the cameras would serve the surrounding area as well as the site – but the appellant is seemingly asked to pay the costs in full. From the evidence before me, the contribution would not be fairly and reasonably related in scale and kind.
94. It has not been shown why two bicycles would be needed to police the proposed development. The same applies in respect of the 'remote IT equipment' for neighbourhood officers. I am sympathetic to the position of TVP, which faces constraints on capital expenditure at a time when new developments will increase demands for equipment. Nevertheless, I cannot find the contribution compliant with the CIL tests.¹⁵

Administration and Monitoring Fees and the OCC Bond

95. OCC and the Council both seek contributions for administration and monitoring fees. However, and as found by the Secretary of State in the Milton Road and

¹⁴ The Deddington Inspector took account of a s106 agreement which required land transfer to a RP at £1, since he found no evidence that a RP would find the proposal unacceptable. I am not aware of further details.

¹⁵ In the Deddington appeal, TVP also sought contributions towards ANPR cameras and two bicycles. The Inspector found insufficient justification for the level of provision sought. The proposed development would be larger than that at Deddington but the situation is otherwise similar.

Barford Road appeal decisions, it has not been shown that payment of the fees would be needed to make the development acceptable. Overseeing the planning agreement would fall within the core duties of the planning authorities and the costs should not be passed on. There is no justification for the fees in local or national planning policy, save for the SPD. The obligations do not accord with the CIL tests and cannot be taken into account.

96. OCC also seeks the payment of a bond or the earlier phasing of payments to guarantee outstanding contributions, with regard to the triggers and indexation provisions of the planning agreement. I heard that the bond is required because the scale and timing of the contributions could put OCC at risk. For example, the primary education contribution is phased, but OCC could not let a contract for the school extension until it holds the funds in full.
97. I agree with the appellant that OCC's argument is untenable. If the development was not built in whole or part, then it would not generate a need for the same number of school places. OCC's position is protected by the agreed triggers for payment, which are ahead of the percentage of units occupied, it would not need to commit to expenditure before the obligations are received. OCC would also have security from the standard enforcement provisions in the planning agreement – and the residual value of the land. The bond or the earlier phasing of payments would add a financial burden to the developer and would not be necessary for planning permission to be granted.

Other Matters

98. Cllr Turner objected that the site currently affords the only route to a field that he farms to the west. However, it has not been shown that the development would inevitably prevent any means of access to the field. This is a matter to be resolved with the landowner and/or at reserved matters stage, where the layout of the appeal site will be considered in detail.
99. The impact of the development on the living conditions of nearby occupiers would also be considered in detail following submission of a reserved matters application. However, the proposed dwellings should be located sufficiently far from the site boundaries to avoid causing any unacceptable loss of light, privacy or outlook at adjacent dwellings. That the height of the buildings will be restricted adds weight to this view. I also find that the proposed development would be unlikely to cause unacceptable noise. There need not be conflict with LP Policy C31, which seeks to prevent unacceptable nuisance or visual intrusion in residential areas.
100. Reports submitted with the ES indicate that the site includes active and vacated badger setts – and arable, scrub and hedgerow habitats which offer foraging potential for badgers. The site is also used by bats for commuting and foraging, although the existing trees have limited potential for use as roosts. Thus, the development could potentially impact upon species that are protected under the Wildlife and Countryside Act 1981 – although the site is not subject to any designations in respect of nature conservation.
101. Existing trees and hedgerows are to be retained and the proposed development would be laid out with areas of grassland plus additional trees and shrubs on and by the site boundaries. These landscaping works would protect if not enhance existing setts and commuting and foraging routes – and they could be secured by condition. Conditions could also be imposed to control the impacts of construction and external lighting in the proposed development. I am satisfied that the development would have no unacceptable impact on protected species or nature

conservation interests. In this respect, it would comply with LP Policies C1, C2 and C4; NSLP Policies EN22 and EN25, PSLP Policy ESD10 and the Framework.

102. Local residents suggest that there is too much housing development in the area, but I have shown and the Council accepts that there is a shortfall. It is also suggested that development of the site at this stage would be premature and should be considered through the process to adopt the PSLP. However, the proposed development would cause no unacceptable harm and the PSLP is far from adoption, I could not dismiss the appeal on prematurity grounds.

Conditions

103. I shall impose conditions relating to the submission and approval of the reserved matters and the commencement of development. The parties agreed that, given the scale of the proposed development, the standard timescales for approval and commencement should be shortened. As discussed below, however, various other conditions are necessary which will require further investigation of the site and other actions before development commences. In my view, it would be unrealistic if not unreasonable to expect the approval of reserved matters within one year or commencement within the following 18 months. I shall give the standard periods of three and two years.
104. It is necessary to require that the development takes place in accordance with the submitted plans, for the avoidance of doubt and in the interests of proper planning. However, I see no need for a condition tying the permission to all of the documents submitted when the wording of the permission will refer to the terms of the application.
105. To ensure a sustainable form of development and in line with the ES, I shall require that the dwellings are constructed to Level 4 of the *Code for Sustainable Homes* in respect of energy requirements. For the same reason, I shall require that a Travel Plan to encourage use of sustainable transport is submitted and approved for the proposed dwellings, although I see no need to require that the Travel Plan complies with the Department of Transport's best practice guide.
106. To protect the character and appearance of the area, the building heights should be restricted to a maximum of 11.5m to the ridge. The standard reserved matters conditions provide for the submission of a landscaping scheme but do not specify requirements. In this case, it is necessary to ensure that details are submitted and approved of existing and proposed ground levels, boundary treatments and means of enclosure, areas of open space, hard and soft landscaping proposals; and minor artefacts. I shall impose separate conditions concerning external lighting, ball-stop netting, tree protection measures, and the retention of new planting.
107. The Phase 1 Geo-environmental Desk Study which forms part of the ES identifies potential sources of contamination from landfill activities on site and backfilling of a former quarry. There is also potential for ground gas generation and naturally recurring radon requiring protective measures to be used in the new properties – but this can all be treated. To avoid pollution and prevent risks to future occupiers, I shall impose conditions to ensure that contamination is fully investigated and remediated. I shall impose the Government's model conditions which differ in wording but not substance from those devised by the Council.
108. The Archaeological Desk-based Assessment in the ES identifies that the site has moderate-low potential for undiscovered archaeological assets. To protect any such assets, I shall require the approval of a written scheme of investigation and the undertaking of a programme of evaluation and mitigation. In the interests of nature conservation, I shall require the submission and approval of a mitigation

strategy for badgers, and a Landscape and Ecology Management Plan, including a method statement for biodiversity enhancements. A further condition will prevent the removal of vegetation during the bird nesting season

109. Again to protect habitats, and to ensure highway safety and protect the living conditions of nearby occupiers, I shall require the submission and approval of a Construction Management Plan (CMP). The parties have agreed some details to be submitted with the CMP and I shall add other standard requirements to the list. Given the risk of contamination, I shall require the submission of details of any measures to remove, store or distribute topsoil during construction. However, conditions must be precise and I will not require the submission of measures to ensure that construction does not 'adversely affect' biodiversity or residential properties, as suggested by the Council, since that would be too vague.
110. To further protect highway safety, I shall require that the means of access to the site are implemented and retained as approved, with no obstructions to visibility splays. It is necessary to require that one, but not both of the accesses to the site are provided before first occupation of the development
111. To ensure suitable drainage and avoid flood risk, a condition will ensure the submission and approval of a strategy for on-site and off-site foul and surface water drainage, in accordance with specified requirements. To ensure that the development can be adequately serviced, I shall require the submission and approval of an impact study in relation to water supply infrastructure. Also in relation to infrastructure, I shall require the provision of fire hydrants on the site.
112. I have already found that it would be unnecessary to require the provision of public art in this development and I shall not impose a condition to that end. This would not prevent the agreement of any artefacts within the development as part of the landscaping scheme

Conclusion

113. For the reasons given above, and having regard to all the other matters raised, I conclude that the appeal should be allowed.

FORMAL DECISION

114. The appeal is allowed and planning permission is granted for up to 300 dwellings, with access from Warwick Road together with associated open space, allotments and a 500sqm retail store at land west of Warwick Road, Banbury, Oxfordshire in accordance with the terms of the application (ref 13/00656/OUT) dated 2 May 2013 and subject to the attached Schedule of Conditions.

Jean Russell

INSPECTOR

ANNEX 1: LISTS

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY

Mr Graeme Keen of Counsel	Instructed by Mr Kevin Lane, Head of Law and Governance, Cherwell District Council
<i>He called the following to discuss planning conditions and/or obligations.</i>	
Mrs Tracey Morrissey DipTP MRTPI	Principal Planning Officer, Cherwell District Council
Mr Paul Almond	Street Scene and Landscape Services Manager, Cherwell District Council
Mr Gary Owens	Strategic Housing Officer (Enabling), Cherwell DC
Mr Howard Cox	Infrastructure Funding Manager, OCC
Mrs Jennifer Crouch	Solicitor, OCC
Mr Michael Deadman	Principal Engineer Transport Development Control, OCC
Mr Simon Dackombe	Strategic Planner, Thames Valley Police

FOR THE APPELLANT

Mr James Strachan QC	Instructed by Mr Steven Brown
<i>He called:</i>	
Mr Clive Self DipLA MA CMLI	Managing Director, CSa Environmental Planning
Mr Steven Brown BSc(Hons) DipTP MRTPI	Associate Director, Woolf Bond Planning LLP
Mr Andy Evans <i>(discussion on planning obligations only)</i>	Strategic Planning Manager, Miller Strategic Land

INTERESTED PERSONS

Mr Alan Jermyn Cllr Webb Cllr Nicholas Turner	On behalf of residents of Firtree Close Ward Councillor for Wroxton Proprietor of Drayton Leisure Golf Centre and tenant of the appeal site
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DOCUMENTS

1	List of speakers for Cherwell DC and Oxfordshire CC
2	List of Core Documents
3	The Cherwell Local Plan November 1996
4	The Non-Statutory Cherwell Local Plan 2011
5	Cherwell Local Development Framework Draft Core Strategy February 2010
6	The Proposed Submission Cherwell Local Plan August 2012
7	The Proposed Submission Cherwell Local Plan Focussed Consultation March 2013
8	Drayton Conservation Area Appraisal October 2008
9	Appeal decision ref. APP/A3105/A/2201339
10	Local Plan Annual Monitoring Report – report to the Council’s Executive dated 6 January 2014
11	Annual Monitoring Report 2013
12	Housing Trajectory and five year housing land supply
13	Housing Land Supply Statement of Common Ground
14	Transport and Highways Statement of Common Ground
15	Draft s106 planning obligation
16	Opening statement on behalf of the appellant
17	Email from Mr Jermyn dated 12 January 2014
18	Email from Mr and Mrs Weir dated 13 January 2014
19	Statement from Mr Turner and appendices: undated letter from Mr Thomas Jones and screenshot from www.rangesystems.com
20	Pegasus Environmental Planning Statement on Driving Range Ball Stop Netting dated January 2014
21	Details of GRN Consulting from www.golfconsult.co.uk
22	Schedule of suggested conditions
23	Signed, dated and completed planning obligation
24	Counter-part planning obligation
25	CIL Regulations compliance statement for Cherwell DC
26	CIL Regulations compliance statement for Oxfordshire CC
27	Cherwell DC Technical Specifications Contract for the provision of landscape maintenance services 1 April 2012 – 31 March 2015
28	Position Statement of Thames Valley Police (TVP) and appendices: letter from TVP dated 16 May 2013, legal advice dated 26 December 2012, appeal decision ref. APP/F2415/A/12/2179844; and the Secretary of State’s appeal decision and Inspector’s report, for appeal ref APP/X2410/A/12/2173673
29	Draft Supplementary Planning Document Planning Obligations

PLANS

A	Definitive Maps identifying public rights of way in the vicinity of the site
B	Proposed Site Access Arrangements – JW7101-01C
C	Land Use Plan – Csa/1986/111
D	Landscape Strategy – Csa/1986/114C

ANNEX 2: SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) 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
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans. CSa/1986/110H, /111, /112A, /114C, /115, /116, /121A and /122A and JNW7101-01B
- 5) The dwellings shall achieve Level 4 of the Code for Sustainable Homes in relation to energy requirements. No dwelling shall be occupied until a final Code Certificate has been issued, and submitted to and approved in writing by the local planning authority, certifying that Code Level 4 has been achieved in respect of energy requirements.
- 6) Development shall not commence until a residential Travel Plan has been submitted to and approved in writing by the local planning authority. The measures approved in the Travel Plan shall be implemented from the date of the first occupation of the dwellings hereby permitted
- 7) No building on the site shall exceed 11.5m at ridge height.
- 8) Development shall not commence until full details of existing and proposed ground levels; all boundary treatments and means of enclosure, hard and soft landscaping works, areas of open and play space including the allotments; and minor artefacts and structures have been submitted to and approved in writing by the local planning authority. The development shall be carried out as approved.
- 9) Development shall not commence until full details of the column height, luminaire type, positions, orientation, cowls and deflectors for the proposed street lighting scheme have been submitted to and approved in writing by the local planning authority. The details shall demonstrate that there is no light spillage from the site. The development shall be carried out as approved prior to first occupation, certified as correctly installed by a qualified lighting engineer and maintained as such thereafter.
- 10) Notwithstanding the details shown on plans CSa/1986/116, /121A and /122A, development shall not commence in the area shaded pink on plan CSa/1986/116 until full details of a golf ball escape mitigation netting structure to be erected along the western boundary of the site, including the design, positions and heights of the support structure, the design, lengths and heights of netting, and a scheme for maintenance have been submitted to and approved in writing by the local planning authority. The structure shall be installed in accordance with the approved details prior to the first occupation of the development in the area shaded pink on plan CSa/1986/116 and maintained as approved thereafter.
- 11) Development shall not commence until a full Arboricultural Survey, Method Statement and Arboricultural Impact Assessment, tree protection plan and report on all existing trees and hedgerows within and around the perimeters of the site have been submitted to and approved in writing by the local planning authority. The survey and report shall include details of all trees and hedgerows to be removed and those to be retained; and the methods to protect the retained trees

during the course of the development. The development shall be carried out in accordance with the approved details.

- 12) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 13) Development other than that required to be carried out as part of the approved scheme of remediation must not commence until conditions 14-18 below have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the local planning authority in writing until condition 18 has been complied with in relation to that contamination.
- 14) An investigation and risk assessment, in addition to any already provided, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The assessment must be conducted in accordance with DEFRA and the Environment Agency's '*Model Procedures for the Management of Land Contamination, CLR 11*'. The contents of the scheme are subject to approval in writing by the local planning authority. The assessment must be undertaken by competent persons and a written report of the findings must be produced, which is also subject to the approval in writing of the local planning authority. The report of the findings must include
 - a survey of the extent, scale and nature of contamination,
 - an assessment of the potential risks to human health; property including buildings, crops, livestock, pets, woodland and service lines and pipes; adjoining land, groundwater and surface waters; ecological systems, and archaeological sites, and
 - an appraisal of remedial options and proposal of the preferred option(s).
- 15) A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the local planning authority. The scheme must include all works to be undertaken, remediation objectives and criteria; a timetable of works, and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the *Environmental Protection Act 1990* in relation to the intended use of the land after remediation.
- 16) The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development, other than that required to carry out remediation. The local planning authority must be given two weeks written notification of commencement of the remediation works. Following completion of the measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced for the approval in writing of the local planning authority.
- 17) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the local planning authority. An investigation and risk

assessment must be undertaken in accordance with the requirements of condition 14 and, where remediation is necessary, a remediation scheme must be prepared in accordance with the requirements of condition 15, which is subject to the approval in writing of the local planning authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, subject to the approval in writing of the local planning authority in accordance with condition 16.

- 18) A monitoring and maintenance scheme, to include monitoring of the long-term effectiveness of the proposed remediation over a period to be agreed, and the provision of reports on the same must be prepared, both of which are subject to the approval in writing of the local planning authority. Following completion of the measures identified in that scheme and when the remediation objectives have been achieved, reports that demonstrate the effectiveness of the monitoring and maintenance carried out must be submitted to the local planning authority. This must be conducted in accordance with DEFRA and the Environment Agency's *'Model Procedures for the Management of Land Contamination, CLR 11'*.
- 19) Development shall not commence until a programme of archaeological evaluation and mitigation for the site has been carried out by a professional archaeological organisation in accordance with an Archaeological Scheme of Investigation which has been submitted to and approved in writing by the local planning authority.
- 20) Development shall not commence until a strategy to mitigate impacts upon the badger population has been submitted to and approved in writing by the local planning authority. The strategy shall include details of a survey undertaken no more than six months before the date of submission, whether a development licence is required, and the location and timing of any works to protect setts and/or commuting routes. The development shall be carried out in accordance with the approved details.
- 21) Development shall not commence until a Landscape and Ecology Management Plan (LEMP) and method statement for protected species and biodiversity enhancements, together with long-term maintenance, has been submitted to and approved in writing by the local planning authority. The LEMP and method statement shall be implemented as approved.
- 22) No site clearance works, including the removal of trees, hedgerows and shrubs, shall take place during the bird nesting and breeding season between 1 March and 31 August inclusive.
- 23) Development shall not commence until a Construction Management Plan (CMP) has been submitted to and approved in writing by the local planning authority. The CMP shall include details of the phasing of the development and construction activities within each phase, a construction method statement; consultation and communication with residents of adjacent and surrounding properties, locations on site for the parking of vehicles for site operatives and visitors, and for the loading and unloading of plant and materials, locations on site for the storage of plant and materials, the erection and maintenance of any securing hoarding fencing; wheel washing facilities, the hours of construction works, restrictions on construction and deliver traffic during peak traffic periods, an agreed route to the development site, measures to control the emission of dust and dirt, the removal, storage and distribution of top soils; and a scheme for recycling/disposing of waste arising from construction work. The CMP shall be implemented in full during the entire construction phase.
- 24) Development shall not commence until a scheme for the phasing of the construction of the means of access to the site has been submitted to and approved in writing by the local planning authority. One or both of the means of

access shall be constructed prior to the first occupation of the development. Both means of access shall be constructed in accordance with the drawing no. JNW7101-01B and retained as such thereafter. Land within the visibility splays identified on the drawing shall not be obstructed above a height of 0.6m by any object, structure, vegetation or other material.

- 25) Development shall not commence until full details of a drainage strategy relating to all on-site and off-site foul and surface water drainage works has been submitted to and approved by the local planning authority. The drainage strategy shall be based on sustainable drainage principles and shall include a scheme to manage the rate and volume of surface water discharge in accordance with the Site-Specific Flood Risk Assessment (FRA) completed by THDA consulting engineers and dated 20 November 2012.

In accordance with the FRA, the scheme shall limit discharge rates from the site to no greater than 8l/s for all events up to and including the 1% annual probability design storm event, including a 30% allowance for climate change; and it shall include a range of sustainable drainage techniques, including but not limited to ponds and swales.

The drainage works shall be carried out in accordance with the approved drainage strategy. No discharge of foul or surface water from the site shall be accepted into the public sewer system until the works detailed in the strategy have been completed. The scheme shall be implemented in full and maintained in accordance with timing/phasing arrangements embodied within the scheme.

- 26) Development shall not commence until an impact study of the existing water supply infrastructure has been submitted to and approved in writing by the local planning authority. The study shall include details of the magnitude and timing of any additional capacity required in the system and a suitable connection point. Development shall be carried out in accordance with the approved details.
- 27) Prior to the occupation of any part of the development hereby permitted, fire hydrants shall be provided on the site in accordance with details to be first submitted to and approved in writing by the local planning authority.