

**Site Address: KM22, South West
Bicester (Kingsmere), Middleton Stoney
Road, Bicester**

14/01207/OUT

Ward: Ambrosden and Chesterton **District Councillor:**

Case Officer: Linda Griffiths **Recommendation:** Approval

Applicant: Countryside Properties (Bicester) Ltd

Application Description: Outline – Construction of up to 46 dwellings with associated amenity space, car parking, access roads and public open space

Committee Referral: Major and Departure from the Development Plan

1. Site Description and Proposed Development

- 1.1 The application site comprises 1.4ha within the wider 116ha S W Bicester development site which was granted consent for mixed use development including 1585 dwellings in 2008 (application number 06/00967/OUT) refers. The site is roughly triangular in shape and comprises undeveloped agricultural land, although it has not been used for such purposes for some time. The application is in outline with all matters reserved.
- 1.2 The site is approximately 0.3km from the Middleton Stoney road to the north, and the village of Chesterton lies approximately 0.8km to the south west of the site. A triangular copse, which will be retained as part of the wider urban extension lies immediately to the north of the site, there are no trees within the application site itself. The buildings of Whitelands Farm, which are currently being converted to residential use (application number 11/01840/F) lie immediately to the south.
- 1.3 The site will be accessed via the new internal principal spine road which has now been constructed as part of the SW Bicester development. The site was originally indicated within the SW Bicester development scheme as a reserve school site for a second primary school should it be required. The application proposal seeks the development of this parcel, now known as KM22 for the erection of up to 46 dwellings. The central road through the parcel will link into the South West Bicester Phase 2 development, providing the bus link between the two phases. A habitat corridor provided as part of the Phase 1 development runs along the southern and western boundaries of the site. The indicative layout indicates a LAP centrally within the site.

2. Application Publicity

- 2.1 The application has been advertised by way of neighbour letter, site notice and notice in the local press.
At the time of writing the report, no representations have been received as a result of the above.

3. Consultations

- 3.1 Ambrosden Parish Council: raise no objections
- 3.2 Bicester Town Council: has concerns over whether due consideration has been given

to enhancing footpaths and cycle ways on the Middleton Stoney Road

In respect of the comments above, enhancing the footways and cycle ways along the Middleton Stoney Road are not included within the application. This has not been requested by the Highway Authority who raise no objections to the proposal subject to the imposition of conditions, which do not include works along the Middleton Stoney Road.

3.3 Chesterton Parish Council: comment as follows

- Is there not a need for a further primary school given the density of houses
- Road calming at junction of A41 and vendee Drive
- Further information on the timescale of building and management of community centre, we feel this is important given the application for more housing

In respect of the comments above, a second primary school will be provided as part of the Phase 2 development (13/00847/OUT) refers. It is not considered that the scale of the development proposed would generate the need for additional traffic calming as suggested. In respect of the community centre provision, the section 106 agreement attached to the original outline consent (06/00967/OUT) requires this to be provided prior to the occupation of 500 dwellings on the site. The provision of this building however is also linked to the phase 2 development and will need to be enlarged to cater for the additional dwellings.

Cherwell District Council Consultees

3.4 Planning Policy Officer: I understand that this application seeks a new permission to replace that granted on 30 August 2011 (11/01052/OUT) and which expired August 2014.

The site lies within the wider South West Bicester urban extension site which is in an advanced stage of construction. A phase 2 development is proposed in the Submission Local Plan as Proposed to be Modified (August 2014), although this remains to be tested through the Examination.

On the understanding that it remains the case that the application site is not required for educational purposes, and all other detailed matters are satisfactory, there is again no planning policy objection to the site being developed for housing. The proposal would assist in making effective use of land within a site already approved for an urban extension, in accordance with existing and emerging local Planning Policy, and in the interest of meeting national policy objectives in the NPPF. In particular, the proposal would accord with national objectives for housing delivery in the current context of an under-supply of deliverable housing when measured against the objectively assessed need identified in the 2014 Strategic Housing Market Assessment.

Please note that the site is included in the district's 5 year land supply as a deliverable housing site. While this in itself carries no policy weight, if the site were ultimately shown not to be deliverable, it would need to be removed from the 5 year supply.

3.5 Ecology Officer: given the nature of the site, the ecological situation is unlikely to have changed since the original permission, therefore, I have no comments to make on this application.

3.6 Housing Officer: no objections. As detailed within the submission, there is a 30% affordable housing requirement which will equate to 14 affordable units. The tenure mix will be consistent with the rest of the Kingsmere development in so much that it

will be a 70/30 Affordable Rent/ Shared ownership split. There will need to be a range of affordable house types with an indicative mix of

Rent

2x1b2p maisonettes

6x2b4p houses

2x3b5p houses

Shared Ownership

4x2b4p houses

The affordable housing standards will need to meet the HCA's Design and Quality Standards and the HQI's

Lifetime Homes Standards will need to be delivered against 50% of the rented properties.

The affordable units will need to be delivered in two clusters

The above requirements will be included within the Section 106 Agreement.

3.7 Landscape Officer: in respect of the indicative layout

- The LAP is appropriately situated in terms of walking distances but appears small. The area must be at least 100m² to comply with CDC standards
- The formal tree line north of the secondary street is appropriate but they appear close to frontages of properties with potential light restriction to windows and structural problems
- All street lighting and cable run areas to be adopted by OCC must be confirmed on the detailed plans
- Public access for the woodland is to be restricted to prevent inappropriate formation of a desire line between development parcels. A hornbeam hedge along the application boundary should be planted and a formal row of limes in the hedge
- Structural soil systems for trees in the adopted street are required to ensure successful establishment and growth of trees
- Contextual environment and connectivity of KM5 to be considered in the layout design
- The woodland RPA to be protected along with relocated calcareous grassland west of the woodland within fenced construction exclusion zone. Fencing is to be in accordance with BS 5837.
- Two pedestrian accesses onto the wildlife corridor are to be controlled with demountable bollards to ensure that only maintenance vehicles gain access to it.

Many of the comments above are detailed and will be considered further at Reserve Matters stage.

Oxfordshire County Council Consultees

3.8 Highways Liaison Officer: No objection subject to conditions and a legal agreement

The submitted TA (WSP document dated 15/07/2014) sets out the trip generation from the proposed development (up to 46 dwellings), which from cars will result in a minor increase in vehicular traffic. Within the TA it has been demonstrated that the expected minor increase in traffic movements is unlikely to have adverse effects upon the operation of local junctions.

A review of the accident data for the area has been carried out, and has highlighted a few incidents that have occurred within the last 5 years. Looking through the information provided, it appears the incidents that occurred were down to driver error rather than the characteristics of the local highway network. In light of this data it is considered that the proposed development is unlikely to increase the number of recorded accidents in the area.

The layout is to accord with the standards within the approved Design Code for the Kingsmere development, i.e., appropriate specifications for lighting, drainage, highway works, acceptable visibility splays at junctions, parking levels etc. A tracking

plan will be required as part of a future reserved application to demonstrate refuse vehicles can turn within the site.

An agreed Residential Travel Plan for Kingsmere Phase 1 is currently being implemented and includes a range of sustainable transport measures, which remain acceptable. This application is to be covered by the agreed/approved Travel Plan too, but will require updating.

It is expected that the site will be offered for adoption to the Local Highway Authority via a sec38 Agreement; if so, the development will need to be constructed to an acceptable County Council standard. However, for dwellings within plots of less than 5 units the streets/roads that serve them will remain private.

The transport and Rail contributions secured in the existing Sec 106 Agreement dated 30 August 2011 associated with planning permission 11/01052/OUT are to be carried over to accompany the legal agreement associated with this proposal.

In terms of the Transport Strategy, there is a minor point for clarification. In paragraph 4.2 of the transport Assessment they refer to the fact that they used OCC's 'strategic traffic model', which may be confused with the Oxfordshire Strategic Model. In actual fact they used the Bicester SATURN model for their assessment work.

The conditions imposed on the previous permission should be carried over.

- 3.9 Drainage Officer: KM22 is part of the main Kingsmere development which is under an approved design code which includes surface water drainage. Surface water drainage needs to adhere to the approved design code for the development.
- 3.10 Education: Any approval should be accompanied by the securing of a planning obligation securing the various contributions towards education infrastructure in respect of primary, secondary and SEN, as in the extant sec 106 Agreement associated with the extant permission (11/01052/OUT) on this site.
- 3.11 Property: Contributions towards Library (including book stock), Waste Management, Museum RESOURCE Centre, Youth Facilities (Integrated Youth Support Service0, Adult Learning and Adult Social and Healthcare (Adult Health and Wellbeing Day Care) as set out in the legal agreement attached to 11/01052/OUT.

The county Council as Fire Authority has a duty to ensure that an adequate supply of water is available for fire-fighting purposes. There will probably be a requirement to affix fire hydrants within the development site. A condition to this effect is therefore recommended.

OCC require an administrative payment for the purposes of administration and monitoring of the proposed sec 106 agreement. Financial contributions will be index linked as per the extant sec 106 agreement relevant to this proposal.

Other Consultees

- 3.12 Thames Water: Waste - with the information provided we are unable to determine the waste water infrastructure needs of this application, and recommend that if permission is granted that a 'grampian style' condition be imposed requiring the submission of a detailed drainage strategy.
Water – Thames Water will aim to provide customers with a minimum pressure of 10m head (approx. 1 bar) and a flow rate of 9 litres/minute at the point where it leaves Thames Water pipes. The developer should take account of this minimum pressure in the design of the proposed development.

- 3.13 Environment Agency: the proposed development is located in Flood Zone 1 (low probability) based on our Flood Zone map. Whilst development may be appropriate in Flood Zone 1, paragraph 103 (footnote 20) of the National Planning Policy Framework (NPPF) sets out a Flood Risk Assessment should be submitted for all developments over one hectare in size. WE note that a FRA has been submitted in support of the proposed development.

In terms of surface water flooding the standing advice states:-

- Surface water runoff should not increase flood risk to the development or third parties. This should be done by using Sustainable Drainage Systems (SUDS) to attenuate to at least pre-development runoff rates and volumes or where possible achieving betterment in the surface water runoff regime.
- An allowance for climate change needs to be incorporated, which means adding an extra amount to peak rainfall (20% for commercial development, 30% for residential).
- The residual risk of flooding needs to be addressed should any drainage features fail or they are subjected to an extreme flood event. Overland flow routes should not put people and property at unacceptable risk. This could include measures to manage residual risk such as raising ground or floor levels where appropriate.

4. Relevant National and Local Policy and Guidance

4.1 Development Plan Policy

Adopted Cherwell Local Plan (Saved Policies)

- H5: Affordable housing provision
- TR1: Transportation funding
- C28: Layout, design and external appearance of new development
- C30: Design of new residential development
- R12: Open space provision

4.2 Other Material Policy and Guidance

Non-Statutory Cherwell local Plan 2011 was approved by the Council for development control purposes and is therefore a material consideration. Policy H13 identifies this site as part of the SW Bicester strategic urban extension as a mixed use development to include up to 1585 dwellings.

National Planning Policy Framework 2012 – Core planning principles and the delivery of sustainable development with particular regard to the following sections:-

- 4: Promoting sustainable transport
- 6: Delivering a wide choice of high quality homes
- 7: Requiring good design
- 8: Promoting healthy communities
- 10: Meeting the challenge of climate change and flooding
- 11: Conserving and enhancing the natural environment

Submission Cherwell Local Plan (January 2014)

The Submission Local Plan was published for public consultation in August 2012. A further consultation on the proposed changes to the draft plan was undertaken from March to May 2013. On 7 October 2013, the draft Submission Plan was approved at the council's Executive. The Plan was presented to Full Council on 21 October and endorsed as the Submission Local Plan. It was submitted to the

Secretary of State for Communities and Local Government on 31 January 2014. The Examination commenced in June 2014 but was suspended for six months. At present the plan carries some weight, but will not form part of the Development Plan until the examination process is complete and the plan is formally adopted by the council. Modifications to the Plan are currently the subject of a public Consultation. These modifications allocate further sites for development in Banbury and Bicester which are the most sustainable settlements in the District.

The plan sets out the Council's strategy for the District to 2031. The policies listed below are considered to be material to the application:-

Policy PSD 1 Presumption in favour of sustainable development

Sustainable Communities

Policy BSC 3 Affordable Housing

Policy BSC 4 Housing mix

Policy BSC 10 Open space, outdoor sport and recreation provision

Policy BSC 11 Local standards of outdoor recreation

Policy BSC 12 Indoor sport and community facilities

Sustainable development

Policy ESD 1 Mitigating and adapting to climate change

Policy ESD 2 Energy hierarchy

Policy ESD 3 Sustainable construction

Policy ESD 4 Decentralised energy systems

Policy ESD 5 Renewable energy

Policy ESD 6 Sustainable flood risk management

Policy ESD 7 SUDS

Policy ESD 8 Water resources

Policy ESD 10 Biodiversity and the natural environment

Infrastructure Delivery

Policy INF 1 Infrastructure

5. Appraisal

5.1 The key issues for consideration in this application are:

- Relevant Planning History
- Principle of development and policy
- Five year housing land supply
- Impact on the adjacent woodland and wildlife corridor
- ecology
- Landscape and visual impact
- Flood Risk
- Access and traffic
- Loss of a second primary school site
- Planning Obligation

Relevant Planning History

5.2 In June 2008 outline planning consent was granted for the development of a site allocated as a strategic site within the Non-Statutory Cherwell Local Plan as a mixed use development, including the erection of up to 1585 dwellings (application number 06/00967/OUT) refers. The submitted master plan indicated the application site as a reserve school site should it be required.

5.3 In March 2011 an outline planning application was submitted and refused for the construction of up to 46 dwellings with associated amenity space, car parking, access roads and public open space (application number 10/01381/OUT) refers. The reason for refusal being that it had not been established beyond reasonable doubt that a second primary school was not required. An appeal was lodged but withdrawn prior to the inquiry following the approval of a subsequent application.

5.4 Following the refusal of the above mentioned application, a second application was submitted (application number 11/01052/OUT) refers. Consent was granted for the development of this land for up to 46 dwellings on 30 August 2011. This consent has now lapsed.

Principle of Development and Policy

5.5 The main policy issues are considered to be;

- Compatibility with the development Plan and other local plan policies
- Housing land supply position and associated NPPF advice

Development Plan and other Local Plan Policies

5.6 The Development Plan for Cherwell District comprises the saved policies in the Adopted Cherwell local Plan 1996. Section 70(2) of the town and Country Planning Act 1990 provides that in dealing with applications for planning permission, the Local Planning Authority shall have regard to the provisions of the development plan, so far as is material to the application, and to any other material considerations. Section 38 of the planning and Compulsory Purchase Act 2004 requires that if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the development plan unless material considerations indicate otherwise.

5.7 The site is not allocated for development in the saved policies of the adopted Cherwell Local Plan, but was part of the strategic allocation identified within Policy H13 of the Non-Statutory Cherwell Local Plan. The Council resolved to approve the application submitted relating to that strategic allocation in order to ensure a continued delivery of housing supply.

National planning Policy Framework

5.8 Paragraph 49 of the NPPF states 'housing applications should be considered in the context of a presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable sites.

5.9 The NPPF sets out the economic, social and environmental roles of planning in seeking to achieve sustainable development: contributing to building a strong, responsive and competitive economy; supporting strong, vibrant and healthy communities; contributing to protecting and enhancing our natural, built and historic environment (paragraph 7). It also provides (paragraph 17) a set of core planning principles which, amongst other things require planning to

- Be genuinely plan led, empowering local people to shape their surroundings and to provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency
- Proactively drive and support sustainable economic development
- Always seek to ensure high quality design and a good standard of amenity for all existing and future occupants of land and buildings
- Support the transition to a low carbon future in a changing climate
- Encourage the effective use of land by reusing land that has been previously developed
- Promote mixed use developments
- Conserve heritage assets in a manner appropriate to their significance
- Actively manage patterns of growth to make the fullest possible use of public

transport, walking and cycling and to focus significant developments in locations which are, or can be made sustainable

- Deliver sufficient community and cultural facilities and services to meet local needs

- 5.10 The NPPF at paragraph 14 states 'At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan making and decision taking.....For decision taking this means
- Approving development proposals that accord with the development plan without delay; and
 - Where the development plan is absent, silent or relevant policies are out of date, granting permission unless;
 - Any adverse impact of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or specific policies in this Framework indicate development should be restricted
- 5.11 The Adopted Cherwell local Plan 1996 is out of date in relation to the policies regarding the delivery of housing. The NPPF advises that due weight should be given to relevant policies within existing plans according to their degree of consistency with the NPPF (the closer the policies in the plan to the policies in the framework, the greater the weight which may be given). The Development Plan (Adopted Cherwell Local Plan) contains no up to date policies addressing the supply of housing and it is therefore necessary to assess the application in the context of the presumption in favour of sustainable development as required by the NPPF.

Five Year Housing Land Supply

- 5.12 Section 6 of the NPPF 'delivering a wide choice of high quality homes' requires local planning authorities to significantly boost the supply of housing by identifying key sites within the local plan to meet the delivery of housing within the plan period and identify and update annually a 5 year supply of deliverable sites within the district.
- 5.13 Paragraph 031 Reference ID: 3-030-20140306 of the Planning Practice Guidance – Housing and Economic Development Needs Assessments states that the 'National Planning Policy Framework sets out that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements. Therefore local planning Authorities should have an identified five-year supply at all points during the plan period. Housing requirement figures in up-to-date adopted local plans, which have successfully passed through the examination process, unless significant new evidence comes to light. It should be borne in mind that evidence which dates back several years, such as that drawn from revoked regional strategies, may not adequately reflect current needs.
- 5.14 Where evidence in Local Plans has become outdated and policies in the emerging plans are not yet capable of carrying sufficient weight, information provided in the latest full assessment of housing needs should be considered. But the weight given to these assessments should take account of the fact they have not been tested or moderated against the constraints. Where no robust recent assessment of full housing needs, the household projections published by the Department for Communities and Local Government should be used as the starting point, but the weight given to these should take account of the fact they have not been tested (which could evidence a different housing requirement to the projection, for example, because past events that affect the projection are unlikely to occur again or because of market signals) or moderated against relevant constraints (for example environmental or infrastructure).

- 5.15 On 28 May, the Council published a Housing Land Supply Update which showed that there was a five year housing land supply, based on the Submission Local Plan requirement of 670 homes per annum from 2006 to 2031. The examination of the Local Plan began on 3 June 2014. On that day, and the following day, 4 June 2014, the Local Plan's housing requirements were discussed in the context of the Oxfordshire Housing Market Assessment (SHMA) 2014, published on 16 April 2014 (after the submission of the Local Plan in January 2014).
- 5.16 The Oxfordshire Strategic Housing Market Assessment (SHMA) 2014 was commissioned by West Oxfordshire District Council, Oxford City Council, South Oxfordshire District Council, Vale of White Horse District Council and Cherwell District Council and provides an objective assessment of housing need. It concludes that Cherwell has a need for between 1,090 and 1,190 dwellings per annum. 1,140 dwellings per annum is identified as the mid-point figure within that range.
- 5.17 The Planning Inspector appointed to examine the Local Plan made clear his view that the SHMA document provided an objective assessment of housing need in accordance with the NPPF and suspended the Examination to provide the opportunity for the Council to propose 'Main Modifications' to the Plan in light of the higher level of need identified. The 1,140 per annum SHMA figure represents an objective assessment of need (not itself the housing requirement for Cherwell) and will need to be tested having regard to the constraints and the process of Strategic Environmental Assessment/Sustainability Appraisal. However, the existing 670 dwellings per annum housing requirement of the Submission Local Plan (January 2014) should no longer be relied upon for the purpose of calculating the five year housing land supply. Until 'Main Modifications' are submitted to the Secretary of State for communities and Local Government, the objectively assessed need figure of 1,140 homes per annum from the SHMA is considered to be the most robust and defensible basis for calculating the five year housing land supply.
- 5.18 A further Housing Land Supply Update (June 2014) has been approved by the LEAD Member for Planning. It shows that the District now has a 3.4 year housing land supply which includes an additional 20% requirement as required by the NPPF where there has been persistent under-delivery. It also seeks to ensure that any shortfall in delivery is made-up within the five year period. The District does not therefore have a 5 year housing land supply and as a result the NPPF advises in paragraph 14 that planning permission should be granted unless 'adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in this framework taken as a whole.'

Environmental Statement

- 5.19 The original outline application, which included this application site, was accompanied by an Environmental Statement. Under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011, where an ES has been submitted with an application, the Local Planning Authority must have regard to it when determining the application, and can only approve the application if it is satisfied that the ES provides adequate information. The development proposed falls within the parameters considered within the original Environmental Statement and therefore a revised Statement was not required in respect of this proposal.

Impact on the Adjacent Woodland and Wildlife Corridor

- 5.20 The application site is located just to the south of an existing small area of woodland which is to be retained and protected as part of the development of South West Bicester (06/00967/OUT) refers. The woodland in question is triangular in shape and stands in isolation from other groups of trees and hedges within the site, but will be enhanced by the provision of a green corridor and wildlife corridor from the Middleton Stoney Road down through the site and to its south linking through with other green routes within the development. The development site is located to the south of this

woodland and will not encroach upon the tree protection areas which have already been identified by a full arboricultural report which has been produced in conjunction with the whole of the S W Bicester development.

Ecology

- 5.21 Full ecological surveys were undertaken in connection with the outline consent including a phase 1 habitat survey, and it is accepted that the change of use of this site from a school site to residential will not affect the conclusions of that part of the Environmental Statement. The site does not have a high ecological value being former arable land. Since that original survey, additional protected species surveys have been undertaken and the original Phase 1 habitat survey has been updated. There are also a number of on-going survey requirements within the Ecological Management Plan which is required under the Section 106 Agreement in respect of the original outline consent (application number 06/00697/OUT) refers. The applicants agent confirms the following surveys have been undertaken:
- Bat surveys between 2004 and 2006, bat transect work in 2013
 - Invertebrate surveys in 2005
 - Great crested newts in 2005/06
 - Badger surveys in 2004, 2005 and 2007
 - Water vole and otter surveys between 2004 and 2006
 - Reptile surveys in 2007
 - Updated Phase 1 habitat survey 2012
 - Butterfly monitoring in 2013
 - Breeding bird survey in 2013
- 5.22 The surveys recorded no protected species on the application site. A badger sett and evidence of foraging have been identified elsewhere on the SW Bicester site but this was a considerable distance from the reserve school site. No Great Crested Newts were recorded during a terrestrial survey of the site and the area is not a suitable habitat for reptiles. There are no watercourses within the site and no conclusive evidence of water voles or otter has been recorded anywhere on the wider SW Bicester site during field surveys. The site contains no features suitable for roosting bats and foraging potential is low.
- 5.23 The site was originally surveyed in 2004 and was in arable cultivation between 2004 and 2009, since when it has been managed as set-aside.
- 5.24 The NPPF – Conserving and enhancing the natural environment requires at paragraph 109, that, the planning system should contribute to and enhance the natural environment by minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government’s commitment to halt the overall decline in biodiversity, including establishing coherent ecological works that are resilient to current and future pressures.
- 5.25 Paragraphs 192 and 193 further add that ‘the right information is crucial to good decision-taking, particularly where formal assessments are required (such as Habitats Regulations Assessments) and that Local Planning Authorities should publish a list of their information requirements for applications, which should be proportionate to the nature and scale of the development proposals. Local Planning Authorities should only request supporting information that is relevant, necessary and material to the application in question’. One of these requirements is the submission of appropriate protected species surveys which shall be undertaken prior to the determination of a planning application. The presence of a protected species is a material consideration when a planning authority is considering a development proposal. It is essential that the presence or otherwise of a protected species, and the extent to that they may be affected by the proposed development is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.

- 5.26 Paragraph 98 of Circular 06/05: Biodiversity and Geological Conservation – statutory obligations and their impact within the planning system states that ‘local planning authorities should consult Natural England before granting planning permission’ and paragraph 99 goes on to say that ‘it is essential that the presence or otherwise of protected species, and the extent to which they may be affected by the proposed development is established before planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision’.
- 5.27 Section 40 of the Natural Environment and Communities Act 2006 (NERC 2006) states that ‘every public authority must in exercising its functions, have regard to the purpose of conserving (including restoring/enhancing) biodiversity’ and;
- 5.28 Local Planning Authorities must also have regard to the requirements of the EC Habitats Directive when determining an application where European Protected Species are affected, as prescribed in Regulation 9(5) of Conservation Regulations 2010, which states that a ‘competent authority in exercising any of their functions, must have regard to the requirements of the Habitats Directive as far as they may be affected by those functions’.
- 5.29 Articles 12 and 16 of the EC Habitats Directive are aimed at the establishment and implementation of a strict protection regime for animal species listed in Annex iv(a) of the Habitats Directive within the whole territory of the Member States to prohibit the deterioration or destruction of their breeding sites or resting places.
- 5.30 Under Regulation 41 of the Conservation Regulations 2010 it is a criminal offence to damage or destroy a breeding site or resting place, but under Regulation 53 of the Conservation Regulations 2010, licenses from Natural England for certain purposes can be granted to allow otherwise unlawful activities to proceed when offences are likely to be committed, but only if 3 strict derogation tests are met:-
1. is the development needed for public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature(development)
 2. is there a satisfactory alternative
 3. is there adequate mitigation being provided to maintain the favourable conservation status of the population of the species
- 5.31 Therefore where planning permission is required and protected species are likely to be found present at the site or surrounding area, Regulation 53 of the Conservation of Habitats and Species Regulations 2010 provides that Local Planning Authorities must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions and also the derogation requirements might be met.
- 5.32 The Council’s ecologist has assessed the information submitted and advises that given the nature of the site, the ecological situation is unlikely to have changed and therefore raises no objections.
- 5.33 Consequently it is considered that Article 12(1) of the EC Habitats Directive has been duly considered in the welfare of any protected species present on or near the site will be safeguarded notwithstanding the proposed development. The proposal therefore accords with the NPPF and Policies C2 and C5 of the adopted Cherwell local Plan and Policy ESD 10 of the Submission Local Plan (January 2014).

Landscape and Visual Impact

- 5.34 Whilst the proposed development will be visible from the immediate locality, it will be

seen in relation to and as part of the wider South West Bicester development, and will be bordered to the north and east by residential properties and therefore viewed against this urban extension background.

- 5.35 The residential development proposed is within the building parameters set out in the Environmental Statement accompanying the 2006 outline application for the Kingsmere Phase 1 development. The development of this site for residential purposes rather than a primary school is unlikely to significantly alter the overall visual impact of the development and is therefore considered acceptable.

Flood Risk

- 5.36 The whole of the Kingsmere Phase 1 site, which includes the application site, benefits from an approved Flood Risk assessment which was submitted as part of the original outline application (application number 06/00697/OUT) refers. This FRA confirms that KM22 is not at risk of fluvial or coastal flooding and it also sets out the strategic surface water management regime. The application site is within Flood Zone 1 which has a low probability of flooding.

- 5.37 The adopted Kingsmere Design Code builds on the original FRA and sets out more specific requirements including the need for each development parcel within the site to provide SUDS, preferably infiltration systems such as soak-a-ways, infiltration trenches or permeable paving to accommodate the 10 year storm. Where infiltration potential is low then flows must be attenuated for the 10 year storm storage and or infiltration to deal with excess runoff. Permeable paving must be used on all minor roads within the parcels.

- 5.38 The submission has been assessed by the Environment Agency and OCC as Drainage Authority who raise no objections to the proposal which is considered to be in accordance with the NPPF in this respect..

Access and Traffic

- 5.39 Vehicular access to this parcel will be taken from the main spine road through the phase 1 development between land parcels KM2 and KM5. Development on KM2 is now complete although development in respect of KM5 has not yet begun. The main infrastructure in respect of the Phase 1 development is now in place, including the road network to serve this development parcel.

- 5.40 A Transport Assessment has been submitted as part of this application which should also be read in conjunction with the TA for the Kingsmere Phase 1 development within which this site was referred to as a reserve school site (application number 06/00697/OUT) refers. The TA submitted with this application has considered the transport implications arising from a change in land-use relating to the 'reserve school site' which was an integral element of the consented Kingsmere Phase 1 development.

- 5.41 The TA report has sought to provide an updated assessment of the transport impacts, to support a renewed application for up to 46 dwellings on the site. The report confirms the following:-

- The design of the site will continue applying 'Manual for Streets' principles which helped to reach agreement with OCC on a Design Code for Phase 1.
- The link road through the KM22 development parcel is characterised as a Secondary Street and allowances have been made to enable it to link through to the phase 2 development
- The proposed development would generate an additional 43 multi-modal trips in the morning peak hour and 46 multi-modal trips in the evening peak hour. Of these, 18 trips in the morning peak and 22 in the evening peak are forecast to be made by car.
- The traffic associated with 46 dwellings has been assessed within the Bicester

Town-wide transport model. It has been demonstrated that the local junctions will have the capacity to accommodate the development and that the cumulative effect of the development would not be severe.

- The re-development of the reserved site would have positive implications for the promotion of sustainable transport, including further improving the viability of bus services and furthering the aims of the Residential Travel Plan.

5.42 The Transport Assessment has been considered by the Highway authority who do not disagree with the conclusions made and raise no objections to the proposal subject to the imposition of a number of conditions and a legal agreement relating to transport and rail contributions as agreed as part of the previous consent for this site (application number 11/1052/OUT) refers.

Loss of a Second Primary School Site

5.43 The first application relating to the residential of this site was originally refused, contrary to Officer recommendation on the basis that it was premature to release the site for housing until the density and housing mix on the south West Bicester Phase 1 development was known and therefore the need or otherwise for a second primary school had been established.

5.44 The South West Bicester urban extension was allocated as a strategic sit within the council's Non-Statutory Cherwell Local Plan under Policy H13. One of the requirements within that policy was to provide a primary school and land for a secondary school within the development. At that time the County Council thought that potentially 2 primary schools would be required to meet the needs of the development. The outline application as submitted in 2006 therefore identified land for a second primary school should it be required. However, following an assessment in 2006 during the consideration of the outline application, of the likely pupil generation and examination of the then extant and forecast capacities in local schools, it was considered by OCC that, to meet the needs from the 1585 homes, a single two form entry primary school only was required to serve the development and that there was no need for the second primary school. That meant that any residual need generated from within the development would be expected to be provided for within existing schools within Bicester.

5.45 As the outline application had progressed so far at that time, the applicants made the decision not to amend the application at that time but to continue with the determination of the application. The outline application therefore granted in June 2008 referred to the provision of 2 number primary schools within the description of the development, and the two sites are indicated within the approved master plan for the site and also within the approved Design Code land use proposals map. A clause contained within the Section 106 Agreement however, does seek further education contributions from the developer should the agreed number of bed spaces generated be exceeded.

5.46 Furthermore, whilst indicated as the reserve school site within the outline application documents, it is not required to be retained as such either as part of that outline consent nor the accompanying Section 106 Agreement, and therefore there is no mechanism for requiring its reservation until the South West Bicester Phase 1 development has been built out and the exact numbers are known. The main primary school within the phase 1 development will be two from entry and a second primary school has now been agreed as part of the Phase 2 development (application number 13/00847/OUT) refers.

5.47 There has been no material change in circumstances since the application proposal was considered and approved (application number 11/01052/OUT) and the alternative use of this site for residential purposes as proposed is considered appropriate.

Planning Obligations

- 5.48 The proposed development would generate a need for infrastructure and other contributions that need to be secured through a planning obligation, to enable the development to proceed. The draft Supplementary Planning Document (SPD) relating to the requirements was considered by the Council's Executive Committee in May 2011 and was approved as interim guidance for development control purposes. It has not been the subject of public consultation.
- 5.49 New development often creates a need for additional infrastructure or improved community services and facilities, without which there could be a detrimental effect on local amenity and the quality of the environment. National Planning Policy sets out the principle that applicants may reasonably be expected to provide, pay for, or contribute towards the cost of all or part of the additional infrastructure/service, obligations are the mechanism used to secure these measures.
- 5.50 In respect of planning obligations, the NPPF advises at paragraph 204 that they should only be sought where they meet all of the following tests:
- Necessary to make the development acceptable in planning terms
 - Directly related to the development; and
 - Fairly and reasonably related in scale and kind to the development
- 5.51 Negotiations are ongoing at the time of writing this report with the applicants to secure the necessary contributions to meet the needs generated by the development as follows:

District Council Requirements

- Affordable housing at 30%, which equates to 13 units
- Informal open space and unequipped LAP provision within the site together with maintenance contributions for the LAP of £15,195 and £27.31m2 in respect of the informal open space maintenance
- Outdoor sports contributions towards the Sports Village provision (consultation awaited)
- Indoor Sports provision (consultation awaited)
- Refuse and recycling bins at £67.50 per dwelling
- Monitoring fee £1000

County Council Contributions

- Highways and public transport
- Education
- Library
- Day centre for the elderly
- Waste and recycling
- Adult learning
- Museum
- Youth centre provision
- Monitoring fee

All the above OCC requirements will be as set out and already agreed in respect of the Section 106 Agreement dated 30 August 2011 attached to 11/01052/OUT.

Engagement

- 5.52 With regard to the duty set out in paragraphs 186 and 187 of the Framework, no problems or issues have arisen during the application. It is considered that the duty to be positive and proactive has been discharged through the efficient and timely determination of the application.

Conclusion

- 5.53 The NPPF presumes in favour of sustainable development, and in the context of this application, having regard to the above assessment, it is considered that on balance the proposal for the erection of up to 46 dwellings on this former reserve school site is acceptable in principle. It will provide additional affordable housing and will help the Council's housing land supply shortfall. The development will not cause harm to the visual amenities of the locality and will not impact significantly upon the local infrastructure subject to securing appropriate contributions. In the context of the presumption in favour of sustainable development, the proposal is considered acceptable and is recommended for approval.

6. Recommendation

Approval, subject to:

- a) The completion of the section 106 agreement, with delegated authority to the Head of Development Management in consultation with the Chairman of the Planning Committee in respect of any final negotiations
- b) That it is resolved that in accordance with the provisions of Regulation 24 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011, that this report is approved as setting out the main reasons, considerations and measures of mitigation proposed with regard to the ES
- c) The following conditions, with any necessary amendments delegated to the Head of Development Management in consultation with the Chairman of the Planning Committee

1. No development shall commence until full details of the layout, scale, appearance, access and landscaping (hereafter referred to as reserved matters) have been submitted to and approved in writing by the Local Planning Authority

Reason – This permission is in outline only and is granted to comply with the provisions of Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004, and Article 4 of the Town and Country Planning (General development procedure) Order 2010 (as amended)

2. In the case of the reserved matters, application for approval shall be made not later than the expiration of three years beginning with the date of this permission

Reason – As above

3. The development to which this permission relates shall be begun not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last reserved matters to be approved.

Reason – As above

4. Except where otherwise stipulated by condition, the application shall be carried out strictly in accordance with the following plans and documents: Application forms, Transport Assessment dated 15th July 2014; Sustainability Statement dated July 2014; flood Risk Statement dated July 2014; Planning design and Access Statement dated July 2014; Woodland Management Plan dated September 2009; site location plan and indicative layout plan 180601X

dated October 2010 submitted as part of this application

Reason – For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and to comply with Government guidance contained within the National Planning Policy Framework

5. Prior to the commencement of the development, a plan showing the details of the finished floor levels of the proposed dwellings in relation to existing ground levels on the site shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

Reason – To ensure that the proposed development is in scale and harmony with its neighbours and surroundings and to comply with Policy C28 of the Adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework

6. No more than 46 dwellings shall be accommodated on the site.

Reason – In order to achieve a satisfactory form of development, to ensure that the site is not overdeveloped and to comply with Policies C28 and C30 of the adopted Cherwell Local Plan and Government guidance within the National Planning Policy Framework

7. Prior to the commencement of the development hereby permitted, a detailed scheme for the surface water and foul sewage drainage of the development shall be submitted to and approved in writing by the Local Planning Authority. The approved surface water drainage scheme shall be carried out prior to commencement of any building works on the site and the approved foul sewage drainage scheme shall be implemented prior to the first occupation of any building to which this scheme relates. All drainage works shall be laid out and constructed in accordance with the Water Authorities Associations current edition 'sewers for adoption'

Reason – To ensure that the development is served by proper arrangements for the disposal of surface/foul sewage, to comply with Policy ENV1 of the adopted Cherwell Local Plan and Government guidance within the National Planning Policy Framework

The development permitted by this planning permission shall only be carried out in accordance with the approved Flood Risk document dated September 2010 submitted under application number 11/01052/OUT and Reflection on Flood Risk document dated July 2014 accompanying this application, and the following mitigation measures detailed within the documents

- The surface water drainage scheme shall be designed to infiltrate or attenuate (where infiltration is not possible) surface water from storms up to and including the 1 in 10 year storm event, as detailed in sections 1.4.2 of the Reflection on flood Risk Document
- The design of the surface water drainage system shall be designed in accordance with the surface water strategy and catchment layout drawing 19.3/D/006 Rev L as set out in Section 1.6.1 of the Reflection of Flood Risk Document
- The surface water drainage system shall be in accordance with the Design Code dated July 2008 for the wider Kingsmere development, and in particular pages 46-50 of that design code and as detailed in section 1.8 of the Reflection on Flood Risk document
- Permeable paving shall be used on all minor roads within the parcel,

as detailed in section 1.4.2 of the Reflection on Flood Risk document.

Reason – To protect the development and its occupants from the risk of flooding and in order to comply with Government guidance within the national Planning Policy Framework

8. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the local planning authority for an amendment to the Method Statement detailing how the unsuspected contamination shall be dealt with.

Reason – The geology under the site is Cornbrash Limestone (a secondary A aquifer). There is a potential for fly tipping to have occurred on the site and should any olfactory or visual evidence of contamination be detected during construction then it should be dealt with in the appropriate manner. The underlying aquifer has the potential to be contaminated, in accordance with Policy ENV7 of the adopted Cherwell Local Plan and Government guidance within the NPPF.

9. Prior to the commencement of development a Construction Management Travel Plan shall be submitted to and approved in writing by the Local Planning Authority

Reason – In the interests of highway safety and to safeguard the amenities of the occupants of adjacent dwellings during the construction period and to comply with Policy ENV1 of the adopted Cherwell Local Plan and Government guidance contained within the NPPF.

10. The internal vehicle access vision splays shall be formed, laid out and constructed in accordance with detailed plans which shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development. The land and vegetation within the vision splays shall not be obstructed by any object, structure, planting or any other object which exceeds 0.6m in height.

Reason – In the interests of highway safety, to ensure a proper standard of development and to comply with Government guidance within the NPPF.

11. Prior to the first occupation of any of the dwellings hereby approved, all of the estate roads and footpaths and pedestrian/cycle links (except for the final surfacing of) shall be laid out, constructed, lit and drained in accordance with Oxfordshire County councils 'Conditions and Specifications for the construction of Roads' and its subsequent amendments.

Reason – as above

12. Prior to the first occupation of any of the dwellings, the proposed vehicular accesses, driveways and turning areas that serve those dwellings shall be constructed, laid out, surfaced, drained (SUDS) and completed, and shall be retained unobstructed except for the parking and manoeuvring of vehicles at all times.

Reason – as above

13. Prior to the commencement of the development hereby permitted, a detailed scheme for the surface water drainage, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context

of the development, and foul sewage drainage of the development shall be submitted to and approved in writing by the Local Planning Authority. The approved surface water drainage scheme shall be carried out prior to the commencement of any building works on the site and the approved foul drainage scheme shall be implemented prior to the first occupation of any dwelling. All drainage works shall be laid out and constructed in accordance with the Water Authorities Associations current edition 'sewers for adoption'

Reason – To prevent the increased risk of flooding, to improve water quality, improve habitat and amenity, and to ensure future maintenance of the drainage system. To prevent pollution of the underlying aquifer from the use of soak-a-ways in contaminated land, and to ensure the satisfactory drainage of the site, in accordance with Policy ENV1 of the adopted Cherwell Local Plan and Government guidance within the NPPF.

14. Development shall not commence until a drainage strategy detailing any on and/or off site drainage works, has been submitted to and approved by the Local Planning Authority in consultation with the sewerage undertaker. No discharge of foul or surface water from the site shall be accepted into the public system until the drainage works referred to in the strategy have been completed.

Reason – as above

15. A Local Area of Play shall be provided in accordance with the Council's adopted policy. Details of the siting and design of the LAP shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development and shall be provided in accordance with the approved details prior to the occupation of any dwelling within 30m of the LAP or prior to the occupation of the first 10 dwellings, whichever is the sooner.

Reason – To ensure the provision of adequate amenity space to serve the development and to comply with Government guidance within the NPPF.

16. No works or development shall take place until a scheme for the protection of the retained trees (section 7, BS5837, the Tree Protection Plan) has been agreed in writing with the Local Planning Authority. This scheme shall include:-

- A plan that shows the position, crown spread and Root Protection Area (paragraph 5.2.2 of BS5837) of every retained tree on site and on neighbouring or nearby ground to the site in relation to the approved plans and particulars. The positions of all trees to be removed shall be indicated on this plan
- The details of each tree retained as required at paragraph 4.2.6 of BS5837 in a separate schedule
- A schedule of tree works for all the retained trees in paragraphs (a) and (b) above, specifying pruning and other remedial or preventative work, whether for physiological, hazard abatement, aesthetic or operational reasons. All tree works shall be carried out in accordance with BS3998 1989, Recommendations for tree work

Reason – To ensure continued health of retained trees and in the interests of the visual amenity of the area, to ensure the integration of the development into the existing landscape and to comply with Policy C28 of the adopted Cherwell Local Plan and Government advice within the National Planning Policy Framework.

17. That the development of the reserve school site for residential purposes shall

be designed in accordance with the Avenue Character Area as specified on pages 81-93 of the Design Code 2008 and shall also be developed wholly in accordance with all other mandatory requirements of the approved design code accompanying the outline application 06/00967/OUT dated July 2008.

Reason – To ensure a satisfactory form of development in keeping with the character of the area, in accordance with Policies C28 and C30 of the adopted Cherwell Local Plan and Government guidance within the NPPF.

18. That prior to the first occupation of any part of the development hereby permitted, fire hydrants shall be provided on site in accordance with details which shall first be submitted to and approved in writing by the Local Planning Authority.

Reason – To secure the provision of essential community infrastructure on site in accordance with Government guidance within the NPPF.

19. Prior to the occupation of each dwelling, that dwelling shall be provided with the necessary services to enable the provision of high speed broadband (no less than 100mbs)

Reason – To facilitate home working and information delivery in accordance with Government guidance within the NPPF

20. Prior to the commencement of the development, evidence that the development is registered with an accreditation body under the code for Sustainable Homes and a Design Stage or Interim Code Certificate demonstrating that the development will achieve Code Level 4 (or the equivalent level of the relevant superseding scheme) for all dwellings shall have been submitted to and agreed in writing by the Local Planning Authority.

Reason – To ensure sustainable construction and reduce carbon emissions in accordance with Government guidance contained within the NPPF

21. Within 3 months of the first occupation of any dwelling hereby approved, a post construction Final Code Certificate issued by an accreditation body confirming that the dwelling has achieved a Code for Sustainable Homes rating of Code Level 4 shall have been submitted to the Local Planning Authority.

Reason – as above

Planning Notes

1. PN32
2. PN33
3. PN22
4. PN24
5. PN19
6. in the submission of reserve matters details for approval it is expected that the new scheme will follow closely the details identified in the Design and Access Statement which has been based on the Design Code produced for the SW Bicester development
7. Consideration should be given to the provision of bird and bat nesting provision within the development in the interests of improving biodiversity within the site.

STATEMENT OF ENGAGEMENT

In accordance with the Town and Country Planning (Development Management Procedure) (England) (Amendment No 2) Order 2012 and paragraphs 186 and 187 of the National Planning Policy Framework (March 2012), this decision has been taken by the Council having worked with the applicant/agent in a positive and proactive way as set out in the application report.