

**OXFORD CITY COUNCIL**

**LOCAL PLAN 2040**

**REGULATION 19 PRE-SUBMISSION PUBLICATION CONSULTATION**

**RESPONSE ON BEHALF  
OF  
MAGDALEN COLLEGE, OXFORD**

**Carter Jonas**

**JANUARY 2024**

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## 1.0 INTRODUCTION

- 1.1 Carter Jonas is instructed by Magdalen College, Oxford (“Magdalen”) to respond to Oxford City Council’s (“the City Council”) Regulation 19 Pre-submission Publication Local Plan (“the Local Plan”) Consultation.
- 1.2 Magdalen College has been a seat of learning in Oxford since the fifteenth century and is part of the fabric of the city. Magdalen owns land and premises across the city, and of most relevance to this iteration of the Local Plan and the consultation is Magdalen’s site named as Land surrounding St Clement’s Church (proposed Policy SPE2).
- 1.3 Magdalen’s vision for SPE2 is for efficient and modern student accommodation in a highly sustainable location, that is respectful of its context and surroundings.
- 1.4 In general terms, Magdalen supports the Local Plan, However, there are matters of detail on which Magdalen needs to comment, and we do so hereunder.

## 2.0 GENERAL COMMENTS

- 2.1 Magdalen’s view is that the **Local Plan is generally sound**, having reviewed its contents and supporting documentation and evidence. There are, however, elements of the Plan that would benefit from some redrafting so as to ensure that the Plan conforms to national policy and that the policies are effective.
- 2.2 The Plan has obviously been drafted with reference to the National Planning Policy Framework, which was last updated in December 2023, post the publication of the Plan.
- 2.3 Soundness, however, is still dealt with at paragraph 35 in the Framework (Dec. 2023). For completeness, that paragraph is reproduced below:

35. *Local plans and spatial development strategies are examined to assess whether they have been prepared in accordance with legal and procedural requirements, and whether they are sound. Plans are ‘sound’ if they are:*

**a) Positively prepared** – *providing a strategy which, as a minimum, seeks to meet the area’s objectively assessed needs<sup>19</sup>; and is informed by agreements with other authorities, so that unmet need from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development;*

**b) Justified** – *an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence;*

**c) Effective** – *deliverable over the plan period, and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred, as evidenced by the statement of common ground; and*

**d) Consistent with national policy** – *enabling the delivery of sustainable development in accordance with the policies in this Framework and other statements of national planning policy, where relevant.*

### 3.0 LEGAL COMPLIANCE AND DUTY TO COOPERATE

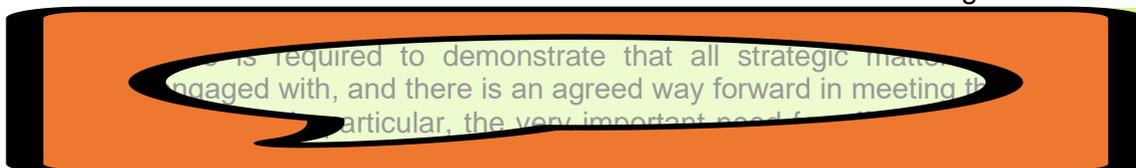
#### *Legal Compliance*

3.1 Magdalen raises no concerns about the legal compliance of the Plan.

#### *Duty to Cooperate*

3.2 Magdalen notes that the Council has produced a scoping paper, and a “Living Statement of Common Ground,” both regarding the Duty to Cooperate. Whilst these two documents list the various joint committees and other groups where the Council is a member, and it also lists ‘stakeholders’ which have been engaged in strategic matters there are limited outputs from this joint working recorded in those documents, or in the Local Plan.

3.3 There are strategic matters, the most acute of which is housing need, where there are not shared conclusions between the local authorities in Oxfordshire. Magdalen is not



### 4.0 POLICY H1: HOUSING REQUIREMENT

Legally compliant	Yes	Positively prepared	Yes
Sound	Yes	Justified	Yes
Compliant with the duty to cooperate	Yes	Effective	Yes
		Compliant with national policy	Yes

4.1 Planning for the right number of new homes is vital to Magdalen. This is to meet the needs of staff and students, and also the continued sustainability of the wider community of Oxford.

4.2 Magdalen is concerned that there remains some ‘unmet housing needs’ – the difference between the total need identified the Housing and Employment Needs Assessment (‘HENA’) of some 26,440 new homes, and the “capacity” in the City of 9,612 new homes. As we have suggested with reference to the Duty to Cooperate, at present there does not appear to be a clear, and agreed, strategy for meeting the needs of the County as a whole. A solution to this must be found as soon as is practicable.

4.3 Magdalen makes no comment about the robustness of the housing land capacity identified in the Housing and Economic Land Availability Assessment 2023, but it is vital that the City can demonstrate that it has left no stone unturned in seeking to deliver as many new homes as it can to engage with the very serious affordability challenge in the City.

**5.0 POLICY H2: DELIVERING AFFORDABLE HOMES**

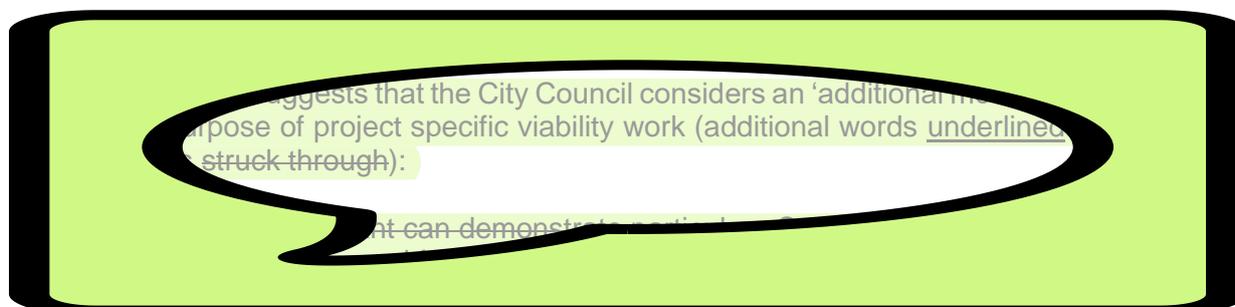
Legally compliant	Yes	Positively prepared	Yes
Sound	No	Justified	Yes
Compliant with the duty to cooperate	Yes	Effective	No
		Compliant with national policy	No

5.1 Magdalen recognises the acute need for affordable homes in Oxford. This need includes that for its own staff. However, Magdalen has some concerns about the potential risk to the viable delivery of regenerated and sustainable hospital sites, which the proposed level of obligation could bring. Magdalen seeks further dialogue on the nature of financial contributions sought towards the provision of affordable housing, and also the types and location of that housing elsewhere in Oxford.

5.2 What the City Council is proposing has the potential to render the delivery of intensified mixed use sites (including employment), for which they are planning, unviable. This puts at doubt the effectiveness of policy H2 and is potentially contrary to the NPPF at paragraph 34:

“...Such policies should not undermine the deliverability of the plan.”

5.3 However, Magdalen is reasonably content that the policy is sound provided that the recognition of the need for project specific viability assessments is retained in the policy. It is likely and widely understood that urban, and particularly brownfield development, will bring with it specific viability challenges, therefore the requirement for an applicant to demonstrate that circumstances exist before they can undertake or submit viability work appears unreasonable.



**6.0 POLICY G3: PROVISION OF NEW GREEN AND BLUE FEATURES – URBAN GREENING FACTOR**

Legally compliant	Yes	Positively prepared	Yes
Sound	No	Justified	No
Compliant with the duty to cooperate	Yes	Effective	No
		Compliant with national policy	No

6.1 Policy G3 introduces the Urban Greening Factor which sets out that the development of sites should achieve a minimum score or no reduction in the green factor, calculated

from the types of green infrastructure found on site using a formula set out in the appendices of the draft plan.

- 6.2 Magdalen recognises the value and need for green space in urban areas, and generally supports the principle of trying to protect and enhance green space where possible. There is a lack of balance in the proposed policy however, which omits the opportunity to properly consider the development of some redundant green spaces or how the *requirements* of the policy are considered alongside the further *requirements* of Policy G4 - Biodiversity Net Gain (BNG).
- 6.3 Magdalen notes that the Urban Greening Factor (UGF) is currently proposed alongside biodiversity net gain but suggests a ‘simpler’ output. Magdalen questions whether this additional layer of calculation is required, and also highlights the significant risk of ‘double counting’ where an applicant might well be asked to provide UGF, and BNG and prove that both calculations result in a positive output. Whereas, in reality, something provided for UGF – e.g., a tree – will of course have a value in BNG. The overlap between the two calculations needs to be acknowledged in the Plan, and it must be set out how this will be managed through the planning application process.
- 6.4 Furthermore, Magdalen notes that where UGF has been introduced elsewhere (in London) this tends to have been prior to the introduction of the minimum biodiversity net gain requirements in Local Plans.
- 6.5 This policy is not effective and has significant overlap with the requirements of G4 (but without the flexibility in Policy G4 to provide off-site mitigation).
- Necessary modification**
- 6.6 Magdalen suggests that the Council gives serious thought to the operation of Policy G3, and how it overlaps with G4.
- 6.7 The Council should consider deleting Policy G3 from the Plan, as it is currently performing a very similar function to G4.
- 6.8 Alternatively, the Council must set out in policy, or supporting text, how UGF and BNG calculations will work in practice, and how an allowance will be made to count the multiple benefits of green assets both in ‘greening’ and in ‘biodiversity’ (and all the other public benefits that they bring). Perhaps this policy would be better framed considering types of urban greening, and how to deliver them in innovative ways, rather than a stark calculation which is required in the following policy.

## 7.0 POLICY G4: DELIVERING MANDATORY NET GAINS IN BIODIVERSITY

Legally compliant	Yes	Positively prepared	Yes
Sound	Yes	Justified	Yes
Compliant with the duty to cooperate	Yes	Effective	Yes
		Compliant with national policy	Yes

- 7.1 Magdalen supports Policy G4 and recognises the need to deliver BNG in its relevant planning and development projects. Magdalen welcomes the approach set out in G4 and the flexibility to deliver BNG ‘off-site’.
- 7.2 Magdalen reiterates here, its concerns regarding the potential ‘double counting’ between BNG and UGF. The Council must set out how the two *requirements* will work in practice, if both policies are to remain in the Plan.

## 8.0 POLICY R1: NET ZERO BUILDINGS IN OPERATION

Legally compliant	Yes	Positively prepared	Yes
Sound	No	Justified	No
Compliant with the duty to cooperate	Yes	Effective	No
		Compliant with national policy	Yes

- 8.1 Magdalen has some concerns about the effectiveness and operation of proposed Policy R1.
- 8.2 There is a significant difference between the requirements in the extant Local Plan, and those which are now proposed. It is unclear if the Council has fully considered the resource implications of the range of new surveys and reports which are set out in the policy, and the effect that this may have on efficient decision making. Magdalen notes the removal of BREEAM standards from the proposed policy, which it considers to be a retrograde step, because BREEAM is a well understood ‘standard’ and development have been delivered which meet and exceed its requirements. The Council should consider retaining its inclusion in some form, if only as a guidance for applicants seeking to meet new standards.
- 8.3 We have not been able to ascertain the evidence which has underpinned the proposed policy, and particularly if it has had regard to local circumstances and local building stock.

### ***Necessary modification***

- 8.4 Magdalen suggests that the policy should be more flexible to account for the range of uses, employers, and institutions in the city. The future needs and aspirations of the city’s businesses and organisation, especially in the education, health, and science sectors should be reflected in the policy, where building specific requirements might not meet the stringent targets, current set out in the policy. These targets might not be achievable for very good safety reasons, or technical operational reasons.

## 9.0 POLICY R2: EMBODIED CARBON IN THE CONSTRUCTION PROCESS

Legally compliant	Yes	Positively prepared	Yes
Sound	No	Justified	Yes
Compliant with the duty to cooperate	Yes	Effective	No
		Compliant with national policy	Yes

9.1 Magdalen raises no objection with the principle of proposed Policy R2, and it recognises the need to manage embodied carbons.

9.2 Magdalen welcomes the fact that there are no ‘targets’ introduced in the proposed policy, but it does question how the Council proposes to assess the feasibility of demolition or re-use of various buildings. Also, Magdalen suggests that the operational needs of businesses, institutions and employers should be considered more clearly in this policy, and if a building is no longer fit for its intended purpose, then this should weight in favour of its removal.

#### **Necessary modification**

9.3 Magdalen considers that this policy should be caveated to ensure that the redevelopment of sites to make the most efficient use of land are not unduly constrained by having to retain existing buildings.

### **10.0 POLICY SPE2: LAND SURROUNDING ST CLEMENT’S CHURCH**

Legally compliant	Yes	Positively prepared	Yes
Sound	No	Justified	No
Compliant with the duty to cooperate	Yes	Effective	No
		Compliant with national policy	Yes

10.1 Magdalen supports the principle of allocating Land surrounding St Clement’s Church through proposed Policy SPE2. Magdalen’s vision for SPE2 is for efficient and modern student accommodation in a highly sustainable location, that is respectful of its context and surroundings.

10.2 Magdalen is pleased to note that the plan associated with the proposed allocation has been updated (compared to that in the extant Local Plan) to reflect the developable area, of the site. The site ‘red line plan’ is therefore supported.

10.3 Turning to the proposed text for draft policy SPE2, there are some questions and concerns that Magdalen has. The policy has a mix of vague guidance, combined with some very prescriptive text and this will not aid in efficient decision making, or indeed in our ability to provide a clear and concise planning application.

10.4 There is a significant risk that even where elements of the policy are written as an encouragement, they will become an expectation. This has the potential to raise expectations and create confusion which is the antithesis of the plan led system.

10.5 Magdalen notes that the policy is relatively long, and that it repeats and cross references many other proposed policies in the Local Plan. Whilst Magdalen does not object to this approach to policy writing, it seems unnecessary repetition.

10.6 Notwithstanding the concern about unnecessary repetition, the Trust makes the following observations:

#### **Potential development on the site**

- 10.7 Magdalen welcomes the flexibility of the policy including different accommodation types. However, the ‘minimum’ requirement for 40 homes, is questioned. The use of the word ‘minimum’ especially in the face of the following policy text, which identifies several potential constraints is challenging. Perhaps the Council would be better suited by using the term ‘approximately.’
- 10.8 Specifically, regarding the nursery, Magdalen continues to consider the potential and feasibility of including one on the site and supports the inclusion of such a facility in the policy.
- 10.9 Considering ‘complimentary’ uses, this term is not defined – and not necessary for policy text, as inevitably they would be considered. For efficient decision making, this text could be removed.

### ***Open space, nature, and flood risk***

- 10.10 There appears to be quite a lot of repetition in this section of the Policy. It is clear that the Council is keen to see as many trees retained as practicable, and the College is of a similar view, but simply stating this would be sufficient. Justification for the 10m buffer to the river is needed.
- 10.11 There is also an unnecessary level of specificity in this section. It is inappropriate to direct landscape design to the degree indicated in the proposed policy, and it is also likely that much of this paragraph would repeat other policies of the Local Plan. This approach potentially limits innovation in design and is unnecessary to demonstrate that the site is suitable and deliverable.
- 10.12 Magdalen notes that the Urban Greening Factor (UGF) calculation is referenced in the policy, but not Biodiversity Net Gain (BNG). This highlights the issues raised in respect of policies G3 and G4 and the clear overlap between the two. Some clarity on the requirement for UGF and BNG needs to be brought to the site-specific policy. Magdalen is confident however, that matters relating to New Marston SSSI can be managed and mitigated where necessary.
- 10.13 The need for a flood risk assessment and lighting strategy is noted and understood. It is likely that it would repeat requirements from other parts of the Local Plan (especially the final sentence) but it raises no significant concern.

### ***Urban design and heritage***

- 10.14 This is another part of the proposed policy that contains unnecessary levels of detail, and it would operate just as effectively simply identifying the specific constraints. It is not clear how this (twice referenced) ‘careful consideration’ and indeed a “green enclave” would effectively operate alongside a policy which requires a minimum amount of development.
- 10.15 There is significant repetition in this part of the proposed policy. The architectural design of potential development should not be prescribed in a site allocation policy such as this. There is the potential to stifle innovation, and potentially risk the deliverability of feasible and viable student accommodation (in particular) if strict design details are contained in a Local Plan policy.
- 10.16 Much of the Policy reads as supporting text, and not policy. It includes too many references to what could happen, rather than what is expected. The text is unlikely to

be justified through evidence, and so would not be appropriate as policy text, therefore it should be moved to supporting text.

10.17 For the avoidance of doubt, the ATC is due to vacate that site, and move its activity to Sandy Lane, Blackbird Lees.

10.18 If the all the requirements of this section of the Policy are to remain in the Local Plan, they require further justification, and certainly some viability testing, to demonstrate that they have longevity for a plan period (albeit that they could be reviewed after 5 years but this would require significant and regular resourcing).

#### ***Movement and access***

10.19 There is (one again) an unnecessary level of specificity in this section because it lists several entrances. Given that the proposed policy allows for several different uses – or alternative uses – then it is almost impossible that the Council can know at this stage what types of entrances will be necessary.

10.20 For the avoidance of doubt, the ATC is due to vacate the site, so to refer to its (soon to be former) premises in the policy could render the policy out-of-date, and hard to implement if the site is delivered in later years of the plan period.

10.21 Whilst the final paragraph of the policy is succinct it is not clearly justified in evidence.

#### ***Natural resources***

10.22 Magdalen recognises that road noise might be an issue on the site but is confident that all the matters can be managed and mitigated where necessary.

#### ***NECESSARY MODIFICATION***

10.23 Magdalen suggests that the policy should be redrafted and made more succinct. The level of specificity is unnecessary and renders the policy ineffective, and much of the detail lacks robust justification, in plan making.

10.24 The use of the word 'minimum' especially in the face of the rest of the policy text, which identifies several potential constraints is challenging. Perhaps the Council would be better suited by using the term 'approximately.'

## 11.0 CONCLUSION

11.1 Magdalen considers the Local Plan to be generally sound. There are, however, some detailed elements of the Plan – as explained through the detailed submissions – that are necessary to modify to ensure that:

- a) the plan is positively worded;
- b) the policies are justified;
- c) the policies are effective; and,
- d) the Plan conforms to national policy

11.2 Magdalen trusts that the comments are useful to the City Council and welcomes continued positive joint working on the vision for the Land surrounding St Clement's Church. This will ensure that the objectives of the Plan can be delivered in a comprehensive and effective way.

## 12.0 PARTICIPATION AT THE ORAL PART OF THE EXAMINATION

12.1 Magdalen confirms that it does wish to take part in the oral part of the Local Plan examination. This is to be able to fully explain the concerns about the policy drafting and to answer questions that the Inspector might have.

12.2 Magdalen also considers it important to share the vision for the Land surrounding St Clement's Church and provide confidence in their delivery.