

IN THE MATTER OF THE TOWN AND COUNTRY PLANNING ACT 1990

LAND AT WHEATLEY CAMPUS, OXFORD BROOKES UNIVERSITY

AND WHEATLEY NEIGHBOURHOOD PLAN

OPINION

Introduction

1. We are instructed to advise Oxford Brookes University (“OBU”) and Crest Nicholson (“Crest”) through their instructed planning consultants, Avison Young (“AY”), in respect of the Wheatley Neighbourhood Plan First Review (“the Review NP”), which is intended to replace the current made Wheatley Neighbourhood Plan (“the Current NP”). The Review NP has been prepared by Wheatley Parish Council (“the Parish Council”) and submitted to South Oxfordshire District Council (“the District Council”), who have appointed Mr Andrew Ashcroft as the Examiner (“the Examiner”).

2. We have been asked to advise on four matters, following the publication online of the Parish Council’s response (undated but uploaded on to the website on 3 May 2023) to the Examiner’s Clarification Note (dated 30 March 2023);
 - (1) Whether the revised versions of Policy H1 (referencing Appendix 8: Design Guidance and Codes) and Policy SPOBU – WHE25 in the Review NP meet the basic conditions under paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990, and

 - (2) The procedure conducted by the Parish Council prior to submission of the Plan, including defects in the consultation before and at the Regulation 14 stage;

 - (3) The content of the Parish Council’s response;

 - (4) The appropriate modifications to the Policies, if the Plan is to proceed.

3. We shall set out the factual background and the legislative/policy background and then address each matter in turn.
4. It is understood that this Opinion will be shared with the Examiner, the District and the Parish Council and then published alongside a further representation letter from AY, as part of what is part of the post-Regulation 16 stage representations procedure under the NPIERS Guidance, p32, [1.12.1] and p44, [2.8.5].

Factual Background

The Site and the Permission

5. On 23 April 2020, the Secretary of State granted permission for Appeal Reference APP/Q3115/W/19/3230827 (dated 23 April 2020), for 500 dwellings and associated development at Oxford Brookes University, Wheatley Campus, College Close, Wheatley, Oxford OX33 1HX (“the Site” and “the 2020 Permission” respectively).
6. On 14 March 2023, the Agreement of Sale was exchanged between OBU and Crest. Crest are now in the process of delivering a residential development of 500 units at the Site. On 1 November 2022, OBU submitted an application for planning permission for a revised permission with the same quantum of units, but with different access arrangements and the application was validated by the District Council on 7 November 2022 (“the 2023 Application”).
7. Both the 2020 Permission and the 2023 Application provide an effective use of /optimise the use of land, consistent with national policy (notably NPPF 119-120 and 125). They deliver both houses and apartments on site, set within extensive open space and playing pitches. The Parameters Plan 4: Building Heights (750 – L20, Rev F) consented by the 2020 Permission specified that buildings in the eastern portion of the site would be up to 3 or 4 storeys. The Parameters Plan for 2023 Application (7590-L80 Rev B) maintains that same distribution. This ensures the delivery of 500 homes across the Site, including 200 affordable homes. In summary, the proposal’s

higher density provision in this higher value location allows it to address a wide range of housing needs.

The Local Plan

8. The Site is allocated in the South Oxfordshire District Local Plan 2035 (adopted December 2020) (“the Local Plan”) under Policy STRAT 14, which provides in its first sub-paragraph (with all underlining and **bold emphasis** added both here and below):

*1. Land within the strategic allocation at Wheatley Campus will be developed to deliver approximately **500 new homes** within the plan period. Higher density development should be located in the eastern and central parts of the site with lower density development in the south western part.*

9. Subparagraphs 2-6 set out other detailed specifications for the Site, notably in respect of development densities ((2)(ii)) and a comprehensive master plan ((3)). The Site was also removed from the Green Belt through the Local Plan.
10. The delivery of this site is a key component of the District Council’s housing land supply. It will also make a substantial contribution to meeting the District’s “serious”: and “acute” shortage of affordable homes (Secretary of State’s Appeal Decision, DL35 and IR13.111).

The Current Neighbourhood Plan

11. The Wheatley Neighbourhood Plan was adopted on 11 November 2021, following an Examiner’s Report by the present Examiner, Mr Ashcroft (dated 20 November 2019), the District Council’s subsequent decision to send for referendum on 2 April 2020 and a referendum held on 6 May 2021 (delayed due to the relevant Covid-19-era legislation postponing all such referendums and local elections).
12. The boundary of the Neighbourhood Plan area only covers the eastern portion of the Site, as illustrated on Figure 9.1 of the Current NP (p47).

13. Policy H1 of the Current NP provides:

POLICY H1: DESIGN AND CHARACTER PRINCIPLES

Development proposals will be supported, provided they complement, enhance and reinforce the local distinctiveness of the village and where appropriate are designed to enhance the setting of the conservation area and its settings. Proposals must show clearly how the scale, mass, density, layout and design of the site, building or extension fits in with the character of the immediate area and wider context within the village.

The development proposals will be supported if they respond positively to the following principles as appropriate to their scale, nature and location with the neighbourhood area:-

[Criteria (a)-(j)]

14. Policy SPOBU – WHE5 of the Current NP provides:

POLICY SPOBU – WHE25

Proposals for the comprehensive redevelopment for residential purposes of the Wheatley Campus site as shown on Fig 9.1 will be supported where they conform with the following development principles:-

- *the development of the site is underpinned by a masterplan addressing infrastructure, access, landscaping, and recreation/open space issues;*
- *the layout, design and height of the new buildings take account of the openness of the Oxford Green Belt and as identified generally in national planning policy (NPPF 145g);*
- *the development of the site should incorporate the provision of affordable housing to the most up-to-date standards of South Oxfordshire District Council;*
- *the development of the site should incorporate high quality public realm and open space; and*
- *the development of the site should address opportunities to incorporate safe, convenient and attractive pedestrian and cycling access to and from Wheatley*

15. The wording of Policy SPOBU – WHE 25 of course pre-dates both the grant of permission and the Local Plan allocation, hence the second bullet-point's reference to extant Green Belt.

The Review Neighbourhood Plan – Pre-Submission

16. Work began on the Review NP following the making of the Current NP. We are instructed that the Parish Council did not contact OBU or Crest to provide any drafts of either the Review Plan or the Design Guidance and Codes to OBU at any stage prior to submission.

17. The Parish Council conducted a Regulation 14 consultation from 3 June 2022 to 22 July 2022. The Parish Council's conduct of this pre-submission consultation was notable in two respects.
18. First, the Regulation 14 consultation was advertised on the Parish Council's website. The Parish Council contacted certain organisations direct. They did not make any attempt to contact OBU and its representatives direct, notwithstanding (a) the obvious relevance of the intended policy content and (b) the PPG guidance advising such consultation with landowners and developers (41-048 set out below).
19. Second, the leaflet announcing the consultation, on its second page (Key Issues), paragraph 4, stated: "*The Oxford Brookes University (OBU) Campus in Holton has been designated as an SODC strategic site. The site has outline planning permission but as yet no further information is available as to the detailed development. How the site is developed is outside the remit of the Wheatley NP (WNP).*" (underlining added).
20. Following upon the above, the Reg 14 consultation statement contained a number of similar statements confirming this understanding on the part of the Parish Council:

P2: "WNP is limited by law in commenting on the proposed size of development for its Strategic Site (the OBU Campus)."

The Review Neighbourhood Plan – Content

21. The Parish Council subsequently submitted the Plan for examination, although this date has not been specified on the website. At this stage, in accordance with the statutory scheme, the District Council took up responsibility for organising the consultation and the document was first provided to OBU as part of the Regulation 16 consultation.
22. The Review NP contains two policies to which AY have objected on behalf of OBU: Policy H1 and Policy SPOBU – WHE25, plus Appendix 8: Design Guidance Codes, a document incorporated by Policy H1.

23. Policy H1 now provides (with the key new section underlined and bolded)

POLICY H1: DESIGN AND CHARACTER PRINCIPLES

Development proposals will be supported, provided they complement, enhance and reinforce the local distinctiveness of the village and where appropriate are designed to enhance the setting of the conservation area and its settings. Proposals must show clearly how the scale, mass, density, layout and design of the site, building or extension fits in with the character of the immediate area and wider context within the village.

The development proposals will be supported where they reflect the Wheatley Design Guidance and Codes and where they respond positively to the following principles as appropriate to their scale, nature and location with the neighbourhood area :-

[Sub-criteria (a)-(j) renewed]

24. The Design Guidance and Code (“the DGC”) contains various components to which AY objected. The number of such components is not exhaustive, because the document has been drafted with near-total disregard to the 2020 Permission and the Local Plan allocation. Character Area 9 (CA9) – Oxford Brookes University simply refers to the existing development on site and makes a brief reference to the allocation: “*The South Oxfordshire Local Plan 2035 allocates the land at Wheatley Campus to deliver 500 new dwellings along with an amendments to the Green Belt boundary.*” There is not a single reference in the DGC document to (1) the 2020 Permission’s parameter plans; (2) the Local Plan Policy STRAT 14 by name, nor its individual paragraphs, e.g. density, masterplanning ; (3) the progress of a permission on the Site.
25. Section 5.3 designates the Site within a wider area termed “Settlement Edge” (defined on p61 as “*areas located mainly around the settlement edges of the village. Development in these areas, and the interface between natural landscapes, should be controlled to avoid the degradation of character.*” No attempt has been made to recognise the separate nature of the OBU Site. It is simply designated within the same area as that to the south of A40, and west of the village, notwithstanding that other areas have been separately identified, for example the “Post-war/modern character area” and an “industrial estate development”.

26. The consequence of this are a series of “Guidelines” and “Codes” which make no reference to the Site, the Permission or the Allocation. These have been identified in the AY Regulation 16 consultation response (pp11-12, [6.4]-[6.12]), and we shall summarise them here, again noting the list of potential conflicts with the 2020 Permission and the Allocation is not exhaustive.

27. Before addressing these points, it is important to note that although it is labelled dually Design Guidance and Codes, the document frequently uses the term “code”, such that its character is more “code” than guidance. Design codes are defined in the PPG 26-008 as “a set of illustrated design requirements that provide specific, detailed parameters for the physical development of a site or area.” Section 4.2 (p41) refers to “Design Coding the Neighbourhood Area” Section 5.2 (p65) refers to each of the Guidelines as a “Code”: “Code to be applied...” Therefore whilst the terms “Guideline” and “Code” are used interchangeably, the document is essentially a Design Code. This is important given PPG 26-008’s observations as to the limitations on the authorship of such documents (as explained further below under Legislative/Policy Framework).

28. Guideline SL01 Village Edge (p74) requires development to “[i]ntegrate into the existing built form” and makes numerous reference to density, whilst (a) failing to reflect the limited amount of adjacent development at the Site; and (b) the fact that the 2020 Permission and the Allocation allow for a new, innovative approach, including higher densities (see AY Regulation 16 response, p11, [6.4]). Put simply, this initial Guideline has not been drafted with regard to either the 2020 Permission or the Allocation and therefore makes no sense when read alongside those existing documents (contrary to NPPF 16d on clarity in policy wording, as set out below).

29. Guideline VV02 Streets, Lanes & Spaces (p87) states that “New developments in the village should demonstrate how they integrate with or improve the existing streetscape”, again without recognising the lack of any such residential “streetscape” in this location (see AY Regulation 16 response, p11, [6.5]).

30. Guideline VV03 House & Building Type then specifies that “A variety of house sizes and building types should be considered to provide variety and diversity within each

development whilst also catering to local housing needs." This is the first of a series of references that make no reference to the provision of apartments on the Site, a core aspect of delivering the 500 units consented by the Appeal permission and by STRAT 14 [1] (see AY Regulation 16 response, p11, [6.6]).

31. Code 1 – Block Principle 1a “Spatial definition of the public realm” states “*The spacing of new development should reflect the rural character and allow for long distance views of the countryside from the public realm.*” No attempt has been made to identify how this would impact delivery on the Site (see AY Regulation 16 response, p11, [6.7]).
32. Code 2- Streetscape Principle 2A – “Building heights and rooflines” stated: “*Development building heights should accord with the prevailing settlement character of two storey dwellings. One storey or three storey building heights may also be appropriate where in keeping with local character and precedence of the surrounding area*” and then “*Flat roofs for buildings, extensions, garages and dormer windows should be avoided*”. This fails to reflect the need for higher density up to 4 storeys on the Site. The entire focus of the guidance has been upon detached and semi-detached houses (see AY Regulation 16 response, p11, [6.8]-[6.10]).
33. Code 3: Parking and Natural Surveillance, 3B “On-plot side and front parking” renews this exclusive focus on houses not flatted development, again without any regard to the developable area of the Site (see AY Regulation 16 response, p11, [6.11]).
34. Code 5B: Building Vernacular then specifies that “*Informed by the local vernacular, the following pages illustrates acceptable materials and detailing for future housing developments in Wheatley.*” The list is then extremely limited to materials which would not cover modern development, especially flatted development (see AY Regulation 16 response, p11, [6.12]).
35. With respect to the external consultant authors of the document (AECOM), it is extraordinary that they did not refer to the 2020 Permission and seemingly did not consider it, given that all stages were completed long after permission had been

granted (see p2 Action Summary/Issue dates: 2021 and 2022). The introductory sections record the list of evidence base that they examined (Section 2, pp12-15), and STRAT 14 is not even referred to in terms at Section 2.2 (p16). Indeed it is entirely unclear whether AECOM intended their document to be incorporated into Policy H1 as has now been attempted. The final section of the Plan (Section 7, p121) merely describes the document as a “*evidence base*” and then states that “*should any development sites come forward*”, then AECOM can provide a new “*Site Assessment Package*”. The document therefore has an incomplete character to it, such that it seems never to have been intended to be applied in the way described in Policy H1. Simply put, the DGC has been drafted with near-total disregard to the Allocation and completely without regard to the 2020 Permission.

36. Separately Policy SPOBU – WHE provides (with the key new text bolded and highlighted):

POLICY SPOBU – WHE25

Proposals for the comprehensive redevelopment for residential purposes of the Wheatley Campus site as shown on Fig 9.1 will be supported where they conform with the following development principles:-

- the development is underpinned by a masterplan addressing infrastructure, access, landscaping, and recreation/open space issues;*
- **the layout, design and height of the new buildings take account of the openness of the Green Belt and as identified generally in national planning policy (NPPF 149g);***
- the development should incorporate the provision of affordable housing in accordance with Policy H9 of the South Oxfordshire Local Plan 2035 [48];*
- the development should incorporate robust measures to alleviate traffic noise from the A40 dual carriageway that lies along the site’s southern boundary*
- the development should incorporate high quality public realm and open space; and*
- the development should address opportunities to incorporate safe, convenient and attractive pedestrian and cycling access to and from Wheatley*

37. This fails to have regard to the removal of the Site from the Green Belt through the Local Plan adoption.

38. The District Council then commenced a Regulation 16 consultation from 19 January 2023 to 2 March 2023.
39. This was the first opportunity that OBU and Crest had to respond to the proposals. AY provided a detailed Regulation 16 representation. We shall not rehearse its comments in full, save to note again the representation's key Section 6 (which provides a more detailed articulation of the problems in the policy content in respect of Design Guidelines/Codes SL01, VV02, VV03, 1A, 2A, 3B and 5B) plus Sections 7 and 8 proposing modifications to the text.
40. AY concluded by observing:

"6.13 In summary, the Design Guidance and Codes appear to have been prepared with relatively small development schemes on the southern side of the A40 in mind. Development in these areas would be adjacent to existing development, hence a degree of "fitting in" is justified. All of the example drawings included in the document show detached or semi-detached, two storey, development set in large gardens.

6.14 The guidance makes no reference to, or acknowledgement of, the need for relatively high density, four storey, development on the campus site....

7.2 The Design Guidance and Codes do not contemplate the type of development for which planning permission has been granted on the campus site, i.e. relatively high density, four storey development that is required to deliver 500 homes on the site.

7.3 This sets up a conflict with both the extant permission and strategic policy STRAT 14 of the Local Plan.

7.6 Much of the Design Guidance and Codes conflict directly with the provisions of Policy STRAT 14 of the adopted Local Plan. If the Guidance and Codes are applied to the Campus site the result would be delivery of significantly fewer than the 500 homes identified by the policy and authorised by the extant permission. This places the Design Guidance and Codes in direct conflict with a strategic policy in an adopted development plan and the Wheatley Neighbourhood Plan Review in breach of the "basic conditions".

41. The Response then made two key recommendations at [8.2], of which the second was identified as the only practical option:

- *Redraft the design guidance and codes to reflect the development authorised by the extant planning permission for the campus site and the strategic allocation for redevelopment in the adopted Local Plan;*
- *Alter the draft WNP to confirm that the Design Guidance and Codes do not apply to the Campus site.*

42. At [8.4] to [8.10], the Response explained why the second was the most expedient, i.e. the only practical option:

“8.7 This could be achieved with two relatively straight forward amendments to the Draft Neighbourhood Plan Review and the accompanying Design Guidance and Codes.

8.8 Policy H1 of the Draft Neighbourhood Plan Review could be modified to confirm that the Design Guidance and Codes do not apply to the Campus. The explanatory notes could explain that this is because a robust design framework for the redevelopment of the site is already in place.

8.9 The Design Guidance and Codes could be modified through the removal of reference to the Campus site in the character areas and other provisions.

8.10 We conclude that the second option offers the most expedient way for the Neighbourhood Plan Review to proceed and to satisfy the basic conditions. The University is willing to discuss the proposed amendments with the Neighbourhood Plan Group and District Council and suggests that this may be the most expedient way forward for all parties.”

Clarification Note

43. On 30 March 2023, the Examiner issued a Clarification Note to the Parish Council, asking them to confirm:

(1) Policy H1: Whether it was the Parish Council’s intention that the Guidance/Codes (i.e. Appendix 8) were to apply to the Oxford Brookes University Site (and the proposed site allocations);

And

(2) Policy SPOBU (WHE25): Whether paragraph 9.1 should also comment about the extant planning permission for the redevelopment of the site and its removal from the Green Belt and whether 9.2 related to land surrounding the site or had been retained in error from the made Plan?

The Parish Council’s Response

44. The Parish Council's Response is undated but was published online on Wednesday 3 May.

Design Code and Guidance (pp1-2)

45. On the first point, the response states at the base of page 1 that: "*The DGC addresses new and in-fill development within the whole of the Plan area which includes a part (WHE25) of STRAT14 designated in the Local Plan*", i.e. in short, a yes to the Examiner's question in respect of the Site. The Parish Council then state their opposition to the 2023 Application (p2, second paragraph):

"The current outline planning application for STRAT14 describes a development that would normally be associated with the edge of a large urban conurbation such as seen at Barton Fields or Grenoble Road in Oxford City. It is clear however that STRAT14 lies between two rural villages, Wheatley and Holton, and the DGC has been prepared partly to mitigate the anomaly of a large scale, multistorey, residential development in an otherwise rural setting surrounded by Green Belt and to respond to Section 12 of the NPPF."

46. Reference is then made to the Parish Council's objection to the development through its own "*Brookes Liaison Group*". On p2, 4th paragraph, the Parish Council then effectively admit that they have made no attempt to contact OBU or Crest about the content of the Review NP.
47. They conclude by accepting that there may be "conflicts" between the DGC and STRAT 14 and seek "recommendations and advice" from the Examiner:

"The DGC was prepared to provide continuity between the existing buildings and infrastructure in the Plan area and any new development. It was not prepared to prevent, per se, new development or subvert any provisions of the Local Plan 2011 - 2035. The draft DGC was discussed with SODC prior to publication and the SODC recommendations were addressed. If the Examiner deems that there are conflicts between the extant WNP, the DGC of the present Plan and the existing provisions of Local Plan 2011 - 2035, especially for STRAT14, the Parish Council would welcome recommendations and advice from the Examiner to achieve both reconciliation and compliance."

48. In the following paragraph, a final reference is made to seeking to impact development outside the Plan area, notwithstanding that they are well aware that this would be unlawful:

“The DGC is intended to provide guidance for any new development within the Plan area. Although part of STRAT14 does not lie within the Plan area it would seem sensible from at least the perspective of continuity that the DGC could be applied also to this part. However, the Parish Council recognises that such a provision cannot be made within the remit of the Wheatley Neighbourhood Plan.”

Policy SPOBU (p2)

49. In response to Policy SPOBU, it is stated on p2:

“Policy SPOBU (WHE25)

Paragraph 9.1 of the Plan: Recommendation accepted. Perhaps the reference included in paragraph 9.3 would be more appropriate?

“Proposals for the comprehensive redevelopment for residential purposes of WHE25 as shown on Fig 9.1 will be supported where they conform with the following development principles: -

The layout, design and height of the new buildings take account of the rural context of the site, the openness of any Green Belt lying adjacent to the site;”

50. In short, the Parish Council propose a modification that seeks to impose aspects of Green Belt policy to a Site notwithstanding that it has been removed from the Green Belt.

Response to Representation (p3-4)

51. Finally, in response to Representation 11 (the AY Regulation 16 representation), the Parish Council state:

Representation 11: In this representation, OBU overstates the extent of its “engagement” in the preparation of the WNP and the current Plan. Part of “engagement” involves “listening” and there has been little evidence of this during the discussions and stakeholder meetings held with OBU and its representatives.

Nevertheless, OBU has presented a comprehensive description of the planning history of what is now known as STRAT14. It would have been helpful if the description had also pointed out:

- that since 2016 the number of houses recommended for the development has varied from 300 (SODC Local Plan 2032 Preferred Options June 2016) to 750 (an unofficial proposal based on pressure from OBU) until settling at “approximately 500” (Local Plan 2011 – 2035),
- policy STRAT14 of Local Plan 2011 – 2035 does indeed allow for higher density development in part of the OBU site (bullet point # 1) but this has to be consistent with visual impacts on the surrounding countryside being minimised (bullet point # 3 i), despite this qualification the developer has sought to maximise the number of units with the result that the height of the buildings in the eastern and central parts of the site has risen to 3- storeys and 4-storeys thereby reinstating the incongruity of the original buildings in this rural setting

Neither of these points reflects policy H1 of the Plan for development to “fit in with the character of the immediate area” nor with paragraph 3.123 of the Local Plan 2011 – 2035.

In paragraph 3.11 of the representation OBU complains that it is inappropriate that only part of STRAT14 (the current built-up campus area and two residential properties) being included in the Plan area. This assignment was made since the built-up campus area and the two residential properties were considered as a brownfield site sitting inside the Green Belt and at the time of the assignment it was never considered that the rest of the campus would be released from the Green Belt.

The main issue however in this representation is OBU’s contention that the DGC is not relevant to STRAT14. This is true if the whole of STRAT14 is considered but it is the firm contention of the Parish Council that it is indeed relevant to the part of STRAT14 that is WHE15. The purpose and rationale of the DGC has already been described above in clarifying policy H1. In section 8 of this representation OBU despite being somewhat self-serving, the proposal presents an efficient path ahead. However, it is important to approach it without bias., the Parish Council is also willing to explore an expedient way forward and accept advice from the Examiner in dealing with the concerns of OBU and at the same time respecting the objectives of the Plan.

52. The Response does not properly address the STRAT 14 Allocation, nor any of AY’s representations on the constituent parts of the Design Codes and Guidance. The description of the representation as “self-serving” and references to “bias” entirely fail to understand OBU’s position as a landowner with a direct interest in and detailed knowledge of the capacity of the Site.

Conclusion

53. The following four key points emerge from the above factual background:

- (1) The Parish Council did not contact OBU or Crest in respect of the content of the Plan or DGC at any stage prior to submission;
- (2) The Parish Council did not prepare or test the DGC with any regard to the fact that 500 units were both (a) consented and (b) allocated for the whole Site, with higher density on the eastern side (as set out in the Parameters Plans);
- (3) The result is a Policy H1 and DGC and (plus part of Policy SPOPU) which make no reference to the 2020 Permission or the Allocation;
- (4) The Parish Council now appear to accept that modifications are required to the text, in order to meet the basic conditions.

Legislation, Policy and Guidance

Basic Conditions Generally

54. Schedule 4B of the Town and Country Planning Act 1990 defines the basic conditions (with all underlining and bold emphasis added both here and below):

(a) having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the order,

...

(d) the making of the order contributes to the achievement of sustainable development,

(e) the making of the order is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area),

(f) the making of the order does not breach, and is otherwise compatible with, EU obligations,...

55. Basic conditions (a), (d) and (e) collectively provide an important constraint on the content of a neighbourhood plan where there is a major allocation in a strategic policy adopted development plan, especially where there is an extant consent for permission to deliver that allocation.

56. Under NPPF 13, a Neighbourhood Plan must "support the delivery of strategic policies contained in local plans ... and should shape and direct development that is outside of these strategic policies."

57. NPPF 29 then makes clear:

29. Neighbourhood planning gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan. Neighbourhood plans should not promote less development than set out in the strategic policies for the area, or undermine those strategic policies.

58. The above national policy requirements are underscored by a number of paragraphs within the Planning Practice Guidance ("PPG"), notably PPG 41-044:

The resulting draft neighbourhood plan must meet the basic conditions if it is to proceed. National planning policy states that it should support the strategic development needs set out in strategic policies for the area, plan positively to support local development and should not promote less development than set out in the strategic policies (see paragraph 13 and paragraph 29 of the National Planning Policy Framework). Nor should it be used to constrain the delivery of a strategic site allocated for development in the local plan or spatial development strategy.

59. National policy also requires that policies in a neighbourhood plan should be (i) clear and (ii) not seek to duplicate existing policy text to that in the Local Plan. NPPF 16(d) and (f) requires that all plans must:

d) contain policies that are clearly written and unambiguous, so it is evident how a decision maker should react to development proposals;

...

f) serve a clear purpose, avoiding unnecessary duplication of policies that apply to a particular area (including policies in this Framework, where relevant).” (see also PPG 41-043).

Consultation

60. Regulation 14 requires a neighbourhood plan qualifying body, prior to submission to “(a) publicise, in a manner that is likely to bring it to the attention of people who live, work or carry on business in the neighbourhood area – (i) details of the proposals for a neighbourhood development plan”

61. The PPG specifies at 41-047 and 048 that

What is the role of the wider community in neighbourhood planning?

A qualifying body should be inclusive and open in the preparation of its neighbourhood plan or Order and ensure that the wider community:

- is kept fully informed of what is being proposed*
- is able to make their views known throughout the process*
- has opportunities to be actively involved in shaping the emerging neighbourhood plan or Order*
- is made aware of how their views have informed the draft neighbourhood plan or Order.*

Paragraph: 047 Reference ID: 41-047-20140306

Revision date: 06 03 2014

Should other public bodies, landowners and the development industry be involved in preparing a draft neighbourhood plan or Order?

*A qualifying body must consult any of the consultation bodies whose interest it considers may be affected by the draft neighbourhood plan or Order proposal. The consultation bodies are set out in Schedule 1 to the Neighbourhood Planning (General) Regulations 2012 (as amended). **Other public bodies, landowners and the development industry should, as necessary and appropriate be involved in preparing a draft neighbourhood plan or Order. By doing this qualifying bodies will be better placed to produce plans that provide for sustainable development which benefits the local community whilst avoiding placing unrealistic pressures on the cost and deliverability of that development.***

Paragraph: 048 Reference ID: 41-048-20140306

Revision date: 06 03 2014

62. This is also noted in PPG 41-080 Stage 2:

Step 2: Preparing a draft neighbourhood plan or Order

Qualifying body develops proposals (advised or assisted by the local planning authority)

- *gather baseline information and evidence*
- *engage and consult those living and working in the neighbourhood area and those with an interest in or affected by the proposals (eg service providers)*
- *talk to land owners and the development industry*
- *identify and assess options*
- *determine whether a plan or an Order is likely to have significant environmental effect*
start to prepare proposals documents eg basic conditions statement

63. Where a neighbourhood plan contains a policy in respect of an allocated site, especially a strategic site with a planning permission, a qualifying body cannot simply avoid contacting such a developer on the plan's intended content pre-submission and be considered to have met the basic conditions. Such an approach would not comply with Regulation 14 nor the clear expectations of NPPF 13 and 29 and PPG 41-047, 048 and 080, thus breaching basic conditions 8(2)(a) and (d).

Neighbourhood Area Boundaries

64. Section 38A(2) of the Planning and Compulsory Purchase Act 2004 specifies that a neighbourhood plan can only include policies in relation to the development and use of land within the neighbourhood area. It cannot seek to include policies which cover land outside that area.

65. Section 61G(6) and (6A) of the Town and Country Planning Act 1990 provide for an approved “area designation” to be amended. No such application has been made in this case.
66. Unless two Neighbourhood Plans are brought forward simultaneously with corresponding policies covering their areas, any policy or supporting text evidence base relating to land outside of the designated area is not lawful. In particular, policy text and supporting text cannot lawfully seek to constrain the use and development of land outside the single designated neighbourhood area.
67. In summary, the production of a neighbourhood plan policy or a design guidance and code which covers areas outside of the designated area would fail to comply with section 38A(2) PCPA and the corresponding parts of Schedule 4B TCPA, the NPPF and PPG.

Design Codes

NPPF Design Chapter 12

68. The NPPF Design Chapter 12 and the PPG Chapter 26 titled “Design: Process and Tools” both set out national policy and guidance on Masterplans, Design Codes and Design Guides. They make clear that these are distinct documents, with distinct authors and set out important limits on what a neighbourhood plan qualifying body can seek to include in a neighbourhood plan.
69. The NPPF, having demarcated strategic and non-strategic policies within both NPPF 13 and 29, then identifies important constraints in Design Chapter 12, notably NPPF 127-129 (with underlining and bold emphasis added)

127. Plans should, at the most appropriate level, set out a clear design vision and expectations, so that applicants have as much certainty as possible about what is likely to be acceptable. Design policies should be developed with local communities so they reflect local aspirations, and are grounded in an understanding and evaluation of each area’s defining characteristics. Neighbourhood planning groups can play an important role in identifying the special qualities of each area and explaining how this should be

reflected in development, both through their own plans and by engaging in the production of design policy, guidance and codes by local planning authorities and developers.

128. To provide maximum clarity about design expectations at an early stage, all local planning authorities should prepare design guides or codes consistent with the principles set out in the National Design Guide and National Model Design Code, and which reflect local character and design preferences. Design guides and codes provide a local framework for creating beautiful and distinctive places with a consistent and high quality standard of design. Their geographic coverage, level of detail and degree of prescription should be tailored to the circumstances and scale of change in each place, and should allow a suitable degree of variety.

*129. Design guides and codes can be prepared at an area-wide, neighbourhood or site-specific scale, and to carry weight in decision-making should be produced either as part of a plan or as supplementary planning documents. **Landowners and developers may contribute to these exercises, but may also choose to prepare design codes in support of a planning application for sites they wish to develop. Whoever prepares them, all guides and codes should be based on effective community engagement and reflect local aspirations for the development of their area, taking into account the guidance contained in the National Design Guide and the National Model Design Code. These national documents should be used to guide decisions on applications in the absence of locally produced design guides or design codes.***

70. These provisions remain unaltered within the National Planning Policy Framework: draft text for consultation (December 2022).
71. Reading these policy requirements together, NPPF 127 first makes clear that plans are to set out a “clear design vision” at the “most appropriate level”: i.e. with careful regard to who the author should be, reflecting the scale and complexity of the site. It follows that where a strategic policy in the Local Plan has specified how a site is to be delivered, then a non-strategic policy or supporting text cannot seek to alter that approach, without breach of the basic conditions (8(2)(a), (d) and (e)).
72. NPPF 128’s re-emphasises this policy requirement. It explains that a design guide or code must contain “geographic coverage, level of detail and degree of prescription” tailored to “circumstances and scale of change in each place”. Put simply a design guide or code that does not recognise or even refer to a strategic allocation will again be in breach of the basic conditions (8(2)(a), (d) and (e)).
73. Finally, NPPF 129 expressly identifies that landowners and developers can contribute to or prepare Design Guides and Codes in their own right, whilst making

clear that there must be effective community engagement. It is clear that the reverse position is true: if a neighbourhood plan qualifying body want to produce a design guidance document, then they must engage with the relevant landowner or developer – a point clarified by the PPG (26-005 and 26-008).

PPG Chapter 26: Design: Process and Tools

74. PPG paragraphs 26-005 to 008 provide:

What are local design guides?

Local design guides are prepared by local planning authorities and neighbourhood planning groups to set out the general design principles and standards that development proposals should follow in the area, building on policies in the development plan. They are an important way of communicating local design expectations and requirements, and are one of the visual tools that the National Planning Policy Framework expects authorities or neighbourhood planning groups to prepare and use.

Local design guides should be informed by the 10 important characteristics of good places set out in the National Design Guide, and need to be shaped by a clear understanding of the local area's qualities and opportunities. Good local design guides are concise, positive documents which are accessible and use tools such as illustrations and checklists to highlight key design issues and possible solutions. They are most effective when used alongside other relevant design tools to assess the design quality of proposed schemes. To be given as much weight as possible in the decision-making process, local design guides need to be adopted as supplementary planning documents or appended to a neighbourhood plan.

Paragraph: 005 Reference ID: 26-005-20191001

Revision date: 01 10 2019

What are masterplans?

Masterplans set the vision and implementation strategy for a development. They are distinct from local design guides by focusing on site specific proposals such as the scale and layout of development, mix of uses, transport and green infrastructure. Depending on the level of detail, the masterplan may indicate the intended arrangement of buildings, streets and the public realm. More specific parameters for the site's development may be set out in a design code, which can accompany the overall masterplan.

A range of other plans and technical reports may be needed alongside a masterplan, to provide supporting evidence and set out related proposals, such as a local character study, landscape assessment, transport assessment and proposals for securing biodiversity net gain. An implementation strategy could also be included, especially where development is expected to be brought forward in a number of phases.

Paragraph: 006 Reference ID: 26-006-20191001

Revision date: 01 10 2019

How can masterplans be used most effectively?

Masterplans are most likely to be produced by local authorities or developers. For local authorities, they can help to clarify design expectations early in the planning process, set a clear vision for the site, inform infrastructure and viability assessments and identify requirements for developer contributions or other investment. Developers may produce a masterplan to help evolve their own vision for a site, assess options, engage the local planning authority and community in pre-application discussions and support an outline planning application.

Whoever prepares them, masterplans can benefit from a collaborative approach between the local planning authority, site promoters and local communities so that aspirations and constraints are understood early on. Masterplans produced by local planning authorities may be adopted as supplementary planning documents to give them weight in decisions on applications. Masterplans often apply to schemes that are developed over a long time period and so may need to be subject to regular review and be flexible to adapt to changing circumstances.

Care should be taken to ensure that masterplans are viable and well understood by all involved and that graphic representations of what the development will look like do not mislead the public by showing inaccurate details or significant elements not yet decided upon.

Paragraph: 007 Reference ID: 26-007-20191001

Revision date: 01 10 2019

What are design codes?

Design codes are a set of illustrated design requirements that provide specific, detailed parameters for the physical development of a site or area. The graphic and written components of the code should build upon a design vision, such as a masterplan or other design and development framework for a site or area. Their content should also be informed by the 10 characteristics of good places set out in the National Design Guide, and the National Model Design Code.

Design codes can be commissioned or prepared by either the local planning authority or developer, but are best prepared in partnership to secure agreed design outcomes and maintain viability, particularly across complex sites and phased and multi-developer schemes. They can also be prepared for smaller sites, including self-build or custom build projects, where codes can be used to maintain a degree of certainty whilst allowing for design freedom. On large sites it can be important to allow for the code to be reviewed as development proceeds, so that lessons from its initial implementation can be addressed, provided that any changes do not subvert the overall design vision or weaken the quality of development.

Design codes can be applied to all development types including residential, commercial, mixed use, open space, landscape or public realm requirements. They can be adopted as a

supplementary planning document, or appended to a Neighbourhood Plan, Community Right to Build Order or Neighbourhood Development order.

Paragraph: 008 Reference ID: 26-008-20191001

Revision date: 01 10 2019

75. PPG 26-005 makes clear that a design guide produced in a neighbourhood plan can only “*build on policies in the development plan*”. It cannot (consistent with basic condition 8(2)(d) and PPG 41-004) constrain or contradict an identified figure for a Site within the development plan. Design guides are described in a more limited fashion than the other two documents: “*general design principles and standards*”. They are to be distinguished from both masterplans (26-006 and 007) and codes (26-008).
76. PPG 26-006 and 007 make clear that masterplans are best suited to site-specific proposals and dealing with questions of scale and layout of development. They can only be drafted by LPAs and developers, not by neighbourhood plan qualifying bodies.
77. PPG 26-008 states that design codes should be commissioned or prepared only by “a local planning authority or developer”. Whilst there is a reference to neighbourhood plans/orders in the 3rd paragraph, there is no other reference to them being prepared by a neighbourhood qualifying body. Moreover, the PPG makes clear that they are best prepared in partnership (between LPA and developer) and with careful regard to viability. The rationale is understandable given that “*Design codes are a set of illustrated design requirements that provide specific, detailed parameters for the physical development of a site or area*”. Given their obvious impact on delivery, they need to be prepared with a detailed understanding of what has been consented and allocated.
78. The NPPF and PPG provisions are rooted in basic planning practice, reflecting the complexity of strategic sites and the importance of a proper understanding of how they are to be delivered in practice. National policy does not envisage that a neighbourhood plan can contain a design code covering a strategic site. A design code certainly cannot be included without full consultation on its contents with the developer/landowner, nor without proper testing of what will be delivered on the

Site, i.e with a detailed understanding of viability. The preparation of a design code is not to be used as a vehicle for objection to the delivery of the strategic site.

Q1) Basic Conditions

Policy H1 and DGC

79. The proposed addition to Policy H1 of the Review NP (*"The development proposals will be supported where they reflect the Wheatley Design Guidance and Code"*) does not meet the basic conditions, notably (a), (d) and (e).
80. The policy and Design Guidance and Code has completely failed to have regard to (1) STRAT 14, as an adopted policy and (2) the extant planning permission, the 2020 Permission.
81. First, as the AY representations identify, Policy H1 seeks to limit the height, layout and the overall quantum of development on the Site, by seeking to impose a Design Code/Guidelines on the Site. It seeks to impose (a) limits on storeys/heights; (b) viewing corridors; (c) on-plot parking; (d) requirements to matching local house types; (e) limitations on materials. It therefore ignores STRAT 14's express provision for higher-density development on site: *"Higher density development should be located in the eastern and central parts of the site"* and would act as a constraint on delivery of the 500 consented and allocated units across the Site. The effect of Policy H1 would therefore be to restrict the development of the Site in express contradiction of NPPF 13 and 29, and PPG 41-044. The Review NP also fails to have regard to and give effect to NPPF 119-120 and 125a which refer to the importance of effective use of land and optimising its use to meet as much identified housing need as possible.
82. Second, Policy H1 and DGC (read together) are not a clear policy framework for the Site, contrary to NPPF 16d. Many of the provisions of the DGC make little sense when applied to the Site area, because (as AY observe), they have been written to

cover an entirely different area: the area south of the A40, without regard to the very different nature of the area within Wheatley Campus north of the A40.

83. Third, underlying both breaches is a central procedural failure, which engages 8(2)(a) and (d), through the clear requirements of the NPPF and PPG. Contrary to the clear expectation of NPPF 129 and 26-008 that a Design Code should be prepared in consultation with a developer, the Parish Council did not do so. On the contrary, they failed to contact OBU or Crest at any stage (contrary to PPG 41-048 and 41-080 (Stage 2)) and in particular failed to notify them at Regulation 14 stage.
84. Policy H1 and the DGC require express modification to remove references to the Site (see Q4 below).

Policy SPOBU

85. Policy SPOBU's second paragraph "*the layout, design and height of the new buildings take account of the openness of the Green Belt and as identified generally in national planning policy (NPPF 149g)*" plainly requires deletion.
86. The Parish Council's alternative suggestion would not meet the basic conditions: "*The layout, design and height of the new buildings take account of the rural context of the site, the openness of any Green Belt lying adjacent to the site*". This would be contrary to the NPPF which confines Green Belt policy to Green Belt land, thereby preserving a sharp distinction between the two areas (Green Belt and non-Green Belt). There is no provision of national policy which requires "adjacent openness" to be taken into account. Such a proposal would therefore be directly contrary to basic condition 8(2)(a). It would also breach basic conditions 8(2)(d) and (e) by acting as a potential constraint on delivery of the Site, and failing to reflect an adopted strategic policy. Indeed, a policy with such wording would ultimately be so contrary to national policy as to be unlawful as it would be based on a fundamental misinterpretation of the relevant NPPF provisions. It is not open for the Parish Council to seek to include such a policy after submission, without any prior consultation or observance of national policy.

Q2) Procedure Pre-Submission

87. The Parish Council breached Regulation 14 in failing to notify OBU or Crest direct, prior to submission. That procedural defect was not cured by the fact that AY were able to submit a Regulation 16 response after submission.
88. The clear expectation of national policy and guidance is that the Review NP should have been informed by direct engagement with the landowners/developers of the major Local Plan allocation within the Neighbourhood Area (PPG 41-0047 and 048 and 080 (Stage 2)).
89. The Parish Council should have sent the DGC to OBU and Crest direct and consulted them directly on its contents prior to Regulation 14 stage and certainly prior to submission. Their failure to do so has resulted in a policy (H1) and DGC, which make no sense, which have no regard to the NPPF/PPG or the facts of the Allocation and Permission. Had they done so, OBU and Crest would have asked for deletion of these references, given the clear attempt to subvert STRAT 14, the disregard for considerations of quantum, viability and consequently housing delivery.
90. The Parish Council have confused their role as plan-makers and as objectors. They make a complaint in their recent response that there has been no “*listening*” to their concerns on the Application. But that is not a proper answer to breaches of the Neighbourhood Planning Regulations and of the PPG. The preparation of a neighbourhood plan document carries statutory and PPG-imposed obligations. Consultation is not a process that can be ignored or shortcut, simply because one is engaged in an objection to an application.
91. Where a procedural defect of this kind has occurred, it can only be cured through substantial modification (or a decision that the plan cannot proceed to referendum).

Q3) Parish Council’s Response to Clarification Note

92. The Parish Council’s response confirms an intention for how Policy H1 is supposed to operate, but provides no justification for that.

93. As set out above, the Parish Council do not properly addresss AY's response. Instead,they refer to their general objections to the Site and the proposals for "*large scale, multistorey, residential development*".
94. As to the Parish Council's suggestion that the Examiner provide "advice", that is, with respect, not a correct description of the Examiner's role. An Examiner can only recommend modifications in the specific circumstances set out in paragraph 10(3) of Schedule 4B. Here, the defects in the policy preparation and the conduct of the Parish Council are such that the only appropriate recommendation must be deletions (see Q4 below).

Q4) Appropriate Modifications to the Policies, if the Plan is to proceed.

Policy H1

95. AY's second recommendation is the only route forward to address the deficiencies in the Review NP that would be consistent with basic conditions 8(2)(a), (d) and (e).
96. Policy H1 should be altered with the additional wording:

Outside the area within STRAT 14 [or such other areas as specified], The development proposals will be supported where they reflect the Wheatley Design Guidance and Codes and where they respond positively to the following principles as appropriate to their scale, nature and location with the neighbourhood area :-

97. The Design Guidance and Code should also be redrafted at Section 5.3, with wording to make clear that the Site area falls outside the scope of this document.
98. No other route would offer the clarity and certainty that is required in respect of such a major strategic site, and one that has been clearly endorsed for development at Secretary of State level. As AY have observed, this would not leave the Site without any design policy. On the contrary, there is a clear framework in STRAT 14.

99. The Parish Council's attempt to seek "advice" on the content of Policy H1 and enter into some form of negotiation as to the content of Policy H1 is misplaced, and does not properly reflect paragraph 10 of Schedule 4B. A DGC document which has been drafted with disregard to the Permission and Allocation, cannot be repaired post-submission. The only correct and lawful route must be to remove its effect in relation to the Site.

Policy SPOBU

100. The second bullet-point of Policy SPOBU should be deleted, for the reasons set out above under Q1. The Parish Council's proposed wording would breach the basic conditions.

Conclusion

101. We have addressed the matters set out in our instructions. Should those instructing require further advice, we can be contacted in Chambers.

CHRISTOPHER YOUNG KC

JAMES CORBET BURCHER

No5 Chambers

12 May 2023