Dear Mrs Burkey

APPLICATION NO: 13/00308/OUT
LAND AT ROWDEN PARK, PATTERDOWN ROAD, CHIPPENHAM, WILTSHIRE
Application Reference: 14/12118/OUT

Mixed Use Urban Extension Comprising Residential (Class C3), Local Centre (Classes A1-A5) and (Classes D1 and D2), Primary School, Public Open Space Including Riverside Park and Allotments, Landscaping, 4 Vehicular Accesses, Site Roads and Associated Infrastructure

I hereby object to the proposed development at Rowden Park, Chippenham. The proposal contravenes both national and local planning policy being unsustainabl due to its location and the nature of the development planned. More critically, it is in conflict with local and national policy concerning cultural heritage.

Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires Local Planning Authorities to make decisions on planning applications in accordance with the Development Plan unless material considerations indicate otherwise. In this case the Development Plan for Chippenham comprises the following:

- Wiltshire Core Strategy 2015
- Adopted North Wiltshire Local Plan 2011 (Saved Policies)

The Adopted Wiltshire Core Strategy Strategic Objective No. 5 concerns ‘protecting and enhancing the natural, historic and built environment.’

Paragraph 2.17 of the Core Strategy concerns environmental quality. It states;

“Wiltshire’s rich environments and heritage will be managed to act as a catalyst for the realisation of this strategy and not a barrier to it. This means a careful stewardship of our environmental assets so the growth is complimentary and does not erode the very qualities that make Wiltshire so attractive in the first place”.

Core Policy 58, ensuring the conservation of the historic environment is more specific. It states;

“Designated heritage assets and their settings will be conserved, and where appropriate enhanced in a manner appropriate to their significance, including:
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\begin{itemize}
  \item \textbf{i.} Nationally significant archaeological remains
  \item \textbf{ii.} World Heritage Sites within and adjacent to Wiltshire
  \item \textbf{iii.} Buildings and structures of special architectural or historic interest
  \item \textbf{iv.} The special character or appearance of conservation areas v. Historic parks and gardens
  \item \textbf{vi.} Important landscapes, including registered battlefields and townscapes. Distinctive elements of Wiltshire’s historic environment, including non-designated heritage assets, which contribute to a sense of local character and identity will be conserved, and where possible enhanced
\end{itemize}

The key issue in this instance is whether the application before you complies with this Development Plan Policy? Scrutiny of the submission reveals it does not. Moreover it contravenes National Planning Policy and it is therefore inappropriate for it to benefit from the grant of planning permission.

This conclusion holds despite the Council’s unsound intention to allocate land for development within the Chippenham Site Allocation Plan, Draft Policy CH1

\textbf{Misdirection of the statutory tests under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 66 and 72}

Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("the Listed Buildings Act") states in relation to development affecting one more listed buildings:

\textit{“In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.”}

Section 72 of the Listed Buildings Act imposes a similar duty in relation to development that may affect conservation areas.

\textit{“In the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.”}

It is well established that the duty under section 66 of the Listed Buildings Act requires "considerable importance and weight" to be accorded to any finding of a failure to preserve a listed building or its setting; see \textit{East Northamptonshire DC. v. SSCLG} [2015] 1 W.L.R. 45. By extension, the same principle applies to any finding of a failure to preserve or enhance...
the character or appearance of a conservation area. In either situation, a finding of harm cannot simply be treated as a ‘normal’ material consideration.

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The Environmental Statement (“ES”) accompanying the present application rightly acknowledges that located within the vicinity of this proposed 1000 dwelling development are 19 listed buildings (para. 6.8.5). Of these, the Rowden Complex comprising a Grade II* listed farmhouse, a Grade II listed stable, and a Grade II listed barn are only 125m away from the proposed development and are acknowledged by the ES to be adversely affected by it (para. 6.8.8). Other listed buildings are said to be “potentially affected” (para. 6.8.9). Moreover, Rowden Park Conservation Area, which is adjacent to the application site, is anticipated to have “both direct and direct impacts” from the scheme (para. 6.8.11) including impacts on what the Conservation Area Character Area identifies as significant views.

The conclusion in the ES at paras. 6.8.14 and 6.8.16 is that the development would have direct effects causing “a high adverse impact” on heritage assets and indirect effects causing “low adverse” impact.

Nowhere, however, in the application documentation is there any recognition that any harm to a listed building or to the character and appearance of a conservation area should be given “considerable importance and weight”. If the Council were to repeat that omission, it would be falling into the same error of law into which the Secretary of State fell in the Barnwell Manor case.

Moreover, the ES goes on to state at 6.9 that the overall effect on heritage assets will be one of “moderate-substantial enhancement” because of purported ‘mitigation measures’ - recording and reporting of archeological records and information panels within the conservation area - which would to increase public awareness and understanding of the archaeological and cultural heritage of the Conservation Area. This appears to amount to a suggestion that the overall effect of the development, taking into account the purported ‘mitigation measures’, would in fact be no harm to the statutory objectives in s.66 and s.72 of the Listed Buildings Act and that the Barnwell Manor principle is therefore not engaged. Insofar as that is indeed the suggestion, it is legally untenable. The focus of s.66 is the “building and its setting” and the focus of s.72 is on the “character and appearance” of the conservation area. These provisions are simply not concerned with the provision of information through, e.g. record-keeping or information panels. They are concerned with the heritage assets themselves. Accordingly, a conclusion that there would be no overall conflict with these provisions because any harm to the listed buildings and to the character and appearance of the conservation area would be off-set by a greater public awareness and understanding of heritage assets is legally untenable. The only lawful conclusion open to the Council based upon the applicant’s own material is that there would be a conflict with the statutory objectives in both s.66 and s.72, and that “considerable importance and weight” should be ascribed to this conflict. A failure by the Council to acknowledge this would provide clear grounds for judicial review.

Conclusions
Taking all of the above into account it is clear that the application at Rowden Park ought to be refused because:-

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- The spatial allocation under Draft policy CH1 of the CSAP is unsound as the process of site selection failed to give 'considerable importance and weight' to cultural heritage matters

- The mitigation proposed does not satisfy the legal tests of S66 nor S72 of the Planning (Listed Building and Conservation Areas) Act 1990

- The proposal fails to meet the objectives and requirements of Development Plan Strategic Objective No 5 and Core Policy 58.

In light of the aforegoing, I will be commissioning further expert heritage analysis on this site will provide it to you in the near future.

Accordingly I respectfully request that the application is refused.

Yours sincerely,

Michael Orr
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