APPEAL BY GLADMAN DEVELOPMENTS LTD

LAND OFF PEPPARD ROAD, EMMER GREEN

APPEAL REF: APP/Q3115/W/17/3185997

CLOSING SUBMISSIONS ON BEHALF
CAMPAIGN AGAINST GLADMAN
IN EYE AND DUNSDEN

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1. As we set out in opening in May, there are six key issues animating this appeal. These six key issues remain broadly the same despite the introduction of the revised NPPF ("**the NPPF**").[1] Key changes to them are italicised below.

2. These issues are:

    a. The principle of development and compliance with the development plan;

    b. Whether the development plan is up to date and in particular, whether *policies which are most important for determining the application are* up to date and compliant with the NPPF;

    c. The weight to attach to any conflicts with the development plan;

    d. The level and extent of harm to landscape and the acceptability of visual impacts arising from the development;

[1] The Revised NPPF published on 24 July 2018 is referred to throughout these closings as NPPF. Other abbreviations used in these closings are:

a. Proof of Evidence ("POE")
b. Updated Proof of Evidence ("UPOE")
c. Supplementary Proof of Evidence ("SPOE")
d. Rebuttal Proof of Evidence ("RPOE")
e. Summary Proof of Evidence ("SumPOE")
f. Statement of Common Ground on Planning between the Appellant and the Council ("SOCG")

e. Whether the development is sustainable and acceptable in transport terms; and

f. Whether the planning balance justifies granting consent otherwise than in accordance with the development plan.

3. We deal with each in turn.

ISSUE 1 – THE PRINCIPLE OF DEVELOPMENT AND COMPLIANCE WITH THE DEVELOPMENT PLAN

4. The Development Plan for South Oxfordshire District comprises the South Oxfordshire Core Strategy (December 2012) ("**CS**") and the 'saved' policies of the South Oxfordshire Local Plan ("**SOLP**").

5. The starting point is that proposed scheme inescapably conflicts with the development plan. Even the Appellant has acknowledged this conflict, agreeing that the appeal proposals are contrary to the adopted spatial strategy (SOCG §4.4.7). It also accepts that there is a conflict with SOLP policies G4 and C4 (DR UPOE §11.2.3) but suggests that such policies are not consistent with the NPPF.

6. There is clearly, even on the Appellant's own case, a *prima facie* conflict with the development plan policies relevant to this appeal. Despite this, the Appellant maintains that the Appeal proposals accord with the Development plan as a whole; a proposition that simply doesn't follow from the evidence.

7. Indeed, it is CAGE's case that the scale of departure from the development plan is very much greater as a consequence of landscape, visual amenity harm and lack of sustainability. This conflict with the development plan means that section 38(6) is engaged so as to give rise to a statutory presumption against granting permission in this appeal.

8. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states:

"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

9. Planning permission must therefore be withheld, unless the Appellant persuades you that there are material considerations indicating otherwise.

ISSUE 2 – WHETHER THE DEVELOPMENT PLAN IS UP TO DATE AND IN PARTICULAR, WHETHER POLICIES WHICH ARE MOST IMPORTANT FOR DETERMINING THE APPLICATION ARE UP TO DATE AND COMPLIANT WITH THE NPPF

10. The National Planning Policy Framework is of course an important material consideration in this appeal. Indeed, as explained by Mr Justice Ousley recently, albeit writing about the former NPPF:

> "…In relation to development control, despite some of its language, it is no more than a material consideration, to be taken into account in deciding planning applications under s70 TCPA 1990. It is a material consideration which may indicate that a decision should be made which does not accord with the development plan; s38(6) Planning and Compulsory Purchase Act."[2]

11. The NPPF published in July 2018 states at §11 that:

> "Plans and decision should apply a presumption in favour of sustainable development…
>
> For decision-taking this means:

[2] CEG Land Promotions II Limited v Secretary of State [2018] EWHC 1799 (Admin) at §24

> (c) approving development proposals that accord with an up-to-date development plan without delay; or
> (d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out of date, granting permission unless:
>
> > i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
> > ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole."

12. Paragraph 11(c) does not apply in this case as the Appellant has, as already indicated, accepted that its proposal does not accord with the spatial strategy and indeed has disputed whether parts of development plan are up to date in any event.

13. In respect of paragraph (d) then, as it is agreed that there are relevant development plan policies, the Appellant is left with two routes to the tilted balance:

    a. By demonstrating that there is a lack of five-year housing land supply (see FN7 of para 11); or
    b. By demonstrating that the policies which are most important for determining the application are out of date.

14. The parties are agreed that para 11(d)(i) will not apply to this appeal and that, as such, if the Appellant can succeed in demonstrating that the tilted balance should apply, the sole basis upon which CAGE and the Council could overcome this balance would be to demonstrate that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits associated with the proposal.

15. Happily, both CAGE and the Council agree that the development plan is up to date and the Council via Ms Smith's evidence has demonstrated the existence of a five-year supply. As such, CAGE's primary submission is that the tilted balance is not engaged.

Housing Land Supply

16. As a result of the Housing Land Supply Statement of Common Ground agreed between the Council and the Appellant, the central issue in respect of whether there is a five-year supply comes down to an issue of principle; this is namely whether the requirement should be calculated on the basis of Ms Smith's proposed approach (i.e. the standard method) or whether it should stem from a justified alternative, as advocated by Mr Tiley, namely the Oxfordshire Growth Deal (**"OGD")**.

17. There are several points to make about this. The first point to note is that both Mr Tiley and Ms Smith agreed in oral evidence that the OGD Outline Agreement is not stated to be a planning policy document. It is therefore difficult to see how it can attract NPPF §6 protection. Indeed, it explicitly states in its preamble that:

    > "This deal, and any distribution of funds via it, does not constitute HMG weight or approval for any scheme which is subject to the planning system.
    > In addition, it does not alter any of the statutory functions, duties and rights of HMG or Local Planning Authorities, and in particular the functions of the Secretary of State in relation to plan-making or decision-taking. Nor does it imply any favourable treatment for any specific scheme or plan."

18. Mr Tiley's evidence appeared to suggest that as the Oxford Cambridge Growth Corridor (of which the OGD forms part) was endorsed by Government in the 2017 budget it somehow becomes government policy within the meaning of §6 NPPF. The fact that the Appellant has had to go to such lengths as introducing

extracts from Budget 2017 and further detail about why a budget amounts to government policy indicates the roundabout way in which it is desperately seeking to shoe-horn the OGD into this appeal. If it was intended that the OGD be taken into account in planning decisions the OGD agreement would surely say so. It doesn't.

19. Second, the agreement is still in *outline;* it is high level ambitious agreement with details to come at what §5 describes as "the full agreement" stage. Indeed, the language of the document is entirely aspirational using the word "ambition" regularly (§§25, 26, 45).

20. Third, the deal is entirely dependent on the Government holding up its side of the bargain; namely, as §3.2.3 of the Growth Deal Delivery Plan Notes:

> "Application of these arrangements within national planning guidance will require changes through a formal process to secure the flexibilities set out above. MHCLG officials will make the necessary arrangements for this. *The agreement of the deal set out in this document depends on these flexibilities being achieved*." (emphasis added).

21. As Ms Smith put it in cross examination – "it is explicit that the deal will only be delivered if planning flexibilities come forward – you can't disaggregate the two." Such flexibilities have yet to be introduced, and thus to expect the Council to rigidly follow an Outline Agreement without them is wholly unreasonable.

22. Fourth, §65 of the Outline Agreement explains that:

> "Unless and until the joint statutory spatial plan for Oxfordshire is produced, submitted and then adopted, all existing plans and national policy continue to provide the basis for decision-making in Oxfordshire."

23. This is a critical point. The JSSP has not been adopted. It follows that all existing plans and national policy must continue to apply. National policy

involves assessing the requirement by reference to the standard method or a justified alternative and it would be quite circular for you Sir to find that §65 of the Outline Agreement by referring to "national policy" was actually referring back to itself before it had been introduced as national policy. It is certainly not national planning policy.

24. Finally, there is the practical issue of what the OGD requirement really is. As Ms Smith explained in oral evidence "it does not provide any apportionment". Mr Tiley's case is that §7.1.2 of the Growth Delivery Plan refers to the "apportionment of unmet need in compliance with the Duty to Cooperate" but this submission chooses to ignore the plain fact that while the Growth Board has sought to make an apportionment, South Oxfordshire has not agreed to this and did not sign up to the relevant memorandum.

25. In XX, Mr Tiley could not point to anywhere else in the document where it could be said that the Council commits to an apportionment.

26. In any event, the allocation of houses is also to be achieved at a strategic level through the JSSP and it is CAGE's case that nowhere does the Growth deal require the Council to adopt the SHMA figure or apportionment of unmet need. Furthermore, the SHMA figure itself has been called into question by Mr Rawlins' detailed and thorough analysis in his Proof of Evidence. Indeed, his analysis also examined where the true economic/employment (FEMA) and housing (SHMA) markets are and demonstrated that the site is way inside real-world reach of the Reading and West Berkshire market [3]

27. The reality is that as Ms Smith explained in her POE at §6.5, the OGD is "intended to be achieved through the plan-making process. This has not yet reached a stage where it should influence the five-year housing land supply

[3] Mr Rawlins' sources for this are particularly useful, namely his Appendix QQ maps 2-6 and conclusions on page 34/35; and his appendix FF, page 3, s2.4 and 3.15 with figures 2.1 and 2.2. Mr Rawlins also explained how we still do not know what direction the OCE will go in – demonstrating again that planning for settlements in the district remains in a state of flux.

assessment for the purposes of para 73 of the Framework." CAGE entirely agrees with this submission.

28. National policy (i.e. the NPPF) states very clearly that local housing need is to be calculated on the basis of the standard method or a justified alternative. There can be no justification for moving away from the standard method to an alternative that contains woolly language, is not planning policy, is in outline form, is based on an outdated SHMA and has no apportionment figure with which the Council has agreed.

29. The only sensible method must be the standard method as it is this (with its up to date household projections) and not the SHMA that contains the most recent and best evidence base for assessing the requirement.

Whether the most important policies for determining the application are up to date

30. The Appellant has accepted that the following policies which CAGE says are breached and in issue at this appeal are up to date and compliant with the NPPF:

    a. CSEN1 (DR UPOE §6.3.29)
    b. C9 – (confirmed in XX of DR)
    c. T1 – (confirmed in XX of DR)
    d. CSM1 – (confirmed in XX of DR)
    e. CSM2 – (confirmed in XX of DR)

31. Any conflict with these should accordingly be given full weight.

32. Turning then to other polices, namely those 'most important policies' identified by Ms Richardson (DR UPOE §6.4.1), it is important to remember that when considering the issue of whether a policy is consistent with the framework, it is the substance of the policy and not its precise terminology that is most important. Otherwise, many development plan policies falling to be considered against the new NPPF would be found inconsistent simply by virtue of a change in wording. Consistency in meaning trumps consistency in form.

33. Ms Richardson suggested in XX that for the tilted balance to be triggered only one policy needs to be out of date. This does not sit well when assessed against the plain wording of NPPF §11d (*the policies which are most important for determining the application are out-of-date).*

34. This does not say "any policy"; nor does it say "a policy". Words must mean what they say and, in this case, §11d must be referring to more than one policy. If the framers wished to ensure one policy triggered the tilted balance, they would have said so. To suggest otherwise is an error in interpretation; not simply a matter of judgment. Happily, none of the policies upon which this appeal actually turns out of date in any event.

35. In cross-examination, Ms Richardson explained her approach to ranking the policies by way of importance, noting that she had chosen those that "go to the heart" of the appeal. However, she accepted that CSR1 (agreed as not being directly applicable in the SOCG) was inserted in her list in a qualified sense and as Ms Jarvis noted in XX that she did not consider it to be important, no more need be said about it.

36. Ms Richardson argued that policies G2, C4 and G4 were not up to date. However, it was clear from the evidence of Ms Jarvis that they are (PJ SPOE §4.33). Each one is entirely consistent with para 170 of the NPPF, with its focus on recognising the intrinsic character and beauty of the countryside.

37. Indeed, in respect of G2, Ms Jarvis agreed in XX that it follows from its protection of settlements that housing cannot be seen as unacceptable in principle. She noted that it protects from "adverse development which is entirely consistent with the NPPF." In respect of C4, Ms Jarvis explained in XX that the focus is on protecting "attractive landscapes", rather than simply landscapes *per se*, and again this is consistent with the NPPF.

38. On G4, she noted in XX that "it is clear that the phrase protect countryside for its own sake is not in the NPPF, but its aims and objectives are the same". There

are of course conflicting appeal decisions on G4 as outlined in Ms Richardson's UPOE and it would be unhelpful to re-rehearse these here. Ultimately, it will be a matter for this Inspector to take his own view, but CAGE is persuaded by Ms Jarvis' measured and thoughtful approach.

39. CS1 is of course now out of date, as accepted by Ms Jarvis's evidence (PJ SPOE §4.30). However, to suggest the datedness of this policy could result in the triggering of the tilted balance would be entirely perverse as CS1 simply reflected the tilted balance under old NPPF §14. It is a policy common to many development plans and to suggest that simply because of the advent of the NPPF all such plans will fail to meet the test in §11d simply by virtue of this policy sitting outside the terms of the framework, cannot be what the framers envisaged.

40. In a similar sense, policy CSH1, which provides for a particular quantum of housing in the district, is of course also now dated. However, when asked in XX whether it was her view that this policy is one of the most important, Ms Jarvis replied: "No – although it is relevant as a background policy."

41. CAGE agrees with Ms Jarvis' approach that as local housing need is now the new benchmark for need, this policy cannot be said to be one of the most important in respect of this appeal. Ms Jarvis' written evidence added that she "does not consider that CSH1's datedness carries any particular significance for the determination of this appeal." (PJ SPOE §4.31).

42. Similarly, Ms Jarvis took the view that CSC1, the contingency policy, was not one of the most important for this appeal (XX yesterday). In any event, she also concluded that despite Ms Richardson's suggestion that the appeal scheme falls within CSC1(iii), the fact that the site is not in accordance with the spatial strategy (as accepted by the Appellants) means that the proposal does not meet the criteria of CSC1(iii) anyway.

43. Finally, and perhaps most importantly, we turn to policy CSS1; the spatial strategy. Mr Rawlins' evidence explained how CSS1 and the allocations made

within the CS set out the strategic intent for the spatial strategy, which notes that proposals for development in South Oxfordshire should be consistent with the overall strategy.

44. As Mr Rawlins' evidence explained, the Council and Reading Borough Council have consistently agreed that urban extensions or development in the countryside directly adjacent to Reading are inappropriate (LR POE §2.7). Despite this, it has been plain that the application site relates to the settlement and housing market of Reading and Berkshire, and not at all to Oxford or indeed Didcot (LR POE §2.8).

45. Ms Jarvis' evidence was that the spatial strategy is still fit for purpose; albeit it is evolving. She reminded the inquiry in XX that the "spatial strategy is to support settlements of the district but the proposed development will do nothing to support the developments of South Oxfordshire."

46. The Appellant's argument in respect of CSS1 appears to be that because of the fact that the Council are amending the spatial strategy as part of their emerging Local Plan, this suggests that the strategy is no longer fit for purpose in delivering the identified need going forward (UPOE DR §6.3.22)

47. However, Ms Richardson accepted in XX that Strat 1 and CSS1 are essentially the same and this reflects the reality that the part of CSS1 with which this appeal is most concerned, is simply not going to be changed by the ELP. So far as developments outside of towns and villages are concerned, the ELP is the same.

48. Stepping back to the broader question of whether the most important policies are out of date so as to trigger the tilted balance, it is CAGE's submission that they are not. Policies CSH1 and CSR1 are certainly not important to the determination of this appeal. Policy CS1 is, for the reasons set out above, only nominally out of date but has no bearing in respect of the determination of the appeal either.

49. The others policies, those that truly go to the heart of this appeal and are indeed the most important – namely the landscape policies and spatial strategy, are clearly up to date and NPPF compliant. Accordingly, the tilted balance cannot be engaged on this basis.

50. As a result of the five-year supply and the fact that the most important policies of the development plan are up to date, it is very firmly CAGE's case that the titled balance does not apply in this appeal.

ISSUE 3 – THE WEIGHT TO ATTACH TO ANY CONFLICTS WITH THE DEVELOPMENT PLAN

51. While the weight to be given to policies is of course a matter of judgment, on the basis that the policies outlined above fully comply with the NPPF, it is CAGE's submission that they should be given full weight.

52. If the Inspector is minded to take a different approach, it is important to remember that the simple fact that policies in a development plan pre-date the Framework and therefore fail to reflect its policy does not render them out of date. A more nuanced approach is required. Indeed, the old Framework expressly provided for this at old §215 which stated that "due weight" should be given to policies which pre-date the Framework depending on their "consistency with the Framework".

53. This approach has been carried forward in the NPPF which states at §213 that:

> "…existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)."

54. It would be entirely wrong in law to suggest that because the Council has granted planning permissions in the past that are in breach of settlement boundaries or indeed other polices, that such policies are to have the weight attached to them reduced as a matter of principle. That approach was expressly deprecated by the Court of Appeal in *Gladman Developments Ltd v Daventry DC* [2016] EWCA Civ 1146 at [43] – [44]. In particular, Sales LJ, as he then was, held that it was a "distraction from the issues regarding continuing relevance of [the saved policies] and their consistency with the policies of the NPPF."

55. CAGE's primary position, in light of the fact that the Council has identified in its latest assessment a five-year housing land supply, is that the relevant policies of the development are up to date and compliant with the NPPF. Accordingly, the policies breached by this scheme should be afforded full weight.

56. However, CAGE's fallback position, should you find that the most important policies are out of date, either because of §213 NPPF or because the Council's five year supply figure does not hold good, is that insofar as any of the policies concerned are policies *for the supply of housing* in the narrow sense meant by Lord Carnwath in *Suffolk Coastal*, weight should still be given to them in accordance with the criteria set out by Lindblom LJ in *Suffolk Coastal DC v Hopkins Homes Ltd* [2016] EWCA Civ 168 at [47][4]

57. However, it is difficult to see whether there are truly are any such policies at issue in this appeal. As such, CAGE fully endorses the submissions on weight made within Ms Jarvis' POE and SPOE.

ISSUE 4 – LANDSCAPE AND VISUAL EFFECTS

58. The revised NPPF was published after the conclusion of the landscape evidence in this enquiry. Ms Jarvis in her SPOE is correct to say that there is no

[4] Namely: (i) the degree of the shortfall, (ii) the action begin taken by the local authority to address the shortfall, and (iii) the particular purpose of the restrictive policy.

"significant change" in the NPPF's approach to valued landscapes. Valued landscapes are now referred to in §170 which states, where relevant:

"Planning policies and decisions should contribute to and enhance the natural and local environment by:

> a) Protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);
> b) Recognising the intrinsic character and beauty of the countryside…"

59. As such CAGE agrees with Ms Jarvis' submission at §4.24 SPOE that:

> "whilst it [para 170] may be taken to mean that landscapes with a statutory status or a local status (as identified in the LP) should generally be given a higher level of protection, it does not mean that those landscapes that have no such designation or protection cannot be considered to be valued. The value of an undesignated site should be assessed in the same way as previously: by reference to landscape character and related assessments, the criteria in GLVIA Box 5.1, and any other specific attributes of the site within the context of the wider landscape within which it lies."

60. Indeed, as Ms Kirkham noted in her written evidence, GLIVA3 at §5.26 explains that "the fact that an area of landscape is not designated either nationally or locally does not mean that it does not have any value."

61. The revised NPPF has not changed the underlying basis for landscape policies CSEN1, G2, C4 or C9 and as such the policies should continue to be given full weight and the expert landscape evidence assessed against them.

Landscape Value

62. One of the key differences between the landscape experts was whether or not the site should be regarded as a valued landscape. Mr Berry said that it should not, whereas both Ms Kirkham and Mr Radmall were in firm agreement that the site should be regarded as a valued landscape for the purposes of old NPPF §109 (now NPPF §170).

63. It was Ms Kirkham's evidence that the appeal site sits within a landscape which contains the necessary "demonstrable physical attributes" so as to be categorised as a "valued landscape".[5] It is above the ordinary and of more than popular or simply local value.

64. Indeed, Ms Kirkham explained in her evidence how the historic landscape policy of the site (lying within an Area of Great Landscape Value between the current Chilterns AONB boundary and Reading Borough) along with the fact that the site is currently being reviewed by Natural England for inclusion within the AONB must also inform the approach taken.

65. This was not simply her own professional view. Ms Kirkham reminded the inquiry that §5.27 of GLVIA3 states that "a stated strategy of landscape conservation is usually a good indicator of [whether a landscape is particularly valued]." And indeed, the 2003 SPG states that the site lies within an area to be "conserved."

66. Ms Kirkham's evidence explained therefore that despite the current lack of a national or local landscape designation, in her professional judgment, it is a valued landscape falling within the criteria just below an AONB namely "landscape of an equivalent value to a local designation through clearly stated and recognised criteria." She noted that the site forms an attractive landscape and visual setting to the Chilterns AONB.

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[5] See: Ouseley J in ***Stroud DC v SSCLG*** [2015] EWHC 488 (Admin.) at [16].

67. In outlining why, in her view, the appeal site has positive physical attributes raising it above the "ordinary" or a popular landscape and attracting valued landscape protection, Ms Kirkham referred to:

    a. The typical rural AONB dipslope topography with the landform dropping away northwards into open countryside away from the settlement ridge;
    b. Well maintained and intact arable farmland as part of the valued mosaic of arable land, pasture fields, woodland and hedgerows which distinguish the Chilterns Plateau;
    c. Pattern of rural intact and Important Hedgerows with TPO hedgerow trees contributing to the rural character;
    d. Contribution to the landscape and visual setting of the AONB and the shared characteristics with the Chilterns AONB;
    e. Valued recreational and community view to the Chilterns AONB from within the site;
    f. The role of the site as an important and major part of the open land separating and maintaining the character distinction between the larger rural village of Sonning Common from urban Emmer Green;
    g. Landscape setting of designated historic, recreational and wildlife assets;
    h. Quiet rural tranquil character in contrast to Reading which can be enjoyed by the local community;
    i. Attractive and valued rural views from the countryside beyond Emmer Green;
    j. An intact rural landscape in good condition;
    k. Absence of urban influences and detracting features;
    l. Part of a Chiltern Society promoted walk and visible from the Chilterns Way; and
    m. Associated with Wilfred Owen's time at Dunsden.

68. Indeed, she emphasised how the appeal site contains, or adjoins, a number of valued aboricultural, nature conservation, heritage and recreational assets. The site also lies within open "remarkably rural" countryside beyond the northern

edge of Emmer Green and in her view, makes a positive contribution to maintaining the separate identity of Emmer Green from Sonning Common. This important separate identity would in her view be harmed by the proposal.

69. The starting point in the context of a lack of local landscape designation is of course the Landscape Character Assessments.[6] Mr Berry had described the 1998 Landscape Assessment as "very much a product of its time" (JB POE §3.23). However, in cross-examination, he accepted that the 1998 LCA and the LCA commissioned for the purposes of the local plan are "very similar" and contain "broadly the same findings". He accepted that there were no differences he could point out in respect of the assessment of characteristics. Indeed, he acknowledged that the 1998 assessment was more thorough in respect of its assessment of sensitivity, quality and management recommendations. Nonetheless, he chose to diminish its importance.

70. Mr Berry was asked in XIC why the landscape was not in his view, a valued landscape. He explained that a valued landscape should not be a "low threshold". The test of course is quite clear; does the site and its context have demonstrable physical attributes raising it above the ordinary. CAGE have not applied a low threshold – Ms Kirkham's evidence was clear that the site has a number of valuable attributes raising it above the ordinary.

71. Mr Berry noted that one of the adopted approaches to adopt is GLVIA Box 5.1, as this is a "transparent process". Mr Berry claimed to have undertaken this transparent process by carrying out his own Box 5.1 exercise, but there were several omissions and errors in that exercise that undermined his approach. In particular:

    a. Mr Berry described the quality and condition of the landscape as somewhat degraded and ordinary/medium despite the fact that, as pointed out by Ms Kirkham, three of the five hedgerows are Important, two almost satisfy that criteria and the site contains three TPOs; is under

[6] GLVIA3, para 5.27

good farmland management and it shares similar characteristics with the adjoining AONB; and

b. Mr Berry failed to identify the landscape and visual setting of several conservation interests within his assessment such as the non-designated historic asset (Bryant's farm), historic field patterns, TPOs and hedgerows, and listed buildings in the vicinity of the site.

72. While such oversights may appear minor in the context of an overall assessment, they were indicative of the more general lack of thoroughness on the part of the Appellant to its landscape evidence in this appeal. As Mr Radmall pointed out in oral evidence, the CSA LVIA "doesn't really investigate what is on the site, doesn't identify particular features and did not carry out the due process as outlined in GLVIA." He noted in his written evidence that it under-reported the effects of the proposal. Ms Kirkham agreed and emphasised how the Appellant was "overstating the detracting features." It is no surprise, therefore, that the Council officer drafting the report to Committee on the basis of this LVIA, found the proposal acceptable in landscape terms.

Visual Effects

73. Ms Kirkham explained in her evidence how the visual impacts of the proposal are not limited or localised but extensive covering a wide range of footpath routes, roads and residential properties to the west, north, east and south east (see CSA's viewpoints and Appendix BK4).

74. In her visual impact table, three groups of visual receptors were classed as experiencing a substantial adverse effect as a result of the development and a loss of view of open countryside; 6 groups would experience a substantial/moderate adverse effect and 10 groups a moderate adverse effect. As such, it was Ms Kirkham's view that there would be substantive harm to the visual amenity of the area.

75. Ms Kirkham observed that the conclusions of the Appellant are distorted because many of the views in the CSA LVIA contain views with no view, key views are omitted, viewpoints were selected where the impact is less; the sensitivity of viewers was undervalued and landscape mitigation was overestimated. (BK POE §6.38). Mr Radmall added that that the loss of countryside and the suburbanising effect on local views would be demonstrably harmful and was under-reported in the CSA LVIA (PR SumPOE §9.9).

76. Importantly, well visited and valued attractive views to the Chilterns AONB and from the edge of the AONB itself would be adversely affected, resulting in harm to the enjoyment of the AONB.

<u>*Landscape Effects*</u>

77. As GLVIA3 advises, landscape effects are identified by combining judgments about *sensitivity* of the landscape together with the *magnitude* of change represented by the development.[7] Ms Kirkham's view, following her own landscape assessment of the effects on the physical setting and character of the site environment in accordance with GLVIA3 is that the proposed development would result in largely substantial/moderate and adverse effects with some moderate harm to the landscape; and the loss or devaluing of recognised valued attributes and a valued landscape (BK POE §7.23).

78. Mr Radmall's evidence similarly noted that the development would have an overwhelmingly suburbanizing effect on the site with the magnitude of change to its appearance being high (PR POE §5.9). His conclusion was that as a result of the sensitivity of the site being medium high, and the magnitude of change being high, the effect on site character on completion of the development would therefore be substantial and adverse.

79. On the other hand, Mr Berry's evidence took sensitivity to be slightly lower at medium (JB POE §3.52) and did not appear to grapple with the issue of magnitude of change in detail. Indeed, Ms Kirkham observed in XIC that it was

[7] GLVIA3, para 5.53

"hard to get to the bottom of what he [Mr Berry] is trying to say as his evidence doesn't refer to magnitude of change but just refers to effects."

80. Through his lack of robust analysis of the site and its context, the exaggerated weight given to the minor sub-urbanising elements of Emmer Green and the underplaying of the magnitude of change as a result of building 250 houses, Mr Berry failed to present an accurate assessment of the landscape impacts of the development.

81. One adverse effect in particular that CAGE argues will be caused by the development was that to the historic hedgerows on the site. Although Mr Berry has insisted that such hedgerows can be translocated and dealt with by way of condition, the evidence of Mr Clive Leeke, who has over 30 years practical experience of translocating hedges (CL RPOE §2.7) was that this would not be possible.

82. Mr Leeke conducted a thorough analysis of Mr Berry's evidence on this issue and observed that Mr Berry had not produced *any* evidence to persuade him that the translocation of the hedges would be workable and as such concluded that any condition for translocation would be unworkable (CL RPOE §3).

Harm to the Setting of the AONB

83. Both Mr Radmall and Ms Kirkham agreed that the site falls within the setting of the AONB and that the proposal would have an adverse effect on it. Indeed, Mr Radmall explained that "the loss of countryside and the suburbanising effect on local views would be demonstrably harmful – in combination, they will be significantly detrimental to the character and appearance of the area, and thereby to the setting of the rural settlements within it and to the setting of the AONB." (PR POE §9.9)

84. Mr Berry disagreed that there was harm to the setting of the AONB. He acknowledged in XIC that the correct approach to setting is difficult as there is no definition of setting but nonetheless maintained that the setting was not harmed. It was less clear whether or not it was his view that the site is within

the setting of the AONB in the first place, although Ms Richardson's SPOE at §7.2.10 makes it clear that this is the Appellant's case.

85. CAGE supports the common-sense approach advocated by Mr Radmall who noted in oral evidence that "in order to work out how a development affects the attributes (including setting) of an AONB one has to consider issues of proximity and intervisibility."

Conclusion on Landscape and Visual Effects

86. As a result of all of the above issues, it is CAGE's considered view that the proposal will cause significant and demonstrable harm to:

    a. The landscape character and value of the site;
    b. Landscape features on the site (in particular its hedgerows);
    c. The landscape and visual setting of the Chilterns AONB;
    d. Local visual amenity and the perception of valued assets;
    e. The landscape setting of important environmental assets including the farmland setting of the listed buildings;
    f. The open landscape which maintains the separate identity of Emmer Green and Sonning Common.

87. It follows that the proposal conflicts with para 170 NPPF and the policies CSEN1, G2, C4 and C9 and accordingly the landscape harm caused by the proposal must weigh heavily against the grant of planning permission. Even if, on CAGE's fall-back case, the tilted balance is in application, the landscape and visual amenity harm alone is such that it would significantly and demonstrably outweigh the benefits of the scheme and the application must thus be refused.

ISSUE 5 – WHETHER THE DEVELOPMENT IS SUSTAINABLE

88. Mr Matthew's evidence on behalf of CAGE explained why it was his professional view that the proposal would have an unacceptable highways

impact exacerbating strategic transport problems. His review of the Appellant's Transport Assessment indicated that the development would result in an unacceptable rise in traffic and would be prejudicial to the operation of the highway network (PM SumPOE §8).

89. CAGE accepts that the SOCG between the Appellant and the Council notes that:

    a. The proposed development is acceptable in highways terms (SOCG §4.19.4); and
    b. Reading Highways Authority has not expressed objections to the proposal.

90. However, the mere fact that the both Highways Authorities have not expressed objections:

    a. is an important reflection of the fact that this site will have significant cross-border impacts such that while SODC or Reading may not have concerns about their relative sides of the border, the day-to-day reality will severely impact on local residents;

    b. does not undermine the fact that, as the Transport Assessment clearly showed, 84% of the development generated traffic would enter Reading Borough and 59% would travel through the heavily congested Caversham centre to use the two Thames bridges (PM POE 3.3.2); and

    c. does not undermine the considered approach taken by Mr Matthews, who has a great deal of experience in this field, in his evidence to this inquiry.

91. Turning to the Transport Sustainability of the proposal, Mr Matthews concluded that residents of the site would have no real choice about how to travel to schools, shops, to places of employment and for leisure other than to use private car. Mr Helme rejected this conclusion (AH RPOE §2.3.1).

92. However, in oral evidence Mr Matthews explained that there would be no real choice because "the amenities are too distant for it to be of practical benefit to walk", citing a 3.2km round trip to the shop as one example. He argued that "75% of traffic from the site would be by private car" – rendering the proposal patently unsustainable.

93. While Mr Matthews accepted in cross-examination that the Appellant's additional funding for the Pink 25 bus service is "welcome" and "might have the potential to reduce traffic", this evidence must now be read in light of the further cuts to bus services announced over the summer rendering the likelihood that patrons will use such buses even less likely [PM SPOE]. Indeed, Sir, you heard first hand evidence from third parties about how unreliable the bus service is, and this even before the new timetable is truncated next week.

94. Mr Helme took the view that the appeal site is sustainable with opportunities for residents to undertake walk and cycle journeys to a range of amenities. However, when asked in XX about his claim that cycle routes are in the vicinity of the appeal site he accepted that (1) his claim that national cycle route 5 runs along Peppard Road was an error and (b) that there were no cycle lanes adjoining the site. From a cycling perspective, the site is not an attractive option and is unsustainable; to maintain that it is, rather undermines the rest of Mr Helme's evidence.

95. Mr Helme insisted that travel to local primary schools would be sustainable despite the fact that:

    a. such schools are beyond 1.6km. Indeed, the SOCG agrees at §2.2.6 that the nearest primary schools in South Oxfordshire are in Sonning Common (3.2km) and Rotherfield Peppard (4.8km); Chiltern Edge, on the other hand, is a secondary school;
    b. As discussed in evidence, Manual for Streets states that almost 80% of trips 1-5 miles long are taken by car/van; and
    c. there are no safe or attractive cycling routes to and from the site.

96. Mr Helme accepted that the National Travel Survey at Appendix G states that 94% of 5-10 year olds are usually accompanied to school by an adult, but insisted, despite this that the Pink 25 bus would be used by adults accompanying their children to school and back, despite its infrequent service!

97. As a result of the above evidence, it has become clear that the appeal scheme runs contrary to T1 of the Local Plan and CSM1 and CSM2 of the Core Strategy. Furthermore, it is difficult to see how the proposal can be said to comply with NPPF Section 9 “Promoting Sustainable Transport” in that it does not appear to ensure that appropriate opportunities to promote sustainable modes can be – or have been – taken up, given the type of development and its location (§108a NPPF).

98. While CAGE accepts that in accordance with §109 of the NPPF development should only be refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe, the Inspector is nonetheless entitled to, and indeed expected to, take into account highways harms as part of the planning balance.

99. Other sustainability concerns raised by Mr Rawlins must not be overlooked. Yesterday he gave evidence about his serious and well-formed concerns in respect serious cross-Thames and circulatory congestion, air quality issues, lack of infrastructure and his view that an approval would undermine the plan led approach advocated by Annex 1 NPPF and planning policy more generally and undermine the respect required to be afforded to duty to cooperate agreements.

ISSUE 6 – DOES THE PLANNING BALANCE JUSTIFY GRANTING CONSENT OTHERWISE THAN IN ACCORDANCE WITH THE DEVELOPMENT PLAN

100. For the foregoing reasons, the appeal scheme conflicts with all of the above-mentioned development plan policies. Accordingly, the proposal fails to comply with the development plan taken as a whole.

101. The question is whether other material considerations justify determining the proposal otherwise in accordance with the development plan. A number of material considerations require careful analysis, including those pointing in favour of the scheme.

102. As Mr Rawlins, and indeed Ms Jarvis, accepted during the course of oral evidence, there are benefits associated with the proposal that the Inspector will need to take into account as material considerations – in particular, but not exclusively, the benefit of affordable housing. Indeed, Ms Jarvis was taken to the Lichfield decision (CD 13.40) during the course of XX where it was pointed out to her that the Secretary of State attached "very substantial weight to the benefits of the provision of affordable and market housing."

103. However, as Ms Jarvis explained, "you have to look carefully on a case by case basis", and while undoubtedly affordable housing would be a benefit in respect of this proposal, it is certainly not a trump card within the planning balance and must be weighed in the context of the considerable harms identified by the Council and CAGE.

104. In short, Sir, the proposed development faces a number of hurdles in relation to the planning balance.

105. First, as it conflicts with the Development plan, section 38(6) requires that planning permission be refused unless material considerations indicate otherwise.

106. Second, the tilted balance in paragraph 11d NPPF is not engaged as the most important policies are up to date and the Council has clearly demonstrated that it has a five-year housing land supply based on the standard method.

107. Third, even if the tilted balance was engaged, the harm to a valued landscape identified by Ms Kirkham and Mr Radmall alongside the serious sustainability issues raised by both Mr Rawlins and Mr Matthews means that

the adverse impacts of the proposal would significantly and demonstrably outweigh any of its benefits.

108. Over the six days that the Inquiry has sat, we have heard many local people express their, as Ms Helen Lambert described yesterday, "heartfelt concerns" about the proposal. Many locals have attended several days of the inquiry, and the fact that local residents got organised and formed Campaign against Eye and Dunsden, becoming a Rule 6 party to these proceedings, again indicating the level of concern that this appeal causes them.

109. Such concerns centred around transport issues (serious concerns about buses and traffic), sustainability issues (fears about provision of healthcare facilities and schools) and landscape issues.

110. In respect of landscape issues, you heard about the appreciation local residents have for the "fields of gold" at the site and the surrounding setting of the Chilterns AONB; one example, was local resident Mr Yarrow, who recounted his daily walks across the site and sightings of wildlife to the inquiry and asked that this experience not be taken away from him.

111. Finally, Mr Woodward, Chairman of CAGE, provided evidence about the associations of Wilfred Owen with the parish and expressed concern that the appeal, if successful, would significantly impact the character of the parish of Eye and Dunsden, which has fewer than 150 houses at present; all changed, changed utterly.

112. Sir, this appeal is parasitic on Reading[8] and blatantly undermines the Council's spatial strategy. The houses are not needed to meet a lack of supply in Reading[9], and with a five-year supply, they are certainly not needed to meet a shortfall in South Oxfordshire. For all of the reasons set out above, it is clear that the harm caused by the proposal significantly and demonstrably outweighs

[8] As suggested by Cllr Bartholomew in his submission to the Inquiry
[9] It is only Reading acting as a Highways Authority that has endorsed the proposal.

its benefits. As such, regardless of whether or not the tilted balance is engaged, planning permission should be refused.

31 August 2018

JOHN FITZSIMONS

CORNERSTONE BARRISTERS

Appearances

For the Rule 6 Party: Campaign Against Gladman in Eye and Dunsden

John Fitzsimons	(of Counsel) instructed by Kim Eccles, Solicitor
He called:-	
Bettina Kirkham	Director, Kirkham Landscape Planning Ltd

Paul Matthews	Chartered Engineer and advisor to Caversham and District Residents Association on transport and highways issues
Leigh Rawlins	Parish Councillor for Sonning Common