

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 78

**APPEAL CONCERNING LAND AT THAMES FARM,
READING ROAD, SHIPLAKE, OXFORDSHIRE**

PINS REFERENCE: APP/Q3115/W/16/3161733

**CLOSING SUBMISSIONS ON BEHALF OF
SOUTH OXFORDSHIRE DISTRICT COUNCIL**

1. At the outset of this inquiry the following were identified as the main issues in the appeal:
 - (1) For the purposes of applying development plan policy, the housing land supply.
 - (2) The effect of the development on the character and appearance of the area.
 - (3) The effect of the development on highway safety, including pedestrians and cyclists.
 - (4) Whether, having regard to all matters in the planning balance, the development would be sustainable development.

Housing land supply

2. The Council accepts that it cannot demonstrate a five-year supply of specific deliverable housing sites¹, and for this reason the relevant policies for the supply of housing² in the South Oxfordshire Local Plan 2011 (“SOLP”) and the South Oxfordshire Core Strategy (adopted December 2012) (“SOCS”) are deemed by para 49 of the National Planning Policy Framework to be out of date. Following the publication of the Written Ministerial Statement on Neighbourhood Planning on 12 December 2016, the housing supply policies of the Joint Henley and Harpsden Neighbourhood Development Plan will not be deemed out of date provided there is a

¹ Planning SoCG para 7.4; proof and supplementary proof of Peter Canavan.

² Meaning housing supply policies, or policies by which acceptable housing sites are to be identified and the five-years supply target is to be achieved (see paras 57, 82 of *Suffolk Coastal DC v Hopkins Homes Ltd* [2017] UKSC 37 (CD7.5)). The relevant policies for the supply of housing as agreed between the parties are listed at para 7.6 of the Planning Statement of Common Ground.

three-year supply of housing sites. Whether there is such a supply depends on the relevant housing requirement and the sites identified by the Council in its evidence.

3. As to the requirement, paragraph 159 of the National Planning Policy Framework (“NPPF”) indicates that local planning authorities should prepare a Strategic Housing Market Assessment to assess their full housing needs. The most recent assessment of housing needs in the Council’s area housing is found in the Oxfordshire Strategic Housing Market Assessment 2014 (“SHMA”) (CD2.3). The main parties agree that the SHMA should be used in determining the district’s housing land supply³.
4. Guidance on housing (and economic development) needs assessments was published by the Government in March 2014⁴. Its purpose is to support “local planning authorities in objectively assessing and evidencing development needs for housing (both market and affordable); and economic development (which includes main town centre uses). The assessment of housing and economic development needs includes the Strategic Housing Market Assessment requirement as set out in the National Planning Policy Framework”⁵. This, therefore, is the Government’s guidance on how local authorities should determine their full objectively assessed need for housing (“FOAN”).
5. As is plain from the following extracts from the guidance, the assessment of FOAN in accordance with the recommended methodology is not simply an exercise in arithmetic; it calls repeatedly for judgements to be made:
 - “Need for housing in the context of the guidance refers to the scale and mix of housing and the range of tenures that is likely to be needed in the housing market area over the plan period ... [this] does not require local councils to consider purely hypothetical future scenarios, only future scenarios that could be reasonably expected to occur”⁶).

³ Planning SoCG para 7.4.

⁴ With minor amendments made in 2015.

⁵ Para 001 Reference ID: 2a-001-20140306.

⁶ Paragraph: 003 Reference ID: 2a-003-20140306.

- “Establishing future need for housing is not an exact science. No single approach will provide a definitive answer. ...”⁷.
- “Household projections published by the Department for Communities and Local Government should provide the starting point estimate of overall housing need. ... The household projection-based estimate of housing need may require adjustment to reflect factors affecting local demography and household formation rates which are not captured in past trends. ... As household projections do not reflect unmet housing need, local planning authorities should take a view based on available evidence of the extent to which household formation rates are or have been constrained by supply”⁸.
- “... plan makers may consider sensitivity testing, specific to their local circumstances, based on alternative assumptions in relation to the underlying demographic projections and household formation rates”⁹.
- “The housing need number suggested by household projections (the starting point) should be adjusted to reflect appropriate market signals, as well as other market indicators of the balance between the demand for and supply of dwellings”¹⁰.
- “Market signals are affected by a number of economic factors, and plan makers should not attempt to estimate the precise impact of an increase in housing supply. Rather they should increase planned supply by an amount that, on reasonable assumptions and consistent with principles of sustainable development, could be expected to improve affordability, and monitor the response of the market over the plan period”¹¹.
- “The total affordable housing need should then be considered in the context of its likely delivery as a proportion of mixed market and affordable housing developments, given the probable percentage of affordable housing to be delivered by market housing led developments. An increase in the total housing figures included in the local plan should be considered where it could help deliver the required number of affordable homes”¹².

⁷ Paragraph: 014 Reference ID: 2a-014-20140306.

⁸ Paragraph: 015 Reference ID: 2a-015-20140306.

⁹ Paragraph: 017 Reference ID: 2a-017-20140306.

¹⁰ Paragraph: 019 Reference ID: 2a-019-20140306.

¹¹ Paragraph: 020 Reference ID: 2a-020-20140306.

¹² Paragraph: 029 Reference ID: 2a-029-20140306.

6. The SHMA was produced in accordance with this guidance.¹³
7. There was no issue between the parties' planning witnesses¹⁴ on the need, when assessing FOAN, to exercise judgment on a number of matters. Depending on the judgments made, the figure for the FOAN will vary, as the table at page 181 of the SHMA¹⁵ shows.
8. Before looking at the parties' estimates of FOAN, it is worth bearing in mind the following words from the *Barker Mill Estates* judgment (CD7.2):

“24 ... In any case where an expert tribunal such as a planning Inspector is the fact-finding body, the threshold for *Wednesbury* unreasonableness is a high and difficult hurdle for a claimant to surmount. This is greatly increased in most planning cases because the Inspector is not simply determining questions of fact, but is also concerned with making a planning judgment or a series of planning judgments. Because a substantial degree of judgment is involved, there will usually be scope for a fairly broad range of possible views by different decision-makers presented with the same materials, none of which could be categorised as unreasonable in the *Wednesbury* sense (*Newsmith* at paragraph 7).”
9. Much the same can be said of the judgments that local authorities (with the assistance of expert consultants) must make in assessing the FOAN for their areas in accordance with the Planning Practice Guidance. Until the SHMA is examined in the plan-making process, it is submitted that the judgments in it should be accepted unless clearly shown to be wrong.
10. The SHMA suggests an FOAN of 725-825 dwellings per annum¹⁶. The Council has accepted the midpoint figure, 775 dpa, and in none of the appeals in which this figure

¹³ See pp 5-9.

¹⁴ Mr Canavan in re-examination; Mr Durrant in cross-examination.

¹⁵ CD2.3; table reproduced at p 5 of Mr Canavan's proof.

¹⁶ The reasons for this range are given in the SHMA at paras 9.48-9.50.

was identified as the FOAN was any concern expressed by the Inspector.¹⁷ As Mr Canavan stated in evidence, the use of the SHMA midpoint figures has also been accepted by Inspectors in other districts in Oxfordshire. If 775 dpa figure is the correct figure for the purposes of this appeal, then even on the appellant's assessment of dwelling supply, 3958,¹⁸ and adding the 20% buffer to both the shortfall and the future requirement, there is a three-year housing land supply:

Shortfall¹⁹ – 1253

Future requirement – 5 x 775 = 3875

Shortfall + requirement = 5128

Add 20% buffer to 5128 = 6154

Supply/overall requirement x 5 = 3958/6154 x 5 = 3.2 years

11. In his rebuttal proof, Mr Durrant put forward three alternative scenarios to arrive at three alternative figures for the district's FOAN²⁰: 825 dpa (the top of the SHMA range); 965 dpa (the SHMA figure derived solely from the affordable housing analysis); and 995 dpa (825 + 170 dpa being Mr Durrant's assessment of the district's share of Oxford City Council's need).
12. In contrast, in his main proof Mr Durrant had identified the FOAN as 825 dpa²¹, without suggesting any higher figure. It was only after the Council released its updated five year housing land supply statement²² that Mr Durrant came forward with new, higher figures. Looking at his assessments of the Council's housing land supply in his rebuttal proof²³, a cynical observer might conclude that this was because his assessment of supply against a FOAN of 825 dpa showed a 2.9 year supply, leaving little margin for error (131 dwellings short).

¹⁷ CD5.2 (paras 22-25); CD5.3 (paras 9-10); CD5.4 (paras 7-8).

¹⁸ See Mr Durrant's rebuttal proof para 8.92.

¹⁹ Mr Canavan's supplementary proof section 6.

²⁰ Rebuttal proof paras 2.4 – 2.6.

²¹ At paras 5.34 and 7.1.

²² Appended to Mr Canavan's supplementary proof.

²³ Tables DPSD19-DPSD21 at pages 26-27 of the rebuttal.

13. The figure of 965 dpa was put forward orally and in writing²⁴ by Mr Durrant without any conviction. And given his acceptance in cross-examination that the FOAN did not need to include the entirety of the annual delivery figure required to meet affordable housing needs, it is obvious why he said the figure was no more than arguable. It was, he conceded, a matter of judgment. When pressed on what he thought the FOAN was he commended the figure of 825, to which he then added 170 dpa representing his assessment of the district's share of Oxford City Council's need. Ultimately, he did not choose 965 dpa as the appropriate FOAN and there is no need to consider it further.
14. That leaves the highest figure of 995 dpa (a figure not found in the SHMA). Mr Canavan explained why it was not yet appropriate to include provision for Oxford City Council's unmet need, given the lack of agreement on, or determination of, the scale of the City Council's unmet need, the district councils' collective and individual share of that need, the strategy for meeting that need, and the timing for meeting that need. This is quintessentially a matter of judgment for the Council: the guidance does not require local authorities to make provision for hypothetical or speculative situations, and that is the situation here.
15. In summary, then, the SHMA concluded that the district's FOAN fell in the range 725-825 dpa. The Council's choice of the midpoint is reasonable; has not been questioned in any previous appeal; and has been adopted by other authorities in Oxfordshire. It is no more "arbitrary" than Mr Durrant's choice of the top of the range. The figure of 965 dpa appears in the SHMA, but only in one of the steps leading to the assessment of the FOAN, and ultimately it was not the figure Mr Durrant chose to support. The highest figure, 995 dpa, does not feature in the SHMA at all, and assumes a degree of certainty about the apportionment of Oxford City Council's housing need that is not justified. It is submitted therefore that the Council's figure of 775 dpa is an appropriate assessment of FOAN for the purposes of this

²⁴ Para 2.4 of Mr Durrant's rebuttal says "It could be argued that SODC's full objectively assessed housing need is dwellings per year. If not, it is certainly 825 dwellings per year".

inquiry. If this is accepted, even on the appellant's approach to the identified supply²⁵ there is a three year housing land supply.

16. In the event, however, that a different conclusion is reached, it would be necessary to consider the identified supply in more detail. I shall therefore address the supply-side arguments raised by Mr Durrant in his rebuttal.

When to apply the buffer

17. Para 47 of the NPPF, second bullet, states that local authorities should:

“identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land”

18. The 20% buffer is a response to persistent under-delivery. Typically, where there has been under-delivery of housing in a local authority's area, the shortfall in delivery is added to the first five years of the authority's housing requirement (“the Sedgefield method”). This approach to under-delivery is not spelt out in the NPPF and has emerged over the years on a case by case basis. There is no reason to suppose that when para 47 of the NPPF was drafted the authors intended that the 20% buffer should be applied in circumstances where the entirety of the backlog (which in the event of persistent under-delivery is likely to be significant) was to be added to the five year housing requirement as well. The addition of a 20% buffer on top of the shortfall would amount to a form of “double counting”, which in some cases is likely to lead to unrealistic housing requirements. Given the stated intention that the buffer should provide “a realistic prospect of achieving the planned supply”, an

²⁵ Mr Durrant's para 8.92 gives the supply figure as 3958. If an annual requirement of 775 was used in place of 825, there would be a 3.2 years' supply.

interpretation that may generate an unrealistic requirement should not readily be accepted.

19. As with so many other ambiguities in the NPPF, there is no guidance that assists. There are divergent appeal decisions, including by the Secretary of State, and the point is left to be argued in appeal after appeal. As the responsibility in para 47 to identify and update annually a supply of housing falls on local authorities, it is submitted that provided they adopt a reasonable approach, the guidance will be satisfied. In the present case the Council has added a 20% buffer to its future five-year requirement, but not to the shortfall (which is also to be met in the first five years). This is a reasonable approach and there is no compelling reason why it should be set aside.

Lead-in times and build-out rates

20. Inevitably, the prediction of future lead-in times and build-out rates requires judgment, and can never be certain. Mr Canavan has provided in appendix B to his supplementary proof a delivery assessment schedule, and in evidence explained the basis for the Council's assumptions, based on its experience across the district and input from Arup. Mr Durrant's position is more pessimistic, but not radically so. The appellant's evidence does not suggest that the Council's assumptions are unreasonable and in this case there is no compelling reason to reject them.

C2 Developments

21. In section 8 of his rebuttal Mr Durrant discounts 151 C2 "dwellings" from Churchfield Lane, Benson; Former Jet Garage, Henley; Henley Youth Club, Henley; The Workshop, Newtown Road, Henley; and Eastfield House Care Home, Whitchurch. He does so for the reasons given in section 6 of his proof.
22. Guidance in the Planning Practice Guidance on housing and economic land availability assessment states:

"How should local planning authorities deal with housing for older people?"

Older people have a wide range of different housing needs, ranging from suitable and appropriately located market housing through to residential institutions (Use Class C2). Local planning authorities should count housing provided for older people, including residential institutions in Use Class C2, against their housing requirement. The approach taken, which may include site allocations, should be clearly set out in the Local Plan. ...”

23. Mr Durrant interprets this as saying that if a Local Plan (which may predate the PPG) does not set out the approach taken to counting C2 housing, the local authority is prohibited from counting C2 housing against its housing requirement. This is not what the guidance says. It advises local authorities to do two things: count C2 housing against their housing requirements and set out the approach they have taken to this in their local plans. The fact that there is a pre-existing local plan which has not caught up with the guidance is no reason to say that C2 housing must be ignored in assessing housing land supply. Given that the Council must include the needs of older people in its assessment of housing need²⁶, it would be perverse to exclude housing for the elderly from the supply. Mr Durrant’s approach should be rejected.
24. The Council discounts the total supply of C2 housing units by 20%. Although this is an untested approach, in the absence of anything more compelling from the appellant it is submitted that it not unreasonable.

Individual site assessments

25. Footnote 11 to para 47 of the NPPF gives this definition of “deliverable”:

“To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable. Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within five years, for example they will

²⁶ As was done in section 8 of the SHMA.

not be viable, there is no longer a demand for the type of units or sites have long term phasing plans.”

26. As a matter of ordinary language, an eventuality does not have to be certain or likely to be a “realistic prospect”. If there is a fair chance that something might happen, even if it is not likely, that is a “realistic prospect”²⁷.
27. The parties’ witnesses have set out their approach to the deliverability of the sites referred to in section 8 of Mr Durrant’s rebuttal. There was little in the way of factual dispute, more differences of judgment. It is submitted that the Council’s assessments are reasonable and should be accepted in the absence of good evidence that it has got something wrong.

Conclusions on housing land supply

28. It is impossible in closing submissions to try to anticipate every permutation of the findings that might be made about the district’s housing requirements and the sites identified in the supply. Only a few headline points are possible.
29. First, as stated above, if the FOAN figure of 775 dpa is accepted as correct, then there is in excess of a three-year supply of housing sites, whichever party’s supply analysis is accepted.
30. If the FOAN is found to be 825 dpa, that would lead to a three-year requirement of 4089 dwellings (if the 20% buffer is added to both shortfall and future requirement)²⁸, or 3902 dwellings (if the 20% buffer is added just to the future requirement)²⁹. As the appellant assesses the Council’s supply as 3958 dwellings, the latter scenario would still result in the Council achieving a three-year supply, whatever view was taken about the appellant’s evidence.

²⁷ In *FE (Ethiopia) v SSHD* [2009] EWHC 1756 (Admin) HHJ Wacksman said at para 40 in relation to an immigration appeal decision that “The second problem with the formulation adopted in the decision letter is that it uses the word ‘would’ - but the ‘realistic prospect’ test connotes not certainty or even the likelihood of a different decision as to a real risk of persecution but simply the lesser hurdle connoted by the words themselves ‘a realistic prospect’”.

²⁸ Based on 3/5 of the five year requirement appearing as item F in Mr Durrant’s table DPDS19.

²⁹ Based on a requirement to 2022 of 5678 dwellings, of which 4125 is the future requirement and 1553 is the accrued shortfall. Three years’ supply = $3/5 \times ((4125 \times 1.2) + 1553) = 3901.8$.

31. If either 965 or 995 dpa was found to be the FOAN, the Council cannot show a three-year supply.

(2) The effect of the development on the character and appearance of the area

32. It is not necessary in these submissions to repeat the evidence on this issue, not because potential harm to character and appearance is unimportant but because the issue is one primarily of planning judgment informed by the site visit and the application documents.

33. The likely landscape and visual impacts of a similar scheme were assessed by the previous Inspector, and much of what he found still holds good. The differences between the parties are also relatively modest. Both sides agree that there would be an adverse impact on landscape and appearance, the question is how significant that impact would be.

34. In assessing Mr Griffiths's evidence, however, I would make two short points. First, as one of the authors of the illustrative scheme before the inquiry, his assessment of the potential visual and landscape effects of the scheme could not be independent or impartial, and in fairness he conceded that in cross-examination. Secondly, as he clarified in his oral evidence, his proof was written on the assumption that there would be lighting only at the crossing points.

35. While the current scheme includes some improvements on the scheme that went before, the changes are minor. It is submitted that there will still be a profound change in the character of the appeal site and enduring harm to the locality. The scheme will bring estate housing to the west of the A4155 for the first time, and the highway works necessitated by the proposed development will add further to the urbanising effect. These are significant and harmful consequences of the development and they merit significant weight.

(3) The effect of the development on highway safety, including pedestrians and cyclists

36. Chapter 6 of Manual for Streets (CD6.1) is concerned with street users' needs. Section 6.3 gives advice on the needs of pedestrians. Paragraph 6.3.7 begins: "Pedestrian

networks need to connect with one another. Where these networks are separated by heavily-trafficked roads, appropriate surface level crossings should be provided where practicable. ...” Paragraph 6.3.8 goes on to state:

“The specific conditions in a street will determine what form of crossing is most relevant. All crossings should be provided with tactile paving. Further advice on the assessment and design of pedestrian crossings is contained in Local Transport Notes 1/95 and 2/95 and the Puffin Good Practice Guide.”

This paragraph is followed by others addressing various aspects of pedestrian crossings.

37. Chapter 9 of Manual for Streets 2 (CD6.2) gives advice on junctions, crossings and accesses. Section 9.3 deals with crossings, and at para 9.3.1 states:

“General advice on the choice of crossing type and their design is given in Local Transport Notes 1/95 and 2/95 and in Chapter 6 of MfS1, which is complemented by the further advice in this section. While the focus is on pedestrian crossings the recommendations can also be applied in most instances to crossings designed for cyclists (other than zebra crossings). ...”

38. The Design Guide for Walking in Oxfordshire, adopted by Oxford County Council on 27 April 2017, “has been produced for developers, scheme designers, engineers and master planners to ensure an attractive and functional environment for walking that is available to all users” (para 1.1.1). Section 2.3 is headed Pedestrian Crossings and begins at para 2.3.1:

“All crossings should be designed with reference to LTN 1/95 – The Assessment of Pedestrian Crossings and LTN 2/95 The Design of Pedestrian Crossings (Department for Transport), which is updated periodically”.

39. Given this unanimity of approach, one might have thought the position was beyond argument: the design of a pedestrian crossing should follow LTN 1/95 (CD6.5) and LTN2/95 (CD6.6). Para 2.1 of LTN2/95 states: “Minimum distances for drivers’

visibility of crossings are set out in Table 1”. Table 1 then gives the relevant desirable and absolute minimum visibility measurements for different 85th percentile approach speeds.

40. As the parties’ highway witnesses have agreed that the preferred “x” distance at a pedestrian crossing is 2m, but 1.5m is an acceptable minimum³⁰, it is a straightforward matter determining if the requisite visibility will be available at the crossing, given known vehicle speeds. As to the relevant recorded speed for this purpose, section 3.1 of LTN 1/95 deals with site assessment and states at para 3.3.2: “The level of traffic flow should be assessed, particularly at peak flow periods of the day. Estimates of the proportion of particular classes of vehicles, such as heavy goods, and the number of public service vehicles in the vehicle flow can be useful. Vehicle speeds should be recorded at peak and off-peak periods. The measured speed of vehicles (for each direction) taken, say, 50 metres before the crossing site should be recorded and the highest 85 percentile speed used in the assessment. ...”. In this case that speed is 36.5mph.

41. Mr Cyples has assessed the required visibility at the proposed crossing in para 5.4.7 of his proof, supported by the calculations in his appendix B. Assuming no increase in traffic speed with the removal of vegetation, and adopting the preferred x distance of 2m, the desirable visibility is 86m and the absolute minimum visibility is 69.5m. If traffic speeds increase³¹ by only half the level estimated³², the desirable and absolute minimum visibility distances become 96m and 77m respectively. At the proposed crossing³³ the available visibility with the vegetation removed is 57.6m. Using a minimum x distance of 1.5m, the available visibility is 59m³⁴.

42. Mr Farmery has taken a different approach, for the reasons given in his rebuttal proof at paras 5.20 to 5.24 and 5.34. In short, he has used guidance on sight stopping distances in MfS2 chapter 10, although nowhere in that chapter are pedestrian crossings mentioned. Nor is chapter 10 referred to in the preceding chapter that deals

³⁰ Highway and Transport SoCG para 2.2(6).

³¹ See MfS fig 7.16 at page 89; MfS2 para 10.3.2.

³² See Mr Cyples para 5.4.5.

³³ Shown on drawing 3537/208 Rev B.

³⁴ Mr Farmery rebuttal para 5.31

specifically with crossings. He has taken this approach because (a) it was agreed by the local highway authority and (b) he considers LTNs 1/95 and 2/95 to be outdated. Unfortunately, this would not be the first occasion when the highway authority has simply got it wrong, and Mr Farmery's belief that the LTNs are outdated is plainly not shared by the authors of MfS, MfS2 or the highway authority itself.

43. Mr Cyples explained why the visibility requirements for crossings were different from the stopping distances dealt with in Chapter 10 of MfS2. Adequate visibility at a crossing is essential not merely to allow a driver time to stop, but also to allow pedestrians (who may be young and inexperienced, disabled, pushing a buggy, or infirm) time to judge whether or not to cross, and to give them time to make the crossing. The stopping site distances in chapter 10 of MfS2 take no account of this, which is perhaps not surprising as that chapter is concerned primarily with vehicles at junctions.
44. The result is that the proposed crossing will have inadequate visibility to the south. This is unacceptable. It is also the second occasion the appellant has come forward with a substandard proposal and it tends to suggest that providing adequate pedestrian links to Lower Shiplake is going to be difficult given the appeal site's location.
45. It is true that the accident record *at present* gives no particular cause for concern, but given that the survey of pedestrians crossing Reading Road in the vicinity of the proposed crossing in Mr Farmery's appendix 7 shows that only three such crossings were made over a two-day period, and none of those was during peak hours, there will be a significant increase in the number of pedestrians seeking to cross Reading Road if the appeal scheme goes ahead. In these circumstances there can be no justification for a proposed crossing with inadequate visibility. In NPPF terms, the residual cumulative impact of the development on pedestrian safety would be severe.
46. The other design deficiencies identified by Mr Cyples do not raise quite the same risk of injury, but nonetheless they demonstrate that for those who are mobility-impaired, reaching the services and facilities in Lower Shiplake will not be straightforward. Nor will cycling be a particularly attractive option for residents. These considerations raise further questions about the suitability of the development's location.

(4) Whether, having regard to all matters in the planning balance, the development would be sustainable development

47. The starting point in the balancing exercise is the development plan. In section 5 of his proof Mr Flood has gone through the relevant development plan policies to assess the extent to which they accord with the NPPF (read as a whole³⁵), and accordingly the weight to be attached to them. The fact that some of these are deemed to be out of date does not mean that they should be given little weight. Most are fully consistent with policies in the NPPF and can be given significant weight.
48. Furthermore, if the Neighbourhood Plan is found to be up to date, very significant weight can be given to it. But even if the housing policies in it were deemed to be out of date, given the importance attached in the planning regime to neighbourhood planning, a departure from the Neighbourhood Plan warrants very substantial negative weight³⁶.
49. On any view the appeal proposals are contrary to a number of policies in the existing and emerging development plan. Although the Council acknowledges the significant benefits that come from a market and affordable housing scheme of development, those benefits are clearly outweighed by the harm arising from breaches of the district's spatial strategy, adverse impacts on the character and appearance of the area, and the risk of injury to pedestrians.
50. For these reasons the Council invites dismissal of the appeal.

Robin Green

Cornerstone Barristers

16 June 2017

³⁵ The correct approach has recently been explained by the Court of Appeal in *Gladman Developments Ltd v Daventry District Council* [2016] EWCA Civ 1146 (CD7.3) at paras 6, 30-44.

³⁶ See *Crane v SSCLG* [2015] EWHC 425 (Admin) (CD7.4) at paras 1, 21-26, 31-32, 34-35, 57-79. As to whether the appeal scheme is in fact in breach of the Neighbourhood Plan, the reasoning in *Crane* at paras 36-55 is equally applicable to the relevant policies here: H1 and H4.