

# **EXAMINER'S REPORT SHILTON COMMUNITY RIGHT TO BUILD ORDER**

**The development of 12 dwellings on land at  
Hen N Chick Lane, Shilton**

A Report to West Oxfordshire District Council of the Examination into  
the Shilton Community Right to Build Order

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## 1. Summary

- 1 This Report provides the findings of the examination into the Shilton Community Right to Build Order (referred to in this Report as "*the Order*").
- 2 **The Report finds that the Order does not meet statutory requirements and consequently, it recommends that the Order should be refused and should not proceed to Referendum.**
- 3 This recommendation has been reached further to consideration of the Order against the basic conditions, in line with statutory requirements. This Report finds that the Order does not have regard to national policy and that it is not in general conformity with the relevant strategic policies of the West Oxfordshire Local Plan 2031. Consequently, the Order does not meet the basic conditions and cannot proceed to Referendum.
- 4 The conflict with national and local policy is such that the Order cannot be modified such that it meets the basic conditions and hence the conclusion that the Order should not proceed to Referendum.
- 5 This Report, submitted to West Oxfordshire District Council, sets out in detail the findings of the examination of the Order. It is a requirement that the Examiner's Report provides a recommendation as to whether or not the Order should go forward to a Referendum and as above, in this case it is recommended that the Order does not proceed.
- 6 The Order was submitted for examination at the same time as the Shilton Neighbourhood Plan. The Neighbourhood Plan has been examined separately from the Order. Community Right to Build Orders and Neighbourhood Plans are different and as such, they are subject to different forms of examination.
- 7 The Report of the examination of the Shilton Neighbourhood Plan recommended to West Oxfordshire District Council that that document should progress to Referendum, subject to recommended modifications.

## 2. Introduction

- 8 Neighbourhood planning provides communities with the power to establish their own policies to shape future development in and around where they live and work.
- *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...*  
(Paragraph 29, National Planning Policy Framework)
- 9 This Order was proposed by Shilton Parish Council. In line with the aims and purposes of neighbourhood planning, as set out in the Localism Act (2011), the National Planning Policy Framework (2018<sup>1</sup>) and national Planning Practice Guidance, Shilton Parish Council is the designated *qualifying body* responsible for the preparation of the Order. The site the subject of the Order lies within the Shilton Neighbourhood Area, which was designated by West Oxfordshire District Council on 5 October 2016.
- 10 The purpose of the Order is to deliver a development of up to twelve dwellings, at least 80% of which should comprise affordable housing, on an area of land comprising circa 0.5 hectares. The Order also supports the delivery of two new accesses to the housing and the provision of a “*village green of approximately 1.0 hectare with an associated parking area*” and vehicle access.

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<sup>1</sup> The National Planning Policy Framework 2018 replaces the original 2012 National Planning Policy Framework. Whilst the replacement version establishes that the policies of the previous Framework will apply for the purpose of examining Neighbourhood Plans up until 25<sup>th</sup> January 2019, there is nothing to suggest that such an approach extends to Community Right to Build Orders. The CRTBO has been considered against the 2018 Framework.

### 3. Community Right to Build Orders

- 11 The Community Right to Build came into force on 6 April 2012. It forms part of the Neighbourhood Planning (General) Regulations contained within the Localism Act 2011.
- 12 A Neighbourhood Development Order grants planning permission for specific types of development in a specific neighbourhood area. It can apply to a specific site, sites, or wider geographical area.
- 13 A Community Right to Build Order is a form of Neighbourhood Development Order. It can be used to grant planning permission for small-scale development for community benefit on a specific site, or sites, in a neighbourhood area.
- 14 The Localism Act<sup>2</sup> establishes that a neighbourhood development order is a Community Right to Build Order if:
  - (a) *the order is made pursuant to a proposal made by a community organisation;*
  - (b) *the order grants planning permission for specified development in relation to a specified site in the specified neighbourhood area;*
  - (c) *the specified development does not exceed prescribed limits.<sup>3</sup>*
- 15 In respect of the above:
  - (a) the Parish Council, as a designated qualifying body, constitutes a community organisation.

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<sup>2</sup> Ref: Localism Act 2011, Schedule 11 which inserted Schedule 4C to the Town and Country Planning Act 1991 and S.61Q.

<sup>3</sup> Ref: (2) Regulations under sub-paragraph (1)(c) may prescribe a limit by reference to—  
(a) the area in which the development is to take place; (b) the number or type of operations or uses of land constituting the development, or (c) any other factor.

- (b) The specified development is set out in the Order submitted to West Oxfordshire District Council by Shilton Parish Council. Whilst there is a degree of uncertainty in respect of precisely what the proposed development might comprise, the Order sets out the general proposal and supports this with indicative information, and it identifies a specified site within the designated Shilton Neighbourhood Area.
- (c) There is nothing to indicate that the specified development exceeds prescribed limits.

16 Planning Practice Guidance<sup>4</sup> states that:

*“A Community Right to Build Order can be used for example to approve the building of homes, shops, businesses, affordable housing for rent or sale, community facilities or playgrounds. Where the community organisation wishes to develop the land itself (subject to acquiring the land if appropriate) then the resulting assets can only be disposed of, improved or developed in a manner which the organisation considers benefits the local community or a section of it.”*

17 In the light of the above, I note that the Order has been proposed by an appropriate community body, Shilton Parish Council. It is the stated aspiration of Shilton Parish Council to set up a Community Land Trust to implement and manage the proposed development in a manner that would be in accordance with the above.

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<sup>4</sup> Ref: Para 12 ID: 41-012-20140306.

#### **4. Role of the Independent Examiner**

- 18 I was appointed by West Oxfordshire District Council, with the consent of the qualifying body, to conduct an examination and provide this Report as an Independent Examiner.
- 19 I am independent of the qualifying body and the local authority. I do not have any interest in any land that may be affected by the Community Right to Build Order and I do not have any interest in any land in the Shilton Neighbourhood Area.
- 20 I possess appropriate qualifications and experience. I am a chartered town planner and a Planning Inspector in England and in Jersey. I am an experienced Independent Examiner of Neighbourhood Plans and Community Right to Build Orders. Since carrying out the examination of the Thame Neighbourhood Plan in South Oxfordshire in late 2012/early 2013, I have examined Plans and Orders throughout the country.
- 21 I have over 25 years of land, planning and development experience and have worked across the public, private, partnership and community sectors.
- 22 As the Independent Examiner, it is a requirement that I make one of the following recommendations:
- a) that the Order should proceed to Referendum, on the basis that it meets all legal requirements;
  - b) that the Order, as modified, should proceed to Referendum;
  - c) that the Order does not proceed to Referendum, on the basis that it does not meet the relevant legal requirements.
- 23 With regards a Community Right to Build Order, the Examiner's Report is binding. If the Examiner's Report recommends that the draft order be refused, the local planning authority must refuse the proposal.
- 24 If the Examiner's Report recommends that the draft order be submitted to a Referendum (either with or without modifications), then a Referendum must be held on the making of the Order by the local planning authority.
- 25 If recommending that the Neighbourhood Plan should go forward to Referendum, the Examiner must also consider whether or not the Referendum Area should extend beyond the Neighbourhood Area to which the Plan relates.

- 26 Without prejudice to the recommendation of this Report – which is that the Order should be refused and not proceed to Referendum, on the basis that it does not meet the relevant legal requirements - I note for reference that the site the subject of the Order is located wholly within the Shilton Neighbourhood Area designated by West Oxfordshire District Council and that there is nothing to suggest a need to extend the Referendum Area beyond that of the Neighbourhod Area.
- 27 According to statute, the Order must meet the Basic Conditions and other requirements set out in Paragraph 8 of Schedule 4B to the Town and Country Planning Act 1990 (as amended). The Basic Conditions are:
- *having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the order;*
  - *having special regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic interest that it possesses, it is appropriate to make the order;*
  - *having special regard to the desirability of preserving or enhancing the character or appearance of any conservation area, it is appropriate to make the order;*
  - *the making of the order contributes to the achievement of sustainable development;*
  - *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);*
  - *the making of the order does not breach, and is otherwise compatible with, EU obligations;*
  - *prescribed conditions are met in relation to the order and prescribed matters have been complied with in connection with the proposal for the order.*

28 Regulations 32 and 33 of the Neighbourhood Planning Regulations (2012) as amended set out two further Basic Conditions. These are:

- *The making of the neighbourhood plan or order is not likely to have a significant effect on a European site or a European offshore marine site either alone or in combination with other plans or projects;*
- *Having regard to all material considerations it is appropriate that the neighbourhood development order is made where the development described in an order proposal is Environmental Impact Assessment development.*

29 In carrying out the Examination, I have also had regard to the following requirements:

- *The order proposal is accompanied by a draft of the order and a statement that contains a summary of the proposals and sets out the reasons why an order should be made in the proposed terms and the order is made by a community organisation and grants planning permission for specified development in relation to a specified site in the specified neighbourhood area and the specified development does not exceed prescribed limits.*
- *The order proposal may not provide for the granting of planning permission for development that is excluded development, where planning permission is already granted for that development, and may not relate to more than one neighbourhood area.*
- *The order proposal complies with section 61L of Schedule 9 of the Town and Country Planning Act 1990 (as amended), which refers to permission granted by neighbourhood development orders and any conditions specified in the order and any time periods specified.*
- *Whether the draft order is compatible with the Convention rights.*

30 I confirm that the Order has been considered against the basic conditions and requirements set out above.

## 5. Shilton Parish Council

- 31 Shilton Parish Council is an appropriate community organisation (a qualifying body), in respect of proposing a Community Right to Build Order.
- 32 As noted above, I recommend that the Order does not proceed to Referendum. However, I note the stated intention of Shilton Parish Council to establish a Community Land Trust to “*deliver and manage the project*” the subject of the Order.
- 33 For future reference, should a new Community Right to Build organisation be created, Part 4 of the Neighbourhood Planning Regulations 2012 (as amended) makes provision in relation to additional prescribed conditions that a community organisation (other than Shilton Parish Council) must satisfy in order to be a Community Right to Build organisation. These additional prescribed conditions include: allowing anyone from the area to be a member of the organisation; ensuring that such members have majority voting rights for the body; and prescribing the way profits must be used and assets distributed on a winding up.
- 34 The prescribed conditions are set out in Regulation 13, the requirements of which are set out below:
- *Prescribed conditions for community right to build organisations 13.— (1) For the purposes of paragraph 3(1)(b) of Schedule 4C to the 1990 Act, the following additional conditions are prescribed for any community organisation which is not a parish council -*
    - (a) individuals who live or work in the particular area for which the community organisation is established must be entitled to become voting members of the community organisation (whether or not others can also become voting members);*
    - *and (b) the constitution of the community organisation must— (i) provide that taken together the individuals who live in the particular area— (aa) hold the majority of the voting rights; and (bb) have the majority on the board of directors or governing body, of the community organisation.*

- *(ii) include a statement— (aa) that the community organisation will carry on its activities for the benefit of the community in the particular area or a section of it and (bb) indicating how it is proposed the community organisation's activities will benefit the community in the particular area (or a section of it).*
- *(iii) provide that any assets of the community organisation may not be disposed of, improved or developed except in a manner which the community organisation consider benefits the community in the particular area or a section of it.*
- *and (iv) provide that any profits from its activities may only be used to benefit the community in the particular area or a section of it (the payment of profits directly to members or directors is not to be considered a benefit to the community in the particular area or a section of it). (v) provide that in the event of the winding up of the community organisation or in any other circumstances where the community organisation ceases to exist, its assets must be transferred to another. (vi) provide that the organisation has at least 10 members, living in different dwellings to each other, who live in the particular area. For the purposes of this regulation, "dwelling" has the meaning given in section 3 of the Local Government Finance Act 1992(a).*

35 I also note that the 1990 Planning Act (as amended) states:

*"4 (1) A community organisation is authorised for the purposes of a community right to build order to act in relation to a neighbourhood area (whether or not any part of the neighbourhood area falls within the area of a parish council) if (a) the area mentioned in paragraph 3(1)(a) consists of or includes the neighbourhood area, and (b) at the time the proposal for the order is made more than half of the members of the organisation live in the neighbourhood area. (2) Accordingly, the community organisation is in that case to be regarded as a qualifying body for the purposes of section 61E.*

## 6. The Proposed Development

- 36 Whilst the Order does not provide precise detail in respect of the proposed development, Section 2.1 on page 3 of the Order states that it would grant planning permission for:

*"...a residential development and village green on land on the western side of the village, south west of the junction between Hen N Chick Lane and Alvescot Road, Shilton...on a gross site area of 2.30 hectares."*

- 37 It then goes on to state that the Order's proposals are for:

*"A total of up to 12 dwellings on a site area of approximately 0.5 hectare, comprising affordable dwellings of a mix of 2 and 3 bedrooms and the minimum open market dwelling to secure a viable scheme.*

*Two new access points off Hen N Chick Lane to serve the housing with provision for car parking to meet local standards.*

*A village green of approximately 1.0 hectare with an associated parking area served by a new vehicle access off Alvescot Road; a surface water attenuation pond; new hard and soft landscape works within the site."*

- 38 Further to the above, a condition proposed as part of the Order (2.2.2 "Affordable Housing") seeks to ensure that at least 80% of dwellings provided are affordable.
- 39 The Order proposes new housing and a village green. It would provide for twelve or fewer dwellings, 80% of which should be affordable. Whilst the Order contains text and figures showing what the development might comprise, this information is purely illustrative. The Order does not set out precisely what the development would comprise, or how it would appear. In this way, the Order bears some similarities to an outline planning application.
- 40 The Order includes proposed planning conditions and refers to future Reserved Matters applications.

- 41 Some information relating to viability has been included in the Order, although this appears very "*broad-brush*" and is based, simply, upon an illustrative example of development. The viability information provided is reliant upon all houses being sold, with affordable houses being sold at a discount to market value.

## **7. Content of a Community Right to Build Order**

42 The required content of a Community Right to Build Order is set out below and the way in which the Order meets these requirements is provided in **bold text**.

43 According to Section 22 of the Neighbourhood Planning (General) Regulations 2012, a Community Right to Build Order submitted to a local planning authority must include:

*a) A map identifying the land to which the order relates.*

**The submitted Order contains illustrations and figures. These identify the land to which the Order relates.**

*b) A consultation statement which includes a) details of those bodies and persons who were consulted, b) explains how they were consulted, c) summarises the main issues and concerns raised by those consulted and d) describes how those issues and concerns have been considered and addressed in the proposed order.*

**A brief Consultation Statement is provided on pages 46 and 47 of the document containing the Order, as submitted to West Oxfordshire District Council. This includes information in respect of each of the points in paragraph b) above.**

*c) The proposed Order.*

**This is contained within a 48 page document, a large part of which is illustrative, as submitted to West Oxfordshire District Council.**

*d) An archaeology statement if the qualifying body considers it to be appropriate after consultation with Historic England. When one is submitted this should confirm that information contained in the historic environment record has a) been reviewed, b) sets out the findings from that review and c) explains how the findings have been taken into account in preparing the order proposal. Where no findings of relevance are identified the statement need only a) confirm the review has taken place and b) explain there are no relevant findings.*

**Page 39 of the document containing the Order states that the Oxfordshire Historical Environment Record (HER) has been reviewed. It notes that there have been no findings on the site and that consultees, including English Heritage, have not raised any concerns.**

**In its representation to consultation, Historic England stated that “*We have no comments on the proposed Community Right to Build Order.*”**

*e) A short statement that explains how the order meets the Basic Conditions.*

**Pages 41 to 44 of the document containing the Order comprise the relevant Basic Conditions Statement and page 45 provides the reproduction of a letter from West Oxfordshire District Council in respect of a screening opinion.**

*f) Details of any enfranchisement rights and the properties or types of properties to which the qualifying body proposes are not exercisable.*

**A paragraph on page 48 of the document containing the Order states that the Parish Council, as a qualifying body, provides that an enfranchisement right is not exercisable in relation to any property consented by the Order.**

- 44 Taking the above into account, I am satisfied that the requirements of Section 22 of the Neighbourhood Planning (General) Regulations 2012, in respect of Community Right to Build Orders, have been met.
- 45 I am satisfied that the Order is made by a *qualifying body*. I note that it seeks to grant planning permission for a specified development on a specified site in a specified Neighbourhood Area. The Order does not grant permission for development that already has planning permission and it does not relate to more than one neighbourhood area.
- 46 The Order proposal contains a draft of the Order, a statement relating to the proposal and its reasons why the Order should be made.

## 8. Background Documents

47 In undertaking this examination I have considered various information in addition to the Order. This information has included, but is not limited to, the following:

- National Planning Policy Framework (referred to in this Report as "*the Framework*") (2018)
- Planning Practice Guidance (2014) (as updated)
- Town and Country Planning Act 1990 (as amended)
- The Localism Act (2011)
- The Neighbourhood Plan Regulations (2012) (as amended)
- West Oxfordshire Local Plan 2031 (2018)
- The Order
- The Basic Conditions Statement
- The Consultation Statement
- EIA Screening Opinion
- Submission Order Appendices

Also:

- Representations received

48 In addition, I undertook an unaccompanied visit to the site the subject of the Order.

Public Hearing

49 According to the legislation:

*“It is expected that the examination of a draft neighbourhood plan or Order will not include a public hearing. Rather the examiner should reach a view by considering written representations.”* (Planning Practice Guidance<sup>5</sup>)

50 Legislation also establishes that, *“when the Examiner considers it necessary”* to ensure adequate examination of an issue, or to ensure that a person has a fair chance to put a case, then a public hearing must be held.

51 Further to consideration of all of the information before me, I determined that there was no requirement for a public hearing in respect of the Order. I confirm that, in line with legislation, I have considered written representations in reaching my view in respect of the contents of this Report.

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<sup>5</sup> Ref: Paragraph 056, Reference ID: 41-056-20140306.

## 9. Consultation

- 52 Successful public consultation can help to provide for a Community Right to Build Order to reflect the needs, views and priorities of the local community. It can add to a sense of public ownership, lead to community consensus and provide the foundations for a "Yes" vote at Referendum.
- 53 Further to the above, as the making of a Community Right to Build Order replaces the need for a traditional planning application, public consultation can provide for important community engagement.
- 54 It is noted earlier in this Report that a Consultation Statement forms part of the submitted document containing the Order. This Consultation Statement addresses the requirements of the Neighbourhood Planning (General) Regulations 2012, Part 6, Regulation 21.
- 55 In line with Regulations, the Consultation Statement sets out who was consulted and how. It summarises issues and concerns raised by those consulted, and it describes how issues and concerns were considered.

**10. Whether the Order Meets the Basic Conditions**

- 56 In order for the Order to proceed to Referendum, it is a legal requirement for it to meet the Basic Conditions and the other requirements set out in Paragraph 8 of Section 4B of the Town and Country Planning Act (as amended).
- 57 This section of the Examiner's Report examines the Order against each of the Basic Conditions (which are identified in **bold**). It concludes that the Order does not meet the basic conditions.
- 58 The three basic conditions that require the Order to have regard to national policy and guidance, to be in general conformity with the strategic policies of the development plan, and to contribute to the achievement of sustainable development, are considered together in the first part of this Section, below.

**Basic Condition:** Having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the Order;

*and*

**Basic Condition:** 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)

*and*

**Basic Condition:** The making of the Order contributes to the achievement of sustainable development.

59 The National Planning Policy Framework (2018) (*“the Framework”*) and Planning Practice Guidance (2014, as amended) set out national planning policies and advice. The relevant development plan comprises the recently adopted West Oxfordshire District Local Plan 2031 (2018) (referred to below as the *“Local Plan”*).

60 National policy establishes that:

*“The purpose of the planning system is to contribute to the achievement of sustainable development...”*

(Paragraph 7, the Framework)

61 Chapter 2 of the Framework, *“Achieving Sustainable Development,”* establishes that the planning system’s three overarching objectives are economic, social and environmental. Planning decisions are required to play an active role in guiding development towards sustainable solutions whilst taking local circumstances into account, to reflect the needs and opportunities of each area.

62 To ensure that sustainable development is pursued in a positive way, at the heart of the Framework is:

*“...a presumption in favour of sustainable development.”*

(Paragraph 10, the Framework)

- 63 The Framework purposefully recognises that the application of this presumption in favour of sustainable development will have direct implications in respect of how communities engage in neighbourhood planning. Specifically, it recognises that communities:
- “...can use Neighbourhood Development Orders and Community Right to Build Orders to grant planning permission. These require the support of the local community through a referendum...”* (Paragraph 52, the Framework)
- 64 This Order seeks to grant planning permission for new, predominantly affordable housing and a village green, with the aim of meeting the needs of the Neighbourhood Area, as identified through the neighbourhood planning process.
- 65 In very general terms, the aim of the Order in respect of seeking to provide a village green has regard to Chapter 8 of the Framework, *“Promoting healthy and safe communities,”* which states that planning should:
- “...aim to achieve healthy, inclusive and safe places which promote social interaction, including opportunities for meetings between people...enable and support healthy lifestyles...provide the social, recreational and cultural facilities the community needs...”*  
(Paragraphs 91 and 92, the Framework)
- 66 Chapter 8 of the Framework also goes on to require positive planning for the provision and the use of shared spaces and community facilities.
- 67 Further to the above, also in very general terms, in seeking to provide new affordable housing the Order has regard to Paragraph 59 of the Framework, which recognises the importance of meeting the needs of groups with specific housing requirements in order to support the Government's objective of significantly boosting the supply of homes.
- 68 Thus, the neighbourhood planning process in Shilton has identified needs for affordable housing and a village green, and this has regard to the national planning requirement to boost housing supply and provide for housing needs, and its support for the provision of community facilities.
- 69 However, as above, there are various facets to sustainability, one of which is the achievement of environmental objectives and it is the proposed development's impact on the environment that raises a number of causes for concern. These are considered below.

- 70 In rural areas, national planning policy requires planning to be responsive to local circumstances and to support housing developments that reflect local needs. Paragraph 78 of the Framework states that:

*“To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services...”*

- 71 This follows on from Paragraph 55 of the Framework, which states that:

*“Local planning authorities should avoid new isolated homes in the countryside...”*

- 72 In line with the national planning policy approach, Local Plan Policy H1 (*“Amount and distribution of housing”*) supports the allocation of housing sites through neighbourhood plans and Local Plan Policy H2 (*“Delivery of new homes”*) provides for the achievement of this in rural areas, subject to development complying with the general principles set out in Local Plan Policy OS2 (*“Locating development in the right places”*).

- 73 In seeking to ensure that development is located in the right places, Local Plan Policy OS2 requires development in small villages and open countryside to respect the intrinsic character of the area. It goes on to require that development should:

*“...form a logical complement to the existing scale and pattern of development...protect or enhance the local landscape and the setting of the settlement...not involve the loss of an area of open space or any other feature that makes an important contribution to the character or appearance of the area...conserve and enhance the natural...environment...”*

- 74 As noted earlier in this Report, the Order does not provide precise detail in respect of a development proposal, but rather, allows for up to twelve dwellings to be built and an area of land be set aside as a *“village green.”* Only indicative illustrations are provided in the Order, to provide a sense of what might be developed and as a consequence, there is no certainty in respect of precisely what would be developed as a result of the Order. It is therefore not possible to fully understand how the proposal would impact on those matters that Local Plan Policy OS2 seeks to protect.

- 75 Further to the above, the site the subject of the Order is located well outside the village of Shilton, within an area of open countryside. During my site visit, I noted that the site comprises a large and open field, with trees and hedgerows to its boundaries and that, like much of the surrounding area, it is distinctly rural and characterised by qualities of openness, spaciousness and greenness.
- 76 As such, I observed that the site appears in keeping with and makes a significant contribution to, the attractive rural qualities of the countryside in this location. The site has a positive impact on local character.
- 77 The site is separated from Shilton by large fields and a considerable distance. It is connected to the settlement by a country lane, which is unpaved and unlit. As a consequence of this and the above, the site forms part of the village's open countryside surroundings and it appears isolated from Shilton, rather than as a site close to the edge of the village. Consequently the Order would effectively promote the development of new isolated homes in the countryside and fails to have regard to national policy.
- 78 Also in the above regard, whilst only illustrative, the Order indicates that a "*village green*" would be provided on the eastern side of the site. I find that locating a "*village green*" between new dwellings and the village would have the physical effect of further isolating the proposed housing from Shilton.
- 79 Whilst there are a small number of scattered buildings, including houses, across the wider area within the vicinity of the site, these simply appear as rural properties and their presence does not afford any sense of the appeal site being adjacent, or close to, an urban or built-up area.
- 80 Shilton village itself comprises a somewhat scattered, and low density settlement. It is characterised by ribbon development along roads and lanes. By way of contrast, the Order indicates that new housing would be provided in a courtyard-style development within the north western part of the site. Such development would appear as an incongruous feature in the open countryside and would fail to reflect Shilton's existing pattern of development.
- 81 In the absence of anything other than illustrative material, it is not possible to conclude that the detailed design of the proposal would provide balancing measures to address the impacts of development on the identified attributes of the area.

82 Rather, the Order seeks to introduce a significant amount of development, relative to Shilton, to an area that is currently distinguished by its open and spacious rural qualities and seeks to do so in a manner that fails to reflect the pattern of development in the nearest settlement. As such, I find that the Order would comprise an alien urban feature within the open countryside and would result in likely significant harm to local character, rather than protect or enhance the local landscape and setting of the settlement.

83 In addition to the above, the Order provides nothing in the way of certainty in respect of the provision of a safe pedestrian link between the site and Shilton and it cannot therefore be concluded that the development would be provided with safe and convenient pedestrian access to supporting facilities and services, as required by Local Plan Policy OS2.

84 Taking all of the above into account, the Order seeks to introduce a form of development that would not be in general conformity with Local Plan Policies OS2 and H2.

85 Taking the above into account, I am unable to reach the same conclusion as that set out in Paragraph 7.4.5 of the Basic Conditions Statement which suggests that the proposal:

*"...is consistent with the high design standards expected...and will protect the local landscape character..."*

86 In support of the Order, the Basic Conditions Statement points out that the proposal *"is similar in its rationale to a Rural Exception Scheme."* However, whether or not this is the case, Local Plan Policy H3 (*"Affordable housing"*), which provides a supportive framework for rural exception sites, requires any such development to be located on *"suitable rural sites."* Local Plan Policy H3 goes on to state that such sites should be well-related to existing built-up areas.

87 Given its significant conflict with Local Plan Policies OS2 and H2, as set out above, and the uncertainty in respect of precisely what the proposal the subject of the Order would comprise, I am unable to reach the conclusion that the site would be *"suitable"* in terms of Local Plan Policy H3. I therefore find that the Order is not in general conformity with Local Plan Policy H3.

- 88 The Basic Conditions Statement goes on to accept that the proposed development the subject of the Order would result in harm “*to the landscape and other effects.*” It then suggests that such harm would be mitigated by planning policies, planning conditions and “*the description of the development.*”
- 89 However, there is an absence of substantive evidence to demonstrate that this would be the case. Rather, by way of contrast, as set out above, the Order would not be “*mitigated*” by planning policies, but conflicts and is not in general conformity with, adopted up to date Local Plan Policies. Amongst other things, these Policies protect local character.
- 90 In its existing form, the site the subject of the Order makes a positive contribution to the open countryside. As pointed out by West Oxfordshire District Council, the site is situated within an area identified in the Carterton Landscape Assessment (2009) as being highly sensitive. Taking all of the above into account, I find that the construction of up to twelve houses on a site in a highly sensitive countryside location that is clearly isolated from the nearest settlement by distance and open fields would appear incongruous and would inevitably result in harm.
- 91 Whilst I note that some technical appraisals have been completed, the absence of a detailed development scheme and a reliance upon indicative, illustrative information relating to a form of development that might, or might not come about, means that there is considerable uncertainty in respect of the detailed appearance of the development supported by the Order.
- 92 I am unable to conclude that harm to local character, recognised by the Basic Conditions Statement, could be effectively mitigated such that the Order would contribute to the achievement of sustainable development.
- 93 Taking all of the above into account, I find that the Order does not have regard to national policy, is not in general conformity with the strategic policies of the Local Plan and does not contribute to the achievement of sustainable development. The Order does not meet the basic conditions.
- 94 In support of the Order, it is the view of the qualifying body that the “*significant social benefits arising*” outweigh the harm resulting from the proposal. However, whilst I note above that the benefits of new housing provision, including affordable housing, and the provision of community facilities, are recognised by national policy, which promotes their delivery, I also note that the purpose of the planning system is to contribute to the achievement of sustainable development, from which environmental sustainability cannot be discounted.

- 95 Further to the above, England's planning system is plan-led and the Local Plan includes up to date adopted strategic planning policies that are reflective of the Framework and which provide for sustainable development. The Order is not in general conformity with the strategic policies of the Local Plan and it does not meet the basic conditions.

**Basic Condition: Having regard to the desirability of preserving any Listed Building or its setting or any features of special architectural or historic interest that it possesses, it is appropriate to make the Order.**

96 Paragraph 189 of the Framework requires:

*“...an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance.”*

97 No Listed Building is identified by the Order and there is nothing to lead me to find that the Order fails to satisfy this basic condition.

**Basic Condition: Having regard to the desirability of preserving or enhancing the character or appearance of any Conservation Area, it is appropriate to make the Order.**

- 98 Shilton Conservation Area covers much of the village. However, given the considerable distance between the site the subject of the Order and the village, even the very the nearest parts of the Conservation Area are located some 100 metres to 200 metres away from the site the subject of the Order.
- 99 Whilst the site the subject of the Order forms part of and contributes towards Shilton's countryside setting, it is therefore separated from the Conservation Area by a considerable distance and I find that it has little, if any, discernible impact on the setting of the heritage asset. Further, there is no information before me to lead me to any different conclusion.
- 100 The Order meets this basic condition.

**Basic Condition: The making of the Order does not breach, and is otherwise compatible with, EU obligations.**

101 I am satisfied that the Community Right to Build Order has regard to fundamental rights and freedoms guaranteed under the European Convention on Human Rights (ECHR) and complies with the Human Rights Act 1998 and there is no substantive evidence to the contrary.

102 In respect of environmental obligations, West Oxfordshire District Council issued an Environmental Impact Assessment (EIA) Screening Opinion which concluded that:

*"...The proposal is considered not to be EIA development requiring the submission of an Environmental Statement."*

103 In addition to the above, the statutory consultees were consulted in respect of the Order and none has raised any concerns in respect of the making of the Order breaching, or not being otherwise compatible with, EU obligations.

104 Taking the above into account, there is nothing that leads me to determine that the Order does not satisfy this basic condition.

**Basic condition: Prescribed conditions are met in relation to the Order and prescribed matters have been complied with in connection with the proposal for the Order.**

105 I refer to prescribed conditions earlier in this Report.

106 I also note that Regulations 32 and 33 of the Neighbourhood Planning Regulations (2012) as amended set out two further Basic Conditions:

- *The making of the neighbourhood plan or order is not likely to have a significant effect on a European site or a European offshore marine site, either alone or in combination with other plans or projects.*

107 Taking the above into account, I find that the Order complies with this and note that there is no substantive evidence to the contrary.

- *Having regard to all material considerations it is appropriate that the neighbourhood development order is made where the development described in an order proposal is Environmental Impact Assessment development.*

108 As above, West Oxfordshire District Council has confirmed that EIA is not required for the development proposed in the Order.

109 For completeness, as identified earlier in this Report, the Examiner is required to consider whether:

- *The order proposal is accompanied by a draft of the order and a statement which contains a summary of the proposals and sets out the reasons why an order should be made in the proposed terms and the order is made by a community organisation and grants planning permission for specified development in relation to a specified site in the specified neighbourhood area and the specified development does not exceed prescribed limits.*

110 This information has been provided and therefore, the Order complies.

- *The order proposal may not provide for the granting of planning permission for development which is excluded development, where planning permission is already granted for that development, and may not relate to more than one neighbourhood area.*

111 Further to consideration of information relating to the Order, I find that the Order complies with the above.

- *The order proposal complies with section 61L of Schedule 9 of the Town and Country Planning Act 1990 (as amended) which refers to permission granted by neighbourhood development orders and any conditions specified in the order and any time periods specified.*

112 The Order complies.

- *Whether the draft order is compatible with the European Convention on Human Rights.*

113 The Order complies.

**11. Enfranchisement rights and retention of affordable housing in perpetuity**

114 The legislation provides a mechanism that enables housing developed using a Community Right to Build Order to be retained as housing that is affordable in perpetuity. This is achieved by dis-applying certain statutory rights of tenants of long leases to buy their freehold and the statutory right given to qualifying tenants to acquire social housing as per the provisions of the Town and Country Planning Act 1990 (as amended) (paras. 11 and 12 of Schedule 4C) and the Neighbourhood Planning (General) Regulations 2012 (as amended), Part 7.

115 Page 48 of the Order states:

*“Under Section 28 of the Neighbourhood Planning (General)(as amended) Regulations 2012 the Parish Council, as qualifying body provides that an enfranchisement right is not exercisable in relation to the property consented by this Order.”*

**12. Modifications to the Order**

116 This Report recommends that the Order be refused and that it should not proceed to a Referendum.

117 As noted in Paragraph 4 of this Report:

*“The conflict with national and local policy is such that the Order cannot be modified such that it meets the basic conditions...”*

118 Given the above, no modifications to the Order are recommended.

**13. Referendum**

**119 I recommend to West Oxfordshire District Council that the Shilton Community Right to Build Order be refused and that it should not proceed to a Referendum.**

Referendum Area

120 In the light of the above recommendation, there is no requirement to consider whether or not the Referendum Area should be extended beyond the Shilton Neighbourhood Area approved by West Oxfordshire District Council on the 5 October 2016.

**Nigel McGurk, December 2018**  
**Erimax – Land, Planning and Communities**

