



SUPPLEMENTARY INFORMATION

Planning Committee

10 December 2020

Agenda Item Number	Page	Title
13	(Pages 1 - 4)	Written Update supplement

If you need any further information about the meeting please contact Lesley Farrell, Democratic and Elections democracy@cherwell-dc.gov.uk, 01295 221591

CHERWELL DISTRICT COUNCIL

PLANNING COMMITTEE – 10 DECEMBER 2020.

WRITTEN UPDATE – Supplement

Agenda Item 10

Land North and West of Bretch Hill Reservoir, Adj to Balmoral Avenue, Banbury

Additional representations received

Since the publication of the agenda the applicant's agent (Savills) has written to the Council (Fri 4th Dec) asking officers to make the Committee aware of the following correspondence from the applicant's agent since the Committee met in October to consider this application:

Friday 9th October – Email to officers from David Bainbridge (“DB”) (Savills) noting that the Planning Committee was not made aware of the Banbury Vision and Masterplan SPD.

Friday 16th October – Email to officers from DB offering to provide officers a written update if the application is re-presented to Planning Committee.

Wednesday 4th November – Email to officers from Rebecca Bacon (“RB”) (Savills) including advice note from Peter Goatley QC of No5 Chambers.

Wednesday 18th November – Email to officers from DB with a suggested alternative layout for the part of the site closest to the water tower and telecoms mast.

Wednesday 18th November – Email to officers from DB reporting further discussion with and comment from the local highway authority, the latter confirming that the Balmoral Avenue/Broughton Road junction is within capacity.

Wednesday 25th November – Email and letter to officers from RB which repeats previous correspondence referred to above including the QC advice that the 2004 non-Statutory Plan allocated the site for development and that the Banbury Vision & Masterplan (“BVM”) SPD shows the site as part of the existing settlement, and repeats previous correspondence from DB on Wednesday 18th Nov.

The letter from RB also refers to the housing trajectory set out at Section E of the 2015 Local Plan which includes 369 dwellings to come forward in Banbury up to 2031 on sites of 10 or more dwellings which are not allocations in the Local Plan Part 1.

The letter from RB also refers to the Oxfordshire Growth Board Meeting on 24 November 2020 which considered the Written Ministerial Statement in light of the new programme for the Oxfordshire 2050 Plan. The agenda papers note that “In the

conversations with MHCLG on extending the timetable for the Plan, they have indicated that an extension to this flexibility is not likely to be supported.”

Thursday 26th November – Email to officers from DB making repeated requests that the Committee be asked to ‘reconsider [the planning application] afresh’.

Monday 30th November – Letter from Lodders Solicitors asserting: ‘*A failing of the Planning Committee to consider afresh the principle of development would be a fundamental flaw in procedure rendering the decision unlawful.*’. It appears to suggest that the Committee would not be capable of considering the BVM SPD unless it considers the application afresh. Like Peter Goatley QC, Lodders asserts that the SPD “approved afresh the principle of development”. As a matter of fact this is incorrect. The SPD cannot allocate land for development. The letter from Lodders states that an addendum to the Committee Report is required so that the Committee is advised of the relevance of the SPD to the principle of development and to site specific concerns raised by the Committee. Lodders’ letter also says that the proposals are acceptable when considered in light of the Development Plan (‘DP’).

In addition to the above, the 4th December letter received from Savills asserts the following:

- The report to this Committee should repeat the Officer’s conclusions and recommendation
- All three refusal reasons should be reconsidered by the Committee and Members and Officers should consider the Local Government Association guidance referred to below
- The BVM SPD is relevant to all three reasons for refusal

The 4th Dec letter is also accompanied by a further letter from the applicant’s transport consultant providing further information re the proposal’s impact on the safety of the local highway network. Savills’ letter also asks that a highways officer is present at the 10th Dec Planning Committee to answer any questions Members may have on highway safety matters and the proposed wording for the 3rd refusal reason.

In addition, Savills’ 4th Dec letter refers to the Local Government Association’s Probity in Planning Guide (April 2013) and the guidance that should be followed by Councillors and Officers: “*..the officer should also be given an opportunity to explain the implications of the contrary decision, including an assessment of a likely appeal outcome, and chances of a successful award of costs against the council, should one be made*”.

Lastly, Savills’ 4th Dec letter questions why, if the application is being heard at Committee for a second time, the applicant is not permitted to speak.

Officer comment

09.10.20 email – Officers refer to this email at para 1.4 of the present Committee report (“your report”).

04.11.20 email and QC advice note – The advice note does not add anything of substance to DB's 9th Oct email or subsequent correspondence between planning officers and Savills on the matter. In some cases, the advice note is plainly incorrect (e.g. that the site does not fall outside an identified settlement boundary and that the site forms part of the existing settlement of Banbury).

18.11.20 emails – These relate to the Committee's 2nd and 3rd refusal reasons and officers do not seek additional clarity from the Committee on how it arrived at its decision in these respects.

25.11.20 email – As noted at para 2.3 of your report, the 2004 Non-Statutory Plan identified the site for development but was not adopted and therefore did not make any allocation. As noted at para 2.10 of your report, the BVM cannot and did not allocate sites for development. The Local Plan does not define an edge to the settlement and the site is clearly greenfield land. However, none of the above is determinative. The salient fact is that the site is on the edge of and adjacent to the settlement.

26.11.20 email – The Committee made a resolution on the application and procedurally it is not possible for the Committee to reconsider the application afresh, other than to consider the impact (if any) of the BVM SPD on its decision. The purpose of this agenda item is as set out at para 1.5 of your report. Officers have taken legal advice in this respect and your report is informed by that legal advice.

30.11.20 Ladders letter – Mostly covered above. The Committee quite plainly is capable of considering the BVM SPD at its December meeting and clarifying to Officers whether or not the SPD has a material bearing on its resolution or any of its reasons for refusal. The 8th October Committee Report is attached as an addendum to your report, and it is not necessary to re-write or augment the former. In relation to the DP, the Committee has considered the proposals in light of the DP and resolved to refuse the application.

04.12.20 Savills letter – Mostly covered above. The letter repeats contentions made in previous correspondence and despite officers' advice across several post-October Planning Committee discussions between officers and Savills. It is not necessary for your report to have repeated the Officers' conclusions. Officers made the Committee aware of the implications for appeal of Reasons 2 and 3 in advance of its resolution; officers do not seek additional clarity from the Committee on how it arrived at its decision in respect of these two Refusal Reasons.

In summary:

- Committee made a resolution;
- The application is not being heard for a second time;
- The Committee is being asked for clarification on particular matters;
- This is a report to Members and not a planning application to be determined; and,
- Speakers have already participated in this application and cannot do so a second time.

Lastly, there is a typographical error at para 1.4 of the Committee Report. It should instead read:

“In preparing a decision, officers reviewed the Committee’s resolution and the debate that preceded it. The day after the Committee the applicant also submitted submissions regarding the material considerations and policies that had **not** been drawn to the attention of the Committee prior to the decision being made.”

Change to recommendation

None