



Ministry of Housing,  
Communities &  
Local Government

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Carter Jonas  
Mayfield House  
256 Banbury Road  
Oxford  
OX2 7DE

Our ref: APP/Q3115/W/17/3180400  
Your ref: 4414786v1/J0009447

20 July 2018

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY R J & S STYLES  
LAND SOUTH OF WATLINGTON ROAD, BENSON, OX10 6NP  
APPLICATION REF: P16/S3441/O**

1. I am directed by the Secretary of State to say that consideration has been given to the report of John Felgate BA (Hons) MA MRTPI, who held a public local inquiry over 4 days from 20 February 2018 into your client's appeal against the decision of South Oxfordshire District Council to refuse your client's application for planning permission for up to 120 dwellings (40% affordable) with associated access, public open space, landscaping and play space, in accordance with application ref: P16/S3441/O, dated 14 October 2016.
2. On 26 February 2018, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal be allowed and planning permission be granted.
4. For the reasons given below, the Secretary of State disagrees with the Inspector's recommendation. He has decided to refuse planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

**Procedural matters**

5. As originally submitted, the application for the appeal proposal was for up to 180 dwellings. However, during the course of the application, this was amended to 120 dwellings. IR2 makes clear that South Oxfordshire District Council (SODC) made its decision on the basis of the amended proposal, as did the Inspector. The Secretary of State has dealt with the appeal in the same way.

## **Matters arising since the close of the inquiry**

6. Following publication of the Examiner's final report on the Benson Neighbourhood Plan (BNhP) on 4 April 2018 and an Addendum Sheet on 13 April 2018, the Inspector received written submissions and comments as set out in IR9.
7. On 20 April 2018, the appellant raised the issue of a change of status to the emerging Local Plan in the light of the Council's decision not to progress the plan in its existing form. This representation was circulated to the main parties and the Council was asked to confirm the position of the emerging Local Plan. On 30 April 2018, the appellant circulated a further representation on this matter to the main parties.
8. On 30 April 2018, the Council published a new housing land supply position statement. The appellant made representations on this matter to the Inspector. While the Inspector did not consider the matter in his report, he informed the main parties that any further representations would be passed on to the Secretary of State for his consideration.
9. On 19 March 2018, a letter was received by Mrs Heather Wheeler MP from Benson Parish Council updating her on the progress of the BNhP.
10. A full list of post-inquiry representations received by the Secretary of State is at Annex A. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter. Given that the representations discussed in paragraphs 6-8 above were all circulated among the main parties, the Secretary of State does not consider it necessary to refer back to parties for further representations prior to reaching his decision on this appeal, and he is satisfied that no interests have thereby been prejudiced. No other new issues were raised in correspondence to warrant further investigation or necessitate additional referrals back to parties.
11. At the time of the public inquiry, the BNhP was at examination. However, on 28 June 2018 the BNhP passed referendum and came into force. It now forms part of the development plan.

## **Policy and statutory considerations**

12. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
13. In this case, the adopted development plan for the area comprises of the South Oxfordshire Local Plan 2011 (SOLP) (adopted January 2006), the South Oxfordshire Core Strategy (SOCS) (adopted December 2012), and the Benson Neighbourhood Plan (BNhP), which came into force on 28 June 2018. The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR17-22 and IR31-33.
14. The Secretary of State notes that the council are currently considering the potential impact of the CJEU *People over Wind* judgment<sup>1</sup> on the BhNP (correspondence of 13 July 2018). However, in the meantime, the BhNP continues to form part of the development plan and the Secretary of State has made his decision on that basis.

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<sup>1</sup> Court of Justice of the European Union (CJEU) judgment in Case C-323/17 *People Over Wind and Sweetman v Coillte Teoranta*, 12 April 2018

### *Emerging plan*

15. Paragraph 216 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework.
16. The emerging plan comprises the draft South Oxfordshire Local Plan (draft SOLP) which was published for consultation in October 2017. The Secretary of State considers that the emerging policies of most relevance to this case are those set out in IR25-28. The future of this plan is currently unclear as in March 2018 the Council decided not to proceed with the plan in its existing form. As such the Secretary of State agrees with the Inspector at IR149 and attaches only very limited weight to it.

### **Main issues**

#### *Housing Land Supply*

17. In the Statement of Common Ground it was agreed between the Council and the appellant that the supply of identified deliverable housing sites amounted to 4.1 years' supply, based on the Council's published assessment dated May 2017 (IR35).
18. In April 2018, the Council published a revised housing land supply figure of 5.4 years. The appellant in a letter of 3 May 2018 questions some elements of the Council's 2018 analysis, and suggests that 'it is not as strong as the 5.4 years stated'. In particular, the appellant draws attention to a recent appeal decision<sup>2</sup> and suggests that, if the highest point of the Strategic Housing Market Assessment (SHMA) range were used (rather than the mid-point which the Council used for its calculations), there would only be a 4.8 year housing supply.
19. However, the Secretary of State notes that the calculations in the Council's May 2017 assessment were, like the 2018 assessment, based on the mid-point figure, and that this approach was agreed by the parties in the Statement of Common Ground. He considers it is appropriate to proceed on this basis.
20. The Secretary of State accepts that the housing land supply may not be as strong as the 5.4 years put forward by the Council, but on the basis of the information currently before him, he considers that the Council can demonstrate a 5-year land supply.

#### *Whether the tilted balance applies*

21. In IR192 the Inspector sets out the reasons why he considers that the tilted balance applies. These include the silence of the SOCS on housing allocations below strategic level, the absence of the intended DPDs (the SAP and DMP DPDs) and the out-datedness of the SOCS housing policies in terms of NPPF paragraph 49.
22. The Secretary of State considers that a 5-year housing land supply can now be demonstrated. He notes that the Council has decided to bring forward new allocations and criteria policies through a full replacement local plan and through neighbourhood plans (IR23). The BNhP allocates a number of sites for housing. The Secretary of State agrees that it commits Benson to a substantial level of housing growth, exceeding the

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<sup>2</sup> (APP/Q3115/W/16/3161733)

village's own local requirements (IR195), and notes that the BNhP's housing figures are based on the 2014 SHMA (Core Strategy + 15% growth)<sup>3</sup>. Overall the Secretary of State considers that the relevant policies in the development plan are not silent or absent or out of date on the matter of housing allocations in respect of Benson, and considers that the tilted balance does not apply.

#### *Accordance with policies for the location of housing*

23. For the reasons given at IR140-144 and IR147-148, the Secretary of State agrees with the Inspector that the development is contrary to policies which aim to protect the countryside from development (SOLP G2 and G4) and is also contrary to policy NP1, which seeks to resist proposals on unallocated sites outside the existing built up area, except where they are otherwise consistent with the development plan. The Secretary of State agrees with the Inspector that, while SOCS policies CSS1, CSH1 and CSR1 do not rule out allocations being made on sites outside existing villages, neither do they permit such developments on an ad-hoc basis and that, read together with policies G2 and G4, the strategy embodied in these locational policies provides no basis for general housing development on unallocated greenfield sites. The Secretary of State further agrees with the Inspector at IR145 that the appeal proposal would not accord with the development plan, considered as a whole.
24. At IR196, the Inspector considers that the loss of land from the open countryside would result in limited harm. The Secretary of State agrees and gives it limited weight against the proposed development.
25. At IR150, the Inspector gives significant weight to the conflict with Policy NP1 of the BNhP. Given that the BNhP now forms part of the development plan, and taking into account the advice in paragraph 198 of the Framework, the Secretary of State affords this conflict very significant weight.

#### *Effects on character and appearance*

26. For the reasons given at IR151-156, the Secretary of State agrees with the Inspector at IR157 that the proposed development would not cause any significant harm to the character or appearance of the landscape, or to the village setting. He agrees with the Inspector that the proposal would not conflict with the aims of policy CSEN1 of the SOCS or policy C4 of the SOLP.

#### *Integration with Benson village*

27. The Secretary of State agrees with the Inspector at IR158 that, in terms of its physical proximity, and relationship to existing development, the proposed development would appear as a natural extension to the village.
28. For the reasons given at IR159-163, the Secretary of State agrees with the Inspector that pedestrian, cyclist and motor vehicles would all be able to access the development without difficulty or danger. Like the Inspector at IR163, the Secretary of State does not share the Council's concerns regarding possible issues of isolation or social cohesion. He further agrees with the Inspector at IR164 that the development would be capable of being adequately integrated with the existing village and that there would be no conflict with any relevant policies, including SOLP Policy T1 or BNhP Policies NP10 and NP11.

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<sup>3</sup> Benson Parish Neighbourhood Plan paragraph 3.8.

### *Loss of agricultural land*

29. For the reasons given at IR165-166, the Secretary of State agrees with the Inspector at IR167 that there is no conflict with the advice in NPPF paragraphs 109 and 112 relating to the protection of agricultural land and soils, or with any other national or local policies. He agrees with Inspector at IR166 that the overall land-take would not be excessive in relation to the potential housing gain, and that the quantity of best and most versatile (BMV) agricultural land lost would not be significant. The Secretary of State gives this loss of BMV land limited weight against the development.

### **Other Matters**

30. The Secretary of State has considered the points raised at IR168-169 in relation to school provision in Benson, and like the Inspector has relied on Oxford County Council's statement of October 2017 that no Section 106 contribution is required in respect of school provision. He does not consider that matters relating to school provision weigh against the scheme.

31. Overall, the Secretary of State considers for the reasons given at IR170, IR173 and IR174, that matters relating to medical services, noise from the airfield, parking spaces, wildlife, sewerage and utility supplies, village services and design do not weigh against the scheme.

32. Turning to traffic concerns, the Secretary of State notes the Inspector's comment at IR172 that Oxford County Council (OCC) as Highway Authority is satisfied that the works to be provided through the Section 106 agreement (summarised at IR171) are adequate to ensure safety and proper traffic management. He agrees with the Inspector at IR172 that there is no basis to disagree with the Highways Authority on this matter. He does not consider that matters relating to traffic weigh against the scheme.

### *Benefits of the scheme*

33. The Secretary of State has considered the Inspector's assessment of the benefits of the provision of housing, including affordable housing at IR175. He has taken into account his finding at paragraph 20 above that the Council can demonstrate a 5-year housing land supply, and has further taken into account the government's aim of boosting significantly the supply of housing (paragraph 47 of the Framework). Overall he affords significant weight to the provision of additional housing, including affordable housing.

34. The Secretary of State agrees with the Inspector at IR176 that the development would generate construction jobs, increased local spending power and increased support for local businesses. Like the Inspector, he gives this moderate weight.

35. The Secretary of State also agrees with the Inspector at IR177 that the provision of on-site open space and play areas and enhancements to public transport facilities would also have some benefits for existing residents. Like the Inspector, he gives this limited weight. Given that the extent of improvements to existing public footpaths is not known, he gives this very limited weight. Unlike the Inspector, the Secretary of State considers that CIL contributions are capable of being a local finance consideration, material to the development. In the present case the CIL receipts are material considerations because they help to make the development acceptable in planning terms. However, as they will primarily be used to mitigate the effects of the development, the Secretary of State gives this little weight as a benefit.

## **Planning conditions**

36. The Secretary of State has given consideration to the Inspector's analysis at IR181-IR190, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission.

## **Planning obligation**

37. Having had regard to the Inspector's analysis at IR179-180, the planning obligation dated 13 February 2018 as amended by the Deed of Variation on 22 March 2018 and 26 March 2018 (IR4), paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR180 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework. The Secretary of State takes into account too the Inspector's note at IR179 that the pooling restrictions in CIL Regulation 123 have been complied with. However, the Secretary of State does not consider that the obligation overcomes his reasons for dismissing this appeal and refusing planning permission.

## **Planning balance and overall conclusion**

38. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with Policies G2, G4 and NP1 of the development plan, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

39. The Secretary of State considers that the provision of additional housing, including affordable housing, carries significant weight in favour of the development. He gives moderate weight to the benefits to the local economy that would come from the proposal. He gives limited weight to the provision of on-site open space and play areas, and the enhancement to the public transport facilities. He gives very limited weight to the improvements to existing public footpaths.

40. On the other side of the balance, the Secretary of State gives limited weight to the loss of land from the open countryside and limited weight to the loss of BMV agricultural land.

41. Taking into account the advice in paragraph 198 of the Framework that where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted, the Secretary of State gives very significant weight to the conflict with the BNhP.

42. In light of the above, the Secretary of State considers that there are no material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

43. The Secretary of State therefore concludes that the appeal should be dismissed and planning permission be refused.

## **Formal decision**

44. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for up to 120 dwellings (40% affordable) with associated access, public open space, landscaping and play space in accordance with application ref: P16/S3441/O, dated 14 October 2016.

## **Right to challenge the decision**

45. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

46. A copy of this letter has been sent to South Oxfordshire District Council, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Maria Stasiak*

Authorised by the Secretary of State to sign in that behalf

## ANNEX A SCHEDULE OF REPRESENTATIONS

<b>Party</b>	<b>Date</b>
Huw Mellor, Carter Jonas	6 March 2018, 20 March 2018, 20 April 2018, 30 April 2018, 3 May 2018
Tracy Smith, SODC	12 March 2018, 22 March 2018, 3 April 2018, 20 April 2018, 30 April 2018, 3 May 2018, 4 May 2018, 13 July 2018
Benson Parish Council	19 March 2018, 26 April 2018
Donna Mattfield, Knights	26 March 2018
Jeremy Briars, John Welch and Stammers Solicitors	26 March 2018, 27 March 2018
Nicole Olavesen, Oxfordshire County Council	26 March 2018, 27 March 2018



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# Report to the Secretary of State for Housing, Communities and Local Government

by John Felgate BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Date: 4 May 2018

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TOWN & COUNTRY PLANNING ACT 1990  
SOUTH OXFORDSHIRE DISTRICT COUNCIL

APPEAL BY:  
R J & S STYLES

PROPOSED DEVELOPMENT OF UP TO 120 DWELLINGS  
LAND SOUTH OF WATLINGTON ROAD, BENSON

Inquiry Held on 20 - 23 February 2018

Land South of Watlington Road, Benson, Oxfordshire

File Ref: APP/Q31115/W/17/3180400

## **CONTENTS**

List of Abbreviations

<b>Procedural Matters</b>	1
<b>The Appeal Site and Surroundings</b>	2
<b>Planning Policies and Planning Background</b>	
<i>The development plan</i>	3
<i>Emerging draft plans</i>	4
<i>Other background matters</i>	6
<b>The Case for the Appellants</b>	
<i>Housing need</i>	7
<i>Suitability of the site</i>	8
<i>Accordance with development plan policies</i>	9
<i>Relationship to emerging plans</i>	10
<i>Effects on the landscape</i>	11
<i>Effects on agricultural land</i>	13
<i>Integration with the village</i>	14
<i>Benefits and planning balance</i>	15
<b>The Case for SODC</b>	
<i>Housing need</i>	16
<i>Conflict with development plan policies</i>	16
<i>Relationship to the emerging draft plans</i>	17
<i>Landscape impact</i>	18
<i>Loss of agricultural land</i>	18
<i>Lack of integration</i>	19
<i>Planning balance</i>	19
<b>The Case for the Other Interested Persons</b>	
<i>Benson Parish Council and Neighbourhood Plan Steering Group</i>	20
<i>Berrick Salome Parish Council</i>	22
<i>Other oral submissions</i>	22
<i>Written representations</i>	22
<b>Inspector's Conclusions</b>	
<i>Main considerations</i>	23
<i>Accordance with the adopted policies for the location of housing</i>	23
<i>Relationship to the emerging draft plans</i>	24
<i>Effects on character and appearance of the landscape and village setting</i>	25
<i>Integration with the village</i>	25
<i>Effects on agriculture</i>	26
<b>Other Matters</b>	27
<b>Conditions and Reasons for Imposition</b>	29
<b>Planning Balance and Overall Conclusion</b>	31
<b>Formal Recommendation</b>	32
<b>ANNEXES</b>	
1. LIST OF APPEARANCES	33
2. LIST OF INQUIRY DOCUMENTS	34
2. RECOMMENDED CONDITIONS (IF PERMISSION IS GRANTED)	37

## ABBREVIATIONS USED IN THIS REPORT

ALC	Agricultural Land Classification
AONB	Area of Outstanding Natural Beauty
BMV	Best and most versatile
BNhP	Benson Neighbourhood Plan
BPC	Benson Parish Council
BSPC	Berrick Salome Parish Council
CIL	Community Infrastructure Levy
DC	Draft Condition
DMP	Development Management Policies
DoV	Deed of Variation
DPD	Development Plan Document
LCA	Landscape Character Assessment
LVIA	Landscape and Visual Impact Assessment
NPPF	National Planning Policy Framework
OAN	Objectively assessed need
OCC	Oxfordshire County Council
PINS	The Planning Inspectorate
PPG	Planning Practice Guidance
RC	Recommended Condition
RoD	Rest of the District
RR	Refusal reason
SAP	Site Allocations Plan
SCG	Statement of Common Ground
SHMA	Strategic Housing Market Assessment
SOCS	South Oxfordshire Core Strategy
SODC	South Oxfordshire District Council
SOLP	South Oxfordshire Local Plan
SoS	Secretary of State (for Housing, Communities and Local Government)
WMS	Written Ministerial Statement

**File Ref: APP/Q3115/W/17/3180400**

**Land South of Watlington Road, Benson, Oxfordshire OX10 6NP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Messrs RJ & S Styles against the decision of South Oxfordshire District Council.
- The application Ref P16/S3441/O, dated 14 October 2016, was refused by notice dated 26 May 2017.
- The development proposed is up to 120 dwellings (40% affordable) with associated access, public open space, landscaping and play space.

**Summary of Recommendation: the appeal be allowed, subject to conditions**

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**Procedural Matters**

1. The appeal proposal is for outline planning permission, with all details reserved except for access. Details of the proposed access from Watlington Road are shown on Drawing No 38409/5502/001, Revision A. It was agreed at the inquiry that all of the other submitted plans are illustrative.
2. As originally submitted, the application was for up to 180 dwellings. During the course of the application, this was amended to 120, and South Oxfordshire District Council (SODC or 'the Council') made its decision on this basis. I have dealt with the appeal in the same way.
3. Planning permission was refused by the Council for four reasons (RRs)<sup>1</sup>. Of these, RR3 related to affordable housing, and RR4 related to on- and off-site infrastructure. Subsequently, the appellants have entered into a Section 106 agreement with SODC and Oxfordshire County Council (OCC)<sup>2</sup>. The agreement provides for affordable housing, open space, and off-site highway and footway works, and financial contributions to public transport, street naming and waste recycling. In the light of this agreement, SODC withdrew RRs 3 and 4, prior to the inquiry.
4. At the inquiry, an error in the S.106 agreement was identified. To address this, a Deed of Variation (DoV) was entered into on 22 March 2018<sup>3</sup>. Subsequently, a further error was noticed in the DoV, and a manuscript amendment to it was made, which was received on 26 March 2018<sup>4</sup>. In subsequent correspondence, SODC and OCC have confirmed that they are content with the amended DoV.
5. In a Screening Opinion issued on 16 October 2016, the Council determined that an Environmental Impact Assessment was not required for the proposed development. A further Screening Opinion issued by the Planning Inspectorate (PINS), on 20 October 2017, concurred with this decision.
6. Following the lodging of the present appeal in July 2017, a request for Rule 6 status was made by Benson Parish Council (BPC). This request was granted on 17 October, but was then withdrawn by BPC on 12 November. At the inquiry,

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<sup>1</sup> CD31: the refusal notice

<sup>2</sup> Doc. APP/3: the Section 106 agreement

<sup>3</sup> Doc. APP?12: the original DoV, 21 March 2018

<sup>4</sup> Doc. APP/13: Amended DoV, 26 March 2018

BPC was represented by Cllr Philip Murry and Mr David Rushton, speaking as Interested Persons.

7. The inquiry sat on four consecutive days, closing on 23 February 2018. During the inquiry, with the agreement of the parties, I carried out unaccompanied visits to the site and surrounding area, on several occasions between 19 February and 23 February 2018.
8. On 26 February 2018, the SoS issued a Direction that the appeal be recovered, on the grounds that it raises important or novel issues of development control, and/or legal difficulties.
9. After the close of the inquiry, the Examiner's Report<sup>5</sup> on the Benson Neighbourhood Plan (the BNhP) was published on 4 April 2018, with an Addendum Sheet<sup>6</sup> on 13 April. Written submissions relating to these were received from the appellants and the Council on 20 April<sup>7</sup>. Further comments on the matters raised were invited and subsequently received<sup>8</sup>. I have taken all of these into account in making my recommendation.

### **The Appeal Site and Surroundings**

10. The appeal site comprises an arable field of just under 8 hectares, adjoining the north-eastern edge of Benson. On its northern side, the site has a road frontage to Watlington Road<sup>9</sup> (the B4009). To the west and south are the backs of residential properties in Blacklands Road and Brook Street. A public footpath (No. PRoW 125/12/10) also runs along the western boundary, from Watlington Road to Brook Street, with a connection to Blacklands Road approximately half-way along. To the east there is open countryside.
11. The topography is almost flat, but with a gentle fall from north east to south west. There is a mature hedgerow along the northern boundary, but no other significant vegetation anywhere on the site. Adjoining the site's south-western corner is a former orchard of 0.5 ha, where planning permission has been granted for a development of 11 dwellings<sup>10</sup>.
12. Benson is a large village with a 2011 census population of around 4,500. The village has a good range of local facilities, including a primary school, a doctors' surgery, a village hall, a supermarket and several smaller shops. Most of these facilities are located centrally, close to the High Street<sup>11</sup>.
13. There are good road links from Benson to Oxford and Reading via the A4074, which runs adjacent to the village on its west side; and also to the M40, via the B4009, which passes the appeal site. Regular bus services connect the village to Oxford, Reading and the nearby market town of Wallingford. The nearest railway station is at Cholsey, about 3 miles away.

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<sup>5</sup> CD34: BNhP Examiner's Report

<sup>6</sup> CD35: Addendum to Examiner's Report

<sup>7</sup> Docs APP/14 and COU/4: post-inquiry emails from appellants and Council

<sup>8</sup> Docs APP/15, COU/5 and OP/18: post-inquiry submissions from the appellants, the Council and BPC

<sup>9</sup> This section of Watlington Road is also shown on some maps as 'The Sands'

<sup>10</sup> Ms Smith's Appendix 1

<sup>11</sup> Doc. J5: village context plan

14. Adjacent to the village on its south-eastern side is RAF Benson, which has a substantial resident population of military personnel and their families.
15. The River Thames runs to the west of the village, just beyond the A4074. A short distance beyond this is the North Wessex Downs Area of Outstanding Natural Beauty (AONB). To the east of the village is the Chilterns AONB<sup>12</sup>.

## **Planning Policies and Planning Background**

### ***The development plan***

*The 'South Oxfordshire Local Plan 2011' (the SOLP), adopted January 2006*<sup>13</sup>

16. The SOLP addressed housing needs for the period 1996-2011, to accord with the former Oxfordshire Structure Plan. A number of its policies have since expired, and some others have been formally replaced, or partly replaced, by the later Core Strategy (see below)<sup>14</sup>.
17. The remaining provisions of saved Policies **G2** and **G4** seek to protect the countryside as a whole, for its own sake. Saved Policy **C4** aims to protect the landscape setting of the District's settlements, and Policy **D1** promotes good design and local distinctiveness, including respect for the settlement pattern and landscape character. Policy **T1** requires that all developments provide safe and convenient access, including for pedestrians and cyclists and people with impaired mobility.

*The South Oxfordshire Core Strategy (the SOCS), adopted December 2012*<sup>15</sup>

18. The SOCS plan period is 2006-27. The overall strategy and the distribution of new housing are set out in Policy **CS1**. The main focus for new development is to be at the growth point of Didcot, and to a lesser extent at the market towns of Henley, Thame and Wallingford. Benson is one of the 12 'Larger Villages', where development should support and enhance their role as local service centres. Outside the towns and villages, development is to be restricted to meeting specific needs.
19. Policy **CSH1**, together with Tables 7.1 – 7.3, sets an overall housing requirement of 11,487 dwellings, derived from the former South East Plan (May 2009). This overall figure is divided between Didcot and the Rest of the District (RoD). Out of the RoD share, the Larger Villages are required to take 1,154 dwellings. Table 7.3 states that the locations for these sites are to be identified in a Site Allocations Plan (the SAP).
20. In the villages, Policy **CSR1** defines the different types and scales of housing that will be permitted at each of the categories in the settlement hierarchy. In the Larger Villages, the permitted types are allocations, infilling and 'rural exception' sites. Such developments should be suitably designed and located, appropriate in scale, and contribute to the villages' economic and social well-being. The

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<sup>12</sup> See the Landscape and Visual Impact Assessment report (Lockhart & Garratt, Oct 2016): plan entitled 'Baseline information'

<sup>13</sup> CD3: the adopted SOLP

<sup>14</sup> The replaced SOLP policies are listed in Appendix 5 of the SOCS (CD2); the Footnote on p153 states that these policies are '*partially replaced*' (as set out in the 'strike-through' version of the SOLP)

<sup>15</sup> CD2: the adopted SOCS

accompanying text, at paragraphs 13.10 - 13.11, states that site allocations pursuant to Policy CSR1 will be made in the SAP, and that criteria policies for housing in the villages will be contained in a future Development Management Policies DPD (the DMP).

21. SOCS Policy **CSEN1** seeks to protect the District's landscape character, including the settings of the Chilterns and North Wessex Downs AONBs. Policy **CSQ3** supports high quality and inclusive designs. Such developments should respect the character of the site and surroundings, create safe communities, ensure high levels of accessibility by all transport modes, and be integrated with existing development.
22. Policy **CS1** sets out a presumption in favour of sustainable development, in similar terms to paragraph 14 of the National Planning Policy Framework (NPPF). Policy **CSC1** and Table 18.2 provide for contingency measures in the event that proposals or policies in the SOCS are not delivered in a timely manner.
23. Subsequently, the Council has decided not to proceed with either the SAP or DMP DPDs, but instead to bring forward new allocations and criteria policies through a full replacement local plan and through neighbourhood plans.

### ***Emerging draft plans***

*Draft 'South Oxfordshire Local Plan to 2033' (draft SOLP), October 2017* <sup>16</sup>

24. The draft replacement SOLP has passed through several stages of consultation, including various sets of development options, in February 2015, June 2016 and March 2017 <sup>17</sup>. The 'Publication Version' was published in October 2017.
25. The overall strategy, as set out in Policy **STRAT1**, is to focus most new development in the Science Vale, including Didcot Garden Town and Culham, with additional major development at Berinsfield and Chalgrove Airfield. For the market towns and Larger Villages, the strategy allows for some development, to support and enhance their respective roles.
26. In terms of housing, Policies **STRAT2** and **STRAT3** identify an overall target of 20,800 new homes over the period 2011-33. This target is based on the District's objectively assessed need (OAN), as assessed in the Strategic Housing Market Assessment (SHMA) carried out in 2014, plus a contribution of 3,750 dwellings for needs arising in the city of Oxford. Draft Policy **H1** seeks to meet these housing numbers primarily through site allocations, either in the draft SOLP itself, or in neighbourhood plans, or on previously developed land.
27. Policy **H4** sets out the housing requirements for the Larger Villages, totalling 1,041 dwellings (which form part of the above District-wide target). In general, a minimum of 15% growth is sought in each Larger Village. In the case of Benson, 15% growth is said to equate to 383 new dwellings, but the village already has existing completions and commitments totalling 514 dwellings, as shown in Table 5f, and therefore Policy H4 allocates no further development to the village. In the countryside outside the towns and villages, Policy **ENV1** seeks to protect the landscape and the settings of settlements.

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<sup>16</sup> CD4: the Draft replacement SOLP - 'Publication' (submission) Version, October 2017

<sup>17</sup> CDs 5, 6 and 7: Draft replacement SOLP 'Options' consultations

28. Policy **TRANS3** safeguards land for various transport schemes, including land to the north of Benson, for a village bypass<sup>18</sup>. This is also shown on the map at Appendix 5 of the draft plan, in which the safeguarded route runs from the Elm Bridge roundabout on the A4074, to the B4009 to the east of the village.
29. At the time of the present appeal inquiry, the Council's intention was to submit the draft SOLP for examination in the near future. Subsequently however, on 27 March 2018, the Council's Cabinet decided not to proceed with the plan in its present form, but instead to reconsider elements of the plan's strategy, including Chalgrove Airfield<sup>19</sup>. The effect of this on the draft plan's future programme is not yet known.

*Draft Benson Neighbourhood Plan (BNhP), October 2017*<sup>20</sup>

30. The draft BNhP was submitted for examination in January 2018. The draft plan proposes to allocate three sites for housing on the northern side of Benson, identified as 'BEN 1' (north of Littleworth Road), 'BEN2' (east of Hale Road), and 'BEN 3/ BEN4' (north of Watlington Road and north and east of The Sands)<sup>21</sup>.
31. Draft Policy **NP1** states that development in the village will be focussed on these three sites, and that proposals for these sites will be supported where they provide for, and contribute to, the provision of a relief road through them. The need for the road is said to arise because of the major developments planned in Chalgrove, Berinsfield and Culham. Draft Policies **NP2**, **NP3**, and **NP4** allocate the three housing sites for 240, 80 and 240 dwellings respectively, and set out detailed requirements for each. Elsewhere, outside the existing built-up area, Policy NP1 states that proposals will only be supported if they are consistent with local development plan policies.
32. Fig 10 of the plan identifies Important Views. View No 4 is from the appeal site's north-western corner, looking out towards the Chilterns AONB, and View No 8 is from the Chilterns, looking back towards the village. Draft Policy **NP31** requires these Important Views to be taken into account in development proposals.
33. Draft Policies **NP10** and **NP11** encourage the provision of pedestrian and cycle routes in new developments, to link with the existing networks and village facilities.
34. At the time of the present inquiry, the BNhP examination was on-going, and the draft plan was subject to objections, including those made by the present appellants<sup>22</sup>. Since then, as noted earlier, the Examiner's Report<sup>23</sup> and Addendum<sup>24</sup> have been published. The Examiner recommends a number of minor changes, including some relating to the policies identified above, but none of these affects the substance of those policies or the plan as a whole. Subject to his proposed changes, the Examiner recommends that the BNhP proceeds to a

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<sup>18</sup> The Benson bypass is also referred to elsewhere as the relief road, or 'Edge Road'

<sup>19</sup> Docs. APP/14 and AP/15: appellants' post-inquiry letters; and Doc. COU/5, Council's email dated 3 May 2018

<sup>20</sup> CD9: the draft BNhP

<sup>21</sup> Sites identified on Fig 3 of the BNhP, p26 (but note that the numbering differs slightly from that used on the agreed plan in the present inquiry - Doc J/5)

<sup>22</sup> Mr Mellor's Appendix 5

<sup>23</sup> CD34: BNhP Examination Report

<sup>24</sup> CD35: BNhP Examination Report Addendum

local referendum. At the time of writing this report, SODC is due to consider this recommendation shortly.

### ***Other background matters***

#### *Housing land supply*

35. It is agreed between the Council and the appellants that the supply of identified deliverable housing sites amounts to only 4.1 years' supply<sup>25</sup>. This agreement is based on the Council's published assessment dated May 2017<sup>26</sup>. The assessment has a base date of 1 April 2017, and uses the annual requirement from the 2014 SHMA. The calculations include a 20% buffer, in recognition of persistent under-delivery over the period 2011-17.
36. As a consequence, the parties also agree that relevant policies for the supply of housing should not be considered up-to-date, and that the NPPF presumption in favour of sustainable development applies, and the 'tilted balance' in NPPF paragraph 14 is engaged.

#### *Progress on other proposed housing sites in Benson*

37. The site identified as 'BEN 1', off Littleworth Lane, is in two parts, which are shown on the agreed plan at Document J5 as BEN 1 Phases 1 and 2. In the present inquiry, these are generally referred to as BEN 1(1) and BEN 1(2)<sup>27</sup>. Site BEN 1(1) received planning permission on appeal, in June 2015, for a development including 107 dwellings, 41 retirement flats, and 11 retirement bungalows<sup>28</sup>. This part of the site is now under construction. BEN 1(2) received planning permission from the Council in January 2018 for development including 241 dwellings, retail space, and various community and leisure facilities<sup>29</sup>.
38. Site BEN 2, to the west of Hale Road, is the subject of a current application for up to 84 dwellings and related infrastructure. At the start of the present inquiry, the Council expected to determine the BEN 2 application imminently, and an Officers' report was produced, in draft form, recommending that permission be granted under delegated powers, subject to completion of a S.106 agreement<sup>30</sup>. However, during the course of the inquiry, the Council announced that no decision would now be made on the BEN 2 application until after the receipt of the BNhP Examiner's report.
39. The site known as BEN3/4, stretching from Hale Road to Watlington Road, is also the subject of a current application, for up to 240 dwellings and associated works. At the opening of the inquiry, the Council expected to determine this application at a Committee meeting on 7 March 2018, and a draft Officers' report to that effect was tabled<sup>31</sup>. The draft report recommended that permission be granted subject to a S.106 agreement. Again, during the course of the inquiry,

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<sup>25</sup> The Statement of Common Ground (Doc. J/1), para 9.0

<sup>26</sup> CD8A: Housing Land Supply report, May 2017

<sup>27</sup> Note: in the BNhP, the proposed allocation for 'BEN 1' refers to BEN 1(2) only; BEN 1 (1) is treated as an existing commitment.

<sup>28</sup> CD20: planning permission for site BEN 1(1)

<sup>29</sup> CD23: planning permission for BEN 1(2); also CDs 21, 22 and 24: officers' report and plans relating to the same development)

<sup>30</sup> CD25: draft officer report on BEN 2 application; and MS Smith's Appendix 6 – officer notes and plan

<sup>31</sup> CD26: draft officer report on BEN 3/ 4 application

the Council changed its position and now intends to defer making any decision until after the Examiner's recommendations on the BNhP are known. In the meantime however, in February 2018 the Council approved a separate application from the developers of the BEN 3/4 site, for the creation of a roundabout giving access to the BEN 2 and BEN 3/4 sites<sup>32</sup>.

### *The 'Cemex' judgement*

40. In May 2016 the High Court gave judgement in a case which dealt, amongst other things, with the weight to be given to certain relevant policies of the SOLP and SOCS<sup>33</sup>. The case followed from two appeal decisions relating to proposed developments at Crowell Road, Chinnor (by Cemex UK Ltd)<sup>34</sup>, and at Greenwood Avenue, Chinnor (by Taylor Wimpey Ltd)<sup>35</sup>.
41. In those appeals, the Inspector found that because of the Council's failure to progress the SAP, as previously intended, the SOCS was either silent or out-of-date on the question of how housing needs and allocations in the Larger Villages were to be dealt with. Consequently, reduced weight was given to the conflict with relevant policies, including SOCS Policy CSR1. In the Cemex case, the Court found the Inspector's reasoning on these matters acceptable, and upheld the Inspector's decision. The Council's challenge against the Taylor Wimpey decision was withdrawn prior to the judgement.
42. Subsequently, the Council has acknowledged the relevance of this judgement to other proposals in the Larger Villages<sup>36</sup>, and in the present appeal there is no dispute that the judgement has a potential bearing on the question of how much weight should be given to some of the relevant planning policies.

## **The Case for the Appellants**

### *Housing need*

43. The starting point for the appellants' case is the lack of a 5-year supply of housing land in the District. The appellants assert that the need for more houses locally is symptomatic of the more widespread housing problems facing much of the country, which are seen as having serious adverse social effects on young adults, low income groups and the elderly.
44. In the case of South Oxfordshire, the lack of a 5-year supply reflects an acknowledged under-delivery over past years, amounting to a cumulative shortfall of 1,253 units over the period since 2011 alone<sup>37</sup>. During this period the annual requirement in the SOCS was set at less than 550 dwellings per annum (dpa), whereas the 2014 SHMA showed that this was well below the full OAN. No provision was made for the difference to be made up elsewhere. Taking account of continuing under-delivery since then, the annual requirement has now grown to around 1,180 dpa<sup>38</sup>.

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<sup>32</sup> CD27: permission for roundabout serving BEN 2 and 3/4

<sup>33</sup> CD33: *South Oxfordshire DC v SoS and Cemex Properties UK Ltd* (see paras 90 – 101)

<sup>34</sup> CD32: appeal decision - Crowell Road, Chinnor

<sup>35</sup> Mr Mellor's Appendix 3: appeal decision - Greenwood Avenue, Chinnor

<sup>36</sup> CD29 (officers' report on the appeal application, para 7.1); and CD22 (officers' report on BEN 1(2) application, para 6.12)

<sup>37</sup> CD8: Housing Land Supply Statement, May 2017, Table 1

<sup>38</sup> APP/11: Appellants' closing submissions, para 1.5; and CD8, Table 2.

45. The NPPF makes clear the requirement to significantly boost housing supply. In South Oxfordshire however, the current development plan provides no means of doing so, because the SOCS relies on a further Development Plan Document (DPD), the SAP, which never materialised. The replacement Local Plan has progressed only slowly, and still has a long way to go; it could easily take a further 18 months or more to reach adoption. The BNhP is further advanced, but addresses needs and issues which are essentially local in nature, rather than those of the District as a whole.
46. At District level therefore, additional housing sites are now needed urgently, and it is clear that these will have to include greenfield sites. Until the new Local Plan has completed its journey, such sites are only likely to be delivered through ad-hoc development control decisions, such as the present appeal.
47. The appeal site is available now, has no physical or legal impediments, and no major infrastructure requirements<sup>39</sup>. It could therefore be developed relatively quickly to help meet the unmet need.

#### *Suitability of the site*

48. The appellants contend that Benson is acknowledged to be a sustainable location for development. The village has a good range of local facilities and public transport services, and is designated as a Larger Village and a local service centre in the SOCS settlement hierarchy. This designation, and the Council's support for other housing developments at Benson, including the BEN 1-4 sites, demonstrates the village's suitability as a location for development of the scale now proposed.
49. The appeal site itself is within 800m of the primary school and the village hall, and less than 500m from the shops and other facilities in the High Street. Bus stops are within easy walking distance<sup>40</sup>. Walking and cycling are facilitated by the existing footpath connections to Blacklands Road and Brook Street.
50. The site is well contained by the landscape and by the existing development pattern. It has no particular ecological interest, no issues in relation to flooding, drainage or other utilities, and there have been no objections from any statutory consultees. Vehicular access is available, from a road of suitable standard. The Highway Authority is satisfied that the traffic can be accommodated, subject to off-site improvement works around the site access, and at the A4074/Church Road junction, which are provided for in the S.106 agreement.
51. The site was identified as an option for consideration ('BEN 5') in the early stages of the replacement Local Plan and BNhP<sup>41</sup>. It was not pursued further in the draft SOLP, only because the role of allocating specific sites was passed on to the BNhP; and it was then rejected in the BNhP process, only because that plan prioritised sites that were thought to be better able to secure the relief road. This rejection was not based on any shortcoming or lack of suitability in the site itself, it was simply about the BPC's preference for other sites. In a situation where there is an unmet housing need in the district as a whole, that is not a

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<sup>39</sup> Mr Mellor's proof, para 5.5

<sup>40</sup> Mr Mellor's proof, paras 5.19 – 5.21

<sup>41</sup> CD7: draft SOLP 'Refined Options', 2015 (pp 28-29); and CD9: BNhP, Appendix A – Site Assessments (pp 11-12)

sufficient reason to refuse permission. SODC officers acknowledged this, in recommending the appeal application for approval<sup>42</sup>.

52. In any event, it is argued that the suitability of Benson as a location for development is demonstrated by the granting of planning permissions for BEN 1(1) and 1(2), and by the proposed allocations and draft recommendations of approval for BEN2 and BEN 3/4. In the appellants' view, the appeal site is demonstrably just as suitable for development as any of these sites, and indeed in some respects more so, not least because it is not dependent on the proposed relief road<sup>43</sup>.

*Accordance with development plan policies*

53. With regard to the adopted SOCS, the appellants contend that the plan's housing policies are all out of date, for several reasons. Firstly, the housing requirement did not seek to address OAN, secondly the more recent SHMA indicates a much higher target, and thirdly there is an agreed lack of a 5-year supply. In addition, in the absence of an SAP, the SOCS lacks any allocations or any mechanism for identifying sites on a plan-led basis, and the *Cemex* judgement found the plan's silence on these matters to be a critical weakness. These circumstances all point to the tilted balance in NPPF paragraph 14, and in Policy CS1 of the SOCS itself.
54. Nevertheless, it is argued that the appeal proposal accords with the SOCS's general locational strategy, as embodied in Policies CSS1, CSH1 and CSR1, because those policies all require some of the district's housing growth to be accommodated at the Larger Villages, in order to support and enhance those villages' service centre function, and to help meet the needs of the RoD area. The development now proposed would contribute to these aims, by supporting local services at Benson, and strengthening the village's role within its hinterland.
55. In so far as there is any conflict with any of these locational policies in the SOCS, that conflict is confined to the fact that the appeal site is not allocated for development, and does not fall within the other categories in Policy CSR1, such as infilling or rural exceptions. But that conflict is outweighed by the failure of the SOCS to provide for the housing that has been needed ever since its adoption, compounded by the abandonment of the SAP, and the length of time taken to progress the replacement Local Plan. It follows that any conflict with CSR1, or any other SOCS housing policies, carries little weight.
56. It is also argued that the lack of adequate or timely housing provision brings into play Policy CSC1, which allows for additional sites to be brought forward if necessary, provided they are in accordance with the SOCS's broad distribution strategy. This is seen as providing further support for the appeal proposal.
57. With regard to the adopted SOLP, the appellants say that the plan is out of date by virtue of the passage of time, given that its policies were never designed to allow for development beyond 2011. Similarly, the relevant policies are inconsistent with the NPPF, because they fail to allow for a significant boost to the housing supply. That said, it is argued that the appeal proposal complies with Policies G2, G4 and C4, because it would not cause significant harm to the

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<sup>42</sup> CD29: officers' report on the appeal application

<sup>43</sup> Mr Brady's proof, para 5.7.18

countryside's character and appearance, and that Policy D1 can be complied with at the reserved matters stage, by following the principles shown on the submitted illustrative plans.

58. The appellants contend that their approach to these policy matters corresponds closely with that taken by previous Inspectors in the BEN 1(1) appeal<sup>44</sup>, and the two Chinnor appeals<sup>45</sup>, and with the rationale of the Cemex judgement<sup>46</sup>. They also suggest that the Council itself has adopted a similar approach to its own policies in the way that it has dealt with decisions concerning the other proposed housing sites in Benson.

#### *Relationship to the emerging plans*

59. The emerging draft replacement SOLP carries only limited weight, as agreed in the Statement of Common Ground (SCG). This means that no reliance can be placed on the overall housing target, or its distribution, or any of the relevant draft policies. It is understood that around 7,000 objections<sup>47</sup> have been received, and it is likely to take some time before the matters in dispute are resolved. In the meantime, the draft plan is not seen as a sound basis for determining planning applications or appeals, or neighbourhood plans.
60. In the light of this position, it is argued that the draft BNhP is a flawed plan, and should carry little weight in the present appeal, irrespective of the stage that it had reached at the date of this inquiry, or might reach by the time the appeal is determined. In the appellants' submission, the draft BNhP prejudices the outcome of the SOLP process. Although the BNhP housing allocations exceed the draft SOLP's 15% guideline, this is irrelevant because there is no certainty that this will be enough to provide for the District's eventual housing target, or that the overall approach to the distribution will be found sound when the draft SOLP is examined. The BNhP cannot claim any basis for this approach in the adopted development plan, and thus is entirely dependent on the outcome of the emerging SOLP process.
61. As to the selection of sites within Benson, the BNhP gives excessive weight to the provision of the proposed relief road. There is no technical evidence to suggest the road is needed<sup>48</sup>. It was not identified as a requirement by either OCC or SODC, until it appeared in the early drafts of the BNhP. Although the road has subsequently been incorporated into the draft SOLP and OCC's infrastructure plans, it is seen mainly as a means of securing local support for additional housing, rather than being an aim in its own right. Hence the emphasis on selecting sites that can provide land for the relief road is misplaced. And in any event, the terms on which planning permissions have been granted for BEN 1, and are proposed to be granted for BEN 2 and BEN 3/4 do not guarantee that the road will be delivered. In the light of these matters, the BNhP's rejection of the appeal site is unfounded, and should be given little weight.

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<sup>44</sup> CD20: BEN 1(1) appeal decision (para 12)

<sup>45</sup> CD32 (Crowell Rd, Chinnor appeal, para 41); and Mellor Appendix 3 (Greenwood Ave, Chinnor appeal, para 35)

<sup>46</sup> CD33: the Cemex judgement

<sup>47</sup> Accepted by Ms Smith in cross-examination

<sup>48</sup> Mr Brady – proof, para 7.3.1, and oral evidence

62. On both counts, the BNhP has been subject to substantial objections, including some by other objectors as well the present appellants. These include specific objections by Natural England to sites BEN 1(2) and BEN 4, and by Berrick Salome Parish Council, to BEN 3/4. Even though the Examiner has now recommended that the plan should go to a local referendum, that is not the end of the process. The final outcome still remains to be seen, especially in the light of the latest set-back to the draft SOLP, and the possible need to find alternative sources of housing in place of Chalgrove<sup>49</sup>. And in any event, the making of the BNhP would not alter the fact that South Oxfordshire as a whole has a shortfall in its housing land supply. The plan should therefore not be given full weight, in any scenario.
63. Furthermore, the appellants argue that the approval of the appeal scheme would not prejudice either the outcome of the BNhP process, or the development of the other allocated sites, or the delivery of the relief road. BEN 1(1) and 1(2) already have planning permission, and nothing would prevent the Council from granting permission for BEN 2 and BEN 3/4 in addition to the appeal site. Neither SODC, OCC, nor any of the developers of the BEN 1-4 sites have argued that case, and indeed the Council's planning witness accepted that prematurity was not an issue.
64. Although BPC is concerned about the availability of school places, OCC has agreed to the S.106 agreement without any requirement for any further education contribution. But in any event, the appeal scheme would contribute to local infrastructure through CIL payments, and the Council or BPC would be free to direct that money to further school expansion or improvements if considered necessary. Fears about other allocated sites being blocked because of a lack of school places are therefore unfounded. Furthermore, nothing stops the CIL receipts being used towards the Benson relief road, if the Council so chose<sup>50</sup>.

#### *Effects on the landscape*

65. The appellants contend that the appeal site is nothing more than an ordinary field, in an unremarkable landscape. The site has no noteworthy features, and little visual interest. It is not subject to any landscape designation, either at national or local level. It is not widely visible, and is seen in the context of the existing village edge, with existing housing, of ordinary, suburban character, on two sides. It is also overflowed by helicopters from the nearby RAF airfield. In all these respects, the site has little by way of visual or landscape sensitivity.
66. The Chilterns AONB is about 1.4km away, with much of the intervening gap filled by the airfield. The North Wessex Downs AONB is slightly closer, but still over 1km away, and the whole of Benson village lies between that AONB and the appeal site. The site is therefore closely related to the village, but remote from either of the AONBs. As such, it does not form part of their settings.
67. In the Council's district-wide Landscape Character Assessment (LCA) in 1998<sup>51</sup>, the appeal site falls within an area where the recommended landscape strategy is to 'restore'. This indicates a landscape in poor condition. In the Council's 2015

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<sup>49</sup> Doc. APP/15: appellants' post-inquiry letter, 30 April 2018

<sup>50</sup> Doc. App/15: appellants' post-inquiry letter, 30 April 2018

<sup>51</sup> CD15: South Oxfordshire LCA, 1998: Fig 10.2 (following p30)

- Landscape Capacity study<sup>52</sup>, the appeal site (as BEN 5) was assessed as having medium/low landscape character sensitivity, and medium/high landscape capacity. Although that report suggested limiting development to part of the site, it did accept that it could accommodate some development, and it was amongst the better options of the sites assessed at Benson.
68. The appellants' Landscape and Visual Impact Assessment (LVIA) found that the only significant visual impacts would be on adjoining residents and users of the adjacent footpath. However, these effects would be limited and localised, and impacts of this kind are to be expected in any edge-of-settlement location. The impacts on views from the AONBs were judged to be negligible. The LVIA conclusions were not challenged in the Officers' report in May 2017, and although the report concluded that there would be some landscape harm, this was considered to be localised, and was not sufficient to justify refusal<sup>53</sup>.
69. With regard to the BNhP's 'Important Views', the outward view from Viewpoint 4 would be obscured, but similar views of the Chiltern escarpment and Sinodun Hills are widely available throughout the area, and new viewpoints could be created on the edge of the proposed development which would offer much the same experience. From the BNhP's Viewpoint 8, the site is seen only distantly, against a backdrop of the existing village. The development now proposed would slightly increase the settlement's overall mass, but this would not be readily appreciated from that distance. This would not amount to significant harm.
70. Having regard to the 'Box 5.1' criteria in the Landscape Institute's guidelines<sup>54</sup>, and relevant caselaw, the appellants consider that the appeal site has no demonstrable physical attributes that elevate it above ordinary countryside. Consequently, in terms of NPPF paragraph 109, it does not constitute or form part of a 'valued landscape'.
71. If the BNhP proposal for development at BEN 3/4 goes ahead, as seems likely, it will be directly opposite the appeal site, just across Watlington Road, and will extend much further east, into the countryside. That development will change the landscape context around the appeal site significantly, making the site even more enclosed, and closing off views of it from the public footpath to the north. The appeal site will then be even less sensitive in landscape terms than it is now. In addition, the already permitted development of 11 dwellings off Blacklands Road will breach the existing village edge, irrespective of the development now proposed.
72. The illustrative plans, including the revised Framework Plan and the Settlement Edge Cross-Section<sup>55</sup>, show how the development could be integrated into the landscape, with a 30-40m buffer zone of landscaped open space and tree planting along the eastern boundary. This would create a softer, but stronger and potentially long-lasting, definition to the village, and would help to screen inward views whilst allowing opportunities for selected outward views. The Framework Plan, and illustrative Landscape, Density and Heights plans<sup>56</sup> also

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<sup>52</sup> CD14: Landscape capacity assessment of sites on the edge of Larger Villages (pp 100-106)

<sup>53</sup> CD29: Officers' report, paras 6.25 and 7.6

<sup>54</sup> CD12: Guidelines for Landscape and Visual Assessment (the GLVIA), p.84

<sup>55</sup> Plan No. PL03, Rev.C; and Mrs Brockhurst's Appendix 4

<sup>56</sup> It was agreed at the inquiry that all of these illustrative plans should be assumed to incorporate the eastern boundary buffer zone, as shown on the revised Framework Plan

demonstrate that adequate open space, landscaping and movement routes could be incorporated into the layout, and that the development could be tailored to fit in with its surroundings.

73. In the 2015 Landscape Capacity study, none of the other potential sites in Benson was scored as more suitable for development than the appeal site in landscape terms<sup>57</sup>. BEN 1 was rated as less suitable in terms of all three measures - landscape value, sensitivity, and capacity. BEN 4 was sieved out at the first stage of analysis, as it was considered too intrinsically harmful to be worth considering further. Nevertheless, the Inspector in the BEN 1(1) appeal found that the development's impact could be adequately mitigated by landscaping<sup>58</sup>, and in recommending permission for BEN 1(2), BEN 2 and BEN 3/4, officers came to similar conclusions<sup>59</sup>. If these developments are considered acceptable in landscape terms, it follows that the present appeal proposal must be equally so.
74. In the light of all these considerations, it is argued that the appeal proposal complies with the relevant requirements of SOCS Policies CSEN1 and CSQ3, and with SOLP Policies G4 and D1.

#### *Effects on agricultural land*

75. The appellants' evidence shows that only 2.2 ha of the appeal site are classified as 'best and most versatile' (BMV) agricultural land, in Grades 2 or 3a, which represents about 28% of the site area<sup>60</sup>. This is a relatively small amount, in both absolute and percentage terms. As a comparison, consultation with Natural England is only required where the loss of BMV land exceeds 20 ha.
76. Furthermore, the BMV land at the appeal site is split between two separate small pockets, in opposite corners, with a much larger area of lower quality land in between. It would not be practical or viable to attempt to work these areas of BMV land separately from the remainder. Realistically therefore, the agricultural capacity of the whole site is limited by the quality of the majority, and the potential added value of the BMV areas cannot be exploited commercially. Consequently the true economic value of the BMV land in this situation is no greater than that of Grade 3b land.
77. Although the NPPF<sup>61</sup> seeks to protect valued soils, including BMV land, it does not preclude development, provided that the agricultural implications have been fully taken into account. Here, the loss of agricultural land would be relatively small, and the majority would be poorer quality. The development therefore does not conflict with the NPPF advice. The development plan in South Oxfordshire contains no relevant local policies relating to development on agricultural land.
78. Elsewhere around Benson, the great majority of the available land around the village periphery is shown as Grade 2 on MAFF's provisional Agricultural Land

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<sup>57</sup> CD14: Landscape capacity assessment of sites on the edge of Larger Villages (pp35 and 76-99); see also Mrs Brockhurst's proof – Table TG1, p21

<sup>58</sup> CD20: BEN 1(1) appeal, paras 34 and 62

<sup>59</sup> CD22: BEN 1(2) report, paras 6.30-6.34, 7.4; and CD25: BEN 2 draft report, paras 6.40, 7.6; and CD26: BEN 3/4 draft report, paras 6.33, 7.5

<sup>60</sup> Mr Kernon's proof – p7 and Appendix 3

<sup>61</sup> NPPF paras 109 and 112

Classification (ALC) maps<sup>62</sup>. This is borne out by the survey information submitted in support of the BEN 1 and BEN 3/4 sites<sup>63</sup>, which show both of these sites to have much higher proportions of BMV land, and also much larger losses in terms of actual acreages. The comparison between these sites is also summarised in a Table, which also includes BEN 2 (albeit the latter is based on the published ALC sheet rather than survey data)<sup>64</sup>. This shows that the present appeal site has both the smallest quantity and the smallest percentage of BMV land of any of the sites at Benson. Development here would therefore accord with the NPPF advice to choose land of poorer quality in preference to higher.

79. The appellants point out that the Council's witness at the inquiry accepted that the harm resulting from the loss of agricultural land is not sufficient on its own to justify refusal<sup>65</sup>. It is argued that this is consistent with the views expressed by officers in recommending permission on the other BEN sites, where the losses of agricultural land were given little weight or not mentioned at all, even though the losses at all of those sites were greater than at the appeal site,

#### *Integration with the village*

80. The appeal site abuts the village's existing built-up area, and would form an extension of it. The main access to the proposed development has been designed for vehicles only, because Watlington Road has no footways along this section. But the appellants say that safe and convenient access for pedestrians and cyclists would be provided, by linking with the existing public footpath route adjacent to the site's western boundary. This would provide for pedestrian/cycle connections to the village facilities by at least three alternative routes.

81. For the first of these routes, at the site's north-west corner, the existing path would be widened and improved to provide access to Watlington Road, where pedestrians would cross to the existing footway on the north side. Crossing at this point would be facilitated by the proposed highway works, as shown on the revised access plan<sup>66</sup>, and provided for in the section 106 agreement. These works include a chicane arrangement with offset build-outs to narrow the carriageway and reduce speeds, plus moving the 30mph speed limit further out beyond the site access, and appropriate 'pedestrians crossing' signage.

82. The second route would be via the existing footpath link to Blacklands Road, in the centre of the site's western boundary. From Blacklands Road, there is an existing route via the lightly-trafficked Newton Way and Westfield Road, and then a further footpath link to Watlington Road, near the Village Hall. The third route is via the existing footpath to Brook Street, and thence west into the High Street.

83. Although all of these off-site routes are already adequate, if any improvements or enhancements are thought necessary, these can be secured by conditions. In this connection, the S.106 agreement also includes provision for a 'Safe Routes to School' study, which is intended to identify any shortcomings in the existing off-site pedestrian and cycle infrastructure. It is also envisaged that all parts of

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<sup>62</sup> Mr Kernon's Appendix 5 – ALC map

<sup>63</sup> Mr Kernon's Appendix 3 (survey report covers BEN 1 as well as the appeal site); and CD28: Agricultural report for BEN 3/ 4

<sup>64</sup> Doc APP/5: Comparative Table of BMV land in all BEN sites

<sup>65</sup> Ms Smith in answer to cross examination

<sup>66</sup> Plan No 38409/5502/001A

the proposed development can be linked to these off-site routes, by an internal footpath/cycleway network, which would be designed as an integral part of the detailed layout, at the reserved matters stage.

84. It is argued that these connections are equally as good as those from most parts of the other 'BEN' sites, and that in terms of distance, the whole of appeal site is significantly closer to most village facilities than the further parts of BEN 1(2) or BEN 3/4.
85. The appellants point out that the Council accepted at the inquiry that the issue of the perceived lack of integration was not sufficient on its own to justify refusal<sup>67</sup>. This is said to be consistent with the fact that the issue was not raised in the officers' report<sup>68</sup>, nor in the comments of OCC as Highway Authority.
86. In the light of the above considerations, the appeal proposal would comply with, and further the aims of SOLP Policy T1, and draft BNhP Policies NP10 and NP11.

#### *Benefits and planning balance*

87. The appellants submit that the development would bring the following benefits<sup>69</sup>:
- housing provision: 120 additional dwellings; mix of house sizes can be targeted to meet local needs; 40% to be affordable in accordance with SOCS Policy CSH3; in a sustainable location;
  - construction jobs;
  - increased local spending power;
  - extra revenue and patronage to support local services and businesses;
  - Council Tax receipts for the local authority;
  - two on-site equipped play areas, and other public open space, to be provided through the S.106 agreement, in accordance with SOLP Policies R2 and R6;
  - contributions to improved public transport services and facilities, through S.106 agreement;
  - possible enhancements to existing public footpaths, if required by condition;
  - support for further expansion of the village school, through CIL<sup>70</sup>;
  - improvement to the site's visual appearance and biodiversity, due to new landscaping.
88. In comparison, it is argued that the harm identified by the Council and objectors is unsubstantiated, and at worst, would be slight. Consequently, the harm cannot outweigh the benefits significantly or demonstrably. The proposed development is therefore sustainable and should be approved.

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<sup>67</sup> Ms Smith in answer to cross examination

<sup>68</sup> CD29: officers' report on the appeal application

<sup>69</sup> Mr Mellor's proof – paras 5.5 – 5.24

<sup>70</sup> Clarified by Mr Mellor in answer to Inspector's questions – references to a S.106 education contribution, in written evidence, are erroneous

## The Case for SODC

### *Housing need*

89. The lack of a 5-year housing land supply is agreed in the SCG, and the Council accepts that this means there is a need to find more sites, to meet the District's OAN. In the case of Benson however, the Council argues that existing completed and committed developments already exceed the level that would be expected of the village under the policies of the emerging draft SOLP.
90. Based on the draft plan's proposed 15% guideline, Benson's share of the District requirement has already been exceeded, and the BNhP proposes to allocate land for a further 324 units. This is considered to be more than sufficient, to meet the village's own needs, and to support local services, and to enable the proposed relief road. Consequently it is not considered that there is any need for further housing sites in Benson<sup>71</sup>.
91. As far as the rest of the District is concerned, the Council is working to progress the draft SOLP to adoption as quickly as possible<sup>72</sup>. The plan itself will bring forward a number of new strategic land allocations, and other sites are expected to follow from this through neighbourhood plans, to make up the District's overall requirement. In the meantime, the shortfall in the 5-year supply is an important consideration in dealing with applications and appeals, but it should carry less weight in villages where neighbourhood plans are already under way, such as at Benson.

### *Conflict with development plan policies*

92. In the Council's view, the appeal proposal is in conflict with SOCS Policies CSS1, CSH1 and CSR1, because those policies encourage development only within settlements or on allocated sites. The appeal site is outside the existing built-up area, and therefore should be treated as part of the countryside. Policy CSS1 is clear that developments in the countryside will only be permitted for specific purposes, and not for general housing needs. The appeal proposal therefore conflicts with the locational strategy in these key policies.
93. The Council accepts that Policies CSS1, CSH1 and CSR1 are all concerned with housing supply, and therefore cannot be regarded as fully up-to-date, due to the lack of a 5-year supply. It is also accepted that the SOCS is silent as to housing allocations for the RoD area. But this does not mean that these housing policies should carry no weight at all. Furthermore, given the ample supply of housing land in Benson, the Council suggests that in this case the reduction in weight should only be modest.
94. In any event, the proposed development is also considered to be in conflict with various other SOCS policies. These include Policy CS1, because the scheme is not considered to be sustainable development, and Policy CSEN1, because of its effect on the landscape. There would also be conflict with Policy CSQ3 in several ways, including accessibility, integration, and the effects on the character of the site and surroundings.

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<sup>71</sup> Ms Smith's proof, paras 3.48, and 5.17 – 5.19

<sup>72</sup> Ms Smith's oral evidence suggested adoption by the end of 2018; however, this was prior to the Council's subsequent decision to review the Chalgrove allocation

95. Policy CSC1 is not considered to be relevant in this case, because the BNhP is proceeding in a timely manner, and provides a mechanism for bringing forward housing sites in Benson, in accordance with SOCS Table 18.2.
96. With regard to the adopted SOLP, it is argued that the proposed development would conflict with Policies G2 and G4 because of the loss of countryside, and with Policies C4 and D1 due to the impact on the landscape and village setting. There would also be conflict with Policy T1, in relation to safe and convenient access. None of these policies are affected by NPPF paragraph 49. Although the SOLP is of some age, these relevant saved policies are still considered to be consistent with the aims of the NPPF, including those for the countryside, the environment, good design, and transport. As such, these SOLP policies are considered to carry significant weight.

#### *Relationship to the emerging draft plans*

97. In the draft replacement SOLP, the Council considers that the appeal proposal conflicts with the strategy in Policies STRAT1 and H1, in that these policies seek amongst other things to protect the countryside, except where needed to meet housing or other identified needs. The appeal site is outside the main locations identified for development, and is not allocated in the emerging neighbourhood plan, and thus conflicts with this aim.
98. In addition, the appeal site is not needed to meet the housing target for the Larger Villages in Policy H4, and the proposal therefore conflicts with that policy.
99. The Council accepts that the draft local plan has limited weight at present. But this will increase to moderate weight when the plan is submitted for examination<sup>73</sup>.
100. In the case of the BNhP, the appeal scheme is considered to conflict with Policy NP1, for similar reasons; the site is outside the settlement, and the policy does not support development on unallocated sites in such a location. The development would also result in the loss of the identified Important View No 4, and thus conflicts with Policy NP31.
101. The housing sites that were selected for development in the BNhP were chosen with particular regard for their ability to help secure the provision of the Benson relief road. This involved prioritising the new road above most other considerations<sup>74</sup>. As part of that process, the appeal site was rejected, partly because of its landscape impact, but also because it was considered not to be able to assist in the delivery of the road. SODC supports this process, the decisions made by BPC, and the reasoning behind them, and considers that the allocations in respect of BEN 1-4 provide a fair and transparent way of achieving the plan's goals in accordance with the expressed wishes of the local community.
102. Now that the Examiner has recommended that the draft BNhP should proceed to a referendum, the weight that should be afforded to it is significantly increased.

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<sup>73</sup> Ms Smith's oral evidence

<sup>74</sup> CD9: BNhP - Appendix A

### *Landscape impact*

103. In the LCA report, the appeal site is located in the Clay Vale character area, and in the Open Undulating Vale character type<sup>75</sup>. The site is described by the Council's landscape witness as strongly representative of this type. As such, it is considered to have medium scenic quality, high visual sensitivity, and moderate sensitivity to change.
104. The site's prevailing character is said to derive from its agricultural use, its openness, and its extensive views. In this context, the Council draws particular attention to the views from public footpath PROW 125/12/10; and from another public right-of-way that passes to the north, through the BEN 3/4 site; and from Brize Lane, to the east; and elevated, distant views from the Chilterns and North Wessex Downs AONBs<sup>76</sup>.
105. In the case of the Chilterns, there is inter-visibility, with the escarpment forming a backcloth to outward views, and the village appearing in the background to inward views. Because of this, the appeal site is seen as part of the AONB's setting. In addition, the site is also seen as part of the setting of Benson village. This is considered important in maintaining the perception of Benson as a rural settlement, surrounded by countryside. The existing village edge at this point is characterised by bungalows, which minimises the settlement's impact on the countryside.
106. In the light of the above, the Council considers the appeal site to be part of a locally valued landscape, within the terms of NPPF paragraph 109. This is because of its role in the settings of the AONB and the village, and because the view across the site from PROW125/12/10 is recognised as an Important View in the BNhP. The distinctive physical characteristics which justify this assessment are the site's agricultural nature, its openness, its relative elevation, its relationship to public rights of way and public views, its position on the settlement edge, and relationship to the surrounding countryside.
107. The proposed development's effect would be to suburbanise the site. Its effect on the character and appearance of the site itself would thus be major and adverse, and its effect on the settings of the village and the Chilterns AONB would be moderately adverse. This assessment is rather more negative than that in the Larger Villages Capacity Study<sup>77</sup>, but that is partly because the scale of development now proposed exceeds that recommended in the study. It is accepted that the impacts in all these respects would be localised, but nevertheless, they are regarded as significant.

### *Loss of agricultural land*

108. The proposed development would result in the permanent loss of 2.3 ha<sup>78</sup> of BMV land. This would be contrary to NPPF paragraphs 109 and 112, which seek to protect agricultural land, and to ensure that its value to the nation is taken into account.

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<sup>75</sup> Mr Radmall's Appendix B: extract from the LCA

<sup>76</sup> Photographic views at Mr Radmall's Appendix C; and the LVIA, Appendix 3

<sup>77</sup> CD14: Larger Villages Capacity Study

<sup>78</sup> COU/3: the Council's closing submissions, para 15 (disputes the appellants' figure of 2.2 ha)

109. The Council argues that the NPPF's advice is not limited to land of BMV quality. It follows that the loss of any significant quantity of agricultural land, whatever its quality, should have regard to that advice. In this context the appeal site's overall size, of 7.9 ha, should be considered significant.
110. Although at the appeal site the BMV land is fragmented, that does not mean that its value is negated. Even if the site is farmed and cropped on a whole-field basis, the overall yield from a field with a mixture of BMV and lower quality soils would be likely to be higher than from one with poorer soil only. For this reason, the NPPF requires that land of poorer quality be taken first where possible. At Benson, the loss of this BMV land is unnecessary, because sufficient housing land has already been identified elsewhere at the village.

#### *Lack of integration*

111. The Council considers the appeal site to be physically and visually divorced from the existing development in Benson. The adjoining houses turn their backs on the site, and it is suggested that this means that the proposed development would not appear as a natural extension to the settlement pattern.
112. There would be a single point of vehicular access from Watlington Road. The Council is concerned that this would mean that, for trips by car, residents in the southern half of the development would have a circuitous journey to connect with the rest of the village, with a resulting sense of isolation and separation.
113. The proposed pedestrian and cycle access points would depend on existing off-site routes which are narrow, unlit, and unsurfaced or poorly maintained for considerable lengths. These would not be attractive or commodious. Users with prams, buggies, wheelchairs or mobility difficulties would have particular problems. The main vehicular access point to the site would not be safe for pedestrians or cyclists. The alternative route in the north-west corner would still require users to cross Watlington Road, and indeed to reach most destinations, they would also have to cross back a little further on.
114. There is therefore a lack of connectivity between the proposed site and the existing village. Accessing the site would be tortuous, and a disincentive for the occupiers to use village facilities or engage in village life. Problems of social cohesion could arise. These issues conflict with NPPF advice regarding the need for integration and good design.

#### *Planning balance*

115. The Council argues that only moderate weight should be given to the benefits of providing housing on the appeal site, both market and affordable, because Benson has no housing shortfall, and thus the proposed development is not needed in this location.
116. Only limited weight should be given to the support that the development could give to local shops and commercial services, because there is no evidence that such support is needed.
117. Limited weight is also given to the proposed provision of play areas within the development, because these are a policy requirement for any development of

the size proposed, and would be needed to serve the development itself; and in any event, there is another existing play area close by.

118. In addition, only limited weight is given to any biodiversity gains, since any such gains would be a result of measures that are required as mitigation for the development.
119. In the Council's view, these benefits would be significantly and demonstrably outweighed by the combined effects of the adverse impacts identified in respect of landscape harm, loss of agricultural land, and lack of integration. Consequently, the proposal does not amount to sustainable development.

### **The Case for the Other Interested Persons**

#### *Benson Parish Council and Neighbourhood Plan Steering Group*

120. Submissions on behalf of BPC and the BNhP Steering Group were made by Mr Murray and Mr Rushton. Both are members of the steering Group, and Mr Murray is also a Parish Councillor. BPC is the qualifying body for the BNhP.
121. Work on the BNhP started in January 2016. Over 100 local residents have given their time in preparing the draft plan and its evidence base, and carrying out the consultation process. Many more have responded to these consultations. The plan has been prepared in close co-operation with SODC and OCC throughout.
122. The draft BNhP proposes to allocate land for about 560 houses in total. Some of these, on the BEN 1(2) site, have subsequently gained approval from the Council, but only after the site was first identified in the draft stages of the BNhP. Together with the previously approved BEN 1(1), and other developments approved since 2011, this allows for a total of around 840 new dwellings in the village, over a 22-year period, up to 2033. This is a much higher figure than the 383 units that would have been required under the emerging local plan's 15% village growth policy. However, local people were worried about traffic, particularly with the planned developments elsewhere, including Chalgrove Airfield. BPC considers that residents have reluctantly accepted the need for a higher level of house building in Benson, to secure a relief road, which was not otherwise proposed.
123. BPC has been involved in the negotiations with the various developers, together with SODC and OCC, and BPC believes the road is deliverable based on the policies set out in the draft BNhP and the terms of the planning permissions granted or recommended. BPC believes that OCC fully supports the relief road, as shown by recent emails<sup>79</sup>. So too do the developers involved in the BEN 2-4 housing sites (Thomas Homes, David Wilson Homes and Cala Homes)<sup>80</sup>. In the event of the funding from housing developers failing to cover the full cost, the Homes and Communities Agency has agreed to provide gap funding, linked to the Chalgrove development<sup>81</sup>. However, BPC consider the road to be needed anyway, irrespective of Chalgrove<sup>82</sup>.

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<sup>79</sup> Docs. OP/2 and OP/8: emails from OCC, re relief road

<sup>80</sup> Doc. OP/3: email from Turley Associates, re relief road

<sup>81</sup> Doc. OP/1: Mr Murray's statement, para 2.24

<sup>82</sup> Doc OP/18: BPC's post-inquiry letter, 26 April 2018

124. The scale of the new housing proposed in the BNhP is said to equate to a 49% increase in Benson's population over the plan period; or 64% excluding the RAF base<sup>83</sup>. BPC agrees that this represents a major challenge for the village, even without any further development as now proposed. It is accepted that the sites proposed in the BNhP would have some adverse impacts, but that is felt to be outweighed by the benefits of securing the relief road. However, the appeal proposal is considered unnecessary; in BPC's view, it would cause harm to the landscape and village setting, and add to pressure on facilities, and would not help secure the new road.
125. OCC education officers have confirmed that capacity at the village school will be limited, even after the already planned expansion from 1-form entry to 1.5- or 2-form, to deal with the housing allocations in the BNhP<sup>84</sup>. In BPC's view, it follows that allowing another large development would run the risk of one of the allocated sites being unable to proceed, for lack of school capacity<sup>85</sup>. That in turn would cast doubt on whether the relief road could be achieved.
126. In addition, the Millstream Surgery has limited capacity, despite planned expansion, and will also have to accommodate additional patients from the RAF base<sup>86</sup>. Irrespective of the effects on the prospects for the relief road, BPC is concerned about the potential effects on existing residents if housing development is allowed to exceed the capacity of local services such as schools and health facilities.
127. The BNhP has not been subject to any significant unresolved objections, except those of the present appellants. The plan is now well advanced. In the light of NPPF paragraph 216, it should be given substantial weight.
128. Having regard for the *Woodcock Holdings* judgement<sup>87</sup>, BPC considers that the appeal proposal is so substantial, both on its own and cumulatively, that to grant permission would pre-determine decisions about the scale and location of development, that are central to the BNhP, thus undermining the plan-making process. The proposal is therefore regarded as premature<sup>88</sup>.
129. BPC is concerned that a decision contrary to the BNhP at this stage would be seen by the local community as undermining the hard work that they have put into the plan, and could have a knock-on effect in deterring other village communities from engaging in the localism agenda.
130. BPC concurs with SODC as to the appeal site's landscape value. It is also considered that the proposed development would not reflect Benson's existing distinctive character<sup>89</sup>.
131. BPC is also concerned about the traffic implications of unplanned development. The traffic counts and forecasts produced by developers show that without the relief road, the Church Road/A4074 and Castle Square junctions will become

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<sup>83</sup> Doc. OP/1: Mr Murray's statement, para 6.1

<sup>84</sup> Doc. OP/4: OCC consultation response to BNhP, 26 Jan 2018

<sup>85</sup> Doc. OP/1: Mr Murray's statement, paras 5.1.1 – 5.1.9

<sup>86</sup> Doc. OP/1: Mr Murray's statement, paras 5.2.1 – 5.2.4

<sup>87</sup> Doc. OP/5: the *Woodcock Holdings* judgement

<sup>88</sup> Doc. OP/1: Mr Murray's statement, paras 4.1 – 4.13

<sup>89</sup> Doc. OP/1: Mr Murray's statement, paras 8.1 – 8.6

overloaded. At the former, visibility is restricted, and any increase in traffic volumes would exacerbate what is already a dangerous situation<sup>90</sup>.

#### *Berrick Salome Parish Council*

132. Cllr Ian Glynn spoke as Chairman on behalf of Berrick Salome Parish Council (BSPC). BSPC is neutral on the appeal proposal. The Parish is opposed to the BEN 3/4 development, but if that development and the other allocated sites in the BNhP go ahead, the relief road will certainly be needed, and without it, parts of Berrick Salome Parish, such as the small hamlet of Rokemarsh, would suffer unwanted external traffic. BSPC would not want to see anything prevent the new road from being delivered.

#### *Other oral submissions*

133. Ms Maggie Winters spoke on behalf of the Benson Patients' Panel<sup>91</sup>. In the Panel's view, additional development would put further pressure on the Millstream doctors' surgery. The practice has some capacity for expansion, to meet the growth already planned, but not for anything beyond that.
134. Mr Michael Goss considered that traffic in the village is already a problem, particularly at Castle Square and at the A4074 junction. If the existing congestion is made worse, children walking to school will be put at risk.
135. Mr Denis De Beger stated that local people have put a lot of work into producing the BNhP. If the appeal decision goes against the draft plan, those people will feel their efforts have been disregarded, and may be less inclined to participate in the future.
136. Mr Paul Day was concerned that the appeal proposal would take up the capacity available in the local facilities, and hinder the prospects of getting the new relief road.
137. Mr Peter Eldridge raised concerns about the effects on local services, including sewerage, gas supplies, schools and library services. He also identified problems with car parking in the village centre; he considered that added pressure on the existing parking facilities might deter shoppers, and lead to local businesses losing custom<sup>92</sup>.

#### *Written representations*

138. Six written representations were received from local residents during the appeal consultation period<sup>93</sup>. Two further representations were received during the inquiry<sup>94</sup>. The writers express concerns related to traffic, parking, village services, noise from the RAF Benson airfield, loss of countryside views, wildlife, and conflict with the BNhP.

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<sup>90</sup> Doc. OP/1: Mr Murray's statement, paras 9.1.1 – 9.1.5; and Docs OP/12 – OP/17: traffic figures, and photographs

<sup>91</sup> Doc. OP/19: Ms Winters' statement

<sup>92</sup> Doc. OP/20: Mr Eldridge's statement

<sup>93</sup> Red folder

<sup>94</sup> Docs OP/21 – OP/22: late representations

## Inspector's Conclusions<sup>95</sup>

### *The main considerations*

139. In the light of the above submissions, the main considerations are:

- whether the appeal proposal would accord with relevant policies for the location of new housing, in the adopted development plan;
- the proposal's relationship to the emerging draft local plan and neighbourhood plan;
- the effects on the character and appearance of the landscape and the village setting;
- whether the scheme would be satisfactorily integrated with the village;
- and the effects on agriculture.

### *Accordance with the adopted policies for the location of housing [53-58, 92-96]*

140. Although there is no defined settlement boundary around Benson, it is not disputed that the appeal site lies outside the village's built-up area, and therefore in the countryside. The site is therefore subject to SOLP Policies G2 and G4. The purpose of these policies is to protect the countryside from development, and thus the development now proposed is contrary to them and to their aims.
141. SOCS Policies CSS1, CSH1 and CSR1 give support of a general nature to a certain amount of development at the Larger Villages. But that support is strategic rather than specific. As far as the villages are concerned, the function of this group of policies is to guide the process of allocating sites and drawing up detailed criteria, through subsequent more detailed plans. None of these policies gives support to development on any particular sites, including the present appeal site.
142. The appeal proposal would assist, to some extent, in meeting the SOCS's aims for the Larger Villages, by providing housing in a sustainable location, and supporting Benson's local economy and services. But the SOCS seeks to achieve these aims in a plan-led way, through site allocations, infilling, and exceptions sites, as set out in Policy CSR1. The appeal site falls into none of these categories.
143. Policies CSS1, CSH1 and CSR1 do not rule out allocations being made on sites outside existing villages, but neither do they permit such developments on an ad-hoc basis. Read together with SOLP Policies G2 and G4, the strategy embodied in these locational policies provides no basis for general housing developments on unallocated greenfield sites.
144. With regard to Policies CSEN1 and CSQ3, detailed matters relating to landscape and related impacts are dealt with elsewhere in this report. In terms of accordancy with the development plan, neither of these policies goes to the heart of the issue, which in this case relates primarily to the overall strategy. As to Policies CS1 and CSC1, although these are designed to allow development to be brought forward, in some circumstances, outside of the

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<sup>95</sup> In this section, the numbers in square brackets [] refer to earlier paragraph numbers in this report

plan's other policies, nevertheless neither CSC1 nor CS1 changes those policies themselves or the overall strategy. Consequently, in this case, they do not affect my conclusion on the question of accordance with the development plan in terms of Section 38(6) of the 1990 Act.

145. In the light of these considerations, I conclude that the appeal proposal would not accord with the development plan, considered as a whole.

*Relationship to the emerging draft plans [59-64, 97-102, 120-129, 135, 137, 138]*

146. At the time of the inquiry, it was common ground that the draft BNhP carried limited weight. But since then, the Examiner has endorsed the plan's main relevant policies, with only minor modifications. There are still some important procedural hurdles to be cleared before the plan can be made, but nevertheless, the Examiner's recommendation represents an important step forward. In the light of the stage that it has now reached, I consider that the draft BNhP should now be given significant weight, albeit less than that of a made plan.
147. In terms of the relevant policies, draft Policy NP1 seeks to resist proposals on unallocated sites outside the existing built-up area, except where they are otherwise consistent with the development plan. The appeal site is an unallocated greenfield site, outside the existing village, and can claim no support from any other policies. The proposed development is therefore contrary to Policy NP1.
148. I see no reason why the appeal proposal would prejudice the development of any of Benson's allocated housing sites in, or the delivery of the relief road. Nor is the appeal scheme so substantial that granting permission for it would predetermine the decisions that are still to be made in respect of those developments. Allowing the appeal would therefore not raise any issues of prematurity. But these considerations do not change my view regarding the conflict with Policy NP1.
149. With regard to the emerging draft SOLP, at the time of the inquiry, the Council and the appellants were again agreed that the October 2017 version of the draft plan carried limited weight<sup>96</sup>. However, in the light of the Council's subsequent decision not to proceed with the submission of the plan in its existing form, it seems to me that this weighting must now be reduced. In the circumstances, the present draft plan carries only very limited weight. As such, it can have no influence on the outcome of this appeal. But in the light of my finding with regard to the Neighbourhood Plan, this does not alter my conclusion.
150. I conclude that the appeal proposal would fail to accord with the emerging draft BNhP, due to its conflict with Policy NP1. Although the plan is not yet made, it has reached an advanced stage, and as such this conflict carries significant weight against the development.

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<sup>96</sup> The Statement of Common Ground (Doc. J/1), para 7.2

*Effects on character and appearance* [65-74, 103-107, 130, 138]

151. The appeal site is an unremarkable agricultural field, with few distinctive features. The site's immediate context is largely dominated by the existing built-up area, and if the proposed and approved developments adjacent to the site go ahead, as seems likely, the suburban nature of this context will be further reinforced.
152. There is a distant view across the appeal site towards the Chilterns AONB, but the focus of that view is the Chiltern ridge, not the appeal site. Consequently, the site itself is not an important component of the view as a whole. Similar long views of the Chilterns are available from many other viewpoints in the area. The North Wessex Downs AONB is on the other side of Benson. In inward views from these two AONBs, the appeal site is insignificant. Consequently, although the AONBs themselves are clearly important and valuable landscapes, the appeal site contributes little to their settings.
153. The view of the Chilterns from the adjacent footpath, PROW 125/12/10, is identified in the draft BNhP as an Important View, and this would be at least partially obscured by any development. However, I see no reason why the development could not be laid out to ensure that the Chiltern ridge remained visible from selected points within or adjacent to the site.
154. The site is part of the countryside setting of Benson, but the village's rural character is derived mainly from its historic centre rather than its setting. The development now proposed would urbanise the site itself, and would alter the outlook from the adjacent footpath and nearby residential properties. But these localised impacts would not significantly affect the character or appearance of the wider expanse of countryside around the village. Two-storey houses would be taller than those in Blacklands Road, but their visual impact could be softened by new planting.
155. The landscape character areas and types in the LCA report relate to broad-brush areas. These cannot sensibly be interpreted as constraints on development at the individual site level. The appeal site is fairly typical of the character area, but this is not indicative of any special value.
156. The characteristics identified by the Council, such as the site's openness, its land use, and its village edge position, are shared by many other sites around Benson. In the absence of any other demonstrable physical attributes, the site does not amount to anything more than ordinary countryside. It therefore does not constitute a valued landscape in terms of NPPF paragraph 109.
157. Consequently, to my mind the proposed development would not cause any significant harm to the character or appearance of the landscape, or to the village setting. In this respect, it would not conflict with the aims of either SOCS Policy CSEN1 or SOLP Policy C4.

*Integration with the village* [80-86, 111-114]

158. The appeal site lies directly adjacent to the settlement edge. The existing development in Blacklands Road faces away from the site, but that is not in any way an unusual relationship. In terms of its physical proximity, and relationship to existing development, it seems to me that the proposed development would appear as a natural extension to the village.

159. The development would have only a single point of vehicular access, but again that is not uncommon. The access point would be close to the edge of the village, and journeys would not be unduly long or circuitous.
160. Pedestrian movements would connect with the village via a network of existing and proposed pathways. These would be separate from the main vehicular access, but no less convenient, and indeed would provide a good choice of routes to connect with the village centre and other local facilities, via Watlington Road, Blacklands Road, and Brook Street.
161. The existing footpaths connecting to Blacklands Road and Brook Street are narrow and unlit, and some parts are unsurfaced. But the fences on either side are low, and I saw on my visits that light reaches these paths from adjoining properties, and there are also opportunities for passive surveillance. In addition, there is an opportunity to secure improvements to the lighting and surfacing on these existing paths, by way of conditions.
162. The existing path connecting to Watlington Road suffers from similar shortcomings, but this section could easily be replaced or bypassed by a new pedestrian/cycle route within the development itself. Such a new route could be required to be designed to an appropriate standard, and would thus overcome the problems identified. Possible issues relating to personal safety and security for vulnerable users could be dealt with through design and layout, with surveillance from new dwellings and internal roads nearby. Pedestrians using this route would need to cross Watlington Road, but with the benefit of the proposed highway works, this would be a reasonably safe crossing point for most users.
163. These proposed access arrangements may not be perfect, but neither are they unacceptable. The distances from the site to local facilities would be well within normal walking or cycling distances. Assuming that the necessary improvements were implemented, pedestrians, cyclists and motor vehicles would all be able to access the development without difficulty or danger. Consequently, I do not share the Council's concerns regarding possible issues of isolation or social cohesion.
164. I therefore find that the proposed development would be capable of being adequately integrated with the existing village. In this respect I find no conflict with any relevant policies, including SOLP Policy T1 and draft BNhP Policies NP10 and NP11.

*Effects on agriculture [75-79, 108-110]*

165. The development would take about 7.9ha of agricultural land, of which up to 2.3ha is of BMV quality, on the worst-case measurement. I accept that any loss of useable farmland must to some extent reduce the UK's food-producing capacity, and that where BMV land is concerned, particular regard should be paid to the potential economic effects.
166. However, these considerations have to be balanced against the established need for housing. In the present case, the overall land-take would not be excessive in relation to the potential housing gain, and the quantity of BMV land would not be significant. There is also no evidence that the District's housing needs can be met entirely on land of lower value.

167. In the circumstances, I find no conflict in this respect with the advice in NPPF paragraphs 109 and 112 relating to the protection of agricultural land and soils, or with any other relevant national or local policies.

### **Other matters**

#### *School provision [64, 87, 125, 136-138]*

168. With regard to school capacity, the Education Authority's consultation response on the appeal proposal, in April 2017<sup>97</sup>, stated that the proposed development would require Benson Primary School to be expanded to 2-form entry. At that time, OCC anticipated that this would require a Section 106 contribution in respect of the necessary land acquisition. Subsequently OCC has changed its position, and its most recent statement in regard to the present appeal, in October 2017, confirms that no such contribution is now sought<sup>98</sup>. At the inquiry, it was confirmed that the cost of the school expansion would be met from Community Infrastructure Levy (CIL) funds, to which the proposed development would be required to contribute, in accordance with the local charging schedule.
169. Since then, in its response to the BNhP examination in January 2018<sup>99</sup>, OCC states that housing growth beyond the BNhP proposals could lead to the village school's expanded capacity being exceeded. I accept that this statement is difficult to reconcile with the position stated in April 2017 and modified in October 2017. But nevertheless, it is the latter which represent the Education Authority's formal position on the appeal proposal, and I have therefore relied on this. In the event that a point was reached where Benson Primary School became over-subscribed, OCC would have to consider other measures, in accordance with their statutory responsibilities. Given the scale of the housing growth required in South Oxfordshire over the next plan period, it seems to me that this situation is unlikely to be unique to Benson.

#### *Medical services [126, 133, 136, 138]*

170. I appreciate the concerns expressed on behalf of BPC and the Patients' Panel regarding the increasing pressure on the Millstream Surgery, especially in the light of recent changes to the services provided at the RAF base. However, the responsibility for providing doctors' services in the area rests with the relevant NHS Clinical Commissioning Group. No objection to the appeal proposal has been made by that body or any other statutory consultee relating to the adequacy of local medical or health services. In any event, I note that increased capacity at local health centres and surgeries is a listed as a type of infrastructure which may be funded through CIL receipts<sup>100</sup>.

#### *Traffic [131, 132, 134, 136, 138]*

171. Traffic congestion and highway safety in Benson are clearly matters of great concern to local people. I saw on my visits that traffic is heavy in the peak hours, and congestion occurs particularly at the A4074/Church Road junction,

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<sup>97</sup> OCC response dated 24 April 2017 – 'Questionnaire' file.

<sup>98</sup> OCC Regulation 122 Compliance Statement, dated 23 October 2017 (red folder)

<sup>99</sup> Doc. OP/4: OCC response to BNhP examination, 26 January 2018

<sup>100</sup> CD11: CIL Reg 123 List

and also at Castle Square in the village centre. The Section 106 agreement<sup>101</sup> provides for highway improvements at Church Road, as well as safety improvements around the entrance to the appeal site in Watlington Road.

172. OCC's consultation response as Highway Authority, in May 2017<sup>102</sup>, makes it clear that the County Council is satisfied that these proposed works are adequate to ensure safety and proper traffic management. If the proposed Benson relief road goes ahead, this is likely to divert some existing traffic away from the village centre, but the Highway Authority's view does not appear to be contingent on that provision. In the light of the technical evidence, including the appellants' Transport Assessment, I can see no basis on which to disagree with the Highway Authority on these matters.

*Other issues raised by local residents [136-138]*

173. Noise from the Airfield can be overcome by appropriate building design and specification, and this can be secured by condition. Parking space in the village centre is limited, but there is no evidence that the extra demands generated by the appeal proposal would be significant. The concerns raised in relation to wildlife, sewerage and utility supplies are not borne out by the technical evidence submitted in support of the application. Concerns regarding the effects on other village services are unsubstantiated.

*Design-related policies [94, 96]*

174. In addition to the policies outlined above, the Council also argues that the proposal would conflict with SOLP Policy D1 and SOCS Policy CSQ3. But these policies are primarily concerned with design, and in the present outline application, all matters except access are reserved. In any event, these policies do not alter the view that I have come to, based on the issues identified above.

*Benefits of the development [87, 115-119]*

175. Having regard to the list of benefits contended by the appellants, in the light of the agreed shortfall in the 5-year housing land supply, the provision of 120 additional dwellings would be a significant social benefit. The fact that these would be located at a sustainable settlement, and that the mix of sizes could be tailored to local requirements, is taken account of in this weighting. However, the provision of 40% of the dwellings as affordable housing, meeting the requirement in SOCS Policy CSH3, increases the benefit and justifies substantial weight to this element.
176. It is not disputed that the development would generate construction jobs, increased local spending power, and increased support for local businesses. It is not necessary to consider whether there is a proven need for such support. In my view these benefits carry moderate weight. The development would also provide Council Tax revenue, but the Planning Practice Guidance (PPG) advises that decisions should not be based on the potential to raise money for a local authority<sup>103</sup>, and I therefore give no weight to this item.

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<sup>101</sup> Doc. APP/3: the S.106 agreement

<sup>102</sup> OCC response dated 12 May 2017 – Questionnaire file.

<sup>103</sup> PPG Paragraph: 011 Reference ID: 21b-011-20140612

177. The provision of on-site open space and play areas and enhancements to public transport facilities, although needed to support the proposed development, would also have some benefits for existing residents, but these would be relatively modest and accordingly I give them only limited weight. The same would apply to any improvements to existing public footpaths, but at present the extent of those works is not known, and this further reduces the weight that can be given to them. The PPG advises that CIL receipts, whether used for education or any other purpose, cannot be considered as a benefit<sup>104</sup>.
178. The effects of any new landscaping and planting would be to mitigate the impacts of the development, and as such this weighs as a neutral consideration rather than a benefit.

*Compliance with the CIL Regulations*<sup>105</sup> [3, 50, 83, 87]

179. The obligations contained in the S.106 agreement are not disputed by any party, either as to their justification or their adequacy. The reasons for the contributions to bus services and public transport infrastructure are set out in OCC's Regulation 122 Compliance Statement<sup>106</sup>, and the justifications for the affordable housing and the open space, and the street naming and recycling contributions, are contained in a similar statement from SODC<sup>107</sup>. The reasoning behind the off-site highway works and Safe Routes to School study is evidenced in other inquiry documents, including the Transport Assessment, OCC's consultation responses on transport matters, and the SODC officers' report. At the inquiry it was confirmed that the pooling restrictions in CIL Regulation 123 have been complied with.
180. In the absence of any evidence to the contrary, I am satisfied that these various obligations are necessary to make the proposed development acceptable, and are directly related to the proposed development, and reasonably related to it in terms of scale and kind. I have therefore taken them into account.

## **Conditions and Reasons for Imposition**

### *Recommended conditions*

181. The conditions provisionally agreed between the Council and the appellants were discussed at the inquiry<sup>108</sup>. Following that discussion, I have reduced the number and amended their wording where necessary, to achieve greater clarity and enforceability, and to avoid unnecessary prescription. Those that I recommend, if permission is granted, are set out in the Schedule at Annex 3 to this report. The following Recommended Condition (RC) numbers refer to the numbering in that Schedule.
182. RCs 1-3 relate to the reserved matters and the time limits for submission of these and for the commencement of development. Although these timescales are shorter than the standard time limits provided for in legislation, this is justified by the need to make good the shortfall in the 5-year housing supply.

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<sup>104</sup> PPG Paragraph: 011 Reference ID: 21b-011-20140612 (as above)

<sup>105</sup> The Community Infrastructure Levy Regulations 2010

<sup>106</sup> OCC Regulation 122 Compliance Statement, dated 23 October 2017 (red folder)

<sup>107</sup> SODC CIL Regulations Compliance Statement – Ms Smith's Appendix 7

<sup>108</sup> Docs. J/3 and J/4: draft conditions

183. RCs 4-6 relate to highway matters and are all needed in the interests of highway safety. RC 4 also defines the details that have been approved in relation to the proposed access, and provides certainty in that respect. RCs 7 and 8 provide for necessary improvements to existing pedestrian and cycle routes, adjacent to the site and elsewhere in the village, which are needed to ensure safe and convenient access for all users. RC 9 requires the implementation of the submitted Travel Plan, to encourage sustainable modes of transport.
184. RCs 10 and 11, relating to drainage infrastructure, are necessary to avoid any risks of flooding or contamination, and to ensure a satisfactory standard of development for future occupiers. RC 12 relating to fire hydrants is necessary to ensure the safety of occupiers in an emergency. RC 13 relating to noise levels secures an acceptable internal living environment, and RC 14 seeks to ensure that the proposed landscaping is carried out in a timely manner, in the interests of achieving a satisfactory appearance.

*Conditions not recommended*

185. Together, the above recommended conditions would secure the main aims of the Draft Conditions (DCs) numbered 1, 4, 5, 6, 7, 12, 15, 17, 20, 22, 23, 24, 25, 28, 29 in the Council and appellants' agreed draft list<sup>109</sup>. In some of these cases however, I have deleted or excluded parts of these draft conditions from my recommended versions, and on these I would comment as follows. It is not necessary to require details of water supply infrastructure other than hydrants (DC 15), or to require the existing public footpath to be kept open during construction (DC 28), because these are covered by other legislation. Nor is it necessary to require a further travel plan (DC 20), because the interim plan already submitted is adequate. It would also not be reasonable to seek to control 'ransom strip' arrangements (DC 28), because this is capable of resolution by agreement between the respective land owners. None of these suggestions therefore meet the tests in NPPF paragraph 206
186. Turning to the other draft conditions suggested by the parties, it is not appropriate to require accordance with any of the submitted plans other than that relating to the proposed access (DC 2), because the other plans are illustrative; there is no evidence that alternative details could not be acceptable. There is also no need for a condition limiting the number of dwellings (DC 3), because any number exceeding that stated in the application would fail to accord with the outline permission. A condition requiring accordance with 'Secured by Design' (DC 8) would exceed the requirements of the relevant policies, and would therefore be unreasonable.
187. A requirement relating to contamination (DC 9) would be unreasonable, because the appellants' existing study indicates that the risk is very low. A construction method statement (DC 10) is not essential, because the appeal site has ample space to accommodate construction activities and vehicles, without adverse effects on nearby residents or highways, and any such effects can be controlled by other means. The suggestion of a construction traffic management plan (DC 27) duplicates that request, and fails for similar reasons.

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<sup>109</sup> Doc. J3: Council/appellants' draft conditions

188. The Council's suggested condition relating to housing mix (DC 11) is too vague to be readily intelligible or enforceable, and is not necessary in the light of SOCS Policy CSH4. Given the site's low ecological potential, biodiversity gains could be achieved merely through the provision of new landscaping; a requirement for a biodiversity mitigation and enhancement strategy (DC 13) is therefore excessive. Highway drainage (DC 14) can be dealt with as part of the surface water drainage details for the site as a whole. Landscape management (DC 16) is fully covered by the S.106 agreement.
189. The provision of car parking (DC 17) is already covered by the estate roads condition. Provision for cycle parking (DC 26) would be better secured at the reserved matters stage. In the light of the Written Ministerial Statement (WMS) regarding housing standards, of March 2015, the Lifetime Homes scheme (DC 18) is no longer supported by Government policy; such matters are now dealt with through Building Regulations and the National Technical Standards. An archaeological evaluation, involving extensive trial trenching across the whole of the site, has already been carried out, and thus the suggested conditions (DCs 19 and 21) requiring a repeat of that exercise, would be unreasonable. Travel information packs (DC 29) are already proposed in the Interim Travel Plan.
190. For these reasons, the above conditions suggested by the Council would fail the relevant tests. The fact that the appellants might be willing to accede to conditions that are unnecessary or unreasonable does not make them acceptable. These conditions are therefore not recommended to be imposed in relation to the appeal proposal.

### **Planning Balance and Overall Conclusion**

191. The proposed development would conflict with Policies G2 and G4 of the adopted SOLP, relating to the protection of the countryside, and is not supported by the SOCS's strategic policies. Permission can only be granted if the scheme's lack of accordance with the development plan is outweighed by other material considerations.
192. However, one of the material considerations is the agreed shortfall in the 5-year housing land supply. As a result of that shortfall, it is common ground that the 'tilted balance' provisions of NPPF paragraph 14 are applicable. Having regard to the silence of the SOCS on housing allocations below strategic level, the absence of the intended DPDs, and the out-datedness of the SOCS housing policies, in terms of NPPF paragraph 49, I agree that the tilted balance should apply. In these circumstances, paragraph 14 indicates that permission should only be refused where the development's adverse impacts would outweigh its benefits significantly and demonstrably.
193. In the present case, the benefits to which I consider that positive weight should be given, as identified above, are the addition of 120 dwellings to the local housing stock, including 40% affordable housing, plus construction activity, support for the local economy, new public open space and play areas, and improvements to local footpaths. Although some of these are common to most housing developments, they nevertheless count as benefits because the development now proposed would be additional to other planned and committed sites. Together, these items would be likely to have a fairly significant beneficial impact on the local community.

194. On the other side of the balance, the adverse impacts suggested by the Council and other objectors have not been demonstrated by the evidence. Although the site is greenfield land, it is not part of any valued landscape, and the development would not cause any significant visual harm. The loss of higher-quality agricultural land would also be small. The development would be reasonably well integrated, and although its connections with the village have some shortcomings, these could be overcome by conditions.
195. The loss of land from the countryside would conflict with Policy NP1 of the draft BNhP, but although that plan is well advanced, it does not yet form part of the development plan. If it does become made, the BNhP will commit Benson to a substantial level of housing growth on other sites, exceeding the village's own local requirements, and those who have prepared the draft plan on this basis are to be commended for this. In the light of the efforts that the village has already made, it would be understandable that some local people might feel let down if the appeal decision were to allow further development in Benson, over and above the draft plan's policies. But nonetheless, on the evidence put to this inquiry, South Oxfordshire as a whole has a housing land shortfall, and although SODC is clearly making considerable efforts to put its new local plan in place, the end of that process is still some way off. If and when the BNhP is made, it may benefit from the protection given in the December 2016 WMS on neighbourhood planning, but while it remains a draft plan, that WMS does not apply.
196. In the light of all these considerations, I conclude that the limited harm resulting from the loss of the appeal site as open countryside, and the resulting conflict with draft Policy NP1, does not significantly or demonstrably outweigh the development's benefits. Neither are there any specific NPPF policies that indicate the development here should be restricted. The proposed development therefore benefits from the NPPF's presumption in favour of sustainable development.
197. Together, these material considerations outweigh the identified conflict with the development plan. It follows that the appeal should be allowed.

### **Formal Recommendation**

198. For the reasons set out in this report, I recommend that the appeal be allowed, subject to the conditions set out in the schedule at Annex 3.

*John Felgate*

INSPECTOR

## **ANNEX 1: APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Robin Green, of Counsel                      Instructed by the Solicitor to the Council

He called:

Mr Peter Radmall                                  Consultant Landscape Architect  
MA BPhil CMLI

Ms Tracy Smith                                    Principal Appeals Officer  
BA(Hons) MRTPI

### FOR THE APPELLANT:

Mr Sasha White QC                              Instructed by Ms J Coppock of Carter Jonas LLP  
and Ms Anjoli Foster

They called:

Mr Tony Kernon                                  Kernon Countryside Consultants  
BSc(Hons) MRICS FBIAC

Mr Phil Brady                                     Peter Brett Associates  
BEng(Hons) MHIT MILT

Mrs Clare Brockhurst                          Tyler Grange Consultants  
BSc(Hons) DipLA FLI

Mr Huw Mellor                                    Carter Jonas LLP  
BA(Hons) MRTPI

### INTERESTED PERSONS:

Ms Maggie Winters	Benson Patients Panel
Mr Michael Goss	Local resident
Mr Denis De Beger	The Bensington Society
Mr Paul Day	Local resident
Mr Peter Eldridge	Local resident
Cllr Phillip Murray	Benson Parish Council
Mr David Rushton	Benson Neighbourhood Plan Steering Group
Cllr Ian Glynn	Berrick Salome Parish Council

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## ANNEX 2: INQUIRY DOCUMENTS

### CORE DOCUMENTS AGREED PRIOR TO THE INQUIRY (set of 2 black ring binders)

#### Policy and related planning documents:

CD1	(not used)
CD2	SODC Core Strategy, Dec 2012
CD3	SODC 'Local Plan 2011', Jan 2006
CD4	SODC draft Local Plan – 'publication version' (submission) , October 2017
CD5	SODC draft Local Plan (Stage 4) – '2 <sup>nd</sup> Preferred Options', March 2017
CD6	SODC draft Local Plan (Stage 3) – 'Preferred Options', June 2016
CD7	SODC draft Local Plan (Stage 2) – 'Refined Options', Feb 2015
CD8A	SODC 5-Year Housing Land Supply, May 2017
CD8B	SODC Annual Monitoring Report, Oct 2017
CD9	Benson Neighbourhood Plan, October 2017 (with Appendices A-L)
CD10	SODC Draft SPD: S.106 Planning Obligations, revised August 2017
CD11	SODC Reg 123 CIL List, August 2017

#### Landscape documents:

CD12	Guidelines for Landscape and Visual Impact (GLVIA), 3 <sup>rd</sup> edition
CD13	'Approach to Landscape Character Assessment' – Natural England, Oct 2014
CD14	SODC Large Villages Capacity Assessment – Kirkham/Terra Firma, 2015
CD15	SODC South Oxfordshire Landscape Assessment – Atlantic Consultants, 1998
CD16	'Independent review of Housing in England's AONBs' – CPRE, Nov 2017
CD17	North Wessex Downs AONB Position Statement: Housing, Oct 2012
CD18	Development Affecting the Setting of the Chilterns AONB - Chilterns Conservation Board, June 2011
CD19	Guidance for Assessing Landscapes for Designation – Natural England, 2011

### ADDITIONAL CORE DOCUMENTS TABLED DURING THE INQUIRY (blue folder No. 1)

#### Planning history: other Benson sites\*:

CD20	'BEN 1(1)': Appeal decision APP/Q3115/A/14/2222595, June 2015
CD21	'BEN 1(2)': application P16/S1139/O - officers' report, 8 June 2016
CD22	'BEN 1(2)': application P16/S1139/O - officers' report, 29 June 2016
CD23	'BEN 1(2)': application P16/S1139/O - planning permission, 18 January 2018
CD24	'BEN 1(2)': application P16/S1139/O - plans
CD25	'BEN 2': application P17/S3952/O - draft report, February 2018
CD26	'BEN 3/4': application P17/S1964/O - draft report, 7 March 2018
CD27	'BEN 3/4': permission P17/3955/FUL (roadworks), 19 Feb 2018; plus officers' report and plans
CD28	'BEN 3/4': application P17/S1964/O – Agricultural and soil report, Apr 2017

#### The appeal site ('BEN 5')\*:

CD29	Application P16/S3441/O: officers' report, 24 May 2017
CD30	Application P16/S3441/O: Planning Committee minutes, 24 May 2107
CD31	Application P16/S3441/O: refusal notice, 26 May 2017

#### Planning history: South Oxfordshire general\*:

CD32	Land at Crowell Rd, Chinnor – appeal APP/Q3115/W/14/3001839, Oct 2015
CD33	<i>SODC v SoS and Cemex Properties</i> , 19 May 2016; [2016] EWHC 1173 (Admin)

**ADDITIONAL CORE DOCUMENTS TABLED AFTER THE INQUIRY** (blue folder No. 1)

CD34 BNhP Examiner's Report, 4 April 2018  
CD35 BNhP Examiner's Report (Addendum Sheet), 13 April 2018

**THE APPELLANTS**

**Proofs of Evidence**

H Mellor Proof - planning (and bound-in Appendices)  
C Brockhurst Proof – landscape  
C Brockhurst Appendices  
C Brockhurst Summary  
T Kernon Proof – agriculture  
T Kernon Appendices  
T Kernon Summary  
P Brady Proof – transport  
P Brady Appendices

**Additional documents** (blue folder No 2)

APP/1 List of appearances  
APP/2 Opening submissions  
APP/3 Section 106 agreement, dated 13 Feb 2018  
APP/4 Summary sheet of S.106 main items  
APP/5 Agricultural quality – comparison between BEN 1-5 sites  
APP/6 Natural England Guide to assessing proposals on agricultural land, Jan 2018  
APP/7 Email from Alison Galbraith of Terra Firma, dated 16 Feb 2018 – re Large Villages Capacity Study  
APP/8 Plan No. 38409/5502/003: Proposed access, overlaid with Framework Plan  
APP/9 Chronology of decisions on BEN 1-5 sites  
APP/10 Note on PPG changes re neighbourhood planning – Tetlow King, 22 Feb 2018  
APP/11 Closing submissions  
APP/12 Deed of Variation, dated 21 March 2018  
APP/13 Amended Deed of Variation, received 26 March 2018  
APP/14 Letter attached to email from Mr Mellor, dated 20 April 2018  
APP/15 Letter from Mr Mellor dated 30 April 2018

**THE COUNCIL** (blue folder No 3)

**Proofs of Evidence**

T Smith Proof – planning (and bound-in Appendices)  
P Radmall Proof – landscape (and bound-in Appendices)

**Additional documents**

COU/1 Opening submissions  
COU/2 *Wainhomes v Sos and others*, 25 March 2013; [\[2013\] EWHC 597 \(Admin\)](#)  
COU/3 Closing submissions  
COU/4 Email from Ms Smith dated 20 April 2018  
COU/5 Email from Ms Smith dated 3 May 2018

**JOINT DOCUMENTS** (blue folder No 4)

- J/1 Statement of Common Ground
- J/2 Core Documents list
- J/3 Draft conditions list
- J/4 Additional draft condition – ‘safe routes to school’
- J/5 Key plan showing Benson village, local facilities, and allocated sites

**OTHER INTERESTED PERSONS** (blue folder No 5)

**Cllr Murray**

- OP/1 Statement on behalf of BPC and the BNhP Group
- OP/2 Email from OCC re Benson Edge Road
- OP/3 Email from Turley Associates re Benson Edge Road
- OP/4 OCC comments to BNhP Examination, January 2018
- OP/5 *Woodcock Holdings Ltd v SoS and Mid Sussex*, 1 May 2015; [\[2015\] EWHC 1173 \(Admin\)](#)

**Mr Rushton**

- OP/6 Plan of Benson village centre
- OP/7 Plan of Benson ‘Edge Road’ route
- OP/8 Email from OCC dated 12 Feb 2018 re Benson edge road
- OP/9 OCC consultation response on appeal application, 19 Dec 2016
- OP/10 OCC consultation response on BEN 3/4 application, 15 Feb 2018
- OP/11 Extract from BEN 3/4 Transport report
- OP/12 Extracts from traffic survey queue length figures
- OP/13 Photos showing visibility at Church Road/A4074 junction
- OP/14 Extracts from traffic modelling figures
- OP/15 Extracts from traffic forecast figures
- OP/16 Extract from Chalgrove ‘Movement and Transport Infrastructure’, July 2016
- OP/17 Technical Note by Aecom, from Chalgrove Airfield TIA, April 2009

**Benson Parish Council**

- OP/18 Letter from BPC dated 26 April 2018

**Other submissions**

- OP/19 Ms Winters – speaking notes
- OP/20 Mr Eldridge – speaking notes
- OP/21 Letter from Mrs Sarah Foster, dated 19 Feb 2018
- OP/22 Written submission from Dionne Simpson and 7 other local residents, dated 20 Feb 2018

\* Some documents in this list have been re-numbered by the Inspector, after the inquiry, for ease of reference

### **ANNEX 3: RECOMMENDED CONDITIONS**

- 1) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") of the development, shall be submitted to and approved in writing by the local planning authority before any development takes place, and the development shall be carried out as thus approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 18 months from the date of this permission.
- 3) The development shall commence not later than whichever date is the later of either:
  - (a) 3 years from the date of this permission; OR
  - (b) 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The proposed vehicular access to the development shall be constructed in accordance with the approved plan No 38409/5502/001, Revision A. The access shall incorporate visibility splays of 2.4m x 118m to the west, and 2.4m x 141m to the east, as shown on that approved drawing. Thereafter, the access shall be retained as built, and the visibility splays shall be kept clear of obstruction above a height of 600mm from the carriageway level.
- 5) Before the proposed new vehicular access to the site is brought into use, other than for construction purposes, the existing field access onto Watlington Road shall be permanently closed, and the highway verge reinstated, in accordance with details to be submitted to the local planning authority and approved in writing.
- 6) The details of layout to be submitted under condition 1 shall include details and specifications of all proposed estate roads, driveways, parking spaces, turning areas, footpaths, cycleways, and related infrastructure within the site, together with a timetable for the provision of these facilities. No new dwelling shall be occupied until the highways, footways and related facilities to serve that dwelling have been constructed, at least to base course, and made available for use, in accordance with the details and timetable thus approved.
- 7) No development shall take place until a scheme has been submitted to the local planning authority and approved in writing, for the upgrading and integration into the development of the existing public right of way No PROW No 125/12/10, from Watlington Road to Brook Street, and the connecting path from this to Blacklands Road. The scheme shall include details of surfacing, fencing, lighting and landscaping, together with a timetable for the implementation of these works. No new dwelling shall be occupied other than in accordance with the timetable and other details thus approved.
- 8) Prior to the occupation of the first dwelling, a Safer Routes Study shall be carried out in accordance with details to be submitted to the local planning authority and approved in writing. The Study shall include proposals for improvements to the existing pedestrian and cycle routes from the site to local facilities including Benson Primary School, Benson Village Hall, and Benson village centre, focussing especially on the needs of children and the less mobile. The study shall also include an implementation timetable, which shall identify the numbers of dwellings in the development that may be occupied in advance of the measures to be identified therein. No new dwelling shall be occupied other than in accordance with the timetable and other details thus approved.
- 9) No development shall be carried out until a scheme has been submitted to the local planning authority and approved in writing, setting out a timetable and all necessary detailed arrangements for the implementation of the Interim Travel Plan dated October 2016. The measures set out in 'Section 4: Supporting Measures and Action Plan' and 'Section 5: Management and Delivery Plan' of the Travel Plan shall be carried out in accordance with the timetable and details thus approved.

- 10) No development shall be carried out until a scheme of sustainable surface water drainage has been submitted to the local planning authority and approved in writing. The scheme shall broadly accord with the 'Surface Water Management Strategy' contained in the Flood Risk Assessment report by forge Engineering, dated October 2016, and shall include details of the proposed arrangements for the long-term management and maintenance of the proposed surface water drainage system. No dwelling shall be occupied until the surface water drainage infrastructure to serve that dwelling has been installed and brought into use in accordance with the details thus approved. The system shall thereafter be managed and maintained as approved.
- 11) No development shall be carried out until details of the proposed foul drainage system have been submitted to the local planning authority and approved in writing. The details to be submitted shall include the proposed arrangements for the long-term management and maintenance of the foul drainage system. No dwelling shall be occupied until the foul drainage infrastructure to serve that dwelling has been installed and brought into use in accordance with the details thus approved. The system shall thereafter be managed and maintained as approved.
- 12) No development shall be carried out until a scheme for the provision of fire hydrants has been submitted to the local planning authority and approved in writing. The details to be submitted shall include the proposed arrangements for the fire hydrants' long-term management and maintenance. No dwelling shall be occupied until the fire hydrants to serve that dwelling have been installed and brought into use in accordance with the details thus approved. All fire hydrants shall thereafter be managed and maintained as approved.
- 13) No above-ground construction work on any new dwelling shall be carried out until a noise mitigation scheme has been submitted to the local planning authority and approved in writing. The scheme shall show how the proposed dwellings will meet the following internal noise levels:
  - 07.00 – 23.00 (bedrooms and living areas): 35 dB  $L_{Aeq, 16 \text{ hour}}$
  - 23.00 – 07.00 (bedrooms only): 30 dB  $L_{Aeq, 8 \text{ hour}}$The noise mitigation scheme shall also include details of any mechanical ventilation systems which may be necessary to meet these levels, together with the details of any noise emissions resulting from such ventilation systems. The development shall thereafter be carried out in accordance with the details thus approved.
- 14) The details of landscaping to be submitted under Condition 1 shall include details of all proposed boundary treatments, and a timetable for the implementation of all proposed hard and soft landscaping works. The landscaping works shall be carried out in accordance with the timetable thus approved. If, within a period of 5 years from the date of planting, any new tree, hedge, shrub or plant shall die, or be removed or destroyed, or become seriously damaged or diseased, it shall be replaced with another of the same species, in the same position, within the next available planting season.



# Ministry of Housing, Communities & Local Government

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## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

## **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS**

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

### **Challenges under Section 288 of the TCP Act**

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

## **SECTION 2: ENFORCEMENT APPEALS**

### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

## **SECTION 3: AWARDS OF COSTS**

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

## **SECTION 4: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.