

Chapter 23: Conclusion

Overview

- 23.1 Having had full regard to the proceeding chapters of this report, it is necessary to consider them as a whole, bringing together the conclusions of those chapters to produce the overall Officer recommendation.
- 23.2 Officers have set out within the report where particular elements of the OPA accord with the saved and relevant polices of the adopted Local Plan and the relevant policies of the emerging Local Plan and consideration has been given to the due weight that those policies are afforded (as set out within Chapter 4: Policy Background).
- 23.3 Officers have set out within this report that the principle of development at the application site does not accord with the development strategy of the adopted Local Plan, notably “saved” Policy 19 (Development outside Development Boundaries) which concerns principally the location of new development. Given the conflict with Policy 19 in particular, it is considered that the proposal does not accord overall with the adopted local plan. It is therefore necessary to consider whether there are other material considerations which outweigh this conflict with the development plan such that outline planning permission should be granted. The other material consideration including, in particular, the NPPF.
- 23.4 First, with regard to such material considerations, and as discussed within Chapter 4, policy 19 of the adopted development plan does not conform with the NPPF and numerous appeal Inspectors have found it to be time expired and out of date. Where relevant polices of a development plan are “out of date” paragraph 14 of the NPPF, which sets out the “presumption in favour of sustainable development”, is engaged. Paragraph 14 states that where relevant policies of a development plan are out of date, as here, planning permission should be granted “unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole”. An exception is made where “specific policies” of the NPPF indicate that development should be restricted, an example of which would be green belt or AONB policies which are generally restrictive of new development. However, no such “specific policies” of the NPPF arise in the context of the present application.
- 23.5 This report has set out that approving the OPA would not result in any adverse impacts that would outweigh the public benefits resulting from the OPA development when considered generally and also when considered against the policies of the NPPF as a whole. The Report also confirms that there are no restrictive policies applicable to the consideration of the OPA which indicate that development at the application site should be restricted. Moreover, it has been demonstrated within the report that the OPA would deliver a sustainable development which would accord with the three aspects of sustainability as set out in the NPPF, namely social, economic and environmental.
- 23.6 In terms of the social dimension, the OPA development would make a significant contribution towards the supply of open market and affordable housing needs of the District and would provide certainty to allow the process of development of the site to move forward and deliver these new homes without delay. The percentage of affordable housing that would be delivered has been demonstrated to be acceptable through detailed viability work and the

tenure mix would respond to the requirement for existing and future needs of the residents of the District.

- 23.7 The OPA development would deliver a comprehensive package of social infrastructure to meet the education, health, wellbeing and recreational needs of the residents of the OPA development. The OPA would establish a Community Management Organisation which would make a significant contribution to establishing a new community at the application site and to integrate it with the wider community.
- 23.8 The OPA development would make a significant economic contribution to the economy of the District through the provision of employment land, job creation and increased expenditure within the town, thereby meeting the economic dimension of sustainability.
- 23.9 In respect of the environmental dimension of sustainability, the OPA would deliver a package of measures to promote sustainable modes of transport within the site and beyond. These measures, in particular increased bus services, would also benefit existing residents of the town. The OPA would deliver a comprehensive package of highways mitigation works to ensure that the development would not have a severe impact upon the local highways network.
- 23.10 It has been demonstrated that the OPA would deliver a development that would not result in substantial harm to heritage assets either on or off site. It is considered by Officers that the less than substantial harm that would be caused to heritage assets, although an important matter, would be outweighed by a number of public benefits, as previously described in this report. The retention and enhancement of GI features, and the distribution of maximum building heights across the site (both to be secured by the parameter plans) would ensure that the development would provide a sensitive expansion to the edge of town. The EMMF would provide a framework to ensure that the development delivers adequate compensation, mitigation and enhancement for biodiversity including European Protected Species.
- 23.11 The OPA would deliver a development that would not cause harm to residents, within the site or off-site, in terms of flooding or pollution and the constraints of the gas pipeline have informed the land use parameter plan.
- 23.12 It has been demonstrated within the ES that, with the exception of immediate viewpoints of the application site, there would be no significant residual impacts resulting from the development following consideration in accordance with the EIA Regulations. There would be no significant cumulative impacts and adequate mitigation can be secured by condition or legal agreement.
- 23.13 The OPA also accords with the development strategy of the emerging Local Plan, although relevant policies (DS1 and S2) can only currently be afforded little weight.

Prematurity

- 23.14 Members will be aware that the issue of prematurity, i.e. approving the application in advance of the emerging Local Plan being found sound/adopted, has been the subject of Third Party objections and has also been raised by Cirencester Town Council.
- 23.15 Officers consider that prematurity is a material consideration in the context of OPA, but how much weight is given to that consideration, is a matter of planning judgement rather than a legal question.
- 23.16 Advice on the issue of prematurity can be found within the National Planning Policy Guidance (NPPG) within paragraph 014 (Reference ID: 21b-014-20140306):-

“...In the context of the Framework and in particular the presumption in favour of sustainable development – arguments that an application is premature are unlikely to justify a refusal of planning permission other than where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking the policies in the Framework and any other material considerations into account. Such circumstances are likely, but not exclusively, to be limited to situations where both:

- the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan or Neighbourhood Planning;
- and the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area”.

23.17 The NPPG goes on to say that “Refusal of planning permission on grounds of prematurity will seldom be justified where a draft local plan has yet to be submitted for examination, or in the case of a Neighbourhood Plan, before the end of the local planning authority publicity period. Where planning permission is refused on grounds of prematurity, the Local Planning Authority will need to indicate clearly how the grant of permission for the development concerned would prejudice the outcome of the plan-making process”.

23.18 It should be recognised at the outset that the fact that a planning application has been submitted for development which coincides with development which is the subject of an allocation within an emerging local plan does not, of itself, mean that the planning application cannot or should not be determined by the Council. Nevertheless, given the relationship of the development proposed to the emerging local plan, and the local plan examination process, Officers consider prematurity is here a material consideration in the determination of the OPA. However, it is considered that prematurity, as a ground for objecting to granting planning permission now for the OPA, attracts limited weight such that, and, in particular, when undertaking the overall balancing exercise as required by paragraph 14 of the NPPF, prematurity does not amount to a factor which significantly and demonstrably outweighs the benefits which would arise from granting planning permission pursuant to the OPA.

23.19 As has been explained earlier in this report the development which is the subject of the OAP generally reflects the strategic allocation which comprises policy S2 of the emerging local plan. Policy S2 is plainly important to delivering the strategy on which the emerging local plan is based, and to meeting the development needs of the District to 2031. Also, as has been referred to earlier in this report, there have been many representations and objections made to policy S2 of the emerging local plan at the various stages of its preparation and many such objections remain extant. Although the conduct of the local plan examination hearings, and in particular what will or will not be considered at the hearings, is a matter for the Inspector who has been appointed to conduct the examination, officers consider it highly likely that consideration at the examination of soundness of policy S2 and issues arising from that policy will be curtailed if planning permission is resolved to be granted at this stage pursuant to the OAP, since a resolution (and the subsequent grant of permission) will confirm development proposed through S2 of the emerging local plan and allow that development to proceed irrespective of the emerging local plan and the examination into it. The examination of the soundness of other unrelated elements of the emerging plan would not be affected.

23.20 However, the likely loss of opportunity for full consideration of soundness of policy S2 as part of the local plan examination process should planning permission be resolved to be granted must be balanced against the benefits which will be delivered by granting planning permission for the OPA at this stage. Officers have set out earlier in this report the benefits of granting planning permission, including through boosting the supply of housing and

affordable housing, and the delivery of jobs, in a sustainable location and without material harm overall in terms of heritage, nature conservation, traffic and other interests. To grant planning permission will also provide the certainty required so as to allow the development process to proceed and thereby deliver these benefits earlier than would arise if the grant of planning permission were to be delayed. It is considered, applying the NPPF at paragraph 14 and the relevant PPG guidance, that the prematurity objection, although relevant and understood, does not significantly and demonstrably outweigh the considerable benefits that the grant of planning permission pursuant to the OPA would deliver.

Alternative Sites

- 23.21 The potential for alternatives to the OPA has been raised by Third Parties and they include distributing the proposed number of dwellings to other settlements or the re-development of Kemble airfield.
- 23.22 There are no national or local planning policies relevant to the consideration of the OPA which require the Council to consider alternative sites. The EIA regulations do require the Applicant to outline the main alternatives considered, and to give reasons for the choices made within its ES, which it has done.
- 23.23 Notwithstanding the absence of any policy requirement to do so, the Courts have held that in certain limited circumstances; the availability of alternative sites may be a material consideration in the determination of a planning application. However the Courts have confirmed recently that, as a general principle, the examination of alternative sites is only capable of being a material consideration in “exceptional circumstances” (see Mr. Justice Holgate in *R (Luton Borough Council) v Central Bedfordshire BV* [2014] EWHC 4325). It is well established that it is generally only in circumstances where a development is “bound to have significant adverse effects” but is sought to be justified on the basis of overriding need, that it may be relevant to consider alternative sites (see Mr. Justice Simon Brown in *Trusthouse Forte Hotels v Secretary of State for the Environment* (1987) 53 P&CR 293). The examples given in that case where consideration of alternative sites may be required are airports, coal mines and nuclear power stations. Officers do not consider that the proposed development here has “significant adverse effects” or that there are otherwise exceptional circumstances which require consideration of alternative sites” as a material consideration when determining the OAP.

Overall Conclusion

- 23.24 Officers fully appreciate the contentious nature of the OPA due to its scale and the timing of the determination of it in relation to the Local Plan examination. However, as set out within this report, Officers are satisfied that the OPA would, over the lifetime of the emerging Local Plan, deliver a high quality, sustainable extension to Cirencester with wider public benefits that would outweigh any harm that has been identified. Officers consider that the OPA development would meet the Government’s objectives to secure a better balance between housing demand and supply, and the creation of high quality sustainable and mixed communities.
- 26.25 The technical evidence has demonstrated that the OPA can deliver the proposed scale of development with impacts either appropriately mitigated or outweighed by the public benefits. As such, there is no justification or legal basis to reduce the scale of the development. Furthermore, Officers have no reason to recommend to Members that the determination of the application should be deferred or that it should be refused on the grounds of prematurity.

26.26 For the reasons set out above and within this report, Officers consider that although giving rise to a conflict policy 19 of adopted local plan, that policy is out of date and the conflict with it should be given limited weight. The OPA accords with the NPPF and other relevant policies of the adopted and emerging Local Plans as appropriately weighted and laid out within this report. As such, there are material considerations which clearly outweigh the conflict with the policy 19 and it is recommended that Members **PERMIT** the application in accordance with the recommendation as set out below.

(a) That Officer Recommendation is the Council resolves to PERMIT the application for the reasons set out in the Report subject to:

- (i) the completion of Section 106 Legal Agreements between the Applicant and Cotswold District Council and the Applicant and Gloucestershire County Council, prior to the decision notice being issued;**
- (ii) the suggested draft conditions set out in the application report, together with any draft conditions as may be agreed by the Council at its Meeting on 26th September 2017;**
- (iii) delegated authority being given to the Head of Planning and Strategic Housing, in consultation with the Chairman and Vice-Chairman of the Council, to amend and/or add to the suggested draft conditions set out in the application report prior to the decision notice being issued, where such amendments would be legally sound and would not deviate significantly from the purpose of the draft conditions;**
- (iv) referring the application back to the Council if any new or altered material considerations arise before the grant of planning permission which, in the view of the Head of Planning and Strategic Housing (having consulted the Group Manager of Land, Legal and Property), may have the effect of altering the resolution ;**
- (v) referral to, and confirmation from, the Secretary of State that the application will not be called-in for determination by the Secretary of State if the decision notice is to be issued in advance of the adoption of the Cotswold District Local Plan 2011-2031.**

IN THE EVENT OF PERMISSION BEING GRANTED BY THE COUNCIL –

- (b) that if, by 12th April 2018, one or both of the Section 106 legal agreements have not been completed and an extension of time for completion has not been agreed, delegated authority being given to the Head of Planning and Strategic Housing to refuse the application, with the reason for refusal to be based upon the failure to secure the required infrastructure to support the development.**