

Joan Desmond
West Oxfordshire District Council
Elmfield
Witney
OX28 1PB



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

21 December 2022

Dear Joan,

APPLICATION NO: 22/03179/OUT

DESCRIPTION: Outline planning application (with all matters reserved) for the erection of up to 70 residential units (including affordable housing) with associated parking, vehicular and pedestrian access, internal roads, public open space, landscaping, drainage and other associated infrastructure.

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

The above planning application, which is for a development that would be located within the Cotswolds National Landscape, has been brought to the attention of the Cotswolds National Landscape Board.

The Board has consistently and firmly objected to the development of this sensitive site, both throughout the preparation of the current West Oxfordshire Local Plan and also in response to previously planning refusals and the dismissed appeal from earlier this year. Having reviewed this latest application, we consider that the applicant has not submitted a proposal which accords with local and national planning policy and guidance and we therefore **object** to the proposed development and recommend that this application should be refused.

In their submission, the applicant acknowledges that the proposed development would constitute 'major development' in the context of paragraph 177 of the National Planning Policy Framework ('NPPF'). In effect, based on the definition of major development contained in footnote 60 of the NPPF, the applicant has acknowledged that the development merits this status by virtue of its nature, scale and setting, and its potential to have a significant adverse impact on the purpose of conserving and enhancing the natural beauty of the Cotswolds National Landscape.

Paragraph 177 of the NPPF states that planning permission should be refused for major development other than in exceptional circumstances and where it can be demonstrated that the development is in the public interest. For the reasons we outlined in Annex 1 below, we consider that those exceptional circumstances neither exist nor that the development would be in the public interest.

In our view, the proposal also fails to accord with Policies OS2, OS4, EH1, EH2, EH8, EH9, EH10, EH11, EH13 and BC1 of the West Oxfordshire Local Plan 2031 and Policies CE1, CE4, CE5, CE10 and CE12 of the Cotswolds AONB Management Plan 2018-2023.

We acknowledge that the Council may not currently be able to demonstrate a five-year land supply. However, we consider, for the reasons outlined in Annex 1, that the application of policies in the NPPF, in particular paragraphs 176 and 177, provide a clear reason for refusing the proposed

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

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Chairman:
Brendan McCarthy

Vice Chair:
Rebecca Charley

development. As such, we recommend that the 'tilted balance' in favour of granting planning permission is not engaged and the application should be determined on an unweighted planning balance with clear reasons for refusal already present as outlined below.

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

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S. Joyce', with a stylized flourish at the end.

Simon Joyce

Planning Officer

simon.joyce@cotswoldsaonb.org.uk | 07808 391227

ANNEX 1: COTSWOLDS NATIONAL LANDSCAPE CONSULTATION RESPONSE IN RELATION TO PLANNING APPLICATION 22/03179/OUT

Preface

The site is valued due to its location within the Cotswolds AONB and as such, any development would need to protect and enhance the special qualities for which the AONB was designated. The statutory purpose of AONB designation is to conserve and enhance the natural beauty of the area¹. Further information regarding AONB designation, including the factors that contribute to the natural beauty of AONBs, is provided in Appendix 1 of the Cotswolds AONB Management Plan 2018-2023² and in Natural England's guidance for assessing landscapes for designation as National Park or AONB³.

Section 85 of the Countryside and Rights of Way Act outlines what is commonly referred to as the 'duty of regard', namely that *"In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty, a relevant authority shall have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty"*⁴. In determining the application, the Council is a 'relevant authority' in this regard.

The most relevant paragraphs of the NPPF in the context of our objection to the proposed development are paragraphs 176 and 177, the requirements of which are considered below. Paragraph 174, with regards to 'valued landscapes' and 'the intrinsic character and beauty of the countryside' is also relevant as is Section 16, 'Conserving and enhancing the historic environment', for reasons outlined below as well as paragraph 041 of the Planning Practice Guidance⁵.

Major development in the AONB

The applicant has acknowledged that the proposed development constitutes 'major development' in the context of paragraph 177 of the NPPF and West Oxfordshire Local Plan 2031 ('WOLP') Policy EH1. Based on the requirements of paragraph 177, the decision maker should not simply weigh all material considerations in a balance but should refuse planning permission unless they are satisfied that *all* exceptional circumstances specified at paragraph 177 apply *and* that the development would be in the public interest.

Paragraph 177 outlines the assessments that must be undertaken when applications for major development are being considered:

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

¹ <https://www.legislation.gov.uk/ukpga/2000/37/section/82>

² Cotswolds Conservation Board (2018) *Cotswolds AONB Management Plan 2018-2023* ([link](#)). Appendix 1.

³ Natural England (2011) *Guidance for assessing landscapes for designation as National Park or Area of Outstanding Natural Beauty in England* ([link](#)).

⁴ <https://www.legislation.gov.uk/ukpga/2000/37/section/85>

⁵ <https://www.gov.uk/guidance/natural-environment#landscape> Paragraph: 041 Reference ID: 8-041-20190721

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

Need

The applicant highlights that the Council cannot currently demonstrate a five-year housing land supply, reflecting the conclusion of the Inspector in determining the appeal for the 173-dwelling proposal on this site (APP/D3125/W/22/3293656). Even if the Council cannot demonstrate such a housing land supply when this application falls to be determined, recent Section 78 appeal Inspectors have held that the circumstances of a housing shortfall, including challenges around providing for affordable housing are not unusual and would not amount to exceptional circumstances that would justify harm to the AONB⁶.

The social and economic benefits identified by the applicant (which are now arguably reduced in comparison with the dismissed appeal) would apply to any similar form of development, irrespective of its location, and as such we do not consider that they amount to exceptional circumstances in this case.

We would also wish to highlight the High Court judgement for ‘Mevagissey Parish Council v Cornwall Council’ where Hickinbottom J found that *“Even if there were an exceptional need for affordable housing in an area, that would not necessarily equate to exceptional circumstances for a particular development, because there may be alternative sites that are more suitable because development there would result in less harm to the AONB landscape”*⁷.

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

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

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

Detrimental effects: Landscape and Visual Impact

Although we acknowledge that the applicant has reduced the scale of development in terms of numbers, building heights and footprint compared to proposal dismissed at appeal earlier in the year, it is for a similar quantum to that proposal in the application previous to that and as such the detrimental effects of the proposed development remain similar.

WOLP Policy EH1 states that the Cotswolds AONB Management Plan and guidance documents are material considerations in decision making relevant to the AONB. Policy CE1 of the Cotswolds AONB

⁶ Paragraph 90, appeal reference APP/M2270/W/21/3273022, Hawkhurst Golf Club, dated 2 February 2022.

⁷ R (Mevagissey Parish Council) v Cornwall Council [2013] EHC 3684. Paragraph 51.

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

Management Plan specifies that development proposals should be compatible with and reinforce the landscape character of the location, as described by the Landscape Character Assessment⁹.

The LCA identifies 19 different landscape character types (LCT) within the Cotswolds AONB. The appeal site is located within Landscape Character Type (LCT) 16: Broad Floodplain Valley and Landscape Character Area (LCA) 16A Lower Windrush Valley.

The Cotswolds AONB Landscape Strategy and Guidelines (LS&G)¹⁰ provides the further information for each LCT, including:

- Key features (reflecting the key characteristics identified in the Landscape Character Assessment);
- An assessment of the landscape sensitivity of each LCT and its capacity for further development;
- The 'local forces for change';
- The 'landscape implications' of these forces for change; and
- Guidelines to address the local forces for change and associated landscape implications, in order to ensure that development in the AONB and its setting is consistent with the purpose of AONB designation.

Policy CE10 of the Cotswolds AONB Management Plan also specifies that development proposals should be compatible with the LS&G.

Section 16.1¹¹ of the LS&G provides fifteen potential adverse landscape implications relating to the 'development, expansion and infilling of settlements' within the Broad Floodplain Valley LCT. This appeal proposal constitutes development, expansion *and* infilling. In our view, at least eleven of these adverse landscape implications are relevant to this application, namely:

- Intrusion of expanded settlement fringes into the landscape;
- Degradation of views along and across the Broad Floodplain Valleys;
- Impact or loss of views of key features such as church towers across the landscape;
- Erosion of distinctive settlement patterns due to settlement growth and coalescence;
- Loss/dilution of organic growth patterns of settlements including the relationship between the historic core and adjacent historic fields, paddocks and closes;
- Proliferation of suburban building styles, housing estate layout and materials;
- Upgrading of minor roads and lanes associated with new development and the introduction of suburbanising features;
- Increased traffic leading to increased damage to road verges and roadside hedges and walls and the creation of informal passing places;
- Introduction and accumulation of lit areas and erosion of characteristically dark skies;
- Potential loss of archaeological and historical features, field patterns and landscapes; and

⁹ Cotswolds Conservation Board (2015) *Cotswolds AONB Landscape Character Assessment* ([link](#)).

¹⁰ Cotswolds Conservation Board (2016) *Cotswolds AONB Landscape Strategy & Guidelines* ([link](#)).

¹¹ <https://www.cotswoldsaonb.org.uk/wp-content/uploads/2017/07/lct-16-broad-floodplain-valley-june-2016.pdf>

- Interruption, weakening or loss of the historic character of settlements and the historic context in how they expanded, especially the importance of the relationship between the historic core of the settlement and surviving historic features.

Section 16.1 of the LS&G also provide landscape strategies and guidelines to mitigate the potential adverse landscape implications discussed above. Again, a number of these are directly contradicted by the proposal, including:

- Avoid development that will intrude negatively into the landscape and cannot be successfully mitigated, for example, extensions to settlements in areas of open landscape;
- Ensure that new development does not adversely affect the wider rural landscape and views to and from the AONB;
- Ensure new development is proportionate and does not overwhelm the existing settlement;
- Avoid developments incorporating standardised development layout, suburban style lighting, construction details and materials that cumulatively can lead to the erosion of peaceful landscape character;
- Ensure that new development does not adversely affect settlement character and form or impact on views of key features such as church towers/spires;
- Ensure new development is visually integrated into its surroundings and does not interrupt the setting of existing settlements. or views along the valley;
- Ensure the density of new development reflects its location;
- Avoid disconnecting the historic core of the settlement from its rural surroundings, particularly village Conservation Areas;
- Avoid proposals that result in the loss of archaeological and historical features or that impact on the relationship of the settlement and its links with surviving historical features.

We would highlight the Council's previous assessment of a development proposal on this site *"The site is prominently located in the countryside beyond the existing settlement edge of Burford. The development would encroach unacceptably into agricultural land and would fail to relate satisfactorily to the town or the existing rural environment which provides a setting for it. It would not easily assimilate into its surroundings resulting in the loss of an important area of open space that makes a positive contribution to the character of the area. It would be highly prominent and visible in a number of public views. The development would also be of a disproportionate and inappropriate scale to its context and would not form a logical complement to the existing scale and pattern of development or the character of the area."* We consider that this assessment could equally be made for this application.

The applicant contends that the site is not assessed as making an important contribution to the local character (LVIA, page 9). They state that the rural landscape that forms the interface with the settlement edge is influenced by settlement and highway features. As such the applicant states that the site does not reflect the condition or have the number of special qualities associated with the AONB as the wider rural landscape does and as such is of lesser value.

We strongly disagree with this assertion. There are no detracting features present on the site itself that represent harm to the site's overriding baseline landscape character, however its development would result in the loss of characteristic fields on the settlement edge and the expansion of the built form. The site is clearly at the settlement edge of Burford, but we would highlight the recent assessment of sites such as this made by an Inspector in a Section 78 appeal. This appeal concerned

an edge of settlement site in Pewsey, Wiltshire within the North Wessex Downs AONB¹². At paragraph 17 of his decision letter, the Inspector states *“That said the whole of the AONB is subject to, and given the protection afforded by, the national designation. This includes areas on the fringe of settlements, such as the appeal site... it is the ... proximity to settlements that makes this type of site more vulnerable to development pressures. Significantly more so than the uplands and remote farmland where built development would be very rarely contemplated. Statute and national policy requires that I have regard to the purpose of conserving and enhancing the natural beauty of all of the AONB and great weight should be attached to that purpose”* (our emphasis).

We also note the assessment of the local character of the site within the report on West Oxfordshire Local Plan Allocations Landscape and Heritage Advice by Chris Blandford Associates which forms part of the Council’s Local Plan evidence base (‘the CBA report’) ¹³. Paragraph 4.2.15 of this report states that the site and its immediate context is broadly consistent with the features *“identified within the published landscape character assessments at national, county and district level, namely the land use including both pasture and some extensive areas of arable land; the well-defined broad valley floodplain, river terraces and gentle convex slopes and small, unspoilt villages with rural character”*. The CBA report then comments at paragraph 4.2.16 that *“Its eastern side is more open and exposed as it faces out into open countryside rather than feeling enclosed by the existing settlement”*.

In our view, the introduction of built form to the site would not only destroy the open character of the field but also intensify the presence of development on the eastern approach to Burford. When travelling towards the settlement either by road or Public Rights of Way, the settlement edge has a perceivable depth and layers which create a softer approach to this historic settlement. Development of the site as proposed would create a harder, more consistent edge to the eastern side of Burford, and would be highly visible on the approach when travelling westwards along the A40, Witney Street or walking along the Windrush Valley. This would be detrimental to both the landscape character of the settlement and wider AONB.

As outlined both in the applicant’s LVIA and the CBA report¹⁴, the site features prominently in views within the area, including those taken from Public Rights of Way and along publicised and published walks¹⁵. In our view it forms an important part of the eastern approach to the settlement, forming part of views towards the town that includes the local focal point that is the spire of the Grade I listed Parish Church of St John the Baptist. For example, the photographs shown below, taken on 26 April 2022 from the end of Wysdom Way, where a pedestrian access is proposed by the appeal scheme, clearly show views of the church’s spire across the site against the backdrop of the AONB when looking northwest and north.

We note that whilst the applicant’s LVIA also considers a photoviewpoint from Wysdom Way (LVIA viewpoint 3), it is taken from a point some distance from the end of the cul-de-sac, from where the view shown below is obscured by residential properties. We would also refer to the photographs of

¹² Ref: APP/Y3940/W/21/3283427, Land west of Wilcot Road, Pewsey, Wiltshire, 7 March 2022

¹³ West Oxfordshire Local Plan Allocations Landscape and Heritage Advice, Chris Blandford Associates, October 2017 ([link](#))

¹⁴ Paragraphs 4.2.17 to 4.2.19 of the CBA Report, referenced above.

¹⁵ For example, the site is prominent in a number of views from Witney Road, the Public Right of Way 149/17/10 along the River Windrush and from Blacksmiths Lane/Beech Grove Lane, Fulbrook close to Beech Grove Farm at LVIA photoviewpoint 6, all of which form the route of Walk 14 in the walking guide *Crimson Short Walks: The Cotswolds* (www.totalwalking.co.uk)

the views referred to as EB2, EB5, EB8 and EB9 contained within Appendix 2 of the CBA report¹⁶, all of which clearly show views of the spire across the site or in association with the site. The CBA report also makes specific reference to how the site is *“considered to be very visually prominent in some middle to long distance views by virtue of its elevated location”* (paragraph 4.2.23). Consequently, we agree with the conclusion of the CBA report at paragraph 4.2.26 that *“the landscape of the East of Burford site is considered to be of medium-high landscape sensitivity and high visual sensitivity”*.

In our opinion, the loss of these views would not accord with Section 16.1 of the LS&G referenced above and by extension the policies of the Cotswolds AONB Management Plan and would also conflict with Policies EH1, EH2, EH9, EH10, EH11 and EH13 of the WOLP.



Above: View of Burford and church spire from northern end of Wysdom Way, looking northwest, April 2022.

¹⁶ Pages 132 to 136 ([link](#))



Above: View of Burford, church spire, Windrush Valley and wider AONB from northern end of Wysdom Way, looking north, April 2022.

The submitted plans for this application retain the principal vehicular access via a long, sinuous access road connecting to Witney Street at a point some distance from the edge of Burford; this would create an incongruous new feature in the rural approach to the town, particularly given the significant regrading work which would be required to create an access through the bank from the elevated field at this point.

The large blocks of development in the centre of the site are situated upon the most elevated area within the site, which would be another prominent change to the landscape. The submitted levels plan (DRWG: P22-2580_DE_003_A_02) shows the development of residential blocks reaching heights of up to 10m above 'future ground level' proposed through the centre of the site. The plan notes state that the 'future ground level' allows for a maximum of 1.5m plus the existing ground level, to allow for 'appropriate drainage, balance cut and fill and alignment of streets and buildings to consistent levels'.

This indicates that the contours of the site present significant technical challenges in terms of achieving workable levels and that significant amounts of cut and fill may be required, resulting in building heights in excess of 11.5m compared to current ground levels. This scale and nature of development would be out of character in this AONB context and would neither conserve nor enhance its landscape and scenic beauty. It would also conflict with the advice contained at paragraph 4.2.28 of the CBA report referenced above which recommended restricting building heights to 1.5 to 2 storeys with a maximum roof ridge height of 8m, significantly below the 11.5m proposed.

The applicant has provided no photomontages and only very simple landscaped sections. In our view it is very unlikely that landscaping proposed on the lower, eastern slopes of the site would provide adequate mitigative screening to a development with ridge heights of potentially up to 11.5m on the higher central and western areas of the site. This planting would appear out of character in this exposed location and its sole purpose appears to be to hide the development, which would suggest that it is inappropriate in the first place. We are also concerned regarding the length of time the vegetation would take to mature to provide any form of screening at all.

We also have significant concerns regarding the earthworks which would be required to deliver the scheme proposed, both on the main development area and the neighbouring field through which the access road would be taken; the access point at Witney Road lies approximately 25m lower than the elevated western part of the site. In our view these earthworks would result in a substantial detrimental change to the character both of the local landform and the rural approach to Burford along Witney Street.

Detrimental effects: Heritage Impact

As explained above, the issue of conserving and enhancing landscape and scenic beauty of the AONB is an important component of conserving and enhancing its natural beauty, particularly given the great weight that should be given to this issue. However, the factors that contribute to the natural beauty of an AONB are more extensive than just landscape and scenic beauty and only having regard to AONB impacts in the context of landscape and scenic beauty would only partially fulfil the statutory 'duty of regard' referred to above.

Natural England's 'Guidance for assessing landscapes for designation as National Park or AONB in England' identifies six factors that contribute to the natural beauty of AONBs¹⁷. One of these is cultural heritage, harm to which was also a reason for dismissing the recent appeal on site.

The photographs shown above illustrate the intervisibility between the landmark church spire and the site, particularly at a point proposed to give pedestrian access to the development. Section 16.1 of the Cotswolds AONB LS&G referred to above explicitly mentions 'impact of loss of views of key features such as church towers across the landscape' as a potential adverse implication of development such as this and advises that it should be ensured that 'new development does not adversely affect settlement character and form or impact on views of key features such as church towers/spires'.

In our view, and in line with the view of the Inspector in respect of the recent appeal, these photographs show that the site forms part of the historic rural setting of the church and contributes to its heritage significance through setting. We support the advice contained within the CBA report at paragraph 4.3.22 that *"The Site does however make a contribution to the character and appearance of the conservation area through its role in views featuring the conservation area from the north and east. In these views the Site is visually prominent and its open and undeveloped character is a feature of the conservation area's character and is a notable element of the rural setting of the historic core of the conservation area"*. The report continues at paragraph 4.3.23 to state that *"in views from the east and north the Site forms a feature in views of the grade I listed church's spire. Development would*

¹⁷ Natural England (2011) *Guidance for assessing landscapes for designation as National Park or AONB in England* ([link](#)). Table 3.

alter the character of these views reducing the rural nature of the church's setting and potentially interrupting views of the spire".

Therefore, we agree with the Inspector's assessment in respect of the previous scheme that development of this (albeit reduced) scale would still result in less than substantial harm (at the moderate to high level) to designated heritage assets (the Burford Conservation Area and Grade I listed Church of St John the Baptist), but the associated benefits of the proposal do not outweigh the less than substantial harm arising in this case.

Detrimental effects: adverse impacts on natural beauty in respect of tranquillity and dark skies

The relative tranquillity of the AONB is another of the six factors identified by Natural England's Guidance referred to above and is also a 'special quality' of the Cotswolds AONB identified in the AONB Management Plan 2018-2023. The 'dark skies' of the AONB are another of its 'special qualities'; in other words, these are two of the features of the AONB that makes the area so outstanding that it is in the nation's interest to safeguard it.

We acknowledge that both the relative tranquillity and dark skies of the AONB are affected by the noise and artificial lighting of the neighbouring built environment of Burford. However, the present undeveloped nature of the site helps to prevent the further erosion of these special qualities, which would occur if the application were granted permission.

In relation to tranquillity, the Board's Tranquillity Position Statement¹⁸ recommends that proposals that have the potential to impact on the tranquillity of the AONB accord with Policy CE4 of the Cotswolds AONB Management Plan 2018-2023, give great weight to conserving and enhancing the tranquillity of the AONB and assess potential impacts on tranquillity, particularly with regards to noise, vehicle movements and landscape and visual impacts. Cumulative impacts on tranquillity should also be taken into consideration in such assessments and with regard to the impact of the proposed development combined with other existing or proposed developments. Proposals that are likely to impact on the tranquillity of the Cotswolds AONB should have regard to this tranquillity, by seeking to (i) avoid and (ii) minimise noise pollution and other aural and visual disturbance and measures should be taken to enhance the tranquillity of the Cotswold AONB by (i) removing and (ii) reducing existing sources of noise pollution and other aural and visual disturbance.

Section 4.5 of the Tranquillity Position Statement outlines how the increase in traffic movements on roads in and directly adjacent to the AONB can have a significant impact on the tranquillity of the AONB. It outlines how the Institute of Environmental Assessment's 'Guidelines for the Environmental Assessment of Road Traffic' recommends using two 'rules of thumb' for identifying the scale at which increases in traffic movements should be considered in an Environmental Impact Assessment:

- Rule 1: Where traffic flows will increase by more than 30% (or the number of heavy goods vehicles (HGVs) will increase by more than 30%).
- Rule 2: Any other sensitive areas where traffic flows have increased by 10% or more.

AONBs are specifically identified as 'sensitive areas' in the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. As such, Rule 2 should be applied in the Cotswolds AONB and

¹⁸ Cotswolds Conservation Board (2019) *Tranquillity Position Statement* ([link](#))

should relate to both traffic flows. On this basis, it can be argued that an increase in traffic flows of more than 10% from a development proposal or in combination with other proposals is likely to be significant and have an adverse impact on the tranquillity of the Cotswolds AONB. This matter has not been addressed within the applicant's Transport Assessment and therefore we consider that the applicant has not demonstrated that the additional vehicle movements on local roads, in particular Witney Street where the main site access is proposed, would not adversely impact the tranquillity of the AONB.

As far as dark skies are concerned, Policy CE5 'Dark Skies' of the AONB Management Plan states that proposals that are likely to impact on the dark skies of the Cotswolds National Landscape should have regard to these dark skies, by seeking to (i) avoid and (ii) minimise light pollution. Measures should be taken to increase the area of dark skies in the Cotswolds AONB by (i) removing and (ii) reducing existing sources of light pollution. Further guidance and information is provided in the Board's Dark Skies & Artificial Light Position Statement¹⁹.

Section 16.1 of the LS&G for LCT16 referred to above identifies the Introduction and accumulation of lit areas and erosion of characteristically dark skies as a potential adverse landscape implication. We consider that the proposed development and associated light spillage and glow will comprise a new source of light pollution within the immediate and wider surrounding area, failing to avoid and/or reduce existing levels of light within the AONB and potentially further adversely impacting on the dark skies of the Cotswolds National Landscape. This is an important consideration given that a key aspiration for the AONB is to avoid, minimise and reduce light pollution in order to enhance the dark skies of the AONB.

In our view, the applicant has not demonstrated that the introduction of up to 70 residential units and associated streetlighting into what is a characteristically dark landscape would be consistent with the LS&G and, by extension, the policies of the Cotswolds AONB Management Plan 2018-2023. In our view the proposal would also not be consistent with WOLP Policy EH2 of the West Oxfordshire Local Plan 2031 which states that *"proposed development should avoid causing pollution, especially noise and light, which has an adverse impact upon landscape character and should incorporate measures to maintain or improve the existing level of tranquillity and dark-sky quality, reversing existing pollution where possible"* and WOLP Policy EH8 which will only allow external lighting proposals where *"the proposal would not have a detrimental effect on intrinsically dark landscapes"*.

Public interest

When assessing whether the proposed development is in the public interest, it is important to note mind that AONBs are landscapes whose distinctive character and natural beauty are so outstanding that it is in the nation's interest to safeguard them.²⁰

¹⁹ Cotswolds Conservation Board (2019) *Dark Skies & Artificial Light Position Statement* (main document ([link](#)), Appendix A ([link](#)), Appendix B ([link](#)) and Appendix C ([link](#))).

²⁰ Department for Environment, Food and Rural Affairs (2017) *Areas of Outstanding Natural Beauty: Landscape Protection and Enhancement. Support Scheme* (England) 2017-2019. This wording is also used in Appendix 1 of the Cotswolds AONB Management Plan 2018-2023.

It is also important to note the Government's recent assertion that '*meeting housing need is never a reason to cause unacceptable harm to [AONBs]*'²¹ We consider that the harm caused by the proposed development would be unacceptable, in this regard and would not be in the public interest.

Recreational benefits

One of the benefits of this proposal cited by the applicant at paragraph 7.43 of their Planning Statement is the 'increased public access to open space in the AONB'. In principle, the Board is supportive of providing new and / or improved opportunities for public enjoyment of the Cotswolds AONB, including recreational and public access opportunities. This is reflected in the Board's second statutory purpose, which is to increase the understanding and enjoyment of the special qualities of the AONB. However, where there is a conflict between this purpose (i.e. purpose (b)) and the purpose of conserving and enhancing the natural beauty of the AONB (i.e. purpose (a)), the Board has a statutory requirement, under Section 87 of the CROW Act, to attach greater weight to purpose (a)²².

This requirement is commonly referred to as the 'Sandford Principle', which also applies in National Parks²³. Under the 'duty of regard' referred to above we would encourage the Council to apply the same principle.

With regards to this specific development proposal, we consider that any potentially minimal recreational and public access benefits provided by the development are far outweighed by the adverse impacts of the development on the AONB. As such, the Sandford Principle should apply.

Tilted balance

Where there is a shortfall in housing land supply, paragraph 11d of the NPPF sets a presumption in favour of granting planning permission (known as the 'tilted balance'). However, it also identifies a number of exemptions to this tilted balance, including where the application of policies in the NPPF that protect AONBs and designated heritage assets '*provides a clear reason for refusing the development proposed*'.

Case law has clarified that limb (i) of paragraph 11d is applied by taking into account only those factors which fall within the ambit of the relevant 'Footnote 7' policies and that development plan policies and other policies of the NPPF are not to be taken into account in the application of limb (i).²⁴

Given the detrimental impacts outlined above and in line with the Inspector's consideration of the recent appeal proposal, we consider that the application of the relevant Footnote 7 policies provides a clear reason for refusal, with regards to both: (i) landscape and scenic beauty; and (ii) cultural heritage. The fact that a similar scale of development on this site has already been refused planning

²¹ Ministry of Housing, Communities & Local Government (2021) Government response to the local housing need proposals in 'Changes to the current planning system'.

²² <https://www.legislation.gov.uk/ukpga/2000/37/section/87>

²³

<https://secure.nationalparks.uk/students/whatisanationalpark/aimsandpurposesofnationalparks/sandfordprinciple>

²⁴ Monkhill Ltd v Secretary of State for Housing, Communities and Local Government & Anor (Rev 1) [2021] EWCA Civ 74 ([link](#)).

permission (17/00642/OUT), largely on the grounds of adverse impacts on the Cotswolds National Landscape, adds further weight to not applying the tilted balance.

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

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

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

Conclusion

The applicant acknowledges that, for the purposes of paragraph 176 and 177 of the NPPF, the proposal represents 'major development' within the Cotswolds AONB; indeed, a development of up to 70 residential units and associated infrastructure on a site extending to over 7.5 hectares comprises 'major development' by most measures.

The starting point for reaching a conclusion on the provisions of paragraphs 176 and 177 of the Framework is that great weight should be given to conserving and enhancing the landscape and scenic beauty of an AONB, which has the highest status of protection in relation to these issues. As such, the scale and extent of development within these areas should be limited, and planning permission should be refused for major development other than in exceptional circumstances and where it can be demonstrated that the development is in the public interest.

For the reasons outlined in our previous consultation response and expanded upon above, this major development proposal does not meet the paragraph 177 tests. Part of this assessment concludes that development of the site would have a detrimental effect on the landscape and scenic beauty of the AONB. As a result, the appeal proposal also conflicts with the requirements of paragraphs 176 and 177 and provides a clear reason for the refusal of this application.

In our view, the proposal also fails to accord with Policies OS2, OS4, EH1, EH2, EH8, EH9, EH10, EH11, EH13 and BC1 of the West Oxfordshire Local Plan 2031 and Policies CE1, CE4, CE5, CE10 and CE12 of the Cotswolds AONB Management Plan 2018-2023.

Although we do not wish to comment further on the five-year land supply situation in West Oxfordshire, should the Council consider that it cannot demonstrate a five-year land supply or the policies which are most important for determining the application are otherwise out-of-date, we consider for the reasons outlined above, that the application of policies in the NPPF, in particular paragraphs 176 and 177, provide a clear reason for refusing the proposed development. As such, the 'tilted balance' in favour of granting planning permission is not engaged and the appeal should be determined on an unweighted planning balance with clear reasons for refusal already present.

The benefits of the proposal including economic and social benefits including the provision of affordable housing and employment benefits to the local economy do not outweigh the scheme's adverse impacts, including its harm to the AONB, a nationally protected landscape where the conservation and enhancement of landscape and scenic beauty should be given great weight. Accordingly, this application should be refused.

Additional comments

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

- Cotswolds Area of Outstanding Natural Beauty (AONB) Management Plan 2018-2023 ([link](#));
- Cotswolds AONB Landscape Character Assessment ([link](#)) particularly, in this instance, with regards to Landscape Character Type (LCT) 16;
- Cotswolds AONB Landscape Strategy and Guidelines ([link](#)) particularly, in this instance, with regards to LCT 16 ([link](#)), including Section 16.1;
- Cotswolds AONB Local Distinctiveness and Landscape Change ([link](#));
- Cotswolds Conservation Board Position Statements ([link](#)) particularly, in this instance, with regards to the:
 - Housing Position Statement ([link](#)) and its Appendices ([link](#));
 - Landscape-led Development Position Statement ([link](#)) and its Appendices ([link](#));
 - Tranquillity Position Statement ([link](#)), including Section 4.5;
 - and the Dark Skies and Artificial Light Position Statement ([link](#)) and its appendices ([link 1](#), [link 2](#), [link 3](#)).