

**Land To The Rear Of No.12 And South Of Dismantled  
Railway Heath Close Milcombe OX15 4RZ**

**22/02104/F**

**Case Officer:** Wayne Campbell

**Applicant:** Stoic Roofing and Construction and Abbeymill Homes

**Proposal:** Erection of 35 two storey dwelling houses, construction of access off Rye Hill, together with garaging, parking, open space with LAP, landscaping and all enabling works

**Ward:** Deddington

**Councillors:** Councillor Hugo Brown, Councillor Eddie Reeves and Councillor Bryn Williams

**Reason for Referral:** Development of 10 or more dwellings

**Expiry Date:** 13 February 2023

**Committee Date:** 9 February 2023

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**RECOMMENDATION: REFUSAL**

**1. APPLICATION SITE AND LOCALITY**

- 1.1. The application site is an area of open pasture on the western edge of the village of Milcombe and is currently used for livestock grazing. In terms of area the site measures approximately 2.2Ha and maintains an existing access driveway off Rye Hill Road to the north of the site. The site maintains strong boundaries on all sides with a mix of existing mature, semi-mature landscaping and rear garden fences to existing properties in Heath Close.
- 1.2. The boundary to the north is marked by mature trees and the route of the dismantled railway line. The contours along the northern section of the site along the Rye Hill edge rise to allow a bridge over this dismantled railway route. To the south the boundary to the site is marked by semi-mature landscaping along the edge of Main Road leading to Hook Norton.
- 1.3. To the immediate east the site is bound by the existing residential development of Heath Close. This is a small 1960's cul-de-sac of dwellings of a mix of two-storey and single storey bungalows with access directly off Rye Hill.
- 1.4. Within the site the area is essentially open pasture with a few trees and stable buildings. Views into the site are limited from outside the site other than from the rear bedroom windows of those properties which shared a common boundary along Heath Close.

**2. CONSTRAINTS**

- 2.1. The application site is positioned beyond the existing built-up limits of the village on the western side and therefore is allocated as an area of open countryside. The site in terms of the development area is essentially flat with Rye Hill to the north rising to bridge the route of the dismantled railway line.
- 2.2. Milcombe is a Category A village, and the site is located in a Conservation Target Area as the Swere Valley and Upper Stour.

### **3. DESCRIPTION OF PROPOSED DEVELOPMENT**

- 3.1. This proposal seeks planning permission for the development of the site for a new housing estate of 35 two-storey dwellings with associated access, open space, landscaping and infrastructure. The proposal would provide a mix of dwellings from detached, semi-detached and terrace form. In terms of size the proposal seeks a mix of dwellings from 2 bedroom through to 5 bedroom accommodation. The density of development at circa 20 dwellings per hectare is relatively low but appropriate for its context given its edge of settlement location. The design and form of the proposed properties are in keeping with the character and plot density of this part of Milcombe.
- 3.2. Access would be maintained off Rye Hill with an improved access junction and a single access road leading through the site. The access road would be framed by properties on both sides and the access will allow for connections with existing pedestrian routes.

### **4. RELEVANT PLANNING HISTORY**

- 4.1. There is no planning history directly relevant to the proposal

### **5. PRE-APPLICATION DISCUSSIONS**

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

20/03290/PREAPP: proposed residential development of 47 x no dwellings comprising of detached, semi-detached houses and apartments, public open space (POS) around retained central group of trees plus Local Area of Play (LAP), at land r/o12 Heath Close, Milcombe, and south of the Dismantled Railway. The response was negative in that the site is located outside the built form of the village and within an area of open countryside. Although Milcombe is a Category A village the lack of community facilities means that the village is not a sustainable location for further new housing development. Policy Villages 2 states that in villages a total of 750 dwellings will be provided to support the need for new dwellings in the Cherwell District; however, this figure has now been achieved and as outlined by the Inspectors at Tappers Farm and Sibford Ferris there would be demonstrable harm from exceeding delivery of 750 dwellings at Category A villages within the plan period.

For these reasons it is considered that the development of this site would conflict with the adopted policies in the Local Plan. It is therefore considered that the principle of this development is unacceptable, and that this harm outweighs the lack of a five year housing land supply and the benefits that the proposal would bring in terms of additional housing including affordable housing.

22/00382/PREAPP: proposed residential development of 18 x 2 storey dwellings (including affordable) with new access garaging parking and landscaping. This pre-app followed recent appeal decision for residential development in Hook Norton which was allowed by the Planning Inspectorate. In taking this recent appeal decision into account it was decided that while the site is on the edge of Milcombe, a Category A village, and therefore development supported in principle by Policy Villages 2, the Council's housing land supply position means that reduced weight is given to housing policies in the Development Plan, and the presumption in favour of sustainable development applies. The site fails some of the criteria of PV2, including

that it would not be well located to services and facilities, meaning future occupiers would have to travel for most services, and would not have a realistic choice of travel means. The site is therefore an environmentally unsustainable location for development of this scale. In addition, the AMR 2021 highlights that the delivery of developments under PV2 at Category 'A' settlements over the plan period is now at a position where the total number of housing completions and the number of dwellings permitted at sites where development has commenced has exceeded 750 dwellings.

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. It is also necessary to recognise that Section 38 of the 1990 Act continues to require decisions to be made in accordance with the development plan and the NPPF highlights the importance of the plan led system as a whole.

Significant weight is attached to the proposal's conflict with the Council's housing strategy. If the Council had been able to demonstrate a 5 year housing land supply this policy conflict would have carried greater weight. Significant weight is attached to the impact of the proposed development, through its scale, on the character of the village. Significant weight is attached to the effect of the proposal on the character and appearance of the countryside through the development of greenfield land. Substantial weight is attached to the site being an unsustainable location for development of this scale and the conflict with Policies PSD and ESD1 of the CLP 2015 and the key objectives of the NPPF

Notwithstanding the conflict with Policies in terms of benefits, significant weight is attached to the provision of additional market houses, and very significant weight is attached to the provision of additional affordable houses through this development. Significant weight is also attached to the proposal's economic benefits through local construction jobs although this benefit would be limited in time to the development's construction.

Overall, it is considered that at this time, given the Council's current housing land supply position, the scale of the proposed development, and that Milcombe benefits from a convenience store in addition to a public house, the conflict with the Council's housing strategy and the impact on the character and appearance of the countryside through the development of greenfield land would, on balance, not outweigh the proposal's benefits. Therefore, a future application for this quantum of development in this location would be considered favourably while the Council's housing land supply position remains as it is.

## **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 **29 September 2022**, although comments received after this date and before finalising this report have also been taken into account.
- 6.2. The comments raised by third parties are summarised as follows:

- Principle of development - Development should be on a brown field site not open green field; loss of green field space; Agricultural land should not be built on; Question the need for this development and additional housing; Site is not within a sustainable location in terms of access to many amenities as suggested by the applicant
- Design/Layout - Question the design of the dwellings to be a mix of stone and red brick; Concerned that the element of affordable housing is not integrated into the overall site but allocated an area within the development; Question the position of the affordable housing close to the boundaries with existing dwellings in Heath Close
- Adverse impact on heritage assets on and surrounding the site
- Development would result in an adverse impact on the local landscape character, entire site is within the area of the Swere and Upper Stour CTA, and the adjacent railway track is an area that is protected under NERC S41.
- Impact on infrastructure - More development in the village which has no services / amenities; schools are at capacity
- Impact on highway safety - Question whether Rye Hill and surrounding area can cope with much more building work and associated heavy vehicle traffic; concern over highway safety due to access point onto Rye Hill and speed of traffic using Rye Hill
- Impact on drainage - Site area known to be marshy and wet with areas of pooling water following heavy rain and drainage of the site is poor; Concern over surface water and foul water drainage throughout the village, development will make this worse
- Adverse impact on local ecology such as Great Crested Newts

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. MILCOMBE PARISH COUNCIL: **No objection subject to changes.** *location to the LAP unacceptable alongside major road with no hedging to protect it.* Question details of the revised drainage report as site known to be wet, marshy and prone to flooding. Ongoing maintenance of drainage and planting needs to be tied to a legal requirement for this work to be completed, in the form of planning conditions. *Concerned that the development needs to ensure that the nature needs of great crested newts, hedgehogs, bats and birds are taken into consideration.*

7.3. Do not agree to use of red brick which is out of character to village as a whole, a lighter coloured brick more in keeping with the surrounding houses in Heath Close and Oak Farm phase 1. Prefer slightly fewer trees planted within the road access areas and tree outside No 32 which should be changed to a parking space. Remove external footpath extending as far as Heath Close. No 34 does not have any access

from the back garden for the removal of waste bins, etc. all houses should have rear access to the back gardens.

- 7.4. *Would like to see traffic calming measures to control the speed of traffic coming down Rye Hill. There are the ongoing issues with width of the road between the Horse and Groom pub which is aggravated by the vehicles that park there. Concern regarding additional traffic strain that this development will put on an already overloaded main road through the village.*

#### OTHER CONSULTEES

- 7.5. OCC HIGHWAYS: **No objection** following amended details and subject to S106 contributions, an obligation to enter into a S278 agreement, planning conditions, and informative.
- 7.6. OCC ARCHAEOLOGY: **Comment.** In accordance with the National Planning Policy Framework (NPPF 2021, paragraph 189), we would therefore recommend that, prior to the determination of any planning application for this site the applicant should therefore be responsible for the implementation of an archaeological field evaluation
- 7.7. LEAD LOCAL FLOOD AUTHORITY (LLFA): **No objection** following receipt of amended details and subject to conditions
- 7.8. OCC EDUCATION: **No objections** subject to S106 contribution towards primary education and special education needs
- 7.9. CDC Land Drainage: **No objections**
- 7.10. THAMES WATER: **No objection** subject to conditions
- 7.11. ENVIRONMENT AGENCY: **No comments** to make
- 7.12. CDC ENVIRONMENTAL PROTECTION OFFICER: **No objections** subject to conditions
- 7.13. CDC ARBORICULTURAL OFFICER: **No objection** subject to conditions
- 7.14. BERKSHIRE, BUCKINGHAMSHIRE AND OXFORDSHIRE WILDLIFE TRUST (BBOWT): **Objection.** Application does not provide adequate evidence of a net gain in biodiversity and does not provide evidence that it will help achieve the aims of the Conservation Target Area.
- Officer Comment: Following receipt of amended ecology report and a biodiversity enhancement scheme BBOT were reconsulted, but no further comments were received. The comments / objection therefore relates to the initial report and not the additional information.*
- 7.15. CDC ECOLOGY: **Comment.** Following submission of amended information in the form of a Biodiversity Impact Assessment which shows that a net gain for biodiversity on site is possible and this is acceptable. This should form part of a full LEMP showing how the various created and enhanced habitats will be managed ongoing to ensure the conditions proposed are met with finalised landscape plans.
- 7.16. NATURE SPACE: **No objections** subject to conditions
- 7.17. CRIME PREVENTION DESIGN ADVISOR – THAMES VALLEY POLICE: **Objection.** Request a number of design changes to the site and further information requested.

- 7.18. CDC RECREATION & LEISURE: **No objections** subject to S106
- 7.19. BUCKINGHAMSHIRE, OXFORDSHIRE AND BERKSHIRE WEST INTEGRATED CARE BOARD: **No objections** subject to S106 contribution.
- 7.20. CDC STRATEGIC HOUSING OFFICER: No comments received.
- 7.21. CDC LANDSCAPE OFFICER: No comments 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 (CLP 2015) was formally adopted by Cherwell District Council on 20th July 2015 and provides the strategic planning policy framework for the District to 2031. The CLP 2015 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
- SLE4: Improved Transport and Connections
- BSC1: District Wide Housing Distribution
- BSC2: The Effective and Efficient Use of Land – Brownfield land and Housing Density
- BSC4: Housing Mix
- BSC10: Open Space, Outdoor Sport and Recreation Provision
- BSC11: Local Standards of Provision – Outdoor Recreation
- BSC12: Indoor Sport, Recreation and Community Facilities
- ESD1: Mitigating and Adapting to Climate Change
- ESD2: Energy Hierarchy and Allowable Solutions
- ESD3: Sustainable Construction
- ESD6: Sustainable Flood Risk Management
- ESD7: Sustainable Drainage Systems (SuDs)
- 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
- Villages 1: Village Categorisation
- Villages 2: Distribution Growth Across the Rural Areas
- INF1: Infrastructure

### CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- H18: New dwellings in the countryside
- C5: Protection of ecological value and rural character of specified features of value in the district
- C8: Sporadic development in the open countryside
- C28: Layout, design and external appearance of new development
- C30: Design of new residential development
- C33: Protection of important gaps of undeveloped land
- ENV1: Environmental pollution

- ENV12: Potentially contaminated land
- TR1: Transportation funding

### 8.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- The Planning (Listed Buildings and Conservation Areas) Act 1990
- EU Habitats Directive
- Natural Environment and Rural Communities Act 2006
- Conservation of Habitats and Species Regulations 2017
- Circular 06/2005 (Biodiversity and Geological Conservation)
- Developer Contributions SPD (February 2018)
- Infrastructure Delivery Plan (IDP) Update (December 2017)
- Countryside Design Summary (1998)
- Cherwell Design Guide SPD (July 2018)
- Oxfordshire Wildlife & Landscape Study 2004
- Annual Monitoring Report (AMR) (December 2021)
- Annual Monitoring Report (2022 AMR) (February 2023)
- Oxfordshire County Council: Local Transport Plan 4 (2015-2031)
- Cherwell District Council Housing & Economic Land Availability Assessment (February 2018)

## 9. APPRAISAL

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

- Principle of development
- Design and impact on the character of the area
- Highway impact
- Residential amenity
- Drainage
- Heritage
- Ecology impact
- Sustainability
- S106

#### Principle of Development

##### *Policy Context*

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

##### *Development Plan*

##### *Development Plan*

- 9.3. 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.

- 9.4. Policy PSD1 of the CLP 2015 embeds a proactive approach to considering development proposals to reflect the presumption in favour of sustainable

development. It states, *'The Council will always work proactively with applicants to jointly find solutions which mean that proposals can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area'*.

- 9.5. The CLP 2015 seeks to allocate sufficient land to meet district-wide housing needs. The Plan states, *'The most sustainable locations for growth in the District are considered to be Banbury, Bicester and the larger villages as identified in Policies Villages 1 and Villages 2 as these settlements have a range of services and facilities, reducing the need to travel by car'*.
- 9.6. Policy BSC1 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.
- 9.7. Paragraph E.10 of the Plan states, *'Housing delivery will be monitored to ensure that the projected housing delivery is achieved. The District is required by the NPPF and the NPPG (to maintain a continuous five year supply of deliverable (available, suitable and achievable) sites as well as meeting its overall housing requirement'*.
- 9.8. Paragraph E.19 of the Local Plan states, *"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"*.
- 9.9. The Council's latest assessment of housing land availability is its 'HELAA' published in 2018. This is a technical rather than a policy document but provides assessments of potentially deliverable or developable sites; principally to inform plan-making. The application site was reviewed in the HELAA as site reference HELAA184. The accompanying HELAA report confirmed that this site is potentially suitable for residential development if the Council requires additional development land outside the built-up area of Milcombe. The site could accommodate 55 dwellings based on 25 dph on 2.2 ha which takes into account the density of the surrounding developments. The site is well screened when approaching the village from the west due to mature trees and hedges along the dismantled railway line.
- 9.10. Policy Villages 1 of the CLP 2015 provides a framework for housing development in the rural areas of the district and groups villages into three separate categories (A, B and C). The categorisation of villages was informed by a defined range of sustainability criteria (CLP 2015 para C.255). Milcombe is a Category A village.
- 9.11. Policy Villages 2 of the CLP 2015 states, *'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, *'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'*.
- 9.12. Policy Villages 2 states that in identifying and considering sites, particular regard will be given to the following criteria:



- i. *'Whether the land has been previously developed land or is of less environmental value';*
- ii. *'Whether significant adverse impact on heritage and wildlife assets could be avoided';*
- iii. *'Whether development would contribute in enhancing the built environment';*
- iv. *'Whether best and most versatile agricultural land could be avoided';*
- v. *'Whether significant adverse landscape and visual impacts could be avoided';*
- vi. *'Whether satisfactory vehicular and pedestrian access/egress could be provided';*
- vii. *'Whether the site is well located to services and facilities';*
- viii. *'Whether necessary infrastructure could be provided';*
- ix. *'Whether land considered for allocation is deliverable now or whether there is a reasonable prospect that it could be developed within the plan period';*
- x. *'Whether land the subject of an application for planning permission could be delivered within the next five years';*
- xi. *'Whether development would have an adverse impact on flood risk'.*

#### *National Planning Policy Framework*

9.13. A key material consideration is the National Planning Policy Framework (NPPF) which sets out the Government's planning policy for England. The NPPF is supported by Planning Practice Guidance (PPG).

9.14. The NPPF explains that the purpose of the planning system is to contribute to the achievement of sustainable development. This is defined as meeting the needs of the present without compromising the ability of future generations to meet their own needs.

9.15. So that sustainable development is pursued in a positive way, the NPPF includes a 'presumption in favour of sustainable development' (para. 10). Paragraph 11 states that applying the presumption to decision-making means:

- approving development proposals that accord with an up-to-date development plan without delay; or
- where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date (this includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites), granting permission unless:
  - i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed;
  - ii. or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

9.16. The position in which the most important policies are considered to be out-of-date because of the absence of a five-year housing land supply is often referred to as the 'tilted balance'.

- 9.17. Paragraph 12 advises, *'The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.'*
- 9.18. Section 5 of the NPPF covers the issue of delivering a sufficient supply of homes and states, *'To support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay'*.
- 9.19. Paragraph 74 highlights the need for Local Planning Authorities (LPAs) to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old (unless these strategic policies have been reviewed and found not to require updating as in Cherwell's case). The supply of specific deliverable sites should, in addition, include a buffer - 5% in Cherwell's current circumstances (moved forward from later in the plan period).

#### *Housing Land Supply*

- 9.20. Cherwell's housing land supply as reported in the Council's 2021 Annual Monitoring Report (AMR) concluded that the District had a 3.5 year supply for the next five year period 2022-2027 commencing on the 1 April 2022. This is reviewed annually and currently the housing land supply position is calculated as 5.4 year supply of housing for the period 2022-2027.
- 9.21. This updated figure is contained within the Agenda to the Council's Executive meeting on 6 February. This is largely the result of applying the standard method housing need figure of 742 homes per year from 2022 rather than the Local Plan figure of 1,142 from 2011. The paper states at paragraph 3.26, *'... economic conditions are challenging, and it is important that officers continue to seek Local Plan compliant housing delivery to maintain supply and deliver the district's planned development. Having a year land supply position does not mean that development allowed for the Local Plan should halt. Indeed, not progressing planning development considered to be acceptable could undermine the land supply position.'*
- 9.22. In addition, the 2022 AMR is also being presented to the Executive meeting on the 6 February 2022, within which it is confirmed that, *"during the 2021/22 there were 184 dwellings completed at Category A Villages that contribute to the Policy Villages 2 requirement of 750 dwellings. Since 2014 there has now been a total of 703 completions with a further 165 under construction totalling 868 dwellings. A further 48 dwellings are likely to be built out..."*

#### *Assessment*

- 9.23. This assessment has been made on the basis that Cherwell District Council shall be able to demonstrate a five-year supply of deliverable housing sites subject to the executive meeting on the 6 February. In the event that the Executive does not agree to the revised five-year housing land supply the planning balance of this proposal may change. The presumption in favour of sustainable development, as advised by the NPPF, will need to be applied in this context.
- 9.24. This application seeks planning permission for the development of a paddock for a scheme of 35 dwellings. The site is an undeveloped green field site that, given its physical and visual relationship to the existing built form, is outside of the existing built form of Milcombe village and therefore within the countryside. The proposal to build on greenfield land would have an urbanising impact, though that impact would be relatively localised. The site is bounded by existing residential properties to the east and mature landscaping to the north, south and the route of the dismantled railway with its mature landscaping buffer acting as a significant western boundary.
- 9.25. Milcombe is identified in the Local Plan 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. Milcombe is one of the least served category A Villages and has only a small number of services and facilities.
- 9.26. Whereas the 2021 AMR reported that 519 dwellings had been completed at Category A villages since March 2014, with a further 230 under construction (running total **749**) and approvals for a further 319 not yet commenced (running total 1068), the 2022 AMR reports that 703 dwellings have now been completed at Category A villages, with a further 165 under construction (running total **868**) and 48 likely to be built out i.e. sites where part of the development has been completed (running total 916). In addition, there are approvals for a further 314 not yet commenced (running total 1230).
- 9.27. It is understood that development should, as a result of meeting the target of 750 houses, be focussed in Banbury and Bicester and that there should be a presumption against development in/around Category A villages unless there are benefits to the scheme, beyond that which would normally result from a S106. However, in the context of Policy BSC1 and the need to meet the overall district requirements by 2031, regard is given to the planning Inspector's comments under appeal decision APP/C3105/W/19/3228169 on Land at Merton Road, Ambrosden, OX25 2NP in relation to spatial dimension.
- 9.28. The Inspector commented that Policy Villages 2 does not contain any temporal dimension (i.e. at what point in time in the plan period housing in the rural areas should be permitted) nor does it have a spatial dimension (i.e. it does not specify how much development should occur at each settlement). These matters are to be considered on their own merits having regard to any planning harm that arises. Related to the Ambrosden Inspector's comment on spatial dimension, given that appeals have been dismissed at some of the smaller Category A villages on the grounds of locational sustainability it falls that the larger Category A villages would be expected to accommodate a greater share of the 750 than if equalised out over all 23 Category A villages. This is support by Policies PSD1 CLP 2015.

9.29. In addition, 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 PV2. At the time of the Tappers Farm decision, 271 dwellings had been delivered at Category A villages under PV2, with a further 425 under construction, and an annual delivery rate of 54 dwellings per year from PV2, which would have resulted in the delivery of 750 homes by 2028. 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, 703 dwellings have now been delivered at Category A villages under PV2 and a further 213 dwellings are under construction across 10 different sites. The delivery rate in 2021-2 was 184 dwellings, the average annual delivery rate having risen to 78 dwellings per year and 134 dwellings per year over the last 4 years. It is reasonable to expect all of these 213 dwellings to be delivered – there are none so far in the plan period at Category A villages that once commenced have not been completed – and therefore the total number of dwellings delivered under PV2 will exceed the total of 750 set out in the policy.

9.31. Applying the conclusions of the Launton and Tappers Farm inspectors, it is considered that that point has been reached where planning harm would be caused to the overall locational strategy of new housing in the district through further permissions at unsustainable locations.

9.32. In determining whether the application site is acceptable there is a need to apply the site criteria within Policy Villages 2. The assessment in the 2018 HELAA is also material, albeit of limited weight (given the purpose of this document). The earlier decisions on the site and the planning appeals within the district including the appeal at Blackthorn Road in Launton (17/01173/OUT), Land North of Merton Road, Ambrosden (18/02056/OUT) and OS Parcel 2778 Grange Farm North West of Station Cottage, Launton (21/04112/OUT) are also material considerations.

#### *Policy Villages 2 Criteria*

9.33. The applicable criteria of Policy Villages 2 are provided at paragraph 9.12 above. The land has not previously been developed. The site is not within a designated landscape and does not have any statutory or local environmental designations so could be said to be of lesser environmental value. The Natural England maps appear to show the land as poor quality and therefore the site is not concluded to be the best or most versatile land.

9.34. In this instance, whilst the site is adjacent to a Category A village, other than a convenience store and a public house Milcombe is not well located to services and facilities, meaning future occupiers would have to travel for most services, and would not have a realistic choice of travel means. The site is therefore a moderately environmentally unsustainable location for development of this scale. Future occupiers of the proposed dwellings would have to travel to other settlements to

meet their day-to-day needs, would be reliant on private car to access most services and would not have a realistic choice of travel means.

- 9.35. Whilst there are benefits of the additional housing including the provision of affordable housing in the area, and the site is relatively visually contained (see later in this report) with the consequent impact on the setting of the village, and regard is had to the relative size of the development proposed and to the positive conclusions of the 2018 HELAA, it is considered that the conflict with the Council's housing strategy, the site's poor sustainability credentials and the impact on the character and appearance of the countryside through the development of greenfield land would outweigh the proposal's benefits.

#### *Concluision*

- 9.36. The latest housing supply figure for the district is calculated at 5.4 years. 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 afforded full weight. In this case it is considered that the planning harm identified above would significantly and demonstrably outweigh the proposal's benefits and the proposed development would be unacceptable in principle.
- 9.37. The meeting of the Executive takes place on the 6th February 2023, confirmation of the decision on the housing land supply figure or should there be any change to the calculation of the five year housing land supply figure as a result of the decisions made at that meeting, will be contained in the written update to planning committee.

#### DESIGN AND IMPACT ON THE CHARACTER OF THE AREA

##### *Policy*

- 9.38. Policy ESD15 of the CLP 2015 provides guidance as to the assessment of development and its impact upon the character of the built and historic environment. It seeks to secure development that *would complement and enhance the character of its context through sensitive siting, layout and high-quality design meeting high design standards and complementing any nearby heritage assets.*
- 9.39. BSC2 of the CLP 2015 states that *new housing should be provided on net development areas at a density of at least 30 dwellings per hectare unless there are justifiable reasons to lower the density.* The Council's Design Guide seeks to ensure that new development responds to the traditional settlement pattern and character of a village. This includes the use of continuous building forms along principal routes and the use of traditional building materials and detailing and form that respond to the local vernacular.
- 9.40. Saved Policies C28 and C30 of the CLP 1996 exercise control over all new developments to ensure that the standards of layout, design and external appearance are sympathetic to the character of the context. New housing development should be compatible with the appearance, character, layout, scale and density of existing dwellings in the vicinity.
- 9.41. Section 12 of the NPPF is clear that good design is a fundamental to what the planning and development process should achieve. Paragraph 130 of the NPPF states that planning decisions should ensure that developments:
- *will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;*

- *are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;*
- *are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change*

9.42. With regards to this current proposal, it is confirmed that the density of the development is at 20 dwellings per hectare which although lower than the requirements of Policy BSC2 is more a line to the density of the adjoining residential development to the east and hence more in character to the site surroundings.

#### *Assessment*

9.43. The layout of the proposal shows a single access road leading into the site with dwellings on either side fronting onto the access road. With the dwellings fronting onto the estate road the development is shown as a perimeter block design which allows for defensible space to the scheme and provide an appropriate layout form.

9.44. Concerns have been raised by the Crime Prevention Officer at Thames Valley Police regarding the design / layout of the site. Key concerns raised include the lack of gates to access routes to the rear / side of dwellings on the site along with the concern that no information is provided in terms of boundary treatment to the dwellings.

9.45. The submitted layout plan does show some gates to the rear access routes and this could be improved with the introduction of gates as the entrance to the few access routes serving the rear of some of the dwellings. In addition, although showing an indication of the boundary lines between the various plots the layout plan does not show the type of boundary treatment to be used in the development. However, this type of detail could be secured by a condition attached to any permission given.

9.46. In terms of house design the development would be all two-storey high dwellings with a mix of detached, semi-detached and terrace form. The proposals would provide an acceptable and high standard of street scene within the site and would follow the height level of the adjoining residential development in Heath Close to the east as well as the relatively new residential development to the north known as Oak Farm Drive.

9.47. With regards to facing materials, ironstone is proposed for parts of the development, namely at the entrance and along parts of the main access road and brick is proposed for the remainder of the development. The distribution is not appropriate, e.g. pepper potting of materials. Several of the dwellings are proposed in split materials, i.e. a mix of stone and brick. The Cherwell Residential Design Guide seeks a greater proportion (60%) of ironstone than is shown here and states that split materials are not acceptable. Again, these changes can be secured by a condition of any permission given.

9.48. The applicant suggests that the brick would be red brick to follow the material, palette used on the new development to the north. The Parish Council has raised concern over this approach commenting that the red brick is not characteristic of Milcombe other than on the new development opposite this site. The Parish Council would prefer to see a lighter brick along with the ironstone which would reflect the lighter style of materials used in Milcombe. Although it is accepted that red brick is limited in terms of its presence in the village and namely on the new development opposite the use of a pale brick alongside that of the ironstone could prove difficult to achieve in a satisfactory way across the site and local bricks are generally a

strong red. Notwithstanding, facing materials would be secured by a condition attached to any permission for this development.

9.49. Due to the scale of the development the scheme would need to provide a play area in the form of a LAP as required under Policy BSC11 of the 2015 CLP. Under the proposals submitted in October 2022, the layout provides for a LAP at the entrance to the site in addition to the retention of the group of mature trees in the central / eastern edge of the site. Concern on this location for the LAP had been expressed by the Parish Council as well as the Crime Prevention Officer – Thames Valley Police. Both raised a concern that the proposed LAP located at the entrance to the site was too close to a major road and hence a safety concern. As an alternative the Parish Council suggested that the LAP should be located in the central part of the site although this would be a concern to the crime prevention officer in that this would locate the LAP close to new dwellings and hence result in a disturbance to the residents.

9.50. Officers agree with the Parish Council and TVP that a central LAP location would be better for the development and although initial concerns had been expressed on the tight nature of the LAP with the internal roads, the applicant has moved plots to allow a larger area in the centre of the site to allow for the LAP to be located as requested by the Parish Council.

9.51. The concerns expressed by the Crime Prevention Officer are acknowledged. However, the location of the LAP would be self-policed by the plots fronting onto the area of the LAP and hence reduce the potential for problems to the local residents whose children would benefit from the facility. The additional area of open space to the rear of the mature trees in the central / part of the site would also allow for play space. For these reasons it is considered that the level of open space / play area is in accordance with the adopted policy.

### HIGHWAYS IMPACT

9.52. Paragraph 110 of the NPPF states that in assessing specific applications for development, it should be ensured that:

- a) *appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;*
- b) *safe and suitable access to the site can be achieved for all users; and*
- c) *any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.*

9.53. In addition paragraph 111 highlights that *development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.*

9.54. This application seeks to retain an access point off Rye Hill although in a different / improved form via a new priority 'T' junction. Following on from onsite traffic surveys revised visibility splays of 2.4m x 167m would be provided to the left and 2.4m x 48.4m to the right as required on egress from the site and all in line with Manual for Streets (MfS) guidance and the Design Manual for Roads and Bridges. In addition to this and as outlined in the paragraphs above, subject to a Traffic Regulation Order the change in speed limit currently located along the site's frontage would be relocated to the west of the site in order to keep reduced speeds on approach to the

village. All of which would help with the highway safety of the development and the revised access arrangements into the site.

- 9.55. Once within the site for the first 152m into the site (from the site access to dwelling 25 and 33) the main access road comprises a 5.5m wide carriageway with 2m wide segregated footways either side. After 152m, the main road provides turning heads for vehicles and access to dwellings 25 and 33. Beyond the main access road, shared surfaces provide access to dwellings 19-24, 34-35, associated car parking and a waste collection point (serves dwelling 19-24). After the first 94m into the site the access to the remaining dwellings would be provided via a junction off the main access road and the access road reduces to 5m but maintains 2m footways. Beyond the access road, the dwellings would be served by shared surfaces providing access.
- 9.56. The traffic statement submitted with the application highlights that the development is expected to generate relatively moderate levels of traffic at peak times and over the course of the day. Clearly the development would generate a greater level of traffic than the current arrangement, which only serves the site as a paddock, the associated stables and the rear access one of the dwellings in Heath Close. Notwithstanding this, in assessing the impact of the development in terms of traffic the transport statement highlights that, once distributed onto the wider highway network, the impact of the estimated development generated trips would be imperceptible.
- 9.57. Overall, officers agree that the residual cumulative impact of the development on the highway network is not considered to be severe in the context of paragraph 111 of the NPPF. This reflects the advice of the Local Highway Authority, which has raised no objections to the scheme from a highway safety point of view following receipt of further information.

#### RESIDENTIAL AMENITY

- 9.58. Saved Policy C30 of the CLP 1996 requires that a development must provide standards of amenity and privacy acceptable to the Local Planning Authority. These provisions are echoed in Policy ESD15 of the CLP 2015 which states amongst other things that, *new development proposals should consider amenity of both existing and future development, including matters of privacy, outlook, natural lighting, ventilation and indoor and outdoor space.*
- 9.59. In this particular instance the eastern boundary to the site is marked by the rear gardens of the existing properties in Heath Close. The design of the proposal allows for the new dwellings to back onto these existing properties with new gardens and the separation distances between the new and existing exceed the requirements of the Cherwell Residential Design Guide. This would ensure that any loss of privacy, loss of outlook and / or light is kept to a minimum.
- 9.60. In terms of within the development itself, the separation distances and plot to plot relationships are generally acceptable. There would be some overlooking of Plot 14 by Plot 6, and some of overlooking from Plots 15 to Plot 30 and in these cases tree planting would be necessary to mitigate the impact. The separation distance between Plots 19-24 and Plots 27-30 is acceptable but in these cases and others permitted development rights would need to be removed in order for future living conditions to be safeguarded. In the case of Plot 25 to Plot 26 the separation distance is substandard and the southern gable end of Plot 26 would need to be blank whereas it currently contains a first floor window. This would need to be addressed through the relocation of the window to the eastern elevation of the gable (which would also provide additional street surveillance).



9.61. Given the above, it is considered that subject to amendments potentially secured through conditions of any permission given the development would be made acceptable in terms of residential amenity, both for existing residents neighbouring the site and future occupiers.

### DRAINAGE

9.62. Section 14 of the NPPF covers the issue of meeting the challenge of climate change, flooding and coastal change. Paragraph 163 of the NPPF 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:*

- a) 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;*
- b) the development is appropriately flood resistant and resilient;*
- c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;*
- d) any residual risk can be safely managed; and*
- e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan.*

9.63. Paragraph 165 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:*

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

9.64. Turning to the Development Plan, Policy ESD6 of the CLP 2015 essentially replicates national policy 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.

9.65. 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.

9.66. The current situation is that the site is located within a flood zone 1 which is land which has less than 1 in 1,000 annual probability of river flooding. Notwithstanding this, concern has been expressed by the Parish Council and some residents that the site is prone to flooding during periods of heavy rain. In support of this a number of photos of the site with areas of surface water have also been provided. Upon viewing the site following heavy rain officers note that there are areas of the site

which become waterlogged, and this is also supported by the Environment Agency mapping showing that the eastern edge of the site is prone to medium flooding from surface water.

- 9.67. In response to this issue the applicant has advised in the flood risk assessment that, providing the levels are set to avoid low-lying areas and an effective drainage system is provided for the proposed development, the flood risk from surface water would be reduced to very low for the entire site area. In extreme storm events, exceeding the design storm event for the surface water drainage system, the site may experience flooding for short periods of time. The site levels would be set to direct water away from the buildings, reducing further the flood risk from surface water.
- 9.68. With regards to the drainage system across the site the applicant has confirmed that the site currently discharges greenfield run-off rates and volumes to the local ditch that runs alongside its south boundary. Therefore, a drainage system can be designed to discharge greenfield run-off rates from the site to the ditch, mimicking existing conditions. The site owner is also the riparian owner and therefore owns the land up to the centre of the ditch. As such, access to the ditch for the proposed works is available and no consent is needed to discharge into the ditch. The SUDS can be used for surface water storage and the development proposals suggest that permeable pavements and swales can be accommodated on site.
- 9.69. The proposed roads would be adopted and would be designed to adoptable standards and surface water from the roads would discharge to the proposed SUDS. The opportunity of utilising a pond or deep swale on site was assessed and the topography of the site shows that the pond can be located in the south and the proposed site layout shows that the southwest part of the site would be the preferred location. However, preliminary calculation shows that the pond must be 1.5m deep below the lowest invert level. This means that the pond would be excessively deep with steep banks due to the limited available space on site. Therefore, a below ground attenuation tank has been considered instead, while a swale is provided to accommodate overflows during exceedance and located along the western edge of the site close to the route of the dismantled railway line.
- 9.70. Following an initial objection to the scheme from the LLFA, the applicant has revised the drainage details with a detailed drainage strategy within which the applicant has confirmed that a SuDS scheme would be incorporated into the drainage of the site. This would ensure that the development would not result in any flooding of the site nor any flood risk to adjoining land parcels within the area. The LLFA has considered the revised details and confirmed no objections subject to conditions. For this reason, it is considered that the drainage of the site is acceptable and not a reason to refuse the application.

## HERITAGE

- 9.71. Section 66(1) of the Planning (Listed Building & Conservation Areas) Act 1990 states that in granting planning permission for development which affects a listed building or its setting, a Local Planning Authority must 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.
- 9.72. Paragraph 199 of the NPPF directs 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. Policy ESD15 of the CLP 2015 echoes this guidance.

- 9.73. Although the site is not recorded as being within a Conservation Area nor adjoining a listed building, the County Archaeologist has requested that in accordance with the National Planning Policy Framework (NPPF 2021, paragraph 189), prior to the determination of any planning application for this site the applicant should be responsible for the implementation of an archaeological field evaluation, on the basis of the submitted archaeological desk-based assessment which has outlined the archaeological potential of the site. The site lies in an area of archaeological interest and potential, located within proximity of a deserted medieval village (PRN 10785). Archaeological investigations immediately north of the proposal site recorded medieval settlement evidence (EOX 3129), and a further archaeological evaluation 100m northeast of the proposal site recorded a number of ditches which are likely field boundaries (EOX 6081). This settlement and agricultural activity could likely continue into the development area, and historic mapping has shown that the site has remained undeveloped, suggesting any archaeological remains could survive on the site.
- 9.74. In response to this request the applicant has confirmed that trench work on the site in accordance with the details outlined by the County Archaeologist would commence before the end of January. Works would have taken place earlier but due to existing commitments and poor weather conditions the that work could not take place until the time confirmed by the applicant. Although the County Archaeologist is looking for the trenching work to be provided before a decision is made on this application, the applicant is content that no decision on this application will be issued until the report is received by the LPA and the County Archaeologist has confirmed no objections or changes required.

## ECOLOGY IMPACT

### *Legislative context*

- 9.75. The Conservation of Habitats and Species Regulations 2017 consolidate the Conservation of Habitats and Species Regulations 2010 with subsequent amendments. The Regulations transpose European Council Directive 92/43/EEC, on the conservation of natural habitats and of wild fauna and flora (EC Habitats Directive), into national law. They also transpose elements of the EU Wild Birds Directive in England and Wales. The Regulations provide for the designation and protection of 'European sites', the protection of 'European protected species', and the adaptation of planning and other controls for the protection of European Sites.
- 9.76. Under the Regulations, competent authorities i.e. any Minister, government department, public body, or person holding public office, have a general duty, in the exercise of any of their functions, to have regard to the EC Habitats Directive and Wild Birds Directive.
- 9.77. The Regulations provide for the control of potentially damaging operations, whereby consent from the country agency may only be granted once it has been shown through appropriate assessment that the proposed operation will not adversely affect the integrity of the site. In instances where damage could occur, the appropriate Minister may, if necessary, make special nature conservation orders, prohibiting any person from carrying out the operation. However, an operation may proceed where it is or forms part of a plan or project with no alternative solutions, which must be carried out for reasons of overriding public interest.

9.78. The Regulations make it an offence (subject to exceptions) to deliberately capture, kill, disturb, or trade in the animals listed in Schedule 2, or pick, collect, cut, uproot, destroy, or trade in the plants listed in Schedule 4. However, these actions can be made lawful through the granting of licenses by the appropriate authorities by meeting the requirements of the 3 strict legal derogation tests:

- (1) Is the development needed to preserve public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment?
- (2) That there is no satisfactory alternative.
- (3) That the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.

9.79. The Regulations require competent authorities to consider or review planning permission, applied for or granted, affecting a European site, and, subject to certain exceptions, restrict or revoke permission where the integrity of the site would be adversely affected. Equivalent consideration and review provisions are made with respects to highways and roads, electricity, pipe-lines, transport and works, and environmental controls (including discharge consents under water pollution legislation).

#### *Policy Context*

9.80. 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.

9.81. 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.

9.82. Paragraph 180 of the NPPF states that planning decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should (amongst others) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.

9.83. Policy ESD10 of the CLP 2015 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.

- 9.84. Policy ESD11 is concerned with Conservation Target Areas (CTAs) and requires all development proposals within or adjacent CTAs to be accompanied by a biodiversity survey and a report identifying constraints and opportunities for biodiversity enhancement.
- 9.85. These policies are both 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.
- 9.86. The Planning Practice Guidance dated 2014 postdates the previous Government Circular on Biodiversity and Geological Conservation (ODPM Circular 06/2005), although this remains extant. The PPG states that Local Planning Authorities (LPAs) 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*

- 9.87. Natural England's Standing Advice states that an LPA only needs to ask an applicant to carry out a survey if it's likely that protected species are:
- present on or near the proposed site, such as protected bats at a proposed barn conversion affected by the development

It also states that LPAs can also ask for:

- a scoping survey to be carried out (often called an 'extended phase 1 survey'), which is useful for assessing whether a species-specific survey is needed, in cases where it's not clear which species is present, if at all
  - an extra survey to be done, as a condition of the planning permission for outline plans or multi-phased developments, to make sure protected species aren't affected at each stage (this is known as a 'condition survey')
- 9.88. This application is supported by a detailed ecology assessment as well as a further Biodiversity Net Gain Assessment together with supporting details and calculations of a net gain in biodiversity across the site. The ecology assessment highlights that the semi-improved grassland of the site is generally species-poor though contains populations of plants such as cuckooflower and field woodrush that are associated with more diverse grassland communities such as lowland meadows. Other habitats include small areas of amenity grassland, ruderal vegetation and planted trees and shrubs, with hawthorn dominated scrub on the north and west edges. An overgrown hedgerow along the south boundary is also dominated by hawthorn but contains other shrubs at low frequency and a small number of mostly semi-mature ash and oak standards.
- 9.89. The ecology assessment confirms that there was no evidence of bats in the existing stable and garage buildings on the site and had negligible potential to support roosting bats with few potential roosting opportunities due to their flat roofs and the timber construction of the stables. The report also confirmed that no evidence of nesting birds was found in the buildings, but a check for nesting birds will need to be undertaken prior to demolition work commencing and the clearance of any woody vegetation, which should ideally avoid the bird nesting season. In addition to this the report also advised that there was no evidence of badgers was found, and no reptiles and amphibians were recorded. The horse grazed grassland of the site

would provide relatively poor terrestrial habitat for reptiles and amphibians, though the adjacent woodland and scrub could support these species. The site is on the boundary of red and amber impact zones for great crested newts identified as part of the South Midlands District Licensing Scheme, which means great crested newts are likely to be present in the area, though there are no records within 500m of the site.

- 9.90. Turning to the Biodiversity Net Gain Assessment, the calculations show that the development would ensure that across the site there would be a net gain in terms of biodiversity. This includes a 11.69% gain in terms of habitat and a 55.34% gain in terms of hedgerow habitat. In considering this information the Council's Ecology Officer has confirmed that the site can provide a net gain in biodiversity which is considered acceptable and should be captured by a condition. Members will note that there is still outstanding objection from Berkshire, Buckinghamshire and Oxfordshire Wildlife Trust; further consultation was carried out following receipt of the amended ecology information but no further comments were received. It is considered that based upon the confirmation from the Council's own Ecology Officer that the details provided are acceptable ensures 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

- 9.91. Section 14 of the NPPF covers the issue of meeting the challenge of climate change, flooding and coastal change. Paragraph 150 states that new development should be planned for in ways that: *a) avoid increased vulnerability to the range of impacts arising from climate change. When new development is brought forward in areas which are vulnerable, care should be taken to ensure that risks can be managed through suitable adaptation measures, including through the planning of green infrastructure; and b) can help to reduce greenhouse gas emissions, such as through its location, orientation and design. Any local requirements for the sustainability of buildings should reflect the Government's policy for national technical standards.* Paragraph 151 continues by stating, amongst other things, that *in order to help increase the use and supply of renewable and low carbon energy and heat, plans should: c) identify opportunities for development to draw its energy supply from decentralised, renewable or low carbon energy supply systems and for co-locating potential heat customers and suppliers.*

#### *Development Plan*

- 9.92. Policy ESD1 of the CLP 2015 covers the issue of Mitigating and Adapting to Climate Change and includes criteria under which application for new development will be considered. Included in the criteria is the requirement that development will incorporate suitable adaptation measures to ensure that development is more resilient to climate change impacts. These requirements will include the consideration of, *taking into account the known physical and environmental constraints when identifying locations for development. Demonstration of design approaches that are resilient to climate change impacts including the use of passive solar design for heating and cooling. Minimising the risk of flooding and making use of sustainable drainage methods and reducing the effects of development on the microclimate (through the provision of green infrastructure including open space and water, planting, and green roofs).*
- 9.93. With regards to Policy ESD 2, this covers the area of Energy Hierarchy and Allowable Solutions. This policy seeks to achieve carbon emissions reductions, where the Council will promote an 'energy hierarchy' as follows: *Reducing energy use, in particular by the use of sustainable design and construction measures.*

*Supplying energy efficiently and giving priority to decentralised energy supply. Making use of renewable energy Making use of allowable solutions. Any new development will be expected to take these points into account and address the energy needs of the development.*

- 9.94. Policy ESD 3 covers the issue of Sustainable Construction and states amongst other things 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. The Policy continues by stating that Cherwell District is in an area of water stress and as such the Council will seek a higher level of water efficiency than required in the Building Regulations, with developments achieving a limit of 110 litres/person/day. The Policy continues by stating that all development proposals will be encouraged to reflect high quality design and high environmental standards, demonstrating sustainable construction methods including but not limited to: Minimising both energy demands and energy loss. Maximising passive solar lighting and natural ventilation. Maximising resource efficiency Incorporating the use of recycled and energy efficient materials. Incorporating the use of locally sourced building materials. Reducing waste and pollution and making adequate provision for the recycling of waste. Making use of sustainable drainage methods. Reducing the impact on the external environment and maximising opportunities for cooling and shading (by the provision of open space and water, planting, and green roofs, for example); and making use of the embodied energy within buildings wherever possible and re-using materials where proposals involve demolition or redevelopment.*

#### *Assessment*

- 9.95. This application is supported by a detailed energy and sustainability report. This report confirms that the development proposed will adopt the following key features:
- Fabric specification improved significantly from Part L 2013 standards in order to achieve the new Part L 2021 requirements;
  - Responsible sourcing of materials and disposal of construction waste;
  - 100% low energy light fittings;
  - Provision of Air Source Heat Pumps to all dwellings;
  - Use of Waste Water Heat Recovery to reduce energy demand and Carbon emissions;
  - The provision of connection points for EV charging points to all parking spaces adjacent to a dwelling;
  - Potable water use designed to be 110 litres per person per day, equivalent to Code for Sustainable Homes level 4.

- 9.96. The details submitted are considered to comply with the requirements of the Policies covering the sustainability features required across new development.

#### S106

- 9.97. Paragraph 54 of the NPPF states that *local planning authorities should consider whether otherwise unacceptable development could be made acceptable through*

*the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. Paragraph 56 continues by stating that planning obligations must only be sought where they meet all of the following tests:*

*a) necessary to make the development acceptable in planning terms;*

*b) directly related to the development; and*

*c) fairly and reasonably related in scale and kind to the development.*

9.98. Policy INF1 of the CLP 2015 covers the issue of Infrastructure. This Policy states, amongst other things, that the *Council's approach to infrastructure planning in the District will identify the infrastructure required to meet the District's growth, to support the strategic site allocations and to ensure delivery by:*

- Development proposals will be required to demonstrate that infrastructure requirements can be met including the provision of transport, education, health, social and community facilities.*

9.99. Policy BSC 3 of the CLP 2015 states, amongst other things that at *Kidlington and elsewhere, 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, all qualifying developments will be expected to provide 70% of the affordable housing as affordable/social rented dwellings and 30% as other forms of intermediate affordable homes. Social rented housing will be particularly supported in the form of extra care or other supported housing. It is expected that these requirements will be met without the use of social housing grant or other grant.*

9.100. The Council also has a Developer Contributions SPD in place which was adopted in February 2018. It should, however, be noted that this is a general guide and development proposals will continue to be assessed on a case-by-case basis with the individual circumstances of each site being taken into consideration when identifying infrastructure requirements.

9.101. Due to the level of development on the site the issue of affordable housing should be taken into account. Paragraph 65 of the NPPF states that *where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the homes to be available for affordable home ownership, unless this would exceed the level of affordable housing required in the area, or significantly prejudice the ability to meet the identified affordable housing needs of specific groups.* This application is for 35 residential units on the site which would represent a major application in terms of definition. For this reason, the application should provide an element of affordable housing as part of the proposal.

9.102. The policy requirement is for 35% affordable housing as set out in Policy BSC3 in the CLP 2015 which would equate to 13 units with a with a tenure split of 70% rented and 30% intermediate including First Homes provision. In line with new Government requirements, 25% of affordable housing is required to be delivered as First Homes. The applicant has confirmed that the development would provide the necessary element of affordable housing as required under this Policy, albeit that the submitted plans show only 12 units.



9.103. In addition, this it is also considered that the development should contribute towards community hall facilities, indoor and outdoor sports provision, towards Public Art, highway infrastructure improvements and health care contributions necessary for the development as outlined by the comments of the consultees. The County Council have also requested a contribution towards i

9.104. The application is supported by a draft heads of terms of the agreement are likely to include the following:

- Affordable housing;
- Offsite sport (indoor and outdoor) and recreation contributions;
- Community hall contribution;
- Bus service contribution;
- Household waste recycling centre contribution;
- Education contributions.

It is expected that these matters will be negotiated with the LPA during the course of the planning application process.

9.105. Although the draft heads of terms do not cover all the areas where a contribution would be required it does show a commitment of the applicant to opening negotiations on an agreement. Notwithstanding this, the applicant has confirmed that they are willing to enter into a S106 agreement to cover the costs of the items outlined in the consultee comments. A commitment to this has been made by the applicant and solicitor details provided to allow for this process to proceed. As such it is considered that in the event that permission was to be approved for this development it would be the subject of an agreed S106 being in place. As such it is considered that the development will comply with Policies BSC3 and INF1 of the CLP 2015 as well as guidance outlined in paragraph 54 of the NPPF.

## **10. PLANNING BALANCE AND CONCLUSION**

10.1. 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.

### *Positive benefits - Economic*

10.2. The proposals will contribute to the Council's Housing Supply in the short term due to the size and duration of the project. The proposals would create construction jobs and also support facilities and employment in businesses, shops and services within the area. Given the small scale nature of the development these should also be afforded limited positive weight.

### *Social*

- 10.3. The proposals would provide affordable housing at a tenure providing housing for those in need and a significant social benefit. Significant weight is to be afforded to the social benefits of the proposed housing.
- 10.4. The proposals would also provide significant social benefit from on-site recreation and play facilities which would be at the level expected by policy. The provision of this would also be of community benefit to existing residents.
- 10.5. Through s106 contributions the proposals would result in support for a range of community-based infrastructure in the area to a level expected by policy.

### *Environmental*

- 10.6. The proposals also commit to a minimum of 10% biodiversity net gain, which also carries positive weight.
- 10.7. The proposals commit to the provision of a sustainable construction methods, which should be given positive weight.

### *Negative impacts*

- 10.8. It is also important to recognise that every development has to consider negative impacts in terms of the development and consider whether the positive benefits outweigh these negative impacts.
- 10.9. No development or construction site is silent and therefore the development will result in impacts on the area in terms of noise and disturbance as the development is completed. There would also be disruption through the implementation of the traffic mitigation. This is minimised through the development and implementation of construction management plans however some disturbance is expected. This carries moderate negative weight.
- 10.10. Milcombe has limited services, public transport links and employment opportunities. Future residents of the development would have no choice but to use their own private cars to access many services. Reliance on the private car does not presently assist in reducing carbon emissions nor help achieve sustainable transport objectives. Substantial weight is attached to the site being an unsustainable location for development of this scale and the conflict with Policies PSD and ESD1 of the CLP 2015 and the key objectives of the NPPF. As a result, the proposal would be contrary to the Council's housing strategy and contrary to which significant weight is also attached.
- 10.11. The application site is positioned beyond the existing built-up limits of the village on the western side and is an area of countryside. Moderate weight is therefore attached to the effect of the proposal on the character and appearance of the countryside through the development of greenfield land.
- 10.12. The weight to be afforded to the development of greenfield land would be greater than moderate if the wider impact was greater. In this instance, it is clear that the site is relatively well screened by mature and semi-mature landscaping along three boundaries and adjoins the rear gardens of existing residential properties on the fourth boundary. As such the development would have limited impact on the wider landscape and views of / into the village and would not be seen as an isolated development in the open countryside. The Council's 2018 HELAA also suggests that the site is suitable for some development (approximately 55 dwellings).

### *Conclusion*

- 10.13. On the basis that the Council is able to demonstrate a five-year supply of land of housing, the housing policies of the Development Plan are the starting point for decision taking and afforded full weight.
- 10.14. The site is unallocated in the adopted CLP 2015. The proposal seeks permission for 35 houses on the edge of a Category A Village. While the total number of houses developed under Policy Villages 2 will exceed 750, the policy is reflective of the housing strategy of the Local Plan in seeking to direct residential development to the most sustainable settlements in the District.
- 10.15. On the basis of the scale of the proposal and the site's unsustainable location the proposal is considered at this point in time to conflict with the overall housing strategy outlined in the Development Plan and is contrary to Policy Villages 2. In accordance with the NPPF the proposed development is considered to represent unsustainable development, the limited planning benefits of the proposal are outweighed by the harm identified and planning permission should therefore be refused.

## **11. RECOMMENDATION**

REFUSE for the following reasons:

1. The site is located outside the built form of the village and within an area of open countryside. Although Milcombe is a Category A village the lack of public facilities, services and employment means that the village is not a sustainable location for further new housing development. The Council is able to demonstrate a 5.4-year housing land supply and therefore the housing strategy Policies in the Local Plan are up-to-date and it is considered that the development of this site would conflict with the adopted policies in the Local Plan and would undermine the housing strategy in the Cherwell Local Plan which seeks to distribute new housing to the most sustainable locations. The principle of this development is therefore unacceptable, as contrary to Policies PSD1, ESD1 and Policy Villages 2 of the Cherwell Local Plan 2011-2031, Saved Policy H18 of Cherwell Local Plan 1996 and Government guidance within the National Planning Policy Framework.
2. 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 INF 1 of the Cherwell Local Plan 2015, CDC's Planning Obligations SPD 2018 and Government guidance within the National Planning Policy Framework.

APPENDIX 1- Heads of Terms for Section 106 Agreement/undertaking

Planning Obligation			Regulation 122 Assessment
Detail	Amount	Trigger point	
Public Transport	£39,655	No more than SEVENTY PER CENT (70%) of the Dwellings shall be Occupied until the Practical Completion Certificate has been issued	<p><b>Necessary</b> – to ensure sustainable mode of transport and encourage and integrated into the development and made attractive to future users to reduce car dependency.</p> <p><b>Directly related</b> as these will benefit the future occupants of the site and encourage use of sustainable transport options in the locality.</p> <p><b>Fairly and reasonably related in scale and kind.</b> The contributions are in scale with the development and would be directly benefiting residents of the future development.</p>
Health	£34,848.00	No more than SEVENTY PER CENT (70%) of the Dwellings shall be Occupied until the Practical Completion Certificate has been issued	<p><b>Necessary</b> - Insufficient Consulting rooms in local GP's to cope with increased population growth as a direct result of the increase in dwellings.</p> <p><b>Directly related</b> – For use of future occupiers of the development</p> <p><b>Fairly and reasonably related in scale and kind</b> – In accordance with the policy and guidance provisions adopted by the Council</p>
Community Hall facilities	£40,009.84 – final figure to be agreed.	Prior to the First Occupation of any Dwelling on the Site	<p><b>Necessary</b> - contribution towards improvements at Milcombe Village Hall, including disabled access, disabled toilets and heating, so the facility can be used by more members of the community</p> <p><b>Directly related</b> – For use of future occupiers by the</p>

			<p>development</p> <p><b>Fairly and reasonably related in scale and kind</b> – In accordance with Policy BSC 12 – The council will encourage the provision of community facilities to enhance the sustainability of communities</p>
Outdoor Sport Provision	£70,596.05	Off-site Outdoor Sports Facilities Contribution in the following instalments:- 50% prior to the first Occupation of any Dwelling; remainder prior to the first Occupation of 50% of the Dwellings	<p><b>Necessary</b> - contribution towards the purchase of land in Milcombe for outdoor sports pitches and associated building / equipment or towards the improvement of facilities at Bloxham Recreation Ground.</p> <p><b>Directly related</b> – For use by future occupiers of the development</p> <p><b>Fairly and reasonably related in scale and kind</b> – In accordance with Policy BSC 10 Ensuring proposals for new development contribute to sport and recreation provision commensurate to the need generated by the proposals. Policy BSC 11 – Local standards of provision – outdoor recreation</p>
Indoor Sports Provision	£29,223.14	Off-site Indoor Sports Facilities Contribution 50% prior to the first Occupation of any Dwelling; remainder prior to the first Occupation of 50% of the Dwellings	<p><b>Necessary</b> - off-site indoor sport contribution towards improvements at Milcombe Village Hall to allow for the provision of indoor sporting opportunities such as badminton and fitness classes.</p> <p><b>Directly related</b> – For use by future occupiers of the development</p> <p><b>Fairly and reasonably related in scale and kind</b> – Policy BSC 10 Addressing existing deficiencies in</p>

			<p>provision through enhancements of provision, improving access to existing facilities. Ensuring proposals for new development contribute to sport and recreation provision commensurate to the need generated by the proposals. Policy BSC 12 – Indoor Sport, Recreation and community Facilities. The council will encourage the provision of community facilities to enhance the sustainability of communities – enhancing quality of existing facilities and improving access</p>
Public Realm / Public Art	£7,840.00	No more than SEVENTY PER CENT (70%) of the Dwellings shall be Occupied until the Practical Completion Certificate has been issued	<p><b>Necessary</b> - Public realm and public art can plan an important role in enhancing the character of an area, enriching the environment, improving the overall quality of space and therefore peoples' lives. Public art and the quality of the public realm are important considerations in the design and layout of a development.</p> <p><b>Directly related</b> – We are seeking public art in the locality of the development. The final location would need to be related to the proposed development site.</p> <p><b>Fairly and reasonably related in scale and kind</b> – SPD 4.130 Public Realm, Public Art and Cultural Well-being. Public realm and public art can plan an important role in enhancing the character of an area, enriching the environment, improving the overall quality of space and therefore peoples' lives. SPD 4.132 The Governments Planning Practise Guidance (GPPG) states public art and sculpture can plan an important role in making interesting and exciting places that people enjoy using.</p>

Primary Education	£226,540.00	No more than SEVENTY PER CENT (70%) of the Dwellings shall be Occupied until the Practical Completion Certificate has been issued	<p><b>Necessary</b> to provide adequate education provision in Bloxham primary school as existing infrastructure is at capacity with planned growth.</p> <p><b>Directly related.</b> Will provided additional school places for children living at the proposed development</p> <p><b>Fairly and reasonably related in scale and kind.</b> In accordance with the County Councils standards for provision of new school places based on cost per additional pupil.</p>
Special Education	£17,948.00	No more than SEVENTY PER CENT (70%) of the Dwellings shall be Occupied until the Practical Completion Certificate has been issued	<p><b>Necessary</b> to provide adequate education provision in Bloxham primary school as existing infrastructure is at capacity with planned growth.</p> <p><b>Directly related.</b> Will provided additional school places for children living at the proposed development</p> <p><b>Fairly and reasonably related in scale and kind.</b> In accordance with the County Councils standards for provision of new school places based on cost per additional pupil.</p>
Waste Management	£3,289.00	TBC	<p><b>Necessary</b> The County Council provides a large number of appropriate containers and storage areas at HWRCs to maximise the amount of waste reused or recycled that is delivered by local residents. However, to manage the waste appropriately this requires more space and infrastructure meaning the pressures of new developments are increasingly felt.</p>

			<p><b>Directly related.</b> Will provided expansion and efficiency of Household Waste Recycling Centre (HWRC) capacity.</p> <p><b>Fairly and reasonably related in scale and kind.</b> In accordance with the County Councils standards for provision of new school places based on cost per additional pupil.</p>
LAP	£36,135.03 or Management company	No more than SEVENTY PER CENT (70%) of the Dwellings shall be Occupied until the Practical Completion Certificate has been issued	<p><b>Necessary</b> – Site based LAP required in accordance with Policy BSC10.</p> <p><b>Directly related</b> – contribution towards the maintenance of the site-based LAP.</p> <p><b>Fairly and reasonably related in scale and kind</b> – In accordance with Policy BSC 10 Ensuring proposals for new development contribute to play and recreation provision commensurate to the need generated by the proposals. Policy BSC 11 – Local standards of provision – outdoor recreation</p>
Affordable Housing	35% with a tenure split of 70% rented and 30% intermediate including 25% First Homes provision.	Not Occupy or cause or permit the Occupation of more than fifty per cent (50%) of the Market Dwellings until each area comprising the Affordable Housing Site has been offered to a Registered Provider	<p><b>Necessary</b> – as would provide housing for those who are not able to rent or buy on the open market pursuant Policy BSC3 of the Cherwell Local Plan</p> <p><b>Directly related</b> – The affordable housing would be provided on-site in conjunction with open market housing</p> <p><b>Fairly and reasonably related in scale and kind</b> – Based on the Cherwell Local Plan requirement for</p>



			percentage of affordable housing.
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