



## Appeal Decision

Inquiry held on 6, 7, 8, 9 and 21 September 2022

Site visit made on 8 September 2022

**by J P Longmuir BA(Hons) DipUD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 09 January 2023

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**Appeal Ref: APP/D3125/W/22/3297487**

**Land at Witney Road, Ducklington, 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 Ainscough Strategic Land against the decision of West Oxfordshire District Council.
  - The application Ref 21/03405/OUT, dated 13 October 2021, was refused by notice dated 10 March 2022.
  - The development proposed is up to 120 dwellings with associated landscaping and infrastructure. Detailed vehicular access from Witney Road with all other matters reserved.
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### Decision

1. The appeal is allowed and planning permission is granted for: Up to 120 dwellings with associated landscaping and infrastructure. Detailed vehicular access from Witney Road with all other matters reserved at land at Witney Road, Ducklington, Oxfordshire, in accordance with the terms of the application, Ref 21/03405/OUT, dated 13 October 2021, subject to the conditions in the conditions annexe at the end of this decision.

### Preliminary matters

2. The application was submitted in outline with all matters reserved except access. A master plan layout was included, and I have given this consideration as an indicative scheme only.
3. The second reason for refusal related to the understanding of the significance of archaeology and therefore the potential effect of development. A survey by Cotswold Archaeology has been undertaken and the Council have confirmed that they are now satisfied subject to a recording condition. I have no contrary evidence before me and therefore concur.
4. A signed Section 106 agreement was submitted on 23 September 2022. This confirms 40% of the dwellings would be affordable. It also makes financial contributions to The Lower Windrush Valley Area project, A40 improvements, public transport, sport/leisure, education, highway works and a Traffic Regulation Order. The Council considers these planning obligations would overcome the third reason for refusal. I shall return to this matter below.

## **The main issues**

5. The main issues are:

- the effect of the proposal on the character and appearance of the area particularly in terms of its scale, coalescence, loss of green space and contexts including the relationship with Witney Lake and Country Park and the Windrush Valley; and
- the effect of the proposal on the significance of the Ducklington Conservation Area having particular regard to the effect on its setting.

## **Reasons**

### ***Character and appearance***

#### *Background*

6. The appeal site and immediate surroundings are not within a designated landscape and not a 'valued landscape' as identified in paragraph 174 of the National Planning Policy Framework (the Framework).
7. Both parties also agree the site is within National Character Area 108 Upper Thames Clay Vales<sup>1</sup>. This notes the prevalence of enclosed pasture and field trees, again reflected by the appeal site. The West Oxfordshire Landscape Assessment<sup>2</sup> (WOLA) places the site within the Lower Windrush Valley and Eastern Thames Fringes character area. This landscape is typically floodplain pasture, close to rivers, low lying and semi-enclosed, which also reflects the characteristics of the appeal site. The site is included in the Windrush Valley Project Area which the Local Plan at paragraph 8.11 describes as an area of major landscape change associated with mineral extraction and after uses specifically for recreation, tourism and nature conservation.
8. The site is just off Witney Road which connects Ducklington village with Witney town. Close to the site, Witney Road is crossed by the elevated A40 dual carriageway with a roundabout junction and surrounding commercial development.
9. The western part of Ducklington (stretching towards Witney and the appeal site) is characterised by 20th century residential development whereas the eastern part of the village has a historic core around the church and environs towards the River Windrush.
10. The north-eastern boundary of the site adjoins Witney Lake and an adjacent Country Park, wherein several well used and marked trails allow public access around the lake and link to wider footpaths. To the western side of the site is an extensive area of allotments and straggle of individual houses. The east side has several residential properties and is dominated by an electricity substation. Substantial pylons and electricity wires prominently traverse the site.
11. The site's boundaries have a varied mix of mature and semi-mature trees and hedges. The site is traversed north-south and east-west by two signposted footpaths. These are well used judging by the eroded surface and cross over several streams with small bridges.

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<sup>1</sup> Core Document 6.6

<sup>2</sup> Core Document 4.7 page 72

12. The potential effect on the character and appearance of the area needs to be considered in several respects as I have identified under the heading in the first main issue. They are derived from the decision notice and local plan policies. Whilst they are inter-related, they are divided below for ease of analysis.

#### *Coalescence*

13. Policy OS2 of the West Oxfordshire Local Plan 2031 (LP) seeks to avoid coalescence and loss of identity of settlements. The Council and local residents consider that the appeal site forms a gap between Ducklington and Witney, thereby maintaining the separate identity and character of both settlements.
14. However, the Inspector reporting on the Local Plan<sup>3</sup> in 2015 found that such a gap was not clearly defined. In any event whilst considering the need for a particular policy for this 'gap' he concluded that other policies were in place which seek to ensure that development protects the character of the area, to which the Council point to OS2.
15. Conversely, in determination of an appeal at the adjacent 110 Witney Road<sup>4</sup>, that Inspector comments that this appeal site is part of a notable gap in the Witney Road frontage which contributes to the open setting around the outskirts of Ducklington.
16. The appellant suggests the village adjoins the commercial area off the A40 roundabout as evident by the road sign for Ducklington. This is also partly reflected by the Ducklington-Witney parish boundary being the A40 carriageway.
17. I note that there are differences to the perception of the extent of Ducklington and it is a matter of opinion whether the appeal site forms a gap between Ducklington and Witney. However, it is clear that the appeal site, as an open space, does form a discernible gap between the groups of buildings on the Witney Road frontage. As such this gap may help some people segregate the village from the more intensive A40 roundabout area of development.
18. However, this gap is only on the east side of the Witney Road as the other side has a continuous line of buildings up to the roundabout. Indeed, in some places this development extends substantially behind this western Witney Road frontage particularly by the cul-de-sacs: Dale Walk and Moors Close both opposite the appeal site. Thus, there is currently coalescence on one side.
19. Moreover, the Council confirmed that the front garden to 110 Witney Road has an extant permission for a new dwelling. This would narrow the gap between the groups of buildings, thereby contributing to coalescence.
20. I therefore find that the role of the appeal site segregating groups of buildings would be reduced. This would lead towards more sense of coalescence, but I do not find this particularly significant due to the extensive development on the opposite side of the Witney Road.

#### *Loss of green space, ditches and openness*

21. Policy EH2 requires the conservation of the landscape character and its distinctiveness. The site is of rough grassland, which has not been grazed for

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<sup>3</sup> Core Document 4.10 Paragraph 122 Report on the Examination of the West Oxfordshire Local Plan 2031

<sup>4</sup> APP/D3125/W/20/3261473 Mr Wood Appendix 1a

several years apparently due to problems with dogs and livestock. It lacks the character of a grassland meadow as it has not been maintained as such, rather it appears overgrown and unkempt. As such I find that the grassland in itself does not contribute significantly to the character of the area.

22. The site is also characterised by its network of drainage ditches, which appear long standing judging from the historic maps. The ditches are crossed by bridges, which indicate a floodplain character. Most of the drainage ditches would be likely to be lost by the proposal.
23. The site has a perceptible openness particularly from Witney Road. However, away from this frontage, the openness is partly impinged by adjacent hotel buildings, electricity sub-station and various houses.
24. Nonetheless the master plan shows an indicative scheme for 120 dwellings but both parties agree<sup>5</sup> approximately 2.64ha 'public open space and green space', 42% of the site, would remain. Some open space could also be left on the frontage, which would retain some sense of openness and limit impact in this regard. Even so there would still be some loss of openness from Witney Road and within the site.
25. This loss of openness and the gap would not be significant when viewed from the east including Witney Lake as I explain latterly.

#### *Views and context*

26. Policy OS4 titled high quality design requires new development to respect the landscape character of the locality and where possible enhance. The most notable view over the appeal site is of Witney church spire, seen from the Witney Road frontage and the footpaths within the site. The master plan shows it is possible to accommodate the built development without obstruction to these views.
27. The other views are of the various boundary trees. The submitted Preliminary Arboricultural Impact Assessment plots the root protection areas of the boundary trees and concludes that no removal would be necessary as a result of the proposal. Moreover, the master plan also shows that it would not only be possible to retain the existing trees but also some open space could be arranged so they would remain in view. New tree planting is indicated, and the undeveloped part of the site would provide space for the new trees to flourish.
28. The views within and into the appeal site are dominated by overhead pylons and power lines. These are both distracting and unsightly due to their height and industrial nature. The appellant has suggested that they would be removed and placed underground, funded as part of the development, which would be a notable benefit and a condition is suggested. Whilst the Council suggest this could happen irrespective of the proposal, such expense would be likely to be prohibitive unless part of a development.
29. Both parties agree that the only lost vegetation would be a 25m length of hedgerow along Witney Road for the site access; this would be capable of being replaced.

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<sup>5</sup> Paragraph 3.4 Statement of Common Ground

30. Both parties agree that potentially 42% of the site could be undeveloped. Therefore, the reserved matters scheme would have scope to create open spaces with new tree planting to create discernible character so that the context for the views of the existing boundary trees would not be expected to be overwhelmingly of new houses. In addition, the layout would be unconstrained by the lack of existing features on the site and would have a central access point thereby giving the designer flexibility to use the spaces to provide character.
31. The appellant's Landscape Visual Appraisal (LVA) had only photographs taken in summer, not in winter when the intervisibility would be expected to be greater. From the footpath to the north alongside the Witney Lake, views into the appeal site are largely filtered in summer and I would expect the winter views to be more apparent due to the deciduous nature of the trees. However, the dwellings would be likely to be deeper into the site, away from this view, as the suggested drainage strategy shows this area is needed for water storage basins being the lowest<sup>6</sup> part of the site.
32. The details of these water storage basins would be determined at a reserved stage but there is no reason why they could not be shaped and landscaped to form attractive features. Indeed, they would be commensurate with the low-lying meadow character.
33. Views of the north-east corner of the appeal site, further along the lakeside footpath where the vegetation becomes sparse, are dominated by the electricity substation. It is unsightly due to its metallic, industrial like construction and is eye catching, so whilst the proposed dwellings may be visible from this footpath, due to the distance they would not dominate.
34. The LVA identifies other more distant viewpoints, wherein the site is small and insignificant beyond the immediate landscape. Consequently, whilst Policy EH2 makes reference to the much wider Lower Windrush Valley Project, the site is experienced as a localised entity, so there is no conflict in that respect.
35. The views of the appeal site would change from an area of open land dominated by pylons to residential dwellings but with some open space, landscaping and the loss of pylons. The overall impact on views would be neutral.

#### *Scale of the proposal and shape of the settlement*

36. Policy OS2 allows for limited development which is a proportionate and appropriate scale to its context including the potential cumulative impact of development. The Council submit that the proposal would be of an inappropriate scale, contravening this policy. However, the master plan shows up to 120 dwellings could be accommodated on the appeal site whilst achieving 42% open space. The Council also acknowledge the scheme would be low density.
37. Relatedly, the Council foresees the development would be disproportionate to Ducklington. The 2011 census records only 654 households in Ducklington<sup>7</sup> and the recent developments in the area have been more modest. However, there are existing extensive residential areas, which adjoin part of some of the site

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<sup>6</sup> Paragraph 5.5 Flood Risk Assessment

<sup>77</sup> Mr Woods paragraph 3.46 Proof of Evidence

boundaries and are opposite Witney Road; these are clearly evident from the public footpaths and roads. In addition, the commercial development in the vicinity of the A40 roundabout has a prominent presence.

38. Furthermore, the village extends over a wide area. It took considerable time to walk the length of the village on my site visit. Similarly, it is also not possible to look from one side of the village to another. In this respect the physical extension of the development area would not be significant.
39. The first reason for refusal also refers to the pattern of development. The original core of the village is concentrated around the church. There is a scattering of original buildings along radial roads, however, there is a considerable spread outward of twentieth century residential development, leading to a nonlinear form. As I have found earlier this development in depth is evident in the cul-de-sacs opposite the appeal site and at the nearly adjacent Chalcroft Close.
40. The proposal would conflict with Policy OS2 in terms of not being limited in scale, however the indicative scheme shows that the site can accommodate 120 dwellings at low density. I find that the proposal would not be seen or perceived to be overwhelming and would not undermine the form of the settlement, so in these respects would not conflict with Policy OS2.
41. In addition, the Council felt this issue impacted on the setting of the Conservation Area, which I will consider latterly.

*Overall Conclusion:*

42. The adverse impacts include less separation between groups of buildings, loss of some openness, and drainage ditches, and I agree with both main parties that the effect would be localised. There would be benefits of new tree planting and removal of pylons and the low density of the proposal would allow the opportunity to create characterful spaces, retain and reinforce the boundary trees. I therefore find that the proposal would result in limited harm to the character and appearance of the area.
43. Policies OS2, OS4 and EH2 seek protection of the landscape and character of the area, to which the proposal would conflict as it would lead to limited harm.
44. Paragraph 126 of the Framework seeks the creation of high quality, beautiful and sustainable buildings and places. Paragraph 130 requires developments are visually attractive; reference is made to layout and appropriate and effective landscaping. It also seeks a strong sense of place. Paragraph 174 requires decisions contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside. Similarly, as I have found above, the proposal would be harmful, albeit limited, and as such would conflict with most of the criteria in the above paragraphs.

***The effect of the proposal on the significance of the Ducklington Conservation Area with particular regard to the effect on its setting***

*Background*

45. The Ducklington Conservation Area (CA) was designated in 1988 and has not been reviewed since. The appeal site is outside the CA but has the potential to

contribute to its setting. Policies OS2 and OS4 refer to conserving heritage. Policy EH9 is titled historic environment and seeks to conserve and/or enhance the special character, appearance and distinctiveness of the historic environment, including the setting of Conservation Areas. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

46. Both parties agree on the relevance of Historic England's Good Practice Advice on the Setting of Heritage Assets. This describes the importance of setting lies in what it contributes to the significance of the heritage asset or to the ability to appreciate that significance. The definition in the glossary to the Framework also refers to the setting as the surroundings in which the asset is experienced. The PPG on 'Historic environment' highlights that the extent and importance of setting includes visual factors as well as experiences including the historic relationship. Both parties highlighted the relevance of the Court of Appeal case involving Kedleston Hall<sup>8</sup> which shows that historical, social and cultural matters are relevant to the definition of setting, and that a direct physical or visual connection is not always necessary to form part of a setting.

*The main elements that contribute to the significance of the CA*

47. Paragraph 195 of the Framework highlights the need to assess the particular significance of the heritage asset would be potentially affected. In this context the contribution the setting makes to the significance is also therefore of relevance.
48. The CA is drawn around the historic core of the village, which latterly spread towards Witney with outlying dispersed groups of buildings at Little Ducklington and other connecting roads.
49. The traditional part of the village is clustered close to the River Windrush, which would have helped support basic living, but equally there is some separation as the flat landscape would be prone to flooding.
50. The village has medieval origins although the surviving buildings are generally later. The twelfth century church is one of the oldest, sited on the edge of the historic core so that it forms a focus particularly with its tower.
51. I noted that the village has a considerable number of traditional buildings, which are largely domestic in character, with a predominance of small cottages. The buildings are tightly knit with few spaces so that an enclosed character predominates. The buildings are typically representative of the vernacular in terms of natural stone walling, proportions and detailing. There are a variety of roof coverings including thatch which adds to the rustic character.
52. There are only a few outward views from the village, so these are consequently noticed due to the otherwise enclosed streets. Similarly, the views into the village tend to be limited to the periphery.

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<sup>8</sup> Inquiry document 15

*The main elements which contribute to the significance of the CA that are most relevant to this appeal*

53. The site is outside the Conservation Area, and its relationship needs to be considered in terms of historical, social and cultural matters as well as visual connection.
54. The visual connection to the countryside is also present from the several views into and outward of the CA. These provide interest and contrast to the otherwise enclosed nature of the traditional form and so contribute to the CA's significance.
55. The Council argued that the village has agricultural origins which fostered its social and economic growth, leading to the development of the village in keeping with the Cotswold traditions. Whilst this assumption is fair it is not unusual, and the Council suggest that the appeal site being historically in agricultural use would have made an important contribution. I give this consideration in the next section below.
56. The Council also advocate that roof pitches, narrow gable widths and limestone materials show the agricultural influence in the nature of buildings in the village. However, I find that the village has generally domestic architecture which does not show an agricultural character.
57. The village spread away from the original historic core around the church towards Witney (and the appeal site) with outlying and dispersed groups of buildings at Little Ducklington. Whilst the CA does have a discernible form, I find that the suggested linearity of traditional buildings along the outward connecting roads is not significant: the Conservation Area Character Area Appraisal notes 'there has been extensive modern development between the conservation area and the bypass although this has no strong overall ordering form and the relationship with the earlier fabric appear somewhat arbitrary'. Additionally, it notes that 'the 20th century infill development on gardens and former farmyards has tended to subvert the linear form within the Conservation 'Area'.
58. I concur that modern development has eroded the original linear form within the Conservation Area and even more so around its edges, so this is not pertinent to this appeal.

*Does the appeal site contribute to the significance of the CA*

59. An undated Conservation Area Character Area Appraisal has been published by the Council, which did not comment on the boundaries or review the designation. It also makes no specific mention of the appeal site, which is an indication that it is not important.
60. The Council has also published 'Proposals for Preservation and Enhancement' for the CA. This refers to the retention and management of floodplain pasture and meadows and planting along watercourses. There is general mention of the need to soften settlements' edges with new landscaping but again there is no mention of the appeal site specifically.
61. The appeal site being historically in agricultural use is suggested by the Council as making an important contribution to social and economic growth, leading to the development of the village.



62. The Council also point to the significance of the appeal site being within fields called 'The Moors'. However, the historic maps show the annotation for The Moors varies in location and extent. The appeal site is also shown in the historic maps<sup>9</sup> as 6 fields in 1960, 5 in 1982 and 1 in 1999, as currently, indicating different historic boundaries and possibly various ownerships. The surrounding fields have also lost their boundaries. The Council accepts<sup>10</sup> that much of The Moors has been lost to roads, the former quarry now Witney Lake and the electrical sub-station.
63. The Conservation Area Appraisal does not mention The Moors, which if significant, would be expected in such a Council document analysing historic characteristics and significance. Similarly, the WOLA makes no reference to the Moors.
64. The Council at the Inquiry commented on the experience of walking across the appeal site, then joining the Conservation Area. However, as I observed on my site visit, the intervening fields have overgrown boundaries without a clear pattern. In addition, the rear gardens and elevations of twentieth century houses are also prominent. Thus, I find that the dynamic or kinetic experience of the series of views does not demonstrate any historic significance.
65. Consequently, I find that the appeal site does not contribute to any surviving historic field pattern nor has it had a significant historic or cultural association with the village which contributes to the significance of the CA.
66. The Appraisal maps<sup>11</sup> 'significant views' out from the Conservation Area towards the adjacent countryside. However, these are neither near or orientated towards the appeal site and both parties agree<sup>12</sup> none of these particular views would be affected.
67. However, there is a view along Witney Road from the edge of the CA, towards the appeal site. The intervisibility with the site frontage is confirmed by the appellant's photograph. Thus, the appeal site has an influence on the visual appreciation of the CA and therefore forms part of its setting.

*The effect of the proposal on the CA*

68. I find on the basis of evidence submitted to the Inquiry, a historic or cultural connection between the CA and the appeal site has not been clearly demonstrated. I find that the only contribution the appeal site makes to the significance of the CA is the extent to which its appearance can be appreciated in the view along Witney Road.
69. Both parties agreed at the Inquiry that only the appeal site frontage would be visible so that only a small part of this view would be influenced by the appeal proposal, largely the new access and the loss of the hedgerow. Whilst the hedge could be replaced by new landscaping this would take time to establish.
70. The houses would be slightly further back from the point of the access due to the need for visibility and therefore even more obliquely in view, even if the reserved matters showed frontage development.

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<sup>9</sup> Core Document 6.7 EDP Extracts from Historic Mapping

<sup>10</sup> Closing Paragraph 75 (l)

<sup>11</sup> Map pages 6-7

<sup>12</sup> Statement of Common Ground paragraph 7.37

71. The proposed development would be visible from this outward view which would attract attention whereas the current view is of countryside which provides a muted background.

*Level of harm*

72. Both parties agree that the effect of the proposal would be 'less than substantial' harm to the CA however the Council at the Inquiry argued that it was towards the upper end of this position and needed to be weighed accordingly in the overall balance.

73. As I found above the view out/into the CA to/from the appeal site is very oblique and at a fair distance, I find that the access and new houses would only be a small element and not prominent particularly with the potential for landscaping. In addition, the appeal site is also not a distinctive part of this view. Consequently, the proposal would lead to very limited harm to the CA as a whole.

74. As such, I therefore find that the proposal would lead to very limited harm to the character and appearance of the CA: a low point within 'less than substantial harm'.

*Conclusion*

75. Policies OS2 and OS4 refer to conserving heritage. Similarly, Policy EH9 seeks to conserve and/or enhance the historic environment, including the setting of Conservation Areas. As I have found the proposal would lead to an intrusion, albeit very limited, to the views towards and from the Conservation Area, the proposal would be contrary to these policies.

76. Paragraph 202 of the Framework states where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate securing its optimum viable use. Accordingly, this is considered latterly in the overall balance. Whilst it is a low point within 'less than substantial' harm, the effect on the CA must be given special attention under section 72 of the 1990 Act and great weight under paragraph 199 of the Framework. I therefore give considerable importance and weight to the harm I have identified in my balancing judgment below.

**Other matters**

77. There are several listed buildings in the vicinity. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. As I noted earlier the spire of St Mary's church, a Grade I listed building is visible from Witney Road and within the appeal site, and these views could be retained as the master plan shows. The nearest listed buildings are the Grade II, 61-63 Witney Road, which are built of stone to a vernacular design and are just outside the Conservation Area. There is restricted inter-visibility, and the Committee Report suggests a 70m<sup>13</sup> distance away.

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<sup>13</sup> Paragraph 5.6

78. I have not been made aware of any apparent historic or cultural connection of these listed buildings with the appeal site. I find that the listed buildings and their settings would not be harmed by the proposal, and I note the Council did not object to the settings of listed buildings and the questionnaire records no such effects.
79. Local residents and Councillors gave written and oral evidence that the appeal site was prone to flooding. Councillor Maynard questioned the Environment Agency (EA) Flood Plain maps and relayed his conversation with them on the need for updating. He suggested the maps had been changed and an earlier one showed a markedly different pattern of flooding.
80. The appellant confirms that the West Oxfordshire SFRA<sup>14</sup> was updated in November 2016. This informed the Agency's mapping which places the majority of the site in Flood Zone 1. A Flood Risk Assessment was submitted with the application. This acknowledges the site's existing drainage ditches, the topographical survey, geology, existing greenfield run-off rates and confirms the detention strategy. The Council duly consulted the EA who have particular responsibility for such matters and the flood plain maps show the best understanding to date of the likelihood of flooding. The EA had no objection, commenting on the application to their best professional expertise, and I accept their conclusion in the absence of any clear evidence to the contrary.
81. The application details show a drainage strategy of using holding basins on the site to accommodate surface water run-off from the proposed hard surfaces away from dwellings. The land levels of appeal site show that such water holding would be effective and the site is large enough to manage water run-off arising from the development: the holding basins could be sized, shaped and orientated towards this specific need. The Council had no objection to the strategy subject to a condition on the details. I find there is no clear evidence to come to a different conclusion.
82. One of the local residents comments that the holding basins could have stagnant water causing nuisance and could be a safety risk to children. However, they could be designed to ensure that they would be appropriate; these are a commonly used means of water management.
83. Some local residents have concern about the safety of children walking and cycling to school. A Transport Assessment was submitted with the application which analysed the safety implications and concluded favourably, which was also accepted by the Council's Highway Officer. Moreover, the proposal provides funding towards implementing a potential Traffic Regulation Order for the reduction of the Witney Road speed limit from 30mph to 20mph, which would help safety. Whilst air quality is another concern, this was the subject of a study including a survey at the application stage and Council Officers<sup>15</sup> had no objections. I was not presented with clear evidence that would lead me to a different conclusion.
84. I also note the concern about inadequate car parking, but there is no reason why a detailed layout could not be designed to meet the Council's requirements. Similarly, there would be sufficient space to design a scheme to avoid impairing the living conditions of existing residents.

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<sup>14</sup> Strategic Flood Risk Assessment

<sup>15</sup> Paragraph 5.78 Committee Report

85. Several residents comment about sewage capacity in the area. However, Thames Water commented at the application stage that they had no objection in terms of foul water capacity. Comments are also made about health provision however the additional households would not be a significant increase in the population of the area. School capacity is also raised but the Section 106 agreement provides funding for expansion.
86. The local residents have concerns about the wildlife particularly birds, bats and badgers which have been seen on the site. However, the site's ecological value was considered in the submitted report dated 24 September 2021, which did not find significant species or habitat. Similarly, I note there is a SSSI nearby, but Natural England had no objection to the proposal. The appellant also suggests a condition promoting ecological measures to create a biodiversity net gain.

### **Housing Land Supply**

87. The Council suggest housing land supply is 3.96 years (a 1,080 dwellings shortfall) and the appellant finds 3.56 years (a 1,485 dwellings shortfall). The yearly requirement 2011-2021 being 550.
88. Both sides acknowledge the definition of deliverable in the Glossary to the Framework and the need for clear evidence. However, the build rate and deliverability of several sites are disputed.
89. At 'REEMA North and Centra' there was dispute whether an extant permission for 200 dwellings existed. In addition, the MoD are discussing a revised scheme which is yet to be submitted. Thus, the implementation and timing are both uncertain, and I do not find that this would meet the test of deliverable.
90. On land east of 'Monaham Way', the appellant suggests a shortfall of 80 units using the Lichfields<sup>16</sup> delivery rate yardstick. The Council rely on the comment from the builder, which may be optimistic given it is the only seller and there is no basis to suggest faster delivery than the Lichfield's rate. I therefore find that these 80 dwellings should not count towards the 5 year supply.
91. For land at 'London Road and Russel Way' there was considerable debate over the contribution of 35 units in a Use Class C2 development near Chipping Norton. The Council preferred to rely upon the nature of the facilities and the internal layout whereas the appellant favoured the C2 use and yardstick in the PPG which bases the number of dwellings for land supply in terms of those freed up. The Council's stance is based on an interpretation however the appellant's is more inclined towards accepted national practice which I find more appropriate.
92. The Council suggest that 24 lapsed small sites could be the subject of new planning applications and make an allowance. However, that would not meet the definition of deliverable in the Framework and in any event their likely implementation date would be beyond 5 years and should not be included within the 5 year land supply.
93. There was also dispute whether an assumption should be made that some permissions on small sites will lapse. The appellant suggests 10% and a

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<sup>16</sup> Research following the progress of numerous developments. The second edition considers 180 sites from 50 to over 2,000 dwellings.

reduction of 66 dwellings should be made. There is a logic to the assumption that some permissions will lapse as the owners may change their minds, may neglect the 3 year deadline or a constraint emerges. Given these eventualities I find that a 10% allowance and 66 dwellings reduction would be reasonable.

94. I therefore find that the housing land supply position is between the Council's and the appellant's positions, nearer the latter. But in any event, I do not find that there is much difference between 3.56 and 3.96 years. Even taking the Council's less pessimistic position the supply is substantially short.
95. Moreover, LP Policy H2 shows that the District from 2021-22 onwards has to take some of the housing need from the Oxford City area. This adds 275 dwellings each year to West Oxfordshire's housing land supply requirement, which is a daunting increase as a proportion and in the context of already under-delivery.
96. Both parties make reference to the recent appeal decision at Burford<sup>17</sup>. That Inspector found that the housing land supply was between the Council's position of 5.02 years and the appellant's 3.68 but closer to the latter. However different evidence was submitted to this Inquiry and so that decision does not lead me to a particular conclusion.
97. Paragraph 5.23 of the LP acknowledges there has been previous under supply and a shortfall of housing. It continues that the Local Plan therefore seeks to make a significant increase in supply. The Council suggest that housing delivery has improved since the Local Plan adoption in September 2018. However, that impetus has happened, and the review of the plan has only just been commenced. Future allocations would be expected to be affirmed at the earliest in 2024. It would take some time thereafter for schemes to be designed, for the planning application process to be completed and for implementation to be arranged. In addition, the abandonment of the Oxfordshire Plan creates further uncertainty of the strategic picture.
98. The Council suggest that delivery on large sites could well improve, but equally some could run into difficulties.
99. I therefore conclude that the housing land supply shortfall is substantial and the prospects for it improving are poor, even more so with the additional requirement from Oxford City.

### **Affordable housing**

100. The proposal would provide 40% of the dwellings as affordable homes in accordance with Policy H3. The dispute at the Inquiry was over the weight this should be given.
101. The Council agree that affordable housing is much needed<sup>18</sup> and it is important that it be delivered as soon as possible<sup>19</sup>. This is echoed in paragraph 5.3 of the LP which refers to the high prices in the area. The Council however suggests that the need in Ducklington is low based on the responses to the housing register. The appellant suggests that those in need are unlikely to select Ducklington because of the assumed unavailability. In any event the

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<sup>17</sup> APP/D3125/W/22/3293656

<sup>18</sup> Statement of Common Ground paragraph 8.13

<sup>19</sup> Affordable Housing Round table

site would be well placed to meet the needs of West Oxfordshire. Indeed, the planning obligation makes provision for general affordable needs and not specifically to Ducklington. 1,084<sup>20</sup> households on the housing waiting list expressed a preference for Witney.

102. The Council acknowledged that it relies upon the delivery of market housing to provide affordable homes. Such delivery is being impaired by the inadequate housing land supply provision and as I found earlier is unlikely to be remedied in the near future. Indeed, the Local Plan<sup>21</sup> includes housing affordability as one of its key issues of greatest significance.
103. When assessed against the 2014 SHMA target<sup>22</sup> there is 6 years of under-delivery and 2 years of surplus but an overall significant shortfall. According to the Council's own most recent figures, there are 2,985 applicants on the Council's housing register. Waiting times are between 721 days and 1,027 days<sup>23</sup> according to the size of the dwelling. I find the affordable housing is shortfall is substantial.
104. These figures represent people lacking suitable housing everyday of their lives, resulting in impaired quality of life and challenges for health and wellbeing. The proposal is for 40% of the up to 120 dwellings to be affordable, which would be a very significant amount. The Council's Strategic Housing and Development Officer concluded<sup>24</sup> that the affordable housing proposed here would make an important contribution to local housing need.
105. I therefore conclude that the proposal should be afforded the substantial weight suggested by the appellant.

### **Other Planning Obligations**

106. The West Oxfordshire Infrastructure Delivery Plan Policy highlights the need for facilities. The 2010 CIL Regulations and paragraph 57 of the Framework provide the tests for obligations. Both the District and the County Councils have provided CIL Compliance Statements. Whilst both parties generally agree on the obligations, there is nonetheless a clause<sup>25</sup> that, if I am not minded that a particular obligation meets the CIL tests or is not material to this proposal, it can be struck out.
107. EH5 requires contributions towards outdoor recreation and play facilities and accordingly the 'Sport and Leisure contribution' would meet the additional demands of new households and is capable of being provided within the catchment area. The two contributions to the 'Capital infrastructure improvements' in the Lower Windrush Valley Area and the 'Countryside enhancements' relating to the Lower Windrush Valley Project would offset the impacts of the new residents. Both are supported by Policy EH4 which requires contributions towards local green infrastructure. The public open space/play obligation is needed to ensure that satisfactory management is in place for the amenity of users and the appearance of the scheme.

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<sup>20</sup> Paragraph 42 Appellant closing

<sup>21</sup> Paragraph 1.1

<sup>22</sup> Figure 4 Mr Stacey Proof of Evidence

<sup>23</sup> Paragraph 52 Appellant closing

<sup>24</sup> Core document 3.28

<sup>25</sup> Clause 6.11

108. The 'A40 improvements' are necessary due to the increase in vehicles arising from the development. The County Council confirmed at the Inquiry that an improvement scheme has been devised. The bus stops, crossings, walking signs and dropped kerbs are necessary to ensure that non-vehicular movement is encouraged in the interest of saving carbon emissions. Policy T1 promotes sustainable transport and more specifically T3 seeks to expand the use and provision of public transport, walking and cycling. The travel plan monitoring fee is similarly warranted. The 'TRO implementation fee' is necessary to support the speed limit being changed to 20mph to help safety.
109. The education contributions are necessary to ensure that provision is made for the new residents as the County Council CIL Statement explains there is insufficient capacity. OS5 requires new development to contribute towards essential infrastructure.
110. The above are intended to mitigate the needs and impact of the intended occupants of up to 120 additional houses, to avoid placing undue pressure on the existing community facilities. The requirements were based on calculating the resulting new residents and the likely need for the particular facilities.
111. The CIL Compliance Statements set out how each obligation would meet the tests in the CIL Regulations and the Framework. Similarly, they meet the requirements of the particular Development Plan policies. I am satisfied that each obligation contained in the agreement would meet the tests in that they are all necessary to make the development acceptable, directly related and fairly and reasonably related in kind and scale.

### **The Development Plan and Planning Balance**

112. Paragraph 202 of the Framework states where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate securing its optimum viable use.
113. Addressing the heritage balance first, I found earlier the proposal would lead to less than substantial harm to the significance of the Ducklington Conservation Area, resultant from an adverse effect on the contribution the setting makes to the designated area, which would be a low point on this scale. Albeit that harm would be very limited, I give this considerable importance and weight as harm to a designated heritage asset. Balanced against this are the positive benefits of the scheme including up to 120 new homes, of which 40% would be affordable housing. I conclude that these public benefits would outweigh that harm. The Council also arrived at a similar conclusion, even though they concluded that the level of impact and the weight they ascribed to the harm to the heritage asset would be greater. On this basis there is no clear reason for refusing the development in the context of paragraph 11(d)i and footnote 7 which therefore does not disengage the presumption in favour of sustainable development or the tilted balance as set out in 11(d)ii of the Framework, however I will still include the heritage harm as part of the harms when undertaking the overall balance.
114. In addition to the above, I have found limited harm to the character and appearance of the area. Accordingly, the proposal would conflict with Policies OS2, OS4, EH2 and EH9 but I ascribe only limited weight to this conflict due to the limited and localised nature of the harm.

115. Policy H1 states that development will be monitored annually to ensure that the overall strategy is being delivered, which shows the importance of maintaining housing land supply. H1 also directs that the Witney sub area<sup>26</sup> (wherein the appeal is located), is the second largest area for growth in the District. Indeed, the Local Plan targets the Witney sub area for new development. Paragraph 9.2.1 confirms that Witney as the District's largest town acts as the main service centre. The submitted Transport Assessment shows that the site would be within walking distance to the southern environs of Witney, whereby the residents would be readily able to access everyday local facilities without having to rely upon the use of private car. Paragraph 9.2.24 states limited development opportunities within Witney mean that greenfield land on the edge of the town will be required for future need. The proposal would not conflict with H1.
116. Policy H2 titled 'Delivery of New Homes', foresees growth in the Witney area. It allows for new homes on undeveloped land adjoining the built-up area 'where convincing evidence is presented to demonstrate that it is necessary to meet identified housing needs [if] it is in accordance with the distribution of housing set out in Policy H1 and is in accordance with other policies in the plan in particular the general principles in Policy OS2'. The proposal would only conflict with H2 by its cross reference to OS2 which has the 'limited development' criterion.
117. Policy OS1 has a presumption in favour of sustainable development. This states that where policies are out of date then permission will be granted unless material considerations indicate otherwise. It then cross references to the Framework.
118. Considering the above collectively there is some support but also some conflict with the development plan. Taken as a whole, I find that the proposal would conflict, but that conflict would only be very limited and consequently warrants very little weight.
119. Both parties accept that the Council is not meeting its five-year housing land supply requirements. Paragraph 11d(ii) of the Framework is therefore engaged. This states that where policies are out of date permission should be granted 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.
120. Paragraph 7 of the Framework states that the purpose of the planning system is to contribute to the achievement of sustainable development. In order to achieve this paragraph 8 of the Framework provides three overarching objectives: economic, social and environmental.
121. In terms of the economic objective the proposal would provide up to 120 houses which would have benefits from their construction. The housing land supply shortfall is substantial with little prospect for improvement. Paragraph 60 of the Framework confirms the Government's objective of significantly boosting the supply of homes.
122. In terms of the social objective the Framework refers to the need to provide sufficient number and range of homes to meet the needs for present and future

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<sup>26</sup> Figures 9.1a and 9.2a Local Plan



generations. The housing land supply shortfall is substantial with little prospect for improvement, and there is a pressing need to increase supply with deliverable sites. The proposal would provide a range of new homes, in terms of size, form and tenure. The proposal would also provide a significant quantum of new homes, which is particularly important bearing in mind the aforementioned shortage. 40% of the new homes would be affordable thereby providing for those in housing need and alleviating that shortfall.

123. In terms of the environmental objective the proposal would lead to landscape and heritage harms as above however those would be limited and very limited, albeit the latter warrants great weight and importance. Conversely, the occupants of the dwellings would be close to facilities without reliance upon car use, thereby helping towards low carbon living as advocated in this criterion of paragraph 8.
124. The appeal at 110 Witney Road was recently dismissed. However, this was for a single dwelling which had a different scale of planning benefits. In addition, the inadequate 5-year housing land supply shortfall was not evident at the time. Moreover, that Inspector found, in any event, that: 'I am not persuaded that the proposal would significantly increase the impression of coalescence between Ducklington and Witney and that, the resulting harm to the wider landscape would be no more than minor in terms of significance. Accordingly, I find that appeal does not lead me to a different decision.
125. In the light of the above I therefore conclude that the adverse impacts of the proposal would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The proposal therefore benefits from the presumption in favour of sustainable development. The benefits of the proposed development and presumption in favour of sustainable development in the context of the tilted balance therefore lead me to conclude that the appeal should be approved not in accordance with the development plan as material considerations indicate a decision otherwise is appropriate.

## **Conditions**

126. Paragraph 56 of the Framework and the Planning Practice Guidance (PPG) provide the tests for the imposition of conditions. Both parties have collaborated on the suggested conditions and are in agreement.
127. Rather than the standard 3 years for the submission of application(s) for reserved matters, the appellant suggests this could be reduced to 2 years. This would encourage the site's implementation and support its contribution to the 5-year housing land supply requirement, in accordance with paragraph 77 of the Framework.
128. A condition is needed to confirm which details need to be the subject of reserved matters. Similarly, a condition lists the submitted and approved plans. Both these conditions help certainty.
129. An archaeological recording condition was recommended following the site investigation. This would ensure that any heritage significance is properly recorded. This is worded as pre-commencement out of necessity.
130. A Construction Method Statement is necessary to safeguard the reasonable living conditions of local residents. Some elements of the suggested

Construction Traffic Management Plan condition partially overlap and are integrated into this one condition. Several elements go beyond the scope of planning control and are not included. The condition is worded as pre-commencement to ensure that the required measures are in place from the outset.

131. Whilst a tree survey has been undertaken measures are needed to ensure that these existing trees around the site's boundaries are protected during construction. As I found earlier, they form an attractive backdrop to the site. This is worded as pre-commencement out of necessity.
132. The landscaping details are a reserved matter, but a condition is needed on the timing of planting and any replacement of lost specimens. Similarly, a landscape management plan is also necessary as the scheme will include significant open space which should be managed appropriately to ensure its long-term value.
133. A condition requiring details of biodiversity measures is necessary to ensure that the proposal delivers a positive gain, as in paragraph 179 of the Framework. The condition also extends into the future maintenance. Whilst several conditions are suggested, the measures can be encompassed in a re-worded single condition simply requiring details and implementation.
134. A condition is necessary to control external lighting to avoid disturbance to wildlife and limit light pollution as promoted by paragraph 185 of the Framework. This was also recommended in the 2021 Ecological Assessment Report. The condition on electric car charging points is necessary to ensure provision is made and is unobtrusive to the scheme and convenient to the residents, whilst benefiting the wider environment. Similarly, the condition on provision of the Travel Information Pack would help promote non vehicular use of local facilities.
135. The condition on accessible and adaptable dwellings is necessary to ensure that the dwellings would be capable of meeting the everyday needs of the population as a whole. Similarly, this condition includes provision for self-build/custom dwellings which is a particular need identified in paragraph 62 of the Framework.
136. The connection to broadband facilities would be at the behest of potential suppliers and details were not provided over the practicalities of implementation. Therefore, there is no certainty that the suggested condition could be complied with and if so when. Accordingly, it is not imposed.
137. A condition on surface water drainage is necessary to accommodate the additional water run-off from the new hard surfaces to avoid exacerbating flooding. The use of SUDS would be advantageous for the site's appearance and biodiversity. Other suggested conditions duplicate this wide-ranging condition and are not so imposed. Conditions on wastewater and water connection are unnecessary as this would be provided by the supplier. Similarly, the suggested condition requiring submission of records showing SUDs implementation is unnecessary as the Local Planning Authority would be able to check themselves.
138. A condition to investigate and potentially remediate land contamination is suggested. The field has been used for agriculture in the past and it is possible

that some chemicals may have been used. This is warranted as a precaution to ensure the health of the new residents.

139. As I found earlier the removal of the overhead power lines and their installation below ground would improve the appearance of the site and a condition on implementation is necessary. This is pre-commencement out of necessity and agreed by the appellant.

### **Conclusion**

140. For the reasons set out above I conclude that the appeal should be allowed subject to the conditions in the annex below and all the obligations within the Section 106 agreement.

*John Longmuir*

INSPECTOR

### **Appearances**

#### For the Council

Mr Cain Ormondroyd Counsel

Mr Chris Wood Senior Planner West Oxfordshire District Council

#### For the Appellant

Mr Killian Garvey Counsel

Mr Jeff Richards BA(Hons) MTP MTRPI Senior Director Turley

Mr James Stacey BA(Hons) Dip TP MRTPI Director Tetlow King

Mr Charles Mylchreest Dip LA CMLI AIEMA Director EDP

Mr Edmund Stratford BA(Hons) MCIfA Associate EDP

#### Interested parties

Ms Emma Morse Local resident

Mr John Dunsdon Local resident

Mr Mick Clack Local resident

Ms Joyce Hussain Local resident

Mr Matthew Barker Local resident

Councillor Maynard West Oxfordshire District Council

Councillor Woodruff West Oxfordshire District Council

Oxfordshire County Council (for the Section 106 session)



Planning Authority before any development begins and the development shall be carried out only as approved.

3. Applications for approval of reserved matters submitted pursuant to conditions 1 and 2 shall be in accordance with the following plans: site location plan drawing number 21\_5503\_01 and site access detail plan drawing number 3453-F01 rev D.

4. Prior to commencement of development, including any clearance and preparatory works, an archaeological written scheme of investigation shall be prepared relating to the application site area, which will be submitted to and approved in writing by the Local Planning Authority. The approved scheme of investigation shall be fully undertaken prior to the commencement of development.

5. No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the Local Planning Authority. The Statement shall provide for:

- the parking of vehicles of site operatives and visitors;
- the methods for accessing the site, including wider construction vehicle routing;
- loading and unloading of plant and materials;
- the management of waste materials;
- storage of plant and materials used in constructing the development;
- the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- the use of wheel washing facilities;
- measures to control the emission of dust and dirt during construction;
- a scheme for recycling/disposing of waste resulting from demolition and construction works;
- delivery, demolition and construction working hours;
- details of appropriate signing, to accord with the necessary standards/requirements, for pedestrians during construction works, including any footpath diversions.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

6. Prior to first occupation, a scheme for biodiversity measures and management, together with a timetable for implementation, shall be submitted to the Local Planning Authority for approval. The scheme shall be implemented in accordance with the approved details and the approved timetable. It shall be maintained thereafter in accordance with the approved management scheme.

7. 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 5 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

8. A landscape management plan setting out the management and maintenance responsibilities, including a timetable for actions, for all hard and soft landscape areas shall be submitted to and approved by the Local Planning Authority prior to first occupation of the development. The landscape management plan shall be carried out in accordance with the approved details and the approved timetable.

9. No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.

10. Prior to first occupation of the dwellings, a scheme to deliver electric charging points, together with a timetable for implementation, shall be submitted to the Local Planning Authority for approval in writing. The scheme shall be fully implemented in accordance with the approved details and to the approved timetable.

11. A Travel Information Pack shall be submitted to and approved by Local Planning Authority. The first residents of each dwelling shall be provided with a copy of the approved travel information pack prior to the first occupation of each dwelling.

12. Prior to first occupation, a scheme for the external lighting shall be submitted to the Local Planning Authority for approval. Only external lighting in accordance with the approved scheme shall be installed. The external lighting shall be maintained and retained as approved thereafter.

13. Prior to the commencement of development, a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development, will be submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented in accordance with the approved details. The scheme shall also include:

- A compliance report to demonstrate Standards and Guidance for Surface Water Drainage on Major Development with full drainage calculations for all events up to and including the 1 in 100 year plus 40% climate change;
- A Flood Exceedance Conveyance Plan;
- Comprehensive infiltration testing across the site to BRE DG 365 (if applicable);
- Detailed design drainage layout drawings of the Sustainable Urban Drainage (SUDS) proposals including cross section details;
- Detailed maintenance management plan in accordance with Section 32 of CIRIA C753 including maintenance schedules for each drainage element;

- Details of how water quality will be managed during construction and post development in perpetuity;
- Confirmation of any outfall details;
- Consent for any connections required into third party drainage systems;
- Maintenance plan for the surface water systems and
- A timetable for phased implementation.

14. No less than 25% of the dwellings hereby approved shall be adaptable dwellings designed to meet building regulations requirement M4 (2) and not less than 5% of the dwellings hereby approved shall meet the NPPF definition of self-build or custom dwellings.

15. Prior to the commencement of development a site investigation of the nature and extent of contamination shall be carried out in accordance with a methodology which has been previously submitted to and approved in writing by the Local Planning Authority. The results of the site investigation shall be made available to Local Planning Authority before any development begins. If any significant contamination is found during the site investigation, a remediation scheme specifying the measures to be taken to remediate the site to render it suitable for development together with a programme for such works, shall be submitted to the Local Planning Authority for approval in writing.

Any remediation scheme as agreed in writing by the Local Planning Authority, shall be fully implemented in accordance with the approved timetable of works. On completion of such works the developer shall submit to the Local Planning Authority written confirmation that all works were completed in accordance with the agreed details. If during the course of development any contamination is found which has not been identified in the site investigation additional measures for remediation of the contamination shall be submitted to and approved in writing by the Local Planning Authority. The remediation of the site shall incorporate the additional approved measures.

16. Prior to the commencement of development, a scheme to place the overhead power lines across the extent of the appeal site (as shown by the red line on the site location plan) and remove the existing above ground power lines, shall be submitted to the Local Planning Authority for approval, including a timetable for such works. The overhead power lines shall be placed underground, and the overhead lines removed, in accordance with the approved details and approved timetable.

*End of conditions*