

Case Officer: Jeanette Davey

Applicant: Abbeymill Homes

Proposal: Erection of 14 two storey dwellings and upgrading of existing access onto the Heyford Road, together with garaging and parking, footpath link, the removal and re-instatement of a section of existing wall and its repair along the Heyford Road frontage, and landscaping and all enabling development

Ward: Fringford And Heyfords

Councillors: Cllr. Patrick Clarke, Cllr. Nigel Simpson and Cllr. Barry Wood

Reason for Referral: Major development

Expiry Date: 19 December 2023

Committee Date: 7 December 2023

SUMMARY RECOMMENDATION REFUSE

1. APPLICATION SITE AND LOCALITY

- 1.1 The application site is relatively level, measures 2.2 hectares and is paddock land used for horse grazing. The existing access to Jersey Cottages is proposed as the application site's access. The four two-storey dwellings at 1 and 2 Jersey Cottages are said to date from the 1950s or 1960s, and 3 and 4 Jersey Cottages date from the late 1970s.
- 1.2 Existing trees on the application site are subject to an Arboricultural Impact Assessment (AIA) (Aspect Arboriculture, August 2023) and proposed Woodland Management Plan (WMP) (Aspect Arboriculture, August 2023). Paragraph 1.4.1 of the AIA states that there are fifty-nine trees of individual distinction, nine groups of trees, three hedgerows and the woodland. There are no individual TPOs within the application site.
- 1.3 Opposite the site is Foxtowns Green, a residential cul-de-sac of four dwellings built in the mid-1990s.
- 1.4 The site is bounded to the north in part by a significant belt of native trees and, in part, by open access to adjoining horse grazing. To the east, it is bounded by a mix of mature trees, modern agricultural barns to Home Farm, the curtilage of the dwelling at Home Farm and a small area of grassland. To the south, its boundary would follow the line of a significant belt of mature trees. To the west, it is enclosed by mature tree planting and the boundary wall to Kirtlington Park, which the Conservation Area Appraisal describes on P30 as magnificent.
- 1.5 Cherwell Local Plan 2015 (CLP 2015) defines Kirtlington as a Category A Service Village. Proposals for development within the built-up limits of villages will be considered for minor development, infilling and conversions.

- 1.6 Cherwell Local Plan 2040 Regulation 18 Consultation Draft (CLP 2040) proposes that Kirtlington be defined as a Larger Village. This definition is material but carries no weight. Larger Villages are stated as having a more limited range of employment, services and facilities than Local Service Centres (Kidlington and Heyford Park) and Main Towns (Banbury and Bicester). Unplanned development will be limited to providing for local needs and to support employment, services and facilities within local communities.
- 1.7 Mid-Cherwell Neighbourhood Plan (MCNP) states that Kirtlington has a traditional, essentially linear, pattern, north-south. P34 states that the settlement plan, formally adopted by Kirtlington Parish Council in 2016, is limited on the eastern side by the listed historic park, while on the western side a well-defined boundary to the contemporary built area approximates closely the old Woodstock Way, which is clearly visible on 18th and 19th century maps.
- 1.8 MCNP also stated, at the time of publication (May 2019), that the school at Kirtlington was at full capacity with no physical space to expand as the playground was already at minimum size for the number of pupils. OCC Education envisaged bussing overflow to the school in the next village. Kirtlington's small shop was well-used and often had queues. The village hall was already booked every weekday evening and at most weekends. Since publication, the shop has closed. The Parish Council is proposing to replace it with a community shop and café at the village hall. The planning application for this proposal, ref 23/02523/F, was approved on 08.11.2023.

2. CONSTRAINTS

- 2.1 The application site is within a Grade II Registered Park and Garden (RPG) designed by Capability Brown. It forms the garden and part of the parkland to the Grade I listed house at Kirtlington Park. The Historic England listing for the RPG extends to approximately 300 hectares (740 acres).
- 2.2 The application site is also within Kirtlington Conservation Area. In geographic extent, the Conservation Area is dominated by the RPG. The Conservation Area Appraisal (2011) states that the total area of Kirtlington Park is 1,200 hectares (3,000 acres). Section 9.1 of the appraisal defines the topology and appearance of the park as gently undulating grassland studded with mature specimen trees. The siting of the main house on the top of the slope within the park enhances its prominence in the landscape and visibility from all parts of the surrounding park. It continues that, within the park, enclosures are rare.
- 2.3 Within the RPG is Home Farm, a Grade II listed dwelling. Home Farm's stead includes a range of traditional and modern barns. Its curtilage juts into the field subject of this application.
- 2.4 Other nearby listed buildings include 1-4 Foxtownsend Cottages, two pairs of Grade II listed cottages opposite the application site. Four other Grade II listed buildings are to the south and south-west of the application site and include the lodge and attached gates to the park. The closest of these six listed buildings is c.4.6m and the furthest c.20m from the site edged red when measured to the southernmost part of the proposed visibility splay.
- 2.5 The agricultural land classification (ALC) of the northern half of the site is Grade 2, thus within the Grades 1-3a range of best and most versatile agricultural land. The southern half is Grade 5.
- 2.6 The site has no specific ecological designations.

3. DESCRIPTION OF PROPOSED DEVELOPMENT

- 3.1. Vehicular and pedestrian access is proposed via Little Foxtown, a no-through road, between the four dwellings known as Jersey Cottages. A proposed extension of the road would divide into two beyond the existing cottages, with that heading north servicing six of the proposed dwellings and that heading south, including a hammerhead turn at its end, for the remaining eight. To increase the visibility splay when exiting onto Heyford Road, a section of the RPG's boundary wall is proposed to be demolished and re-aligned on both sides of the exit, and the bell mouth access widened to allow two-way traffic.
- 3.2. Pedestrian access is also via a footpath encircling the southern group of eight dwellings. Within the site is a proposed access point from that footpath onto Heyford Road, closer to the centre of the village. Its provision would require another section of the boundary wall to be removed and replaced with a new gate.
- 3.3. Tenure for the six dwellings to the north is proposed to be affordable housing, with the nature of tenure to be agreed. Tenure for the eight dwellings to the south is proposed as private market housing. Paragraph 4.14 of the Planning Statement (Abbeymill Homes, September 2023) advises that the proposal will fulfil a local housing need for those properties most in demand in the district.
- 3.4. External-facing layout of the site shows three dwellings facing Heyford Road, with a set-back of approximately 28 to 30 metres between the dwelling frontages and the road edge. The buffer comprises both the parkland wall and the belt of mature trees, whose crown diameters measure up to 30 metres. Paragraph 4.7 of the Planning Statement considers that this will continue the linear arrangement that exists on the opposite side of the road, but the proposal does not include any direct access from each property to Heyford Road, as exists opposite. Each dwelling frontage opposite is set back between approximately 11 to 14 metres from the road edge. Buffers for those frontages comprise hedgerow boundaries and some low boundary walls.
- 3.5. Internal-facing layout of the site has seven dwellings fronting the proposed extension to the access to Jersey Cottages. The access turns north to two dwellings which would front an area proposed as open space and whose rear gardens would back onto that at 4, Jersey Cottages. The access turns south to the remaining dwellings. None of the eight dwellings in the southern half of the development would front the new access road, with each having its enclosed rear garden or its gable end against the road. Enclosure of private amenity space facing the road for all eight dwellings is proposed in 1.8m high stone walling.
- 3.6. Density of development is defined on P12 of the Design and Access Statement (DAS) (Abbeymill Homes, September 2023) as being at 25dph exclusive of open space, *which reflects its sensitive location adjoining open countryside and on the settlement edge.*
- 3.7. Design of dwellings is described in the Planning Statement as detached and semi-detached units, in two storeys and in a traditional style.
- 3.8. Dwelling sizes range from two- to four-bed, with an equal split between the tenures for two- and three-bed dwellings, but with both four-bed dwellings being for private market housing. The six affordable dwellings to the north comprise two two-bed and

four three-bed. The eight private market dwellings to the south comprise two two-bed adjoining Jersey Cottages, four three-bed and two four-bed.

- 3.9. Private amenity space lengths for the rear of each dwelling range from approximately 10 metres up to 22 metres, with some of the shortest having part of their garden length reduced to 7.5m.
- 3.10. Parking on-site for each dwelling is proposed as two parking spaces, with some being in garages. The accompanying Plot Schedule Rev B shows a total of 5.6 unallocated parking spaces. It is not understood how 0.6 of a parking space is to function and it is not shown on the Site Layout Plan, which shows five parking spaces.
- 3.11. Materials proposed for each dwelling are Cotswold stone under slate roofs, with four of the dwellings shown as having flat green roofs to part of each dwelling to the rear. The road system and visitor parking spaces are in block paving throughout, including a change to that which exists in front of Jersey Cottages. Tarmac is proposed at the bell mouth junction with Heyford Road.
- 3.12. Heritage assets are considered in Paragraph 4.5 of the Planning Statement which states that a significant open buffer has been maintained with Home Farm to the east. At its closest point, this measures approximately 3.36m between the boundary to Home Farm and the nearest newly built form: the proposed encircling footpath. At its furthest point, this measures approximately 21.8m between the corner of the dwelling at Plot No 9 and the corner of Home Farm.
- 3.13. Woodland area management is addressed in Paragraph 1.4.4 of the WMP, which states that management of the woodland areas has previously been limited. Section 3.7 proposes structural thinning and restocking. Paragraph 3.4.1 proposes footpath routes for residents as informal trails, replenished as required with woodchip to enable year-round use. No mature trees are recommended for removal within the woodland areas. Sections 3.10 and 3.11 propose monitoring of the woodland areas on a five year cycle and implementation of the WMP by a management company appointed by the developer.
- 3.14. Existing trees and landscaping are stated as being affected in Point (v) of the Executive Summary, which states that the proposed development would result in the loss of three trees of individual distinction, two domestic hedges and the partial clearance of low-quality scrub. Paragraph 4.1.4 of the AIA states that the losses are primarily to enable the proposed vehicular access. Paragraph 1.4.6 considers that the removal of four trees is recommended irrespective of the development proposal. It is not clear whether this is additional to the three trees proposed for removal in Point (v) of the Executive Summary.
- 3.15. Proposed trees and landscaping include enhancement of the understorey layer within the shelter belt on the southern and western boundaries. The Landscape Strategy Plan indicates that reinforcement is proposed on the boundaries of the site. Within the site, ornamental trees, hedges and shrub planting are proposed, including orchard trees within the north-east corner of the site. Additional shrub planting is proposed along the boundary with Home Farm. A mown grassland route is proposed to the southern side of the site, together with 'medium' trees, intended to reflect the parkland character of the wider landscape setting.
- 3.16. Public open space is identified in Paragraphs 4.1 and 4.8 of the submitted Planning Statement and it is shown in indicative terms on the Landscape Strategy Plan, but it is not specifically delineated on plan. Paragraph 4.8 states that it is extensive. It appears to be at land to the east of plots 4, 5, 6, 9 and 10, to the south of plots 9-12 and to the west of plots 12-14.

- 3.17. Biodiversity Net Gain is defined in Section 5.3.1 (P25 onward) of the Ecological Impact Assessment (Windrush Ecology, August 2023). The result of the calculation predicts a net gain in biodiversity value. It continues: *The parkland style habitat that will be created to the south and east of the development has been designed to integrate the development into the surrounding landscape and create a new area of parkland, which is a target habitat of the nearby Kirtlington and Bletchingdon Parks and Woods Conservation Target Area. It will provide a stepping stone of habitat and over time as it matures, a continuation of a high value habitat that will link the woodland and parkland in the wider area. Further species-specific enhancements have also been included within the development in order to provide additional gains for biodiversity.*
- 3.18. Accessibility improvements are outlined in the Transport Statement (Glanville, August 2023). There is no pavement on the application side of Heyford Road. Improvements therefore include a proposed uncontrolled crossing to connect the development on the eastern side of Heyford Road to the existing footway on the western side of Heyford Road. A second uncontrolled crossing is proposed further south on Heyford Road, to connect the footpath loop within the site to the western side of Heyford Road. These crossings have not been plotted but would be subject to a S.278 agreement with the Highway Authority.
- 3.19. Drainage is defined within Page 8 Paragraph 5.4 of the Drainage Strategy to include SUDS, including permeable pavements and a pond, the latter being defined on an unnumbered page and an unnamed plan within the document as not being designed for water storage but to distribute greenfield run-off to a large area, mimicking existing conditions. Maintenance is stated as being in accordance with The SUDS Manual (presumably that published by CIRIA, 2015) and would range from as required / monthly to every five years.
- 3.20. Sustainability features include integrated solar hot water panels and air source heat pump technology.
- 3.21. Repairs to the existing stone wall are proposed as part of the scheme.

4. RELEVANT PLANNING HISTORY

4.1. The following planning history is considered relevant to the current proposal:

Application: 73/00503/NE	Approved	7 February 1974
Erection of two cottages for agricultural workers. Access.		
Application: 15/01128/OUT	Application Withdrawn	29 September 2015
OUTLINE - Demolition of 1 to 4 Jersey Cottages, residential development for the erection of up to 34 dwellings, open space and associated works		
Application: 15/00054/SO	Screening Opinion not requesting EIA	8 July 2015
Screening Opinion to 15/01128/OUT - OUTLINE - Demolition of 1 to 4 Jersey Cottages, residential development for the erection of up to 34 dwellings, open space and associated works		

Application: 17/01688/OUT Refused 24 November 2017

OUTLINE - Proposed residential development for up to 20 new dwellings and associated works with all matters reserved except access (Resubmission of 17/00539/OUT)

Application: 17/00539/OUT Application
Withdrawn 14 June 2017

OUTLINE - Proposed residential development for up to 20 new dwellings and associated works with all matters reserved except access.

Application: 17/00011/SO Screening Opinion
not requesting EIA 28 March 2017

Screening Opinion to 17/00539/OUT - Proposed residential development for up to 20 new dwellings and associated works with all matters reserved except access.

4.2. In reviewing the one application that has previously been refused, ref 17/01688/OUT, and the current application, they have been compared in the context of the former being an outline application with an illustrative sketch scheme which did not have a scale, but for which it is possible to have worked out the scale at approximately 1:750, versus the latter being a full application with scaled plans. The principal differences appear to be as follows:

- a. The site edged red is broadly the same, with the refused scheme excluding two areas: land to the south beyond the dwellings and a parcel of land to the east.
- b. Twenty dwellings were proposed for the refused scheme versus fourteen for the current scheme, with a consequential impact on layout.
- c. The total number of hectares proposed for development was 1.26ha for the refused scheme versus 2.2ha for the current scheme, including informal open space for the latter.
- d. The stated density, in dwellings per hectare (dph), was 16dph for the refused scheme versus 25dph for the current scheme.
- e. The built footprint of the refused scheme extended to the edge of existing woodland. The current scheme's built footprint is approximately 19 metres from the edge of the existing woodland.
- f. The distance between the curtilage boundary of Grade II listed Home Farm and the nearest built form is approximately 13.23 metres to a road in the refused scheme versus 3.36 metres to a footpath in the current scheme. To the nearest dwelling, it is 22.3m in the refused scheme versus 21.8m in the current scheme.
- g. The distance from the frontage of dwellings that would face Heyford Road to the road edge was approximately 17-31 metres for the three dwellings in the refused scheme versus 28-30 metres for the three dwellings in the current scheme.
- h. A five-year housing land supply (5YHLS) existed with the refused scheme and with the proposed scheme.

- i. The planning obligations were drafted in detail within the Design and Access Statement for the refused scheme and they have been acknowledged in principle in paragraphs 6.92 and 6.93 of the Planning Statement for the current scheme.
- 4.3. Paragraph 3.7 of the Planning Statement for the current scheme misrepresents the Officer Report from the refused scheme. It states that Officers advised that:
...if the scheme received clear support from the Parish Council and village residents and any harm to the heritage assets and visual amenities of the area could be shown to be limited and outweighed by public benefits, it may result in a positive Officer recommendation.
- 4.4. This quote is not in relation to the refused application. It is a quote from PreApp ref. no. 16/00329 for roughly the same site and scheme, to which a response was issued on 12.12.2016. All PreApp responses include a caveat to the effect that the response is the professional opinion of an Officer of the Council and that it does not necessarily represent the opinion of the Council itself.
- 4.5. The accurate record of the Officer Report for the refused scheme is in Paragraph 8.11 which states, in the report to Committee dated 23.11.2017:
Whilst... the strength of support from the Parish Council is a consideration which should be given weight, in the context of the issues raised and the Council's current ability to demonstrate a 5 year housing land supply, it is considered that the support for the scheme is not so overwhelming that it would outweigh the conflict with the Development Plan.
- 4.6. The four reasons for refusal for 17/01688/OUT were as follows:
 1. By virtue of its siting, scale, size and form the proposal fails to respect the traditional linear settlement pattern of Kirtlington extending well beyond its built up limits to the east into open countryside and into Kirtlington Park, resulting in an incongruous and inappropriate form of cul-de-sac development which would relate poorly to the remainder of the village, and cause demonstrable harm to the rural character and setting of the village and visual amenities of the area. Therefore the proposal is contrary to saved Policies H18, C8, C27, C28 and C30 of the Cherwell Local Plan 1996, Policies ESD13 and ESD15 of the Cherwell Local Plan 2011-2031 and Central government advice within the National Planning Policy Framework.
 2. The proposed development would by reason of its location, scale, and form cause considerable harm to the character and significance of the heritage assets of Kirtlington Conservation Area and the Grade II Registered Kirtlington Park, and would cause unacceptable harm to the settings of nearby listed buildings in particular Home Farm and the wider setting of Kirtlington Park House. Whilst, on balance, this harm is less than substantial the public benefits do not outweigh this harm. Therefore the proposal is contrary to Policies ESD13 and ESD15 of the Cherwell Local Plan 2011-2031 and the National Planning Policy Framework in particular paragraph 17 'Core planning principles' and section 12 'Conserving and enhancing the historic environment', and the Planning Practice Guidance.

3. In view of the harm identified in refusal reasons 1 and 2 above and in the context of the Council being able to demonstrate an up-to-date 5 year housing land supply, the proposal is considered to be unnecessary, undesirable and unsustainable new housing development that would conflict with the criteria for assessing proposals for minor development listed under Policy Villages 2 of the Cherwell Local Plan 2011-2031. Therefore the proposal is unacceptable in principle contrary to Policy Villages 2 of the Cherwell Local Plan 2011-2031 and Central government advice within the National Planning Policy Framework.
4. In the absence of a satisfactory planning obligation the Local Planning Authority is not convinced that the infrastructure required to mitigate the impacts of the development on existing community infrastructure and services, along with the affordable housing directly required as a result of this scheme, will be delivered. This would be contrary to Policies BSC3 and INF1 of the Cherwell Local Plan 2011-2031 and central government guidance within the National Planning Policy Framework.

5. PRE-APPLICATION DISCUSSIONS

- 5.1. The following pre-application discussions have taken place with regard to this proposal:

Application:	Response Sent	20 January 2022
21/03786/PREAPP		

Pre-Application Enquiry - Erection of 14 two storey dwellings, including affordable housing

- 5.2. Three site layout options were presented in this pre-app, all broadly on the same footprint as the current proposal but with alternative access points, site layout and areas coloured green on the Site Proposal Option plans. Again, in broad terms, the options are not dissimilar to the footprint of the current application, with Option 3 proposing access between Jersey Cottages and Options 1 and 2 from alternative locations on the Heyford Road and Akeman Street.
- 5.3. The Case Officer responded in the absence of a response to consultation from The Gardens Trust. She summarised that any future planning application for these proposals was very unlikely to be considered favourably due to its impact on the visual amenities and rural character of the village and its setting. It would also be harmful to the traditional settlement pattern and would have a significant adverse impact on Kirtlington Park and would neither preserve nor enhance the character and appearance of the Conservation Area, nor the setting of Home Farm.

6. RESPONSE TO PUBLICITY

- 6.1. This application has been publicised by way of a site notice displayed near the site, by advertisement in the local newspaper, and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records. The final date for comments was **13 October 2023**, although comments received after this date and before finalising this report have also been taken into account.
- 6.2. Twenty-five responses to neighbour notification and publicity have been received: 17 against the proposal and 8 in favour. The comments raised by third parties are summarised as follows:

Objections

Impact on the settlement

- Failure to respect the linear settlement pattern.
- In clear contrast to the prevailing and established grain of the village, representing an unacceptable sprawl of development into the Kirtlington Park Estate.
- Incongruous, unnecessary and creeping urbanisation in the rural and open character of this section of the village.
- Development within villages must be brought forward in a manner which reflects the established development pattern. Kirtlington cannot embrace any more big site housing - creating yet more distinct areas apart from the rest of the village (like Gossway). This will cause further impersonalisation, making it feel more like a suburban settlement than a close-knit village.
- The proposed development would have very limited connectivity with the remainder of the village and reads as a distinct and separate housing development, on the edge of the settlement and out of kilter with the prevailing development pattern.
- The submitted layout is contrived and appears to have been shaped so that it can be nestled into the centre of the existing paddock in which it has been located, and does not respond to the numerous heritage, arboricultural or landscaping constraints in either an imaginative or considerate manner. It fails to form acceptable relationships with the existing built environment and the local landscape setting.
- Relates poorly to surrounding properties.
- Will be visible from the north, particularly Akeman Street.
- Permanent alteration to the character with street lights, pavements, signage and associated destruction of green space.
- It is clear there is a bigger development intended!

Impact on the heritage assets

- The listed building, RPG and Conservation Area designations demand high quality and proportionate development to be brought forward for consideration. This development would spoil the surrounding area.
- The land subject to the application for development adjoins the landscape designed by Capability Brown; it is one of the finest of Oxfordshire's country houses and parklands.
- The proposed site is firmly within the overall scheme of the park designed by Capability Brown, which remains a beautiful, famous and nationally valuable contribution to the area.
- Development on this site will not enhance or conserve the character and appearance of the registered park and its setting; it would affect it detrimentally. Destruction of part of the border of this park, which is created as a shelter for the landscape, would greatly damage the design as a whole, and grievously alter its appearance from its outside.
- It is unacceptable for the protected wall be demolished firstly, to gain access to the site and secondly, to give access via a footpath to the development.
- In the past few years there have been a number of applications for building on the site designated in this application, with proposals for thirty-seven, twenty-eight and twenty houses. Those proposals underwent various amendments, in attempts to meet Cherwell DC's objections to them, but the amendments in each case proposed did not address the fundamental flaws in the proposals. The current application appears to suffer from the same issues, which is wholly unsuitable for development, for whatever number of houses.
- The proposal would blight the approach to Kirtlington from the north, which consists of green fields, an ancient wall and fine trees and it would also closely

and directly impact the environment of the listed eighteenth-century cottage immediately adjacent.

- The mature trees and planting which line the Western boundary of the application site are deciduous, and whilst they provide good screening of the proposed development from many of the heritage assets named above, during the winter months, this screening is lost, and clear visibility of the site can be achieved. Light pollution will be worse in winter months, when the loss of the foliage and screening is most pronounced, which will significantly impact the setting of the heritage assets.
- These designated heritage assets do hold individual relationships with the application site, contrary to the statement made on paragraph 6.2 of the submitted Heritage Statement.
- The sprawl of urban development towards a Grade I listed asset cannot be considered to represent an acceptable form of development or an acceptable development site.
- It is, by definition, harmful to the rural character of the village and would have a significantly adverse impact on Kirtlington Park, causing significant harm to the individual heritage assets, their settings, and the wider conservation area.

Housing supply

- The categorisation of Kirtlington is out of date:
- The shop has gone (a community shop is being attempted but nothing thus far, and even if successful this will be a skeletal operation)
- The post office is hardly working (it was closed most of the summer and the owners have moved out of the village with I believe an intention to close completely)
- The bus timetable has severely reduced
- One pub has completely closed with the other only open Wed - Sun
- Not every Category A Village is required to accept additional housing. More should be done to resist further development. The site is not suitable for the form and scale of residential development proposed regardless of any local or Parish Council support.
- The use of the argument that larger villages should have more housing than others is nonsensical. The fact that we are 'larger' already suggests we have had to incorporate a large number of dwellings and have therefore had our relevant quota. The reason this needs to be considered is the development of Gossway Fields and Hatch Way/Close, together with infilling to the North of the village, which has considerably changed the look, feel and 'workings' of the village, with it having four distinct areas.

Highways and access

- Traffic in Kirtlington has been increasing year on year with the ever-increasing number of housing and other developments in the local area yet absolutely nothing is being done to tackle the increasing transport problem in North Oxfordshire. The M40 and A34 are totally inadequate for the number of vehicles, so minor roads are constantly used as rat runs. During rush hour or if there is an incident on the A34/M40, frequently the villages in the surrounding area (including Kirtlington) become gridlocked. This is an utter detriment to the quality of life of residents. To add to this, bus services have been cut, and would have been cancelled if not for active and passionate local residents. Lorries are happy to use our village as a bypass to deliver to other local shops, the main bus services from Bicester/Oxford/Cambridge are happy to use our village as a through road when they choose if the A34 has problems. But there is no shop, and these buses do not stop and serve our village. The village is becoming a victim of developments in other areas and the traffic problem is being totally ignored.

- In my view no more housing should be built in Kirtlington until measures are put in place to reduce through traffic first. For example, banning HGVs, more chicanes, a bypass, perhaps an LTN at one end of the village to prevent through traffic?
- The noise of the traffic has risen dramatically over the years and the addition of a crossing will not only increase the levels of noise but also the level of pollution due to the stopping and starting of engines, no doubt heavier at rush hours, particularly with the large numbers of lorries, acceleration and deceleration and heavy goods vehicles passing through the village constantly.
- Our main concern is the safety of access with additional vehicles at the end of a village where cars traditionally drive faster than 20mph
- Assuming some of new residents will have families using village school, it will currently require x2 crossings of road to reach the village school which, particularly in the morning, is very busy with commuter traffic. Danger to preschool and junior school children.
- I doubt the safety of future residents as there are not adequate pathways for pedestrians.

Ecology

- An Environmental Impact Assessment is essential before further consideration is given to this site.

Access and Impact on Trees

- The proposed widening of the access will place unacceptable pressures on the trees immediately adjacent to the access. It is noted that the submitted AIA begins to address the impact of this widening on the RPA of trees 2 & 3, however this report only describes a method for removing and replacing hard surfacing with respect to these trees and does not acknowledge the foundations required for the proposed boundary wall amendments, which will fall within the RPA for these trees. It is important that a clear picture is given of what engineering work is required here, so that a fair and balanced assessment can be made. This should not be dealt with under a planning condition, due to the potential impact on important and irreplaceable trees which contribute highly to the character of the village in this location. Details of new surface build-ups and levels should also be requested to ensure that the new road surface is capable of being formed on top of the existing sub-base. The intensification of use – from 4 to 18 units, and future adoption of the new access road is likely to require a different build up to the existing private road.
- Details on location / siting for service trenches also need to be understood with respect to these and other trees.

Sustainability

- Kirtlington has suffered the loss of the village shop and Post Office, and the regular bus route is now severely reduced and under threat of closure. The developers simply see the site as a profit-making exercise and are not contributing anything to the village needs or services to maintain the character.
- There are problems with the back-up of sewage in this part of Kirtlington.

Democratic process

- In Kirtlington village itself there remains a significant lack of consensus about the application, with much strong objection apparent; alongside there is some support driven by the hope that development of this site will lead the council to reject applications for development in other parts of the village; valid reasons for support for an application should not include guesses about the council's consequent attitude to other development applications.

- Outraged that it has come to the 'divide and conquer' method by pitching different sites in and around the village against each other
- By suggesting we 'must' have housing (which is not correct) - it means villagers from different areas in the village are set against each other - instead of fighting together against the overall proposal. This of course plays into the hands of the developers as each site is now strengthened having less objections per site.
- If needs be then have a ballot which includes ALL the villagers of Kirtlington to vote on it, not people from outside this village.

Community Benefits

- As stated on the Kirtlington website: 'community views are an important part of the process.' Community is everything in a village. It is almost destroyed already... I appeal to the Council to object to this planning application. We are already large enough; we have done our bit as far as large numbers go. The proposal conflicts with the benefits of a community as listed by the Government.
- There is no interest in adding any value to the village (perhaps propose some shops, or ways to reduce traffic when they apply next time). It will only increase traffic. There are ample housing developments in the north area of the parish in Heyford, which do have facilities (eg shops).

Support

- Impact on both the RPG and Conservation Area would be minimal and would allow Kirtlington to move some way to meeting its obligations under the current Local Plan without significant harm.
- Although the details of the proposals are illustrative, they demonstrate a development which would potentially integrate well with the existing built fabric of the village, particularly with the addition of a footpath link.
- There is an opportunity for better quality design in the detail of the houses and layout, should the application be approved, to create a proposal which better reflects the character of the village vernacular architecture.
- I feel this village has to grow to allow the children who have been born here to purchase their own homes, also with an influx of new families, the school would still be needed, and maybe we would get a shop and post office which would benefit the whole village.
- Kirtlington is targeted for more housing and this application is more in keeping with the historically linear village heritage than other planning applications.
- We are happy provided that the houses are in keeping with other houses in the village.
- It is important that the existing mature trees on the site bordering the Heyford Road are maintained.
- This particular position for houses would be quite a good one as there is already safe access and services to the proposed design. It is near the end of the village so can access Bicester, the B430 and A34 without going through the village itself.
- This site provides the best solution for more houses, with minimal adverse effects on the character and appearance of the village, or on nearby houses. The site proposed respects the linear pattern of Kirtlington, and it is well-screened both from the main road and from other houses.
- The proposal offers a mix of properties, including smaller affordable houses.
- The site is not within the historic park and is separated from that park by existing mature trees. It is quite different in character from the landscaped park, having previously been a common thoroughfare called Town Green, and so this development should have no impact on the historic park.
- The land in question is well covered by trees and a wall meaning the development will be well hidden.

- Repair of existing walls alongside the road frontage and landscaping to ensure the area is presentable in line with the current landscaping would be beneficial.

6.3. The comments received can be viewed in full on the Council's website, via the online Planning Register.

7. RESPONSE TO CONSULTATION

7.1. Below is a summary of the consultation responses received at the time of writing this report. Responses are available to view in full on the Council's website, via the online Planning Register.

PARISH/TOWN COUNCIL AND NEIGHBOURHOOD FORUMS

7.2. KIRTLINGTON PARISH COUNCIL (summary): **Divided.**

Areas of support:

Provision of starter homes, affordable dwellings and smaller dwellings for downsizing; improved design compared to the previous scheme; reduction in the number of dwellings proposed; harm to a heritage asset is at the lower end of less than substantial; spurious and unsupported inclusion within the RPG; not part of the park designed by Capability Brown; no intervisibility with the Brownian landscape; no harm to the original design intent or setting of Kirtlington Park house; very peripheral relationship with the Conservation Area; minimal harm to nearby listed buildings.

In this context, the scheme should be permitted because the Conservation Area status would allow the achievement of a high quality of finish to the development.

The response proceeds to list benefits of the scheme. It requests continuing engagement between Parish Council and agent.

Areas of opposition:

A modern housing estate within a designated RPG and Conservation Area would not be an enhancement; within the curtilage of a Grade I listed building and in close proximity to a Grade II listed building; partial destruction of the parkland, damaging the design as a whole; clear visibility through the trees, worsened when not in leaf; the repair of the wall is the responsibility of the landowner and not a community benefit; blight of the approach to the village from the north; conflicts as stated in the PreApp of 2022; creeping urbanisation including of engineering clutter; conflict with the NPPF, CLP(2015) and the MCNP.

General comments on sustainability, applicable to any application in the village:

Service provision calls into question the proposed categorisation of Kirtlington as one of the eleven larger villages in the draft CLP (2040); the foul sewage system in the village is not fit for purpose.

7.3. MID CHERWELL NEIGHBOURHOOD PLAN FORUM (in full): **Support.**

While we are aware of the sensitive nature of the site, MCNPF considers the application to be of suitable quality, and that it will make a valuable contribution towards the housing needs of Kirtlington. In our view, the site is one of the only sites in the parish that can successfully accommodate new housing without causing serious harm to the character of the village.

As part of the review of the neighbourhood plan, MCNPF is undertaking assessments of all eligible sites in Kirtlington. The review team's recommendations are that this site is suitable for allocation for housing in the emerging NP review. The housing allocation

process is at an interim stage, but the conclusions follow many months of analysis. The Regulation 14 consultation, which will include housing allocation on this site, is due to commence in early January 2024.

It would be inappropriate for Cherwell to refuse this application in the knowledge that the emerging NP Review, in which a site allocation process in Kirtlington to be carried out by MCNP was agreed with Cherwell officers in July 2023, supports development on this site.

Officer Note: A draft set of reports and assessments has been made public from 13.11.2023 on the following website: <https://kirtlingtonvillage.co.uk/mid-cherwell-neighbourhood-plan-report-2023>. That specifically relating to this site is at <https://kirtlingtonvillage.co.uk/wp-content/uploads/2023/11/KIRTLINGTON-SITE-ASSESSMENT-KT7.pdf>

CONSULTEES

7.4. OCC HIGHWAYS (summary): **Objection** for the following reasons:

- *The visibility to the north from the site access junction is inadequate.*
- *A Stage 1 Road Safety Audit has not been submitted.*
- *The swept path of the Refuse Collection Vehicle overhangs private driveways and a hedge*

It must be questionable whether Kirtlington is a sustainable location for development on the basis of the bus service provision. Access to Tackley station is via an unlit, unsurfaced bridleway and is unlikely to be attractive to anyone except the most determined. It cannot be relied on as a realistic transport choice for the majority of development residents.

7.5. PLANNING POLICY (summary): **Objection**. *Kirtlington is one of the more sustainable villages in the District and Policy Villages 2 does make provision for some development in such villages. However, there is no pressing need for additional housing at the present time.*

The application site, if developed, will extend the current built up limits of Kirtlington into open countryside. The site is not allocated for development in the development plan. The proposals are therefore contrary to saved policies C8 and H18.

The Council is currently undertaking a review of the adopted Cherwell Local Plan 2011-2031 (Part 1) which will cover the period to 2040. This plan and any future reviews to Mid Cherwell Neighbourhood Plan is the appropriate context for identifying the quantum and location of future residential development in the rural areas.

7.6. THE GARDENS TRUST (summary): **Strong Objection**. *Notwithstanding the reduction in the number of dwellings proposed from 20 to 14, the GT has significant concerns and re-iterates its previous consultation response. The GT objects in principle to the Proposal and considers it to cause a high end of less than substantial harm to the Grade I registered park and garden (RPG) of Kirtlington Park, listed buildings adjacent to the site and the Kirtlington Conservation Area as set out in the Council's response to the 21/03786/PREAPP on the site.*

The (scheme) proposes built form on a currently undeveloped green space which is part of the grade II Registered landscape surrounding Kirtlington Park. It is also at the

entrance to the conservation area and is considered to harm the character of the settlement and visual amenities of the area.

The Countryside Design Summary SPD states that “development in historic parklands or within their setting must maintain or enhance the specific character, which defines this part of the District.” The proposed development does not maintain or enhance the parkland character as it introduces a sizeable new residential cul-de-sac on land that is currently open. The development would have a very limited connection with the village and would appear as a separate housing estate on the edge of the village. It would not be well integrated into the fabric of the built environment of Kirtlington and this would be emphasised by the siting behind the park wall and a mature tree belt. It would therefore fail to comply with Para 206 of the NPPF 2021 in Research - Conserve – Campaign terms of better revealing and enhancing the significance, character or appearance of the conservation area and its setting and would not amount to sustainable development.

The applicant has indicated a pedestrian gate in the wall giving access into the site. The breaching of the wall, albeit limited, we consider has an adverse impact on the character and appearance of the Conservation Area and the setting of the Park.

There are significant concerns, in principle, with the development of a key area of (previously undeveloped) green space in the registered parkland and at the entrance to the conservation area. It is considered that the proposed development would be harmful to the RPG, listed buildings adjacent to the site and the Kirtlington Conservation Area as set out above and in the previous application, 17/01688/OUT. The GT strongly object to the application.

- 7.7. THAMES VALLEY POLICE (summary): **Recommend refusal.** *I have fundamental concerns with the proposals in terms of the potential for crime and disorder, and for that reason I am unable to support this application. Unfortunately, I cannot see a way for my objection to be addressed without significant redesign of the scheme. I recommend this application be refused.*

Development layout – Reason for objection

I have fundamental concerns with the proposed layout of this development, where almost every dwelling is at greatly elevated risk of high impact crime such as burglary, due to having all vulnerable boundaries exposed and easily accessible whilst lacking surveillance. Particularly to the south, the road leading through the development between plots 9-14 is completely devoid of surveillance, whilst rear access and parking is completely exposed. This layout will be highly attractive to opportunistic and more organised crime, where offenders will be able to operate without fear of being seen or caught. The very excessively permeable layout of this development provides ample opportunities to escape, with multiple options for an offender.

I am unable to recommend remediation to this concern, as complete redesign is the only solution I can envisage.

Surveillance – Reason for objection

The south of the development in particular is very vulnerable to crime due to the street being completely devoid of any surveillance at ground floor level. Corner plots have blank gable ends, removing important surveillance opportunities across the development. The footpath to the east around plot 9 is very vulnerable to crime and anti-social behaviour (ASB) due to being enclosed behind a wall lacking surveillance. Plot 9 is exceptionally vulnerable due to this lack of surveillance.

I am unable to recommend remediation to this concern, as complete redesign is the only solution I can envisage.

Defensible Space

There should be clear definition between the public and private realm. Where the public or semi-private realm adjoins private areas of the development, defensible space and planting to a depth of at least 1m should be provided. This will provide an area of 'stand-off', marking the change of ownership and therefore the acceptable activity that is associated with it, protecting the privacy and security of occupants whilst reducing the potential for neighbourhood disputes. This is particularly important where parking areas or public spaces abut vulnerable side or rear residential boundaries. Side and rear boundaries are the entry point for the majority of residential burglaries and should be secured within a secure perimeter block wherever possible to prevent easy access. Consideration should be given to specifying thorny species where defensible planting is required to provide additional physical protection to boundaries.

Cycle storage

I am unable to locate details of secure cycle storage for each plot across this development.

Rear access routes

I am unable to identify garden gate locations on plans provided.

Public Open Space (POS)

POS to the east significantly lacks surveillance and will be very vulnerable to crime and ASB. It may also be vulnerable to unauthorised encampments where it is accessible from the highway. Areas of POS/play should be designed and located to incorporate a high level of natural surveillance from neighbouring dwellings.

Excessive permeability – Reason for objection

Footpaths around the development, completely encircling several dwellings, create significant excessive permeability which will be highly beneficial to offenders committing crime or ASB. Excessive permeability introduces anonymity, making it difficult for residents to identify and challenge who should or shouldn't be there. Residential areas should primarily be formed of secure perimeter blocks, which protects the vulnerable side and rear boundaries of properties. Clear and direct routes through developments are important, but they should not undermine the defensible space of neighbourhoods:

- *Maximising Legitimate Activity - Perhaps the most important factor is that footpaths should have a high level of legitimate usage, deterring those intent on crime and anti-social behaviour with the risk of being observed or challenged. To ensure pathways become well used, they must lead to places people need to go, preventing desire lines through the development likely to undermine private space. They should promote a feeling of being a 'safe route' encouraging their usage further. Providing an excessive number of footpaths through developments dilutes activity and usage levels, leaving them vulnerable to crime and anti-social behaviour and providing a network of escape routes for an offender.*
- *Maximising Surveillance - To help deter those intent on crime and anti-social behaviour footpaths should in general terms be as straight and as wide as possible, maximising surveillance along the route and allowing people to pass with ease. Landscaping should support clear sightlines and take into consideration surveillance from the residential dwellings (incorporating visibility from active rooms) to the public realm and vice versa.*
- *Identifying Primary Routes – It is important that primary pedestrian routes required to navigate the site on a day to day basis are identified. These must be located where sufficient surveillance and lighting can support them to deter crime and anti-*

social behaviour and provide the user with a sense of security. Those located where lighting or surveillance will be restricted due to ecology and landscaping requirements should be avoidable if the user wishes.

I am unable to recommend remediation to this concern, as complete redesign is the only solution I can envisage.

Cycle routes

The principles in terms of the footpaths and pedestrian access should also be applied to cycle ways. Providing dual purpose routes (pedestrian/cyclist) would be beneficial in attracting higher levels of legitimate activity and casual surveillance and should be promoted.

Lighting

Lighting throughout the development should meet the general standards of BS5489-1:2020. Lighting plans should be provided which should set out how this standard will be achieved not only on adopted highways, but also un-adopted roads and parking courts. Note above, parking court lighting should be included within the plan, and be fed from the main highway. Bollard lighting is not an appropriate lighting method and should be avoided. Not only can they be damaged by reversing vehicles, more critically they do not provide sufficient light at the right height to aid facial recognition and reduce the fear of crime. It also does not deter crime and antisocial behaviour.

7.8. CDC LANDSCAPE SERVICES (summary): **No objection.**

Design and Access Statement (DAS): Acceptable if the DAS included a proposal for a play area as required under CDC Policy LSC 11. Otherwise, I agree with the reasoning put forward in the DAS.

Landscape and Visual Technical Note (LVTN): A comprehensive LVTN. The chosen viewpoints for assessment are thought to be representative experiences and conclusions and generally acceptable: I agree that there will be 'no change' for visual receptors in relation to viewpoints (VP) 6, 7, and 9 – refer below. I also agree with appraisal/judgement of all visual receptor experiences VP 1 - 5, VP 8, 10 and 11 in the LVTN.

The LVTN's landscape character and sensitivity appraisal / judgements are also acceptable.

The development will be experienced by Akeman Street roadside receptors VP 10. Paragraph 3.11, LVTN states: 'The magnitude of change upon close range views from the road is considered to low adverse, upon a medium sensitivity receptor resulting in moderate adverse significance of effect'. However, I support the LVTN proposal – refer to 3.2 / second arrowed point.

Paragraph 3.2, LVTN states: 'Creation of a robust mixed native landscape buffer to the northern boundary which will help to filter views of the Proposed Development from Akeman street and the approach into the village, as well as creating green infrastructure links across the Site...'

The site, a paddock, is contained by the surrounding tree belts which separates the sensitive landscape Grade II listed Kirtlington Park to the east. The highly sensitive visual receptors on the PRow / VP 6, 7, 8 and 9 indicate that the site is completely screened in winter and summer (when the trees are in full leaf). However, because of the high sensitivity of the visual receptor and Kirtlington Park itself, there should be a consideration of the construction impacts (noise / cranes) within the LVTN which, because of the scale of the development, will in my opinion be low adverse and

temporary in nature. It is therefore important to protect these tree belts to ensure continuous screening, and potential open space for tree planting within the application red line, under BS5837, to ensure root zones are protected during the course of construction. The Woodland Management Plan (August 2023) purports to manage the woodland in the most appropriate way, but this will have to be considered by our arboricultural team.

Jersey Cottage residential receptors will experience a degree of harm with the loss of amenity when the paddock is developed. However, this should be offset with the retention of the attractive woodland surrounding the site, with dwellings and property boundaries of high quality build in local stone (as per Materials Plan), play provision and open space landscaping, supported by a comprehensive landscape and ecology management plan (inclusive of the Woodland Management Plan).

Policy BSC 11: Local Standards of Provision - Outdoor Recreation: 14 units triggers a LAP. Minimum 100 sq. m equipped activity zone set within a landscaped area designed to provide a safe area for alternative play for children aged 2 to 6. The size of the equipped activity zone should be a minimum of 10m x 10 m.

The Landscape Strategy Plan (December 2022): Indicates appropriately designed areas and quantity of open space, subject of course to the inclusion of a designed LAP, all informed by the development context.

Open Space Typologies and Commuted Sums: If informal open space / landscape typologies / play areas are to be transferred to CDC for long term management and maintenance, commuted sums / rates covering a 15 year landscape maintenance will apply.

The legal (Land Registry ready) informal open space adoption boundary (red edge) to be confirmed by the developer at the earliest stage for our consideration of adjoining land ownerships.

7.9. CDC CONSERVATION (in full): **Objection.**

Impact on Kirtlington Conservation Area

The site is considered to make a positive contribution to the Conservation Area, and although it is located behind the existing boundary wall it still retains its open nature. Historically this area was the 'Town Green' or common land before being incorporated into the parkland associated with Kirtlington Park. It is accepted that views across the site are largely interrupted by the existing wall but the openness and the parkland beyond can still be perceived and appreciated. Furthermore, the building pattern in this part of the village is that of a linear built form with the dwellings facing on to and running along Heyford Road on the west side. As a consequence of this the introduction of housing on this area of land is considered to result in a detrimental incursion of built form that protrudes into the space and does not follow the existing built form. It is considered that development here will detract from the character and alter the appearance of the Conservation Area in this part of the village in a harmful way.

The design of the proposed dwellings is however considered to largely reflect the building type in the local area, but the layout proposed is not considered to be in keeping.

The proposed repairs to the wall are welcomed and the minor changes to the wall are not in themselves considered to be unacceptably harmful, however the heritage benefits of the repairs are not considered to outweigh the harm that would result from the development here.

Kirtlington Park Registered Park and Garden (Grade II)

The site is included in the designation for the Registered Park and Garden. It is acknowledged that this parcel of land is to some extent distinct from the designed landscape of the historic parkland and was enclosed more recently as a result of the changes in ownership of the village common land (Town Green). The tree belts and planting help to illustrate this and provide a buffer between the site and the designed parkland. However, it is considered that the site still makes a contribution to the Registered Park and Garden through its open and agricultural character, and it also demonstrates how land ownership contributed to the development and evolution of the village. The introduction of residential building here is considered to be harmful to the character of the Registered Park and Garden as a result of the reduction of the openness and resulting changes to the rural character.

Listed Buildings

Kirtlington Park House (Grade I) – The main building (and its associated stables and buildings) sits within the centre of the Registered Park and Garden. Therefore, it is a notable distance away from the application site. Although it is argued that the site does contribute to the wider setting of these Listed Buildings it is not considered that dwellings here would directly result in harm to the significance of Kirtlington Park House (including stables and dairy) through development within its setting.

Home Farm (Grade II) – The application site is considered to have a direct relationship with Home Farm as the farmhouse and associated buildings have historically and continue to have an agricultural setting consistent with their historic purpose and function. Therefore it is considered that by introducing dwellings the agricultural character of the setting will be unacceptably altered. As the setting is considered to contribute to the significance of Home Farm the proposal will unavoidably result in some harm to significance as a consequence of development within the setting.

Foxtownsend Cottages and other Listed Buildings on Heyford Road - The application site is considered to contribute to the rural character of the village. Therefore, development opposite these Listed Buildings, although behind the existing wall, will inevitably alter the character of the street scene and this part of the village. Consequently, the setting of these Listed Buildings will be changed. It is accepted that change does not necessarily equate to harm, and it is noted that the buildings further to the south and further away from the site will be less affected. But it is considered that the proposal will result in a minor adverse impact to the setting which it is agreed would result in negligible harm to the significance of these Listed Buildings.

Park Lodge (Grade II) - Because of the location of this Listed Building and the existing landscape features it is agreed that the proposed development would have limited or no impact on this Heritage Asset.

Overall, it is considered that the proposed development on this site will result in varying levels of less than substantial harm to the Heritage Assets.

7.10. CDC ECOLOGY (in full): **Conditional no objection.**

With regard to the above application, an acceptable ecological appraisal has been submitted to assess impacts. There are few protected species issues on site which cannot be mitigated through a conditioned CEMP for biodiversity. The Landscape Strategy Plan proposes created and retained habitats of benefit to wildlife – although I note this looks very different to the Proposed Site Layout plans (also with the D & A statement) which suggests most of the woodland to the South to be absent.

A biodiversity impact assessment metric has been carried out which is stated as demonstrating a good level of net gain on site above the 10% net gain we currently

seek. However, the applicant has not submitted the actual metric and it is difficult to read the pasted tables in the net gain report.

A full LEMP with a habitat management and monitoring plan will need to be conditioned which must contain an updated (full) metric and mapping in order for the relevant habitat conditions to be monitored and enforced. This should also include full details of biodiversity enhancements (with locations and types) of bat/bird/invertebrate bricks. There needs to be clear monitoring periods with an indication of the stages at which monitoring against the targets of the metric will be carried out (for all habitats) and the results submitted to the LPA.

The woodland management plan is generally satisfactory however there are some parts which do not align with the information on access within the ecological appraisal. The woodland management plan mentions footpaths through two compartments of the woodland, the appraisal only through one. The ecological appraisal suggests there will be fencing along the footpaths to deter access into the wider woodland, but the woodland management plan does not mention these. Post and rail fences will not prevent access by dogs off leads for example, which could impact the proposed condition the wood will be able to achieve. Access management needs to be made clear within the LEMP.

7.11. OCC LOCAL LEAD FLOOD AUTHORITY (LLFA) (summary): **No objection, subject to conditions.**

7.12. OCC EDUCATION (summary): **No objection, subject to S106 contributions.**

7.13. OCC ARCHAEOLOGY (summary): **No archaeological constraints.** *The proposals outlined would not appear to have an invasive impact upon any known archaeological sites or features.*

7.14. OCC WASTE MANAGEMENT (summary): **No objection, subject to S106 contributions.**

7.15. CDC STRATEGIC HOUSING (summary): **Support this proposal in principle.**

7.16. CDC ENVIRONMENTAL PROTECTION (summary): **No objection in principle.**

7.17. CDC LAND DRAINAGE (in full): **No comments or objections in principle** subject to the comments of the LLFA.

7.18. CDC BUILDING CONTROL (in full): **No comment on the principle.**

7.19. CDC RECREATION AND LEISURE (summary): **No comment, subject to S106 contributions** towards enhancements and improvements at Kirtlington Village Hall, sports pitches in the locality and Kidlington and Gosford Leisure Centre.

7.20. HISTORIC ENGLAND (summary): **No comment.** *Historic England provides advice when our engagement can add most value. In this case we are not offering advice. This should not be interpreted as comment on the merits of the application.*

7.21. THAMES WATER (summary): **No objection.**

7.22. CPRE OXFORDSHIRE: No response received.

7.23. SOUTHERN GAS NETWORK: No response received.

7.24. CDC ARBORICULTURE: No response received.

7.25. CDC PUBLIC ART: No response received.

7.26. CDC WASTE AND RECYCLING: No response received.

8. RELEVANT PLANNING POLICY AND GUIDANCE

8.1. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

8.2. The Cherwell Local Plan 2011-2031 - Part 1 was formally adopted by Cherwell District Council on 20th July 2015 and provides the strategic planning policy framework for the District to 2031. The Local Plan 2011-2031 – Part 1 replaced a number of the ‘saved’ policies of the adopted Cherwell Local Plan 1996 though many of its policies are retained and remain part of the development plan. The relevant planning policies of Cherwell District’s statutory Development Plan are set out below:

CHERWELL LOCAL PLAN 2011 - 2031 PART 1 (CLP 2015)

- PSD1 - Presumption in Favour of Sustainable Development
- BSC1 - District-Wide Housing Distribution
- BSC3 - Affordable Housing
- BSC4 - Housing Mix
- BSC10 - Open Space, Outdoor Sport & Recreation Provision
- BSC11 - Local Standards of Provision - Outdoor Recreation
- BSC12 - Indoor Sport, Recreation and Community Facilities
- ESD1 - Mitigating and Adapting to Climate Change
- ESD3 - Sustainable Construction
- ESD5 - Renewable Energy
- ESD6 - Sustainable Flood Risk Management
- ESD7 - Sustainable Drainage Systems (SuDS)
- ESD8 - Water Resources
- ESD10 - Protection and Enhancement of Biodiversity and the Natural Environment
- ESD13 - Local Landscape Protection and Enhancement
- ESD15 - The Character of the Built and Historic Environment
- ESD17 - Green Infrastructure
- SLE4 - Improved Transport and Connections
- INF1 - Infrastructure
- Villages 1 - Village Categorisation
- Villages 2 - Distributing Growth across the Rural Areas
- Villages 4 - Meeting the Need for Open Space, Sport and Recreation

CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- H18 - New dwellings in the countryside
- C8 - Sporadic development in the open countryside
- C23 - Retention of features in a Conservation Area
- C28 - Layout, design and external appearance of new development
- C30 - Design of new residential development
- C33 - Protection of important gaps of undeveloped land
- ENV12 - Development on contaminated land
- TR1 - Transportation funding

MID-CHERWELL NEIGHBOURHOOD PLAN

8.3. Under Section 38 of the Planning and Compulsory Purchase Act 2004, a Neighbourhood Plan that has been approved at referendum also forms part of the statutory development plan for the area. In this case, the application site falls within the Mid Cherwell Neighbourhood Plan and the following Policies of the Neighbourhood Plan are considered relevant:

- PD1 - Development at Category A Villages
- PD4 - Protection of important views and vistas
- PD5 - Building and site design
- PD6 - Control of light pollution
- PH1 - Open housing market schemes
- PH3 - Adaptable housing
- PH5 - Parking, garaging and waste storage provision

8.4. Other Material Planning Considerations

- The Planning (Listed Buildings and Conservation Areas) Act 1990
- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- CABE Design and Access Statements - How to write, read and use them
- UK Police Service - Secured by Design Development Guides
- Historic England: 'The Setting of Heritage Assets' Good Practice Advice in Planning Note 3
- The Gardens Trust - The Planning System in England and the Protection of Historic Parks and Gardens – Guidance for Local Planning Authorities
- Catesby Estates Ltd and SSCLG v Steer [2018] EWCA Civ 1697
- Bedford Borough Council v SSCLG & Nuon UK Ltd [2013] EWHC 2847
- Planning Inspectorate appeal decision for Finmere PINS ref 3309489 / LPA ref 21/03066/OUT, October 2023
- CDC Countryside Design Summary SPD
- CDC Residential Design Guide SPD
- CDC Developer Contributions SPD
- CDC Kirtlington Conservation Area Appraisal
- Cherwell Community Planning Partnership Sustainable Community Strategy
- DfT and DCMS Manual for Streets
- OCC Parking Standards for New Development
- UK Green Building Council: 'Embodied Carbon: Developing a Client Brief' Hirigoyen, Julie et al.
- EU Habitats Directive
- Natural Environment and Rural Communities Act 2006
- Conservation of Habitats and Species Regulations 2017
- Circular 06/2005 (Biodiversity and Geological Conservation)
- Human Rights Act 1998 ("HRA")
- Equalities Act 2010 ("EA")

9. APPRAISAL

9.1. The key issues for consideration in this case are:

- Principle of development and sustainability of the location
- Heritage impact
- Landscape matters
- Designing out crime and conflicts with the heritage status of the site
- Design, layout and residential amenity
- Highway Safety
- Flood Risk and Drainage

- Ecology impact
- Agricultural Land Classification
- Affordable Housing
- Sustainable Construction and Energy Efficiency
- Noise, Contamination and Air Quality
- Impact on Local Infrastructure

Principle of Development and sustainability of the location

Development Plan

- 9.2. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that any application for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for this area comprises the adopted Cherwell Local Plan 2011-2031 Part 1 (CLP 2015) and the saved policies of the Cherwell Local Plan 1996 (CLP 1996).
- 9.3. Policy PSD 1 of the CLP 2015 states that when considering development proposals, the Council will take a proactive approach to reflect the presumption in favour of sustainable development contained in the National Planning Policy Framework. The policy continues by stating that planning applications that accord with the policies in this Local Plan (or other part of the statutory Development Plan) will be approved without delay unless material considerations indicate otherwise. Paragraph B88 of the CLP 2015 also highlights that by focusing development in and around the towns of Bicester and Banbury we aim to ensure that the housing growth which the District needs only takes place in the locations that are most sustainable and most capable of absorbing this new growth.
- 9.4. In terms of affordable housing provision Policy BSC3 of the CLP 2015 states that all proposed developments that include 11 or more dwellings (gross), or which would be provided on sites suitable for 11 or more dwellings (gross), will be expected to provide at least 35% of new housing as affordable homes on site. The Policy continues by stating that should the promoters of development consider that individual proposals would be unviable with the above requirements, 'open-book' financial analysis of proposed developments will be expected so that an in-house economic viability assessment can be undertaken. Where it is agreed that an external economic viability assessment is required, the cost shall be met by the promoter. Where development is demonstrated to be unviable with the above requirements, further negotiations will take place. These negotiations will include consideration of: the mix and type of housing, the split between social rented and intermediate housing, the availability of social housing grant/funding and the percentage of affordable housing to be provided.
- 9.5. Policy BSC1 of the CLP 2015 states that Cherwell District will deliver a wide choice of high-quality homes by providing for 22,840 additional dwellings between 1 April 2011 and 31 March 2031. 1,106 completions were recorded between 2011 and 2014 leaving 21,734 homes to be provided between 2014 and 2031.
- 9.6. Policy BSC4 of the CLP 2015, which covers the issue of providing housing mix on new development, states that new residential development will be expected to provide a mix of homes to meet current and expected future requirements in the interests of meeting housing need and creating socially mixed and inclusive communities.

- 9.7. The CLP 2015 seeks to allocate sufficient land to meet District Wide Housing needs. The overall housing strategy is to focus strategic housing growth at the towns of Banbury and Bicester and a small number of strategic sites outside of these towns. With regards to villages, the Local Plan notes that the intention is to protect and enhance the services, facilities, landscapes and natural and historic built environments of the villages and rural areas. It does, however, advise that there is a need within the rural areas to meet local and Cherwell-wide needs.
- 9.8. In February 2023 Cherwell District Council approved a review of their adopted planning policies carried out under regulation 10A of the Town and Country Planning (Local Planning) (England) Regulations 2012. This review concluded that, due to the publication of more recent evidence on Housing Needs to support the preparation of the Cherwell Local Plan Review 2040, policies including Policy BSC1 are “out of date”. Paragraph 74 and footnote 39 of the NPPF requires that in such circumstances the 5 Year supply of land should be calculated using the government’s standard methodology.
- 9.9. The use of the standard method has the effect of reducing the annualised requirement from 1,142 dpa to 742 dpa for the purposes of calculating the land supply and consequently Cherwell District Council is able to demonstrate a 5.4 year supply.
- 9.10. The Council’s housing supply position of 5.4 years means that the relevant development plan policies are up to date and that development proposals must be assessed in accordance with the Development Plan. Whilst the NPPF states the requirement to have a 5-year supply is not a cap on development, the housing policies of the Development Plan are the starting point for decision taking and are afforded full weight. However, the delivery of homes across the district remains an important material consideration in the planning balance.
- 9.11. In terms of Category A villages, the 2021 AMR shows that 749 dwellings are either completed or under construction on sites with planning permission for 10+ dwellings at Category A villages. During 2020/21 there were 88 dwellings completed at Category A villages that contribute to the Policy Villages 2 requirement of 750 dwellings. There are also 246 dwellings that are under construction from the supply of permitted sites and are likely to be delivered in the short term. Between 1 April 2014 and 31 March 2021 there were a total of 503 net housing completions on the Policy Villages 2 sites which is an average of 71 homes per year. The AMR continues by highlighting that Since 1 April 2014 a total of 1,062 dwellings have been identified for Page 163 meeting the Policy Villages 2 requirement of 750 dwellings. These are included in the Housing Delivery Monitor in Appendix 2. Policy Villages 2 requirement has already been exceeded by 312 dwellings when considering the planning permissions and identified sites without planning permission in the above (749+287+26).
- 9.12. On the 31st of March 2022, there were at least 916 dwellings either completed or under construction on sites with planning permission for 10+ dwellings at Category A villages, comprising 706 dwellings completed and at least 210 under construction. During 2021/22 there were 203 dwellings completed at Category A villages that contribute to the Policy Villages 2 requirement of 750 dwellings. There are permissions for a further 161 dwellings on 6no sites that, on the 31st of March 2022, had yet to commence construction.
- 9.13. Section E of the CLP 2015 concerns the monitoring and delivery of the Local Plan. Paragraph E.19 states that if the supply of deliverable housing land drops to five years or below and where the Council is unable to rectify this within the next monitoring year there may be a need for the early release of sites identified within this strategy or the release of additional land. This will be informed by annual reviews of the Strategic

Housing Land Availability. In this instance the most recent published review undertaken by the Council is the Housing & Economic Land Availability Assessment (HELAA) (February 2018). This application site was not reviewed in the HELAA and therefore not considered.

- 9.14. Policy Villages 1 of the CLP 2015 provides a framework for housing growth in the rural areas of the district and groups villages into three separate categories (A, B and C), with Category A villages being considered the most sustainable settlements in the District's rural areas which have physical characteristics and a range of services within them to enable them to accommodate some limited extra housing growth. Kirtlington is a Category A village.
- 9.15. In order to meet the area's housing needs, Policy Villages 2 of the CLP 2015 states that a total of 750 homes will be delivered at Category A villages. This will be in addition to the rural allowance for small site 'windfalls' and planning permissions for 10 or more dwellings as at 31 March 2014. This Policy notes that sites will be identified through the preparation of the Local Plan Part 2, through the preparation of the Neighbourhood Plan where applicable, and through the determination of applications for planning permission.
- 9.16. Policy Villages 2 continues by setting out that when identifying and considering sites, particular regard will be given to the following criteria:
- Whether the land has been previously developed land or is of less environmental value
 - Whether significant adverse impact on heritage and wildlife assets could be avoided
 - Whether development would contribute in enhancing the built environment
 - Whether best and most versatile agricultural land could be avoided
 - Whether significant adverse landscape impacts could be avoided
 - Whether satisfactory vehicular and pedestrian access/egress could be provided
 - Whether the site is well located to services and facilities
 - Whether necessary infrastructure could be provided
 - Whether land considered for allocation is deliverable now or whether there is a reasonable prospect that it could be developed within the plan period
 - Whether land the subject of an application for planning permission could be delivered within the next five years; and
 - Whether development would have an adverse impact on flood risk.
- 9.17. Policy PD1 of the Mid-Cherwell Neighbourhood Plan (MCNP) states that in Category A Villages such as Kirtlington, infill, conversion and minor development will be supported in principle within the settlement limits (as defined in the Neighbourhood Plan). It states that residential development proposals outside the settlement areas in such villages must have regard to the following criteria:
- Be immediately adjacent to the village
 - Not be best and most versatile agricultural land and previously developed land is particularly likely to be acceptable
 - Conserve and, wherever possible, enhance the landscape
 - Conserve and, where possible, enhance heritage assets
 - Not give rise to coalescence with other nearby settlements
- 9.18. Policy PD1 of the MCNP goes onto state that the *'total indicative number of additional dwellings permitted during the plan period either within the settlement area of those villages, or adjacent to them, shall be approximately 17 for Kirtlington.'*

Comments made by the MCNP Forum

- 9.19. The MCNP Forum state in their response to consultation that it would be inappropriate to refuse this application in the knowledge that the emerging NP Review is undertaking assessments of all eligible sites in Kirtlington and that it does not support development on this site.
- 9.20. The PPG on Neighbourhood Planning (updated 2020) states, at Paragraph 106, that there are three types of modification which can be made to a neighbourhood plan. The process will depend on the degree of change which the modification involves:
- *Minor (non-material), which may include correcting errors.*
 - *Material modifications which do not change the nature of the plan would require examination but not a referendum. This might, for example, entail the addition of a design code that builds on a pre-existing design policy, or the addition of a site or sites which, subject to the decision of an independent examiner, are not so significant or substantial as to change the nature of the plan.*
 - *Material modifications which do change the nature of the plan would require examination and a referendum. This might, for example, involve allocating significant new sites for development.*
- 9.21. Paragraph 86 of the PPG confirms that whether the modifications change the nature of the plan is a decision for the independent examiner. The Examiner considers representations and statements made including, inter alia, by the local planning authority. The MCNP Forum's proposal to declare their preferred location for development of the 17 dwellings appears to be a material modification which changes the nature of the plan because it involves the allocation of a significant new site for development. That change is considered to be significant because it is for the majority of the allocation proposed for Kirtlington.
- 9.22. Paragraph 50 of the NPPF states that *Refusal of planning permission on grounds of prematurity will seldom be justified... – in the case of a neighbourhood plan – before the end of the local planning authority publicity period on the draft plan. Where planning permission is refused on grounds of prematurity, the local planning authority will need to indicate clearly how granting permission for the development concerned would prejudice the outcome of the plan-making process.*
- 9.23. The Planning Policy Team has advised that they would not expect the end of the Local Planning Authority publicity period to be until at least July 2024. As such, the Council has no alternative but to give the following responses to the two requests of the MCNP Forum:
- To delay a decision cannot be granted because it would conflict with Paragraph 50 of the NPPF. The application has been submitted for determination and the LPA is obliged to do so in a timely manner.
 - To give preference to this site does not have a legitimacy in the democratic process and the preference of the MCNP Forum has to be disregarded.

Assessment

- 9.24. Policy Villages 1 of the CLP 2015 designates Kirtlington as a 'service village' where minor development, infilling and conversions are permissible. Supporting text to the policy states that infilling refers to the development of a small gap in an otherwise continuous built-up frontage. Under such a definition the proposal would not constitute infilling. Further supporting text states that in assessing whether proposals constitute acceptable 'minor development', regard will be given to the size of the village and the

level of service provision, the site's context within the existing built environment, whether it is in keeping with the character and form of the village, its local landscape setting and careful consideration of the appropriate scale of development.

- 9.25. The site is outside of the village envelope / boundary as defined in the MCNP.
- 9.26. Kirtlington is identified in the CLP 2015 as a sustainable location for meeting defined housing requirements – one of 23 Category A villages intended to provide 750 homes from 2014 to 2031 (Policy Villages 2). The Local Plan reached that conclusion having undertaken a comparative assessment and categorisation of all the district's villages.
- 9.27. The requirement of Policy Villages 2 to provide 750 homes at Category A villages is monitored in the Council's AMR. Table 39 of the AMR shows that, on 31st March 2021, 749 dwellings had either been completed or were under construction on sites with planning permission. Para. 5.159 of the AMR records that between 1 April 2014 and 31 March 2021 a total of 1,062 dwellings have been identified for meeting the Policy Villages 2 requirement of 750 dwellings.
- 9.28. On the 31st of March 2022, there were at least 916 dwellings either completed or under construction on sites with planning permission for 10+ dwellings at Category A villages, comprising 706 dwellings completed and at least 210 under construction, and there are now at least 1,077 dwellings that have been identified for meeting the Policy Villages 2 requirement.
- 9.29. The Tappers Farm (Bodicote) 2019 appeal decision (which applied the same logic as the Launton appeal decision a year earlier) provides a useful steer as to how the decision taker should apply Policy Villages 2. At the time of the Tappers Farm decision, 271 dwellings had been delivered at Category A villages under Policy Villages 2, with a further 425 under construction. The Tappers Farm Inspector stated, *"There will undoubtedly be a point where there will be a situation that will result in the material increase over the 750 dwellings figure and at that time there will be some planning harm arising from the figure being exceeded, for example harm to the overall locational strategy of new housing in the district. There is no substantive evidence before me to demonstrate that this is the case in this appeal. Clearly, when considering any subsequent schemes however, this matter will need to be carefully scrutinised."*
- 9.30. As noted above, as of 31 March 2022, 706 dwellings had been delivered at Category A villages under Policy Villages 2 and at least a further 210 dwellings were under construction, with another 161 with the benefit of planning permission that has not started. Given these numbers and the trajectory of annual completions including 203 completed in 2021-22, it is highly likely that the total number of dwellings delivered under Policy Villages 2 has now exceeded the 750 set out in the policy.
- 9.31. The total of 750 will by now have been met is a material consideration when assessing further applications for 'major' developments at Category A villages. However, the provision of housing represents a significant positive material consideration to weigh in the planning balance and contributes to meeting the overall district housing figures which is needed to be delivered.
- 9.32. However, while the proposal may be considered contrary to the Council's housing strategy, the following factors lead to a conclusion that in this instance the principle of development should be considered acceptable.
- 9.33. Like the numbers in Policy BSC1, limited weight is applied to the figure of 750 set out in Policy Villages 2 given that the Council's housing need is now informed by the standard method rather than the numbers set out in the CLP 2015.

- 9.34. The proposal would provide a mix of residential units in terms of size, type and tenure, and the proposal thus complies with Policy BSC4 of the CLP 2015.
- 9.35. Returning to the MCNP, Policy PD1 identifies an indicative level of growth for Kirtlington over the plan period which is a potential conflict between PD1 and Policy Villages 2 of the CLP 2015. Planning Practice Guidance (PPG) and Section 38(5) of the Planning and Compulsory Purchase Act 2004 states that, where policy in a development plan, for an area, conflicts with another policy in the development plan, the conflict should be resolved in favour of the policy which is contained in the last document to be adopted, approved or published. In this case this would be the MCNP. Therefore, MCNP Policy PD1 is considered to take precedent over Policy Villages 2 – although the criteria of Policy Villages 2 are still considered to be relevant to the consideration of the application.
- 9.36. Several concerns have been raised by neighbours over the general sustainability of village. The village of Kirtlington has relatively limited services and facilities. There is also limited public transport to and from the village resulting in residents being highly reliant on the private car. Whilst these concerns are valid, the MCNP clearly indicates a level of growth for the village and as outlined above, the proposal is considered to accord with the MCNP's housing strategy. There has been no significant change in services to the village since the adoption of the MCNP which would justify taking a different position on this issue.
- 9.37. The basis of the planning system is plan-led and therefore the aforesaid concerns regarding the general sustainability of the village do not outweigh the provision of the MCNP in regard to the scale of growth appropriate for the village. It should also be noted that the proposed development is likely to help support the existing services and facilities in the village to some extent, although that is hard to quantify.
- 9.38. Policy PD1 goes onto provide several criteria to which applications for development outside the settlement must have particular regard. It is important to note that the policy has no requirement for all these criteria to be met although they clearly are material considerations in undertaking the planning balance. These include:
- The site should be immediately adjacent to the settlement area
 - The site should not be the best and most versatile agricultural land (BMV)
 - The development should conserve and, where possible, enhance the landscape
 - The development should conserve and, where possible, enhance the special interest, character and appearance of the conservation areas and the significance of other heritage assets.
- 9.39. The proposal complies with the first criteria, but, in respect of the second criteria, half of it is on Grade 2 BMV land. The proposal therefore conflicts with this and the other listed criteria. The conflicts are outlined elsewhere in this report and need to be considered in the planning balance.

Conclusion

- 9.40. The most relevant policy to consider the principle of the application against is Policy PD1 of the MCNP. The scale of growth complies with Policy PD1 and therefore accords with the growth strategy outlined in the Neighbourhood Plan. Subject to other material considerations, the principle of this level of growth at Kirtlington is therefore considered to be acceptable.

Heritage Impact

Legislative and policy context

- 9.41. The site is within Kirtlington Park's Grade II listed Registered Park and Garden. Because of its location within the RPG, it is within the curtilage of Grade I listed Kirtlington Park. It also adjoins Grade II listed Home Farm. It is within Kirtlington Conservation Area.
- 9.42. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) states that, in carrying out its functions as the Local Planning Authority in respect of development in a conservation area: *special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.*
- 9.43. Likewise, Section 66 of the same Act states that: *In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority...shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.* Therefore, significant weight must be given to these matters in the assessment of this planning application.
- 9.44. Conservation Areas and Listed Buildings are designated heritage assets, and Paragraph 193 of the NPPF states that: *when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.*
- 9.45. Policy ESD15 of the CLP 2015 echoes this guidance and Policy ESD13 supplements it by stating that *proposals will not be permitted if they would cause undue visual intrusion into the open countryside, be inconsistent with local character, harm the setting of settlements, buildings, structures or other local landmark features, or harm the historic value of the landscape.*
- 9.46. Policy PD4 of the MCNP states *development proposals must demonstrate sensitivity to the important views and vistas described within Kirtlington Conservation Area Appraisal.* Page 33 of the Appraisal highlights *six views which frame and characterise the character and appearance of the Conservation Area.* This includes *views east into Kirtlington Park from Heyford Road.* Page 39 shows a single view on the Visual Analysis plan, identified in the key as a positive view. This is therefore open to interpretation but the use of the plural when listing *views east* is interpreted as being from more than one point.
- 9.47. Policy PD4 also states that *applications for development in or adjacent to a Conservation Area must demonstrate... that the proposal causes as little harm as possible and that any harm is outweighed by the benefits of the proposal. The development should not harm the Conservation Area and its setting, other heritage assets, or historic street and village views and longer distance vistas.*

Assessment

- 9.48. The Parish Council has referred to the status of the RPG as non-statutory, as defined by the MAGIC (Multi-Agency Geographic Information for the Countryside) Map. They appear to assume that this means that it does not carry the weight of other statutory designations. The acronym stands for multi-agency geographic information for the countryside and was established by DEFRA. RPGs were first provided with a statutory designation in the National Heritage Act 1983. The parkland has been in the Conservation Area since 1998 and about one-quarter of it (c.300ha out of a total parkland of about c.1200ha), including this part of the parkland, has had the status of a Registered Park and Garden since May 1995. Historic England's Regional Inspector for Historic Buildings and Areas advises that MAGIC's information is

probably referring to RPGs as non-statutory because its designation brings no additional statutory controls. They proceed to advise of their designated status and required considerations within the context of the NPPF and UK planning law.

9.49. The Landscape and Visual Technical Note (Aspect Landscape Planning, August 2023) (LVTN) submitted in support of the application states:

9.50. In Paragraph 4.3: *The scale, form, pattern and urban grain of the proposed scheme will be comparable to recent developments to the west of Heyford Road including Akeman Spinney as well as within the immediate localised context and, as such, would not be out of character. It is therefore considered that the design, scale, form and layout of the proposal would form a logical complement to the existing scale, pattern and character of development within Kirtlington and would not be out of context.*

9.51. In Paragraph 4.4: *It is considered that the proposed development will not give rise to any significant adverse landscape or visual effects in the longer term, or that [it] would significantly and demonstrably outweigh the benefits of the scheme.*

9.52. In Paragraph 4.5: *...the integrity of the receiving landscape character will be preserved.*

9.53. These paragraphs fail to acknowledge the difference in heritage settings between developments to the west of Heyford Road and this proposal to the east of Heyford Road. The housing development referred to is neither in the RPG nor in Kirtlington Conservation Area at:

9.54. Akeman Spinney (five dwellings, with two fronting the road and three in a cul-de-sac to the rear)

9.55. Akeman Close (four dwellings in a cul-de-sac, to the rear of a pre-existing dwelling called Mallory), and

9.56. Foxtowns Green (four dwellings in a cul-de-sac, to the rear of Grade II listed 3-4 Foxtownsend Cottages)

9.57. The application site is in both. Both Akeman Spinney and Akeman Close are also not as close to listed buildings as those proposed at the application site. It is clearly a fallacious argument to suggest that the integrity of the receiving landscape character, a Grade II parkland within a Conservation Area, will be preserved following the development of residential cul-de-sacs within it. This statement is rejected.

9.58. In the Court of Appeal case *Catesby Estates Ltd and SSCLG v Steer* [2018] EWCA Civ 1697, Mrs Justice Lang DBE identified an error of law when conflating harm to heritage assets with the assessment of visual or landscape harm. The judgement stated that the setting of heritage assets is not necessarily confined to visual or physical impact, but that other considerations are potentially relevant.

9.59. Historic England's publication 'The Setting of Heritage Assets' Good Practice Advice in Planning Note 3 (GPA3) provides a non-exhaustive checklist of potential attributes of a setting that may help to elucidate its contribution to significance. These include the following experiences of an asset:

Assessment 2

- Views from, towards, through, across and including the asset;
- Noise, vibration and other nuisances
- Tranquillity

- Diurnal changes
- Sense of enclosure, seclusion, intimacy or privacy
- Land use

Assessment 3

- Prominence, dominance or conspicuousness
- Distraction from the asset
- Visual permeability
- Introduction of movement or activity
- Change to spaces
- Change to skyline
- Change to general character (eg urbanising)
- Lighting effects and light spill
- Changes to permeability, accessibility including traffic, road junctions, and car parking
- Changes to ownership arrangements, including fragmentation
- Permanence and reversibility

9.60. All of those attributes listed above from GPA3 would be negatively impacted by the proposed development. This application would include the introduction of domesticity and the associated paraphernalia of residential living. Aspects of the proposal such as the introduction of the houses themselves, the enclosure of land to form private gardens, the need for a play area as required by Policy BSC11 of the CLP(2015), vehicle movement, the Thames Valley Police request for additions to the pedestrian routes with dual purpose cycle routes and, in the dark, car lights within the parkland, lighting from the houses and possibly from street lighting, and an intensity of use on a permanent basis within what is currently open grazing land, would all contribute to a detrimental impact. This is in addition to the visual harm that would occur through its prominent location mainly from Akeman Street but also from Heyford Road, and to the landscape harm that would occur through converting grazing land within an RPG to a housing estate.

9.61. It is of note that the booklet submitted by its author: *Capability Brown and Kirtlington Park: A History and Guide* states on page 21 that, in order to shield the mansion from view until just before arrival, Capability Brown proposed a thickly planted roundel to be grown about three hundred yards north-west of the house. Page 28 of the document states that Capability Brown's plans did not extend to the outer edge of the north park. However, the thick belt of planting on the eastern boundary of the site has the same effect, albeit from a greater distance of about 700 metres. Page 24 states: As Brown intended, the prospects from each part of the house were different: from some parts, long, empty views; from others, closer and fuller plantations, flowers and shrubs. Whilst it would appear that not the whole of the parkland has been designed by Capability Brown, the extent of the parkland that he designed is not determinative of whether or not the parkland has the status of a heritage asset.

9.62. The Heritage Statement (HS) (Bidwells, August 2023) seeks to emphasise that the land subject of this application is not part of the original Capability Brown landscape, by separating out that which it considers is part of his designed landscape and that which is outside of it. Whilst paragraph 4.7 states that a review of historic maps cannot be considered to be definitive, paragraphs 4.5 and 4.6 indicate that this site was previously included within a Town Green. This is acknowledged and it is perhaps the case that too much emphasis is being placed on the importance of the Capability Brown part of the landscape by those objecting to the scheme. However, the HS does not give enough emphasis to the fact that the application site is, in itself, part of a heritage asset, being within the Grade II RPG and within Kirtlington Conservation Area. Paragraphs 9.9, 9.10 and 9.11 refer to the application site's location as a buffer zone between the built form and the Park, with Paragraph 9.11 referring to it *providing*

a clear sense of separation between the RPG and the built form. It is not understood why the HS attempts to define the application site as lying outside of the RPG when it is within it. This undermines the status of the HS findings. It concludes on the impacts in paragraph 10.3: *'the site in its current form either detracts or makes a neutral contribution to the setting of the identified assets'*. This cannot be accepted for fields which form part of an RPG and Conservation Area. Use of the word 'setting', presumably in the context of listed buildings, including the Grade I house and immediately adjoining Grade II Home Farm, again fails to acknowledge that the site is, in itself, a heritage asset.

- 9.63. The response received from The Gardens Trust includes a strong objection. A past response from The Gardens Trust was to application reference 17/01688/OUT for twenty dwellings within the same site edged red but with an indicative layout that was further from Home Farm but closer to the tree belts to the south and west. It expanded further by stating that there did not appear to have been any exploration of whether other sites not affecting a designated heritage asset were considered, and why a less sensitive area was not chosen in preference. This continues to be the case.
- 9.64. The Parish Council's response lists a set of points which it would like the Council to consider in its consideration of this application. These include removal of one of the houses closest to Home Farm; its replacement with open space; alterations to the visibility and pedestrian access / egress points; offset of the houses proposed to the north, to allow the planting of a 10-15m wide tree belt to provide robust screening from the north and offsetting of the houses on the western and southern boundaries, to protect existing trees.
- 9.65. These requests would require fundamental alterations to the scheme's layout and that altered scheme is not the one before the Council for determination. As such, whilst the Parish Council supports the scheme subject to these caveats, it has to be assumed that there would be an objection in the absence of compliance with them. This is unclear because it has not been expressly stated in their response.

Conclusion

- 9.66. Much of the text in the HS discusses effects on setting. For example, paragraph 9.13 of the HS considers that aspects of harm relating to effects on setting do not directly infer impacts on significance. It does little to acknowledge that the application site itself is within two designated heritage assets or to assess whether the Town Green was of importance and the reasons why it was incorporated into the parkland and the RPG. Notwithstanding these shortcomings, it is pertinent to consider impact on settings. The Glossary to the NPPF (Annex 2) defines the setting of a heritage asset. The evolution of the parkland could be argued to have changed, including at that which is the subject of this planning application. The Glossary states: *Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance, or may be neutral.* As existing, the land makes a positive contribution to the heritage assets within which it sits and for which it forms a setting.
- 9.67. Paragraphs 9.18 and 10.6 state levels of harm to various nearby listed buildings ranging from nil to less than substantial. For the Conservation Area and RPG, the impact is defined as minor / moderate adverse and the resulting harm as less than substantial. Paragraph 10.7 of the HS refers to the High Court case of *Bedford Borough Council v SSCLG & Nuon UK Ltd* [2013] EWHC 2847, which considers the range of levels relevant to 'less than substantial' harm. It states that this ranges from 'negligible' to 'something approaching demolition or destruction'. The HS concludes that there would be low-medium levels of less than substantial harm in terms of the NPPF. By contrast, whilst The Gardens Trust considers that there would be less than

substantial harm, it would be at the high end. The Council's Conservation Officer considers that harm would occur at a range of levels within less than substantial harm, for the range of assets that would be impacted.

- 9.68. The differences of opinion are not going to reach an agreement. From a planning perspective, the HS bases much of its analysis on the impact on settings rather than on the identified heritage assets within which the application site sits. The opposing ends of the harm both result in harm. Paragraph 199 of the NPPF states that, when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. This is irrespective of the level of harm. Paragraph 202 states that, 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.
- 9.69. Optimum viable use (OVU) does not need to be the most economically viable option, but it must be the use that is likely to cause the least harm to the significance of the asset. This should be not only through necessary initial changes but also as a result of significant wear and tear and likely future changes. Whether or not RPGs are subject to OVU is debatable. If they are, the OVU of a park must be to retain it as a park in order to protect its status, in the same way that the OVU of a listed building would be to retain the building. The proposal seeks to undermine the status of this land rather than protect it and insufficient evidence has been forwarded to conclude that the use of the land for a housing development would comprise its OVU.
- 9.70. As such, public benefits associated with the building of a housing development within its curtilage, particularly the provision of affordable housing, could not outweigh the harm caused and the proposal would not be consistent with its conservation. As proposed, the contribution would not preserve or enhance the heritage assets in which it sits and those for which it forms a setting; it would result in harm, and the contribution to those assets would be negative.

Landscape matters

Policy context

- 9.71. The policy parameters when considering the landscape impact of the proposal are inextricably linked with the heritage status addressed in the preceding paragraphs due to the location of the application site within the RPG and Conservation Area.
- 9.72. In addition to these parameters, Paragraph 8 of the NPPF seeks to protect and enhance our natural and historic environment. Paragraph 130 states that planning decisions should ensure that developments are sympathetic to local character and history, including the surrounding landscape setting. Section 15 of the NPPF seeks to conserve and enhance the natural environment and, within it, Paragraph 174 seeks to protect and enhance valued landscapes and recognise the intrinsic character and beauty of the countryside.
- 9.73. Policy ESD13 of the CLP 2015 seeks to protect and enhance local landscapes. It states that opportunities will be sought to secure the enhancement of the character and appearance of the landscape through the restoration, management or enhancement of existing landscapes and features. It continues that development will be expected to respect and enhance local landscape character, securing appropriate mitigation where damage to local landscape character cannot be avoided. Proposals will not be permitted if they cause undue visual intrusion into the open countryside, harm the setting of landmark features or harm the historic value of the landscape.

- 9.74. The intention of Policy H18 of the CLP 1996 is to ensure that the countryside is protected from sporadic development.
- 9.75. Paragraph 2.2(i) of the Countryside Design Summary SPD states that protection given by a woodland location should be used but only where this does not undermine the character of these existing landscape features. Paragraph 2.2(ii) states that development in historic parklands must maintain or enhance the specific character.
- 9.76. Policy PD1 of the MCNP states that proposed development should conserve and, where possible, enhance the landscape.

Assessment

- 9.77. The Council's Landscape Officer has stated agreement with the LVTN assessments. Whether or not there can be Case Officer agreement with this statement is of minor significance compared to the fact that paragraph 2.50 of the LVTN refers to publicly accessible viewpoints as a *fair representation of the site's visibility within the localised and wider visual environment*. *Specific regard has been given to the public rights of way (PROW) which traverse the RPG*. It fails to acknowledge that the Park owners provide permissive access to their land, including to the land immediately to the east and south-east of the application site. The viewpoints chosen therefore do not reflect the reality of visibility, whether by the Park's owners or by residents of the Parish. As such, the LVTN is flawed because it does not provide a robust and comprehensive assessment of the impact of the development on the RPG.
- 9.78. Similarly, its statement in paragraph 3.11, that there will be no effect on important views identified by the MCNP and Conservation Area Appraisal, contradicts the statement in Policy PD4 of the MCNP and page 33 of the Appraisal. Its conclusion in paragraph 3.13, that there will be no change to views from the south and west, is again flawed and has to be challenged.
- 9.79. The Council's Landscape Officer supports the proposal in respect of its impact from the north, Akeman Street, subject to compliance with paragraph 3.2(1(2)) of the LVTN. This seeks to create *a robust mixed native landscape buffer to the northern boundary which will help to filter views from Akeman Street*. The Landscape Strategy Plan proposes ornamental trees, hedges and shrub planting. This would not be sufficiently robust such as to provide an adequate screen. It is not known whether space exists within the site edged red to provide a more comprehensive buffer.
- 9.80. The main road through Kirtlington is about 0.8 miles in length when measured from the first dwelling to the north, to the last dwelling to the south before Corner Farm. It is described as a linear settlement in the Conservation Area Appraisal, and the importance of this is repeated by objectors to the scheme. Heyford Road strongly defines this type of settlement layout, albeit with development that is one-sided at the northern end, with the boundary wall to Kirtlington Park being on the opposite side. The distinctiveness of the street scene is of a central section that has back-of-pavement cottages, with many of them being terraced, and two village greens, one at each end of the central section of the village. This contributes to the overall character. The linear definition, whilst visible on the main street, clearly hasn't precluded other development which is not keeping to the linear form: about 50% of the village does not follow this linear pattern. The proposal does not seek to cause harm to the established central spine of the village. As such, objections to the proposed development cannot be sustained on this basis.
- 9.81. The recurrent themes within each of the national, district and neighbourhood policies and the SPD are ones of protection and enhancement of the landscape. Because the proposal is in sensitive landscapes: RPG, Conservation Area and countryside, the

development of fifteen houses cannot result in the protection of the landscape nor its enhancement.

Conclusion

- 9.82. The proposal conflicts with each of the landscape policies. It fails to conserve and enhance the landscape at each level, from countryside to that which has a protected status through formal designation. It also fails to recognise the intrinsic character and beauty of the landscape for its own sake. As such, this forms an objection to the scheme which has significant weight.

Designing out crime and conflicts with the heritage and countryside status of the site

Policy context

- 9.83. Paragraph 92(b) of the NPPF states *'planning policies and decisions should aim to achieve healthy, inclusive and safe places which are safe and accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion.'*
- 9.84. Paragraph 130(f) of the NPPF states *'planning policies and decisions should ensure that developments create places that are safe, inclusive and accessible... where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.'*
- 9.85. Section A.22 of CLP 2015 and CDC's Sustainable Community Strategy (SCS) seek to have thriving communities where everyone feels safe in their homes and welcome in their neighbourhoods. The SCS states that anti-social behaviour is a key concern of residents. Addressing residents' perceptions of crime and delivering low levels of crime and anti-social behaviour are priorities.
- 9.86. Policy ESD15 of the CLP 2015 seeks new development which delivers safe places to live and work. Paragraph B.265 expands on this, looking to ensure that new developments are safe places to live, work and visit through design standards by using tools such as 'secured by design'.
- 9.87. CABE's 'Design & Access Statements (DAS) - How to write, read and use them' requires a DAS to address crime and disorder. It states that a DAS should demonstrate how development can create accessible and safe environments, including addressing crime and disorder and the fear of crime.

Assessment

- 9.88. Thames Valley Police's Designing Out Crime Officer does not feel that the Design and Access Statement (DAS) adequately addresses crime and disorder. Whilst the DAS states safety and security is considered with active frontages, he states that this does not permeate through to the plans provided.

Conclusion

- 9.89. The opinions of the Designing Out Crime Officer carry significant weight. It is noted that he states within the Consultees section of this report that complete redesign is the only solution that he can envisage for three aspects of his consideration: development layout, issues relating to surveillance, and excessive permeability.
- 9.90. Conflict therefore exists between the aspirations of the designers of the layout and Thames Valley Police. Whilst the overall layout has been configured as spacious, with plentiful green spaces and tree protection, into which it has been tucked, to

attempt to mitigate against the impact of the proposal on the RPG, the consequence is a layout with multiple flaws from a designing out crime perspective and, thus, conflict with the NPPF and CLP 2015.

Design, layout and residential amenity

Policy context

- 9.91. Paragraph 126 of the NPPF states *good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities*. Paragraph 73 refers to significant extensions to existing villages. It emphasises the importance of appropriate tools such as design guides.
- 9.92. The National Design Guide (2021) details ten characteristics which work together to create character, a sense of community and to address climate issues. Together, they all contribute towards the cross-cutting themes for good design set out in the NPPF. One characteristic deals with uses of land, particularly mixed and integrated.
- 9.93. Policy ESD15 of the CLP 2015 states that *new development proposals should be designed to deliver high quality safe, attractive, durable and healthy places to and work in. They should contribute positively to an area's character and identity, and respect the traditional pattern of routes, spaces, blocks, plots, enclosures and the form, scale and massing of buildings. Buildings should be configured to create clearly defined active public frontages. They should consider matters of privacy and outlook*.
- 9.94. Section 6.3 of Cherwell Residential Design Guide SPD (2018) states the importance of 'public fronts, private backs'. It states that the elevation of buildings fronting the public realm should be 'active', to encourage human interaction and passive surveillance of the public realm. It continues: *Layouts which confuse the relationship between fronts and backs or emphasise property access from the rear should be avoided*.
- 9.95. Policy PD6 of the MCNP seeks to control light pollution and sets criteria for the installation of all external lighting, including that proposals should not have a detrimental effect on the amenity of surrounding occupiers nor a significant adverse impact on the character of a village and its setting, or of the wider countryside.

Assessment

- 9.96. The proposal seeks to face outward by having three houses in the scheme fronting Heyford Road. However, their distance from the road is so significant that there would be no interaction between the houses or their occupiers and the existing village dwellings and occupiers. Passive surveillance to and from Heyford Road would fail to exist.
- 9.97. In order for the other private sector houses in the southern half of the development to benefit from the parkland into which they are being set, they too are designed to face outward, looking at the park. The consequence for the layout is that all houses have been designed to turn their backs to the new access road, with enclosed gardens facing the road, which are proposed to comprise 1.8m high stone walls and fences. This results in an oppressive form of design and layout for the road user, whether driver or pedestrian, producing a feeling of being both trapped in to the road space and locked out of the development.
- 9.98. Good design includes the need for passive surveillance. The scheme would fail to achieve this, with the consequences as defined by the Thames Valley Police response

to consultation. Good design would avoid blind corners and would incorporate longer sightlines; movement networks should be enticing. This layout has three blind corners between seven houses and would fail to give that sense of security for the user. Good design would also ensure that the visible environment was well-maintained in perpetuity. This layout would fail to ensure that that could be achieved.

- 9.99. The absence of pavements on the southern half of the scheme is compensated for by the provision of a semi-circular path across the remaining field, encircling the front of the dwellings. This presents multiple problems. It does not represent the desire line of the quickest method of getting from A to B. It does not show how this would be navigated in dark hours: lighting would perpetuate the visual pollution of the parkland environment. It does not present a perceived safe pedestrian route for the user as identified by Thames Valley Police. The quickest, best lit and possibly safest route for the pedestrian would be along the road. This has no pavements and would only bring a visitor to back doors and enclosed gardens, and to conflicts with vehicular traffic.
- 9.100. Cherwell Residential Design Guide seeks to avoid dead spaces which are provided by blank building facades, garages, integral parking and bin stores. It states in Section 6.3 that these are not appropriate in the public realm. It also states in Section 6.6 that dead frontages must not be used as vista stoppers. The southern half of the proposal in particular conflicts with the design guide due to the layout providing each of these aspects that deaden the vistas.
- 9.101. Layouts should encourage social cohesion and seamless integration between those dwellings which are for affordable tenures and those which are for private market sale. This would align with the policy guidance of the National Design Guide (2021), in which Section U2 Paragraph 116 seeks that, where different tenures are provided, they are well-integrated to create tenure-neutral homes and spaces. There is a distinct north-south layout on this site which does not achieve that aim.
- 9.102. Design and materials are considered in Section 2 of the DAS. Section 4 considers that the design and form of the proposed properties are in keeping with the character and plot density of this part of the village. The design and materials are appropriate for a typical housing development, but they do not comprise a development of sufficiently high design and quality to complement the historic asset within and adjoining which it is located. As an example, whilst small areas of green roof are shown on the Materials Plan for four of the dwellings, the quantum proposed is minimal and no reference is made to them in any other submitted documentation other than when quoting Council policy. As such, the proposal conflicts with Policy ESD15 of the CLP 2015.
- 9.103. Private garden spaces have been minimised on some plots to an extent which is unacceptable because it results in overdevelopment of the plots. Plots 4, 6, 7, 8, 9, 12 and 13 have rear garden sizes which are disproportionately small to their house sizes, restricted by factors including the existing treescape, the desire to protect the setting of Home Farm, a Grade II listed building, the engineering needs of the access roads and access to parking and rear gardens. In particular, the dwellings at Plots 7 and 8 (two-bed dwellings) have rear garden depths of about 7.6m for the full width of their gardens and Plots 12 (four-bed dwelling) and 13 (three-bed dwelling) are at about 9.9m but not for the full width of the dwelling. This conflicts with Section 6 of CDC's Residential Design Guide which states that the amount of garden and outdoor space should be appropriate to the size of the property, with an expectation that larger properties will be located within larger plots with larger gardens, reflecting the likely needs of larger families.

Conclusion

9.104. Good design should incorporate a sense of belonging and a social right to a space as key principles of integration both within the proposed development and between the proposal and existing parts of the village. The proposal has been contrived to fit the parkland space to the detriment of future users, those users being not only the occupiers of the dwellings but also their visitors. The detail of the scheme fails to comply with policy guidance at local and national level, to which objection is raised.

Highway Safety

Policy Context

9.105. Policy ESD15 of the CLP 2015 states that: "New development proposals should be designed to deliver high quality safe, attractive, durable and healthy places to live and work. Development of all scales should be designed to improve the quality and appearance of an area and the way it functions." Policy SLE4 states that: "All development where reasonable to do so, should facilitate the use of sustainable modes of transport (and) development which is not suitable for the roads that serve the development and which have a severe traffic impact will not be supported." The NPPF advises that development should provide safe and suitable access for all and development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or where the residual cumulative impacts are severe.

Assessment

9.106. The Highway Authority has made the following comments in relation to visibility when exiting the site:

9.107. *Access is proposed onto Lince Lane (A4095) immediately north of the existing 20mph speed limit sign, on the outside of a curve. The speed limit to the south is 50mph. The transport statement says there is a visibility splay of 2.4m x 120m to the south, with the sight line crossing the opposite verge on the inside of the curve. However, having revisited the site, we find this is not achievable, due to the gradient and vegetation. Visibility measured along the edge of the northbound carriageway is between 90 and 100m. Therefore, the drawing is misleading in our opinion, and this is a reason for objection.*

9.108. *While no speed survey data has been provided with this application, a speed survey carried out for the previous application ref 22/03049/OUT (for fewer dwellings using the same access) used equipment placed immediately south of the 20mph sign, i.e. very close to the access, in January 2023. This showed 85th percentile speeds of 34mph northbound. To be confident that visibility to the south is adequate, given that drivers heading north could be braking from 50mph close to the speed limit sign, a speed survey should be carried out further to the south, I would suggest close to the limit of visibility of around 90m.*

9.109. *The drawing should be resubmitted showing the achievable visibility splays, together with the speed survey data and a Stage 1 Road Safety Audit (RSA1) in accordance with GG119 (5.46.1) A Designers Response should accompany the RSA1 with the Overseeing Organisation agreeing and signing off the RSA.*

9.110. *The application proposes extending the speed limit further south. Officers would support this but given the rural nature of the road on the approach, it may be more appropriate to provide a 30mph buffer between the 50mph and 20mph limit. This would be subject to a separate statutory consultation, which could be carried out as part of the S278 process. (A S278 agreement would be required for the construction of the access).*

Conclusion

9.111. The proposal therefore conflicts with highway safety standards and, in the absence of adequate supporting information, improvements to the access could result in additional demolition of the boundary wall being required, to the detriment of the status of the RPG and Conservation Area.

Flood Risk and Drainage

Policy context

9.112. Section 14 of the NPPF covers the issue of meeting the challenge of climate change, flooding and coastal change. Paragraph 16 states that *when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessment. Development should only be allowed in areas at risk of flooding where, in the light of this assessment (and the sequential and exception tests, as applicable) it can be demonstrated that:*

- o *within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;*
- o *the development is appropriately flood resistant and resilient;*
- o *it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;*
- o *any residual risk can be safely managed; and*
- o *safe access and escape routes are included where appropriate, as part of an agreed emergency plan.*

9.113. Paragraph 169 of the NPPF continues by stating that *major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate. The systems used should:*

- o *take account of advice from the lead local flood authority;*
- o *have appropriate proposed minimum operational standards;*
- o *have maintenance arrangements in place to ensure an acceptable standard of operation for the lifetime of the development; and*
- o *where possible, provide multifunctional benefits.*

9.114. Policy ESD6 of the CLP 2015 essentially replicates national policy contained in the NPPF with respect to assessing and managing flood risk. In short, this policy resists development where it would increase the risk of flooding and seeks to guide vulnerable developments (such as residential) towards areas at lower risk of flooding.

9.115. Policy ESD7 of the CLP 2015 requires the use of Sustainable Drainage Systems (SuDS) to manage surface water drainage systems. This is with the aim to manage and reduce flood risk in the District.

Assessment

9.116. A Drainage Strategy (Price and Myers, July 2023) has been submitted to support the application. The Environment Agency's flood maps indicate that the site is located in Flood Zone 1 and therefore at lowest risk from flooding.

9.117. The Local Lead Flood Authority (LLFA) raise no objection subject to detailed conditions regarding to a SuDS and surface water drainage scheme and future maintenance.

Conclusion

9.118. The proposals are considered to be acceptable in flood risk and drainage terms in accordance with the requirements of Policies ESD6 and ESD7 of the CLP 2015 and the Policy Villages 2 criterion relating to “*whether the proposals would have an adverse impact on flood risk*”.

Ecology Impact

Legislative context

9.119. The Conservation of Habitats and Species Regulations 2017 consolidate the Conservation of Habitats and Species Regulations 2010 with subsequent amendments.

Policy Context

9.120. Paragraph 170 of the NPPF states that Planning policies and decisions should contribute to and enhance the natural and local environment by (amongst others): a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils; and d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.

9.121. Paragraph 175 states that when determining planning applications, local planning authorities should apply the following principles: a) if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused; d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.

9.122. Policy ESD10 of the Cherwell Local Plan 2011-2031 lists measures to ensure the protection and enhancement of biodiversity and the natural environment, including a requirement for relevant habitat and species surveys and associated reports to accompany planning applications which may affect a site, habitat or species of known ecological value.

9.123. This policy is supported by national policy in the NPPF and also, under Regulation 43 of Conservation of Habitats & Species Regulations 2017, it is a criminal offence to damage or destroy a breeding site or resting place, unless a licence is in place.

9.124. The Planning Practice Guidance dated 2014 post-dates the previous Government Circular on Biodiversity and Geological Conservation (ODPM Circular 06/2005), although this remains extant. The PPG states that Local Planning Authorities should only require ecological surveys where clearly justified, for example if there is a reasonable likelihood of a protected species being present and affected by development. Assessments should be proportionate to the nature and scale of development proposed and the likely impact on biodiversity.

Assessment

- 9.125. Having regard to the Local Planning Authority's duty under the Conservation of Habitats and Species Regulations 2017, the lack of a suitable protected species/ecological survey and proposed mitigation strategy means that it has not been demonstrated that the proposal will not cause harm to any protected species or its habitat which is reasonably likely to be present and affected by the development. The proposal is therefore contrary to Policy ESD10 of the CLP 2031 Part 1, advice contained in the PPG and Natural England's Standing Advice, and section 15 of the National Planning Policy Framework.
- 9.126. Officers are satisfied, on the basis of the advice from the Council's Ecologist and the absence of any objection from Natural England, and subject to conditions, that the welfare of any European Protected Species found to be present at the site and surrounding land will continue and be safeguarded notwithstanding the proposed development and that the Council's statutory obligations in relation to protected species and habitats under the Conservation of Habitats & Species Regulations 2017, have been met and discharged.

Sustainable construction and energy efficiency

Policy context

- 9.127. Paragraph 8 of the NPPF looks to secure net gains across each objective: economic, social and environmental. Policy ESD 3 of CLP (2015) specifically deals with sustainable construction, including that 'All new residential development will be expected to incorporate sustainable design and construction technology to achieve zero carbon development through a combination of fabric energy efficiency, carbon compliance and allowable solutions in line with Government policy.'
- 9.128. Policy ESD1 of the CLP 2015 states that measures should be taken to mitigate the impact of development within the District on climate change. It also seeks that the design of developments reduces carbon emissions and use resources more efficiently, including water.
- 9.129. Policy ESD2 of the CLP 2015 seeks to achieve carbon emission reductions and to reduce energy use, in particular by the use of sustainable design and construction measures. The reference to allowable solutions in Policy ESD2 and 'zero carbon' are no longer being pursued by the government so are no longer relevant.
- 9.130. Policy ESD3 encourages sustainable construction methods.
- 9.131. Policy ESD 5 supports renewable and low carbon energy provision provided that there is no unacceptable adverse impact on, inter alia, visual impacts on local landscapes and the historic environment. Policy ESD 15 of the CLP (2015) deals with the character of the built and historic environment. It repeats the provisions listed above for ESD 5, by seeking to incorporate energy efficient design and sustainable construction techniques, whilst ensuring that the aesthetic implications of green technology are appropriate to the context.

Assessment

- 9.132. In paragraph 1.1.3 of the agent's Sustainability Statement (Environmental Economics, July 2023), the proposed development is designed to achieve carbon emissions in line with Part L 2021 through the adoption of good fabric performance and employment of low and zero carbon technologies. It states that this therefore complies with Policy ESD3 of the CLP (2015). This is not a convincing conclusion: Policy ESD3 requires the achievement of a higher bar than 'low and zero', of zero

carbon development. The proposal therefore fails to comply with Policy ESD3 of the CLP (2015).

- 9.133. Paragraph 3.2.3 of the submission states an aim to use timber that is procured sustainably, independently accredited by either the FSC or PEFC schemes. As an aim this is commendable, but it is not stated as a commitment. The UK Green Building Council estimate that around 30% of total greenhouse gas emissions arising from the built environment are embodied emissions, meaning that they are generated by the extraction, transport and manufacturing processes that happen before a building is first occupied. The terminology for sourcing these materials in Paragraph 3.2.3 is non-specific and therefore cannot be given any weight.
- 9.134. A solar hot water system is referred to in Appendix E as a means of heating stored water by either evacuated tubes or flat plate collectors, both of which are typically a roof-based system. Their provision would result in a visual conflict between policies seeking to mitigate against climate change and those seeking to preserve and enhance the character of the existing heritage assets and their environments.
- 9.135. Paragraph 6.84 of the Planning Statement refers to the achievement of high environmental standards. Paragraph 6.86 refers to renewable technologies and how, overall, the proposed measures should achieve at least a 31% reduction in carbon emissions, ensuring compliance with Part L of the building regulations.

Agricultural Land Classification

- 9.136. The PPG Guide to Assessing Development Proposals on Agricultural Land (2021) states that the best and most versatile (BMV) agricultural land is graded 1 to 3a.
- 9.137. Paragraph 174 of the PPG states that planning decisions should contribute to and enhance the natural and local environment by recognising the wider benefits from natural capital and ecosystem services, including the economic and other benefits of the best and most versatile agricultural land.
- 9.138. Policy Villages 2 of the CLP 2015 states that particular regard will be given to whether best and most versatile agricultural land could be avoided.
- 9.139. Policy PD1 of the MCNP states that development should not be on the best and most versatile agricultural land.
- 9.140. The northern part of the application site is Grade 2 BMV land. The southern half is Grade 5. The proposal therefore conflicts with national and local policy.

Noise, Contamination and Air Quality

- 9.141. The NPPF advises that the planning system should contribute to and enhance the natural and local environment by preventing both new and existing development from contributing to, or being put at unacceptable risk from, or being adversely affected by unacceptable levels of noise pollution or air pollution. Saved Policy ENV1 seeks to ensure development is appropriate in terms of contamination and does not give rise to unacceptable levels of pollution.
- 9.142. The Council's Environmental Protection Officer has reviewed the application and is satisfied that acceptable internal and external noise environments can be achieved on the site subject to detailed mitigation which would be secured by condition. Prior to the commencement of the development, a Construction Environment Management Plan (CEMP), which shall include details of the measures to be taken to ensure construction works do not adversely affect residential properties on, adjacent to or

surrounding the site, together with details of the consultation and communication to be carried out with local residents, shall be submitted to and approved in writing by the Local Planning Authority. This would be secured by condition.

9.143. In relation to land contamination, the Environmental Protection Officer has raised no objection subject to 'unexpected contamination'. A condition is also proposed for a lighting scheme. The Environmental Protection Officer has made no comments in relation to air quality or odour.

9.144. No objection is therefore raised, subject to the imposition of proposed conditions, to matters relating to noise, contamination and lighting.

Impact on Local Infrastructure

Policy Context

9.145. Policy INF1 of the CLP 2015 states that: *“Development proposals will be required to demonstrate that infrastructure requirements can be met including the provision of transport, education, health, social and community facilities.”*

9.146. Policy BSC11 of the CLP 2015 states that: *“Development proposals will be required to contribute to the provision of open space, sport and recreation, together with secure arrangements for its management and maintenance. The amount, type and form of open space will be determined having regard to the nature and size of development proposed and the community needs generated by it. Provision should usually be made on site in accordance with the minimum standards of provision set out in ‘Local Standards of Provision – Outdoor Recreation’. Where this is not possible or appropriate, a financial contribution towards suitable new provision or enhancement of existing facilities off site will be sought, secured through a legal agreement.”* Policy BSD12 requires new development to contribute to indoor sport, recreation and community facilities.

9.147. The Developer Contributions Supplementary Planning Document (SPD) sets out the position in respect of requiring financial and onsite contributions towards ensuring the necessary infrastructure or service requirements are provided to meet the needs of development, and to ensure the additional pressure placed on existing services and infrastructure is mitigated. This is the starting point for negotiations in respect of completing S106 Agreements.

Assessment

9.148. Where on and off-site infrastructure/measures need to be secured through a planning obligation (i.e. legal agreement) they must meet statutory tests set out in regulation 122 of the Community Infrastructure Ley (CIL) Regulations 2010 (as amended). These tests are that each obligation must be:

- Necessary to make the development acceptable in planning terms;
- Directly related to the development;
- Fairly and reasonably related in scale and kind to the development.

9.149. Where planning obligations do not meet the above statutory tests, they cannot be taken into account in reaching a decision. In short, these tests exist to ensure that local planning authorities do not seek disproportionate and / or unjustified infrastructure or financial contributions as part of deciding to grant planning permission. Officers have had regard to the statutory tests of planning obligations in

considering the application and Members must also have regard to them to ensure that any decision reached is lawful.

Conclusion

9.150. Having regard to the above and in the absence of a signed S106 agreement, the proposal fails to comply with the policy provisions of the CLP 2015.

10. PLANNING BALANCE AND CONCLUSION

10.1. Paragraph 4.14 of the Planning Statement lists the following benefits of the scheme that they state weigh in favour of the application.

- *It is a windfall site that can be delivered relatively quickly to contribute toward the outstanding housing requirement of Kirtlington;*
- *The proposal will fulfil a local housing need for those properties most in demand in the district;*
- *It will deliver affordable housing at a village location where such housing provision has not come forward in recent times;*
- *The site is in a sustainable location and the scale of development is entirely suitable and accords with the existing pattern of development;*
- *The site is well screened and public views of the development will be heavily filtered by the existing and proposed landscaping;*
- *Its development will support the vitality and viability of existing village facilities;*
- *It will deliver a positive biodiversity net gain through onsite enhancements to encourage wider biodiversity interest;*
- *It will deliver heritage benefits through the repair and reinstatement of the boundary wall of the listed parkland;*
- *It will secure a management plan for the existing woodland which will ensure it is positively managed and improved in the long term; and*
- *It will fulfil the social, environmental and economic objectives of sustainable development.*

10.2. In reaching an informed decision on planning applications there is a need for the Local Planning Authority to undertake a balancing exercise to examine whether the adverse impacts of a development would be outweighed by the benefits such that, notwithstanding the harm, it could be considered sustainable development within the meaning given in the NPPF. In carrying out the balancing exercise it is, therefore, necessary to take into account policies in the development plan as well as those in the NPPF. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined against the provisions of the development plan unless material considerations indicate otherwise. The NPPF supports this position and adds that proposals that accord with an up-to-date development plan should be approved and those which do not should normally be refused unless outweighed by other material considerations.

10.3. There are elements of the Planning Statement's assessment which are agreed, particularly those relating to housing need and the maintenance of vitality of existing village facilities. However, the sequential approach to determining whether or not the housing is in the right place to address those needs is not addressed within this submission. The Council considers that it is in the wrong place. The speed of delivery of the site has not been advised. The owners of the wall have a legal obligation to

maintain it, as part of the RPG and curtilage to Kirtlington Park listed building. The weight to be given to those benefits can therefore only be neutral.

- 10.4. Harm is identified in the Planning Statement. At Paragraph 6.22 and 7.7, it is defined in broad terms, as limited. Paragraph 6.44 considers that landscape impact is limited to the site. These assessments are disputed.
- 10.5. Paragraph 8 of the NPPF seeks to achieve three overarching objectives which are mutually supportive and secure net gains across each one of the three.
- 10.6. For the economic objective, the land is not in the right place at the right time to support growth, due to its location within the RPG in particular, and also within the Conservation Area, in close proximity to Home Farm (Grade II) and in the curtilage of Kirtlington Park (Grade I).
- 10.7. For the social objective, the proposal fails to provide a well-designed, beautiful and safe place.
- 10.8. For the environmental objective, the proposal fails to protect and enhance our natural, built and historic environment. It does not make effective use of land, whose best use is as parkland within the RPG and Conservation Area.
- 10.9. Each of these failings result in harm and the weight to be attributed to that harm is very substantial, significantly outweighing the weight to be given to the benefits of the proposed scheme. The proposal therefore does not represent sustainable development.

10. RECOMMENDATION

REFUSAL FOR THE REASONS SET OUT BELOW:

- 1 By virtue of its siting, scale, size, layout and form the proposal fails to respect the traditional settlement pattern of Kirtlington, extending beyond its built up limits to the east into countryside and into Kirtlington Park, resulting in an incongruous, contrived and inappropriate form of cul-de-sac development which would relate poorly to the remainder of the village, and cause demonstrable harm to the rural character and setting of the village and visual amenities of the area. Therefore, the proposal is contrary to Policies PSD1, ESD13 and ESD15 of the Cherwell Local Plan 2011-2031 Part 1, saved Policies C8, C28 and C30 of the Cherwell Local Plan 1996, Policies PD1, PD4, PD5 and PD6 of the Mid-Cherwell Neighbourhood Plan 2018-2031, Government guidance contained within the National Planning Policy Framework and the National Design Guide.
- 2 The proposed development would, by reason of its location, scale, layout and form, cause considerable harm to the character and significance of the heritage assets of Kirtlington Conservation Area and the Grade II Registered Park and Garden at Kirtlington Park, and would cause unacceptable harm to the settings of nearby listed buildings, in particular Grade II Home Farm, Grade II 3-4 Foxtownsend Cottages and the wider setting of Grade I Kirtlington Park house. Therefore, the proposal is contrary to Policies PSD1, ESD13 and ESD15 of the Cherwell Local Plan 2011-2031 Part 1, PD1 of the Mid-Cherwell Neighbourhood Plan 2018-2031 and Government advice within the National Planning Policy Framework.

- 3 The proposed development would fail to achieve a satisfactory standard of development on highway grounds due to the inability to achieve a satisfactory visibility splay to the south, resulting in the potential for highway safety to be compromised. It would therefore conflict with Policies PSD1, ESD15 and SLE4 of the Cherwell Local Plan 2011-2031, PD1 of the Mid-Cherwell Neighbourhood Plan 2018-2031 and Government guidance contained within the National Planning Policy Framework.
- 4 The proposed development fails to address the need for a safe layout to prevent the risk of crime and disorder occurring. The proposal would therefore fail to comply with Policies PSD1, ESD15 and BSC11 of the Cherwell Local Plan 2011-2031 Part 1, Policy PD5 of the Mid-Cherwell Neighbourhood Plan 2018-2031 and Government guidance contained within the National Planning Policy Framework.
- 5 The proposed development would occur on land classified as Grade 2 BMV agricultural land, in conflict with the NPPF, Policy Villages 2 of the Cherwell Local Plan 2011-2031 Part 1 and PD1 of the of the Mid-Cherwell Neighbourhood Plan 2018-2031 and Government guidance contained within the National Planning Policy Framework.
- 6 In the absence of a satisfactory unilateral undertaking or any other form of Section 106 legal agreement the Local Planning Authority is not satisfied that the proposed development provides for appropriate infrastructure contributions required as a result of the development and necessary to make the impacts of the development acceptable in planning terms, to the detriment of both existing and proposed residents and workers and contrary to Policy INF1 of the Cherwell Local Plan 2011-2031 Part 1, CDC's Planning Obligations SPD 2018 and Government guidance within the National Planning Policy Framework.

CASE OFFICER: Jeanette Davey