

Joan Desmond
West Oxfordshire District Council
Elmfield
Witney
OX28 1PB



By email only to: joan.desmond@westoxon.gov.uk

28 July 2021

Dear Joan,

APPLICATION NO: 21/02343/OUT

DESCRIPTION: Outline planning application with all matters reserved for up to 141 assisted extra care residential units (Class C2) and up to 32 affordable housing units (Class C3) along with associated communal facilities, parking, vehicular and pedestrian access, internal roads, public open space, landscaping, drainage and other associated infrastructure.

LOCATION: Land East Of Barns Lane, Barns Lane, Burford

Thank you for consulting the Cotswolds Conservation Board ('the Board') on this proposed development, which would be located within the Cotswolds National Landscape.

The applicant has acknowledged that the proposed development would constitute 'major development' in the context of paragraph 172 of the National Planning Policy Framework (NPPF). In effect, based on the definition of major development in footnote 55 of the NPPF, the applicant has acknowledged that the development merits this status by virtue of its nature, scale and setting, and its potential to have a significant adverse impact on the purpose of conserving and enhancing the natural beauty of the Cotswolds National Landscape.

Paragraph 172 of the NPPF states that planning permission should be refused for major development other than in exceptional circumstances and where it can be demonstrated that the development is in the public interest. As outlined below, we do not consider that there are exceptional circumstances or that the development would be in the public interest. We therefore object to the proposed development and recommend that planning permission should be refused.

Need

The applicant has relied heavily on district-wide, unconstrained housing need data and extrapolated this to the local level. As outlined in Appendix 1, below, this data should be given little weight in the planning decision.

The applicant has also relied heavily on data from the affordable housing register (i.e. Homeseeker Plus). As outlined in Appendix 1, below, this data (as presented in the applicant's supporting information) should also be given little weight in the planning decisions

The proposed development is not based on convincing, or robust, evidence of need specific to the settlement / parish or AONB sub-area. As such, it is not consistent with the West Oxfordshire Local Plan or the Cotswolds AONB Management Plan 2018-2023. It would also not be consistent with the conclusions of the Local Plan inspector's report.

Cotswolds Conservation Board

The Old Prison, Fosse Way, Northleach
Gloucestershire GL54 3JH
01451 862000
info@cotswoldsaonb.org.uk

The Cotswolds National Landscape is a designated Area of Outstanding Natural Beauty (AONB), managed and looked after by the Cotswolds Conservation Board.

cotswoldsaonb.org.uk

Chairman:
Brendan McCarthy
Vice Chair:
Rebecca Charley

Scope for developing outside the designated area or meeting the need for it in some other way

The applicant has failed to demonstrate that there is no scope for the proposed type and quantum of housing to be delivered outside the Cotswolds National Landscape or for the need to be met in some other way.

Detrimental effects

The undeveloped character of the site plays an important role in maintaining the rural setting of Burford and its important heritage assets, including in views from numerous locations. Developing the site would have a significant urbanising effect, which would be exacerbated by the access road extending beyond the eastern limits of the settlement boundary.

Tilted balance

We consider that the application of policies in the National Planning Policy Framework (NPPF) provide a clear reason for refusing the proposed development. As such, there should not be a 'tilted balance' in favour of granting planning permission. On the contrary, the major development status of the proposed development, in effect, provides a presumption against granting planning permission.

Further information is provided in Appendix 1, below.

If you have any queries regarding this response, please do get in touch.

Yours sincerely,

A handwritten signature in black ink that reads "John Mills". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

John Mills
Planning & Landscape Lead
john.mills@cotswoldsaonb.org.uk | 07808 391227

APPENDIX 1. SUPPORTING INFORMATION

MAJOR DEVELOPMENT TESTS

Context

The applicant has acknowledged that the proposed development constitutes ‘major development’ in the context of paragraph 172 of the National Planning Policy Framework (NPPF). Based on the requirements of paragraph 172, the local planning authority should not simply weigh all material considerations in a balance but should refuse planning permission unless they are satisfied that exceptional circumstances apply and that the development would be in the public interest.

Paragraph 172 outlines the assessments that must be undertaken when applications for major development are being considered:

- a) The need for the development, including in terms of any national considerations and the impact of permitting it, or refusing it, upon the local economy.
- b) The cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way.
- c) Any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.

As outlined below, we do not consider that the applicant has demonstrated that exceptional circumstances apply or that the development would be in the public interest.

Need

District-wide, unconstrained housing need data

In seeking to demonstrate that exceptional circumstances apply, the applicant has relied heavily on (unconstrained) district-wide housing need data with regards to both older persons housing need and affordable housing need, including extrapolating this data to the settlement or sub-area level. There are several fundamental flaws with this approach, as outlined below. As such, we consider this data should be given little weight in the planning decision.

The West Oxfordshire Local Plan (paragraph 5.39) specifies that *‘within the Cotswolds AONB, windfall housing proposals on undeveloped land adjoining built up areas will be particularly closely scrutinised and will only be supported where there is convincing evidence of a specific local need such as needs identified through a neighbourhood plan or affordable needs specific to a particular settlement, for example through a rural exception site’*.¹ This clearly indicates that ‘local’, in this context, means evidence that is specific to the relevant settlement / parish, not an extrapolation of district-wide data.

This requirement is reflected in Policy CE12 of the Cotswolds AONB Management Plan 2018-2023, which states that *‘development in the Cotswolds AONB’ should be based on robust evidence of local need arising within the AONB’*.²

¹ West Oxfordshire District Council (2018) *West Oxfordshire Local Plan* ([link](#)). Paragraph 5.39, which is supporting text for Policy H2 (Delivery of New Homes).

² Cotswolds Conservation Board (2018) *Cotswolds AONB Management Plan 2018-2023* ([link](#)). Policy CE12.

The Board's Housing Position Statement³ provides further relevant guidance, including differentiating between:

- unconstrained housing need and an appropriate level of housing provision within a national important protected landscape, such as the Cotswolds;
- district-wide housing needs and housing needs arising within the AONB, including needs specific to an individual settlement / parish.

In the West Oxfordshire Local Plan 2031 Inspector's Report, the Planning Inspector, Mr Rivett, made the following comment regarding the District Council's evidence on housing and demography in Burford (i.e. 'the Peter Brett report'):

- *It merely indicates the likely implications of various levels of housing growth for the subarea's population and resident labour force. Neither it nor any other substantive evidence before the examination identifies a housing requirement figure for the Burford – Charlbury sub-area which appropriately reflects needs, constraints, relevant national policy and the key issues for development and transport.*⁴

The same principle applies to the applicant's supporting evidence.

Furthermore, the Planning Inspector stated that:

- *In the absence of a specific housing need figure for the sub-area, it is not possible to identify that new dwellings, over and above existing completions and commitments, are as a matter of principle, necessary specifically in the context of the AONB or the Burford–Charlbury sub-area.*⁵

As far as we are aware, there is still no official, specific housing need figure for the sub-area. As indicated above, extrapolating district-wide data does not address this issue. Therefore, Mr Rivett's comments still stand.

It is important to note that planning permission has already been granted, in 2017, for a development of 91 dwellings (50% 'affordable'), 78 assisted / supported living apartments and a 90-bed care home in Burford.⁶ This further undermines the applicant's assertion that exceptional circumstances apply. For example, it calls into question the applicant's assertion that the proposed, additional 141 extra care residential units would meet a need arising with Burford or the Burford-Charlbury sub-area.

³ Cotswolds Conservation Board (2021) *Housing Position Statement* ([link 1](#) (main document), [link 2](#) (appendices)).

⁴ The Planning Inspectorate (2018) *Report on the Examination of the West Oxfordshire Local Plan 2031*. Paragraph 218.

⁵ The Planning Inspectorate (2018) *Report on the Examination of the West Oxfordshire Local Plan 2031*. Paragraph 219.

⁶ Land west of Shelton Road. Appeal Ref: APP/S3125/W/14/3139687 ([link](#)) and Planning Application Ref: 15/00166/OUT ([link](#)).

Affordable housing need specific to Burford and the Burford-Charlbury Sub Area

In seeking to demonstrate affordable housing need, the applicant has relied heavily on data from the West Oxfordshire District Council's affordable housing register (i.e. Homeseeker Plus).

However, as outlined in the Board's Housing Position Statement, such data should not be used explicitly as a measure of affordable housing need. For example, households can express a preference for up to three locations, which could lead to double, or even triple counting, of housing need.

A key consideration is whether the households on the register have a local connection to the settlement. The applicant has not identified this figure, or the number of households that have both a local connection and a preference.

Further guidance on the extent to which Homeseeker Plus data equates to convincing evidence of housing need within a specific settlement is provided within Appendix 3 of the Board's Housing Position Statement.⁷

Based on the points outlined above, we consider that the applicant's evidence, in this regard, should be given little weight.

Scope for meeting the need outside the Cotswolds National Landscape or in some other way

Case law has clarified that '*no permission should be given for major development save to the extent the development ... met a need that could not be addressed elsewhere or in some other way*'.⁸

The applicant's evidence relies heavily on the assertion that West Oxfordshire cannot meet all of its housing needs outside the Cotswolds National Landscape. Whilst this may be the case, this does not necessarily mean that the proposed type and quantum of development could only be located: (i) in the Cotswolds National Landscape; and / or (ii) in this particular location.

The applicant's case is further undermined by the statement in the West Oxfordshire Local Plan 2031 Inspector's Report that:

- *There is significant opportunity for general development needs to be met outside the AONB.*⁹

As such, the proposed development does not comply with the requirements of the NPPF or relevant case law in this regard.

⁷ Cotswolds Conservation Board (2021) *Housing Position Statement* ([link 1](#) (main document), [link 2](#) (appendices)). Appendix 3.

⁸ R (Advearse) v Dorset Council v Hallam Land Management Ltd [2020] EWHC 807 ([link](#)). Paragraph 35.

⁹ The Planning Inspectorate (2018) *Report on the Examination of the West Oxfordshire Local Plan 2031*. Paragraph 224.

Detrimental effects

The detrimental effects of the proposed development are very similar to the detrimental effects of the previous planning application for this site (17/00642/OUT), as outlined in the ‘Notice of Decision’ for that planning application. For example:

- The site is prominently located in the countryside beyond the existing settlement edge of Burford. The development would encroach unacceptably into agricultural land and would fail to relate satisfactorily to the town or the existing rural environment which provides a setting for it. It would not easily assimilate into its surroundings resulting in the loss of an important area of open space that makes a positive contribution to the character of the area. It would be highly prominent and visible in a number of public views.
- The site is a substantial agricultural field forming part of an extensive area of countryside around Burford that provides a setting for the town. The site is substantially within the Burford Conservation Area, with only the means of access sitting outside it. A large number of Listed Buildings and undesignated heritage assets are located in the vicinity. The Grade I Listed church of St John, and in particular its spire, is inter-visible with the site from a number of public viewpoints. The proposed development would significantly encroach into the countryside and would have an urbanising effect on the Conservation Area and the setting of heritage assets.

As such, the development would not be compatible with the policies of the Cotswolds AONB Management Plan 2018-2023,¹⁰ the Cotswolds AONB Landscape Strategy & Guidelines¹¹ or Policy EH1 of the West Oxfordshire Local Plan.

Public interest

When assessing whether the proposed development is in the public interest, it is important to note mind that AONBs are landscapes whose distinctive character and natural beauty are so outstanding that it is in the nation’s interest to safeguard them.¹²

It is also important to note the Government’s recent assertion that ‘*meeting housing need is never a reason to cause unacceptable harm to [AONBs]*’ and that the ‘standard method’ ‘*does not present a target*’.¹³ We consider that the harm caused by the proposed development would be unacceptable, in this regard.

Tilted balance

Where there is a shortfall in housing land supply, paragraph 11d of the NPPF sets a presumption in favour of granting planning permission (known as the ‘tilted balance’). However, it also identifies a

¹⁰ Cotswolds Conservation Board (2018) *Cotswolds AONB Management Plan 2018-2023* ([link](#)).

¹¹ Cotswolds Conservation Board (2016) *Cotswolds AONB Landscape Strategy and Guidelines* ([link](#)), particularly with regards to Landscape Character Type (LCT) 16 (Broad Floodplain Valley) ([link](#)).

¹² Department for Environment, Food and Rural Affairs (2017) *Areas of Outstanding Natural Beauty: Landscape Protection and Enhancement. Support Scheme* (England) 2017-2019. This wording is also used in Appendix 1 of the Cotswolds AONB Management Plan 2018-2023.

¹³ Ministry of Housing, Communities & Local Government (2021) Government response to the local housing need proposals in ‘Changes to the current planning system’ ([link](#)).

number of exemptions to this tilted balance, including where the application of policies in the NPPF that protect AONBs and designated heritage assets ‘provides a clear reason for refusing the development proposed’.

Case law has clarified that limb (i) of paragraph 11d is applied by taking into account only those factors which fall within the ambit of the relevant ‘Footnote 6’ policies and that development plan policies and other policies of the NPPF are not to be taken into account in the application of limb (i).¹⁴

Given the detrimental impacts outlined above, we consider that the application of the relevant Footnote 6 policies provides a clear reason for refusal, with regards to both: (i) landscape and scenic beauty; and (ii) cultural heritage. The fact that a similar scale of development on this site has already been refused planning permission (17/00642/OUT), largely on the grounds of adverse impacts on the Cotswolds National Landscape, adds further weight to not applying the tilted balance.

In the planning appeal that was the subject of this case law, it was common ground that if a development constituted major development (with the associated presumption against granting planning permission), that provided a clear reason for refusal. The same principle applies in this instance.

Based on this case law, we consider that issues such as a shortfall in housing land supply should be given very little (if any) weight when deciding if the tilted balance applies.

For these reasons, we do not consider that the tilted balance should be applied in this instance.

Therefore, when deciding the overall planning balance (which should be a subsequent step to the question of the tilted balance), great weight should be given to conserving and enhancing landscape and scenic beauty, but there shouldn’t be a presumption in favour of granting planning permission. Indeed, as outlined earlier in this response, the major development status of the proposal means that, in effect, there should be a presumption against granting planning permission.

Additional comments

In reaching its planning decision, the local planning authority (LPA) has a statutory duty to have regard to the purpose of conserving and enhancing the natural beauty of the National Landscape.² The Board recommends that, in fulfilling this ‘duty of regard’, the LPA should: (i) ensure that planning decisions are consistent with relevant national and local planning policy and guidance; and (ii) take into account the following Board publications:

- Cotswolds Area of Outstanding Natural Beauty (AONB) Management Plan 2018-2023 ([link](#));
- Cotswolds AONB Landscape Character Assessment ([link](#)) particularly, in this instance, with regards to Landscape Character Type (LCT) 16;
- Cotswolds AONB Landscape Strategy and Guidelines ([link](#)) particularly, in this instance, with regards to LCT 16 ([link](#)), including Section 16.1;
- Cotswolds AONB Local Distinctiveness and Landscape Change ([link](#));
- Cotswolds Conservation Board Position Statements ([link](#)) particularly, in this instance, with regards to the:

¹⁴ Monkhill Ltd v Secretary of State for Housing, Communities and Local Government & Anor (Rev 1) [2021] EWCA Civ 74 ([link](#)).

- Housing Position Statement ([link](#)) and its Appendices ([link](#));
- Landscape-led Development Position Statement ([link](#)) and its Appendices ([link](#));
- Tranquillity Position Statement ([link](#)), including Section 4.5;
- and the Dark Skies and Artificial Light Position Statement ([link](#)) and its appendices ([link 1](#), [link 2](#), [link 3](#)).