

Cherwell District Council

Executive

2 March 2015

Graven Hill: MOD Bicester, Site D & E Ambrosden Road, Proposals for a Local Development Order
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Report of Head of Development Management

This report is public

Purpose of report

To seek the agreement of Executive to prepare a Local Development Order for phase 0 and part of phase 1a of Graven Hill

1.0 Recommendations

The meeting is recommended:

- 1.1 To agree in principle to the proposals for a Local Development Order (LDO) for Graven Hill
- 1.2 To agree to implement a pilot LDO for phase 0 and part of phase 1a of Graven Hill
- 1.3 To delegate authority to the Head of Development Management (in consultation with the Lead Member for Planning and the Commercial Director (Bicester) to agree an appropriate number of houses (between 100 and 200) to be included in the LDO, from within phase 1a

2.0 Introduction

- 2.1 Sections 61A-D of the Town and Country Planning Act allow Local Planning Authorities to implement Local Development Orders (LDO). A LDO grants planning permission for the type of development specified in the Order, thereby removing the need for planning permission. The National Planning Policy Guidance explains:

“Local Development Orders are made by local planning authorities and give a grant of planning permission to specific types of development within a

defined area. They streamline the planning process by removing the need for developers to make a planning application to a local planning authority. They create certainty and save time and money for those involved in the planning process.”

- 2.2 The purpose of the proposed LDO at Graven Hill is to allow purchasers of the self-build plots to build their homes in the knowledge that if they meet the requirements of a set design framework. (e.g., maximum height and built area within the plot), they can proceed with development without further cost or delay.
- 2.3 LDOs can be permanent or temporary, revoked or modified at any time, and made subject to conditions, as necessary. The procedure for preparing and adopting an LDO is not a ‘one size fits all’ option. In its simplest form the procedure requires just four steps:
- a. Executive agrees LDO preparation; article 34 of the Town and Country Planning (Development Management Procedure) Order 2010 requires that this comprise a draft of, and a statement of reasons for making the LDO, a description of the development the LDO will permit and a plan or statement identifying the land to which the LDO relates.
 - b. Local Planning Authority (LPA) consult with interested parties
 - c. LPA considers whether any modifications are needed in response to consultation or if the draft should be adopted. LPA determines whether any modifications are so significant as to require re-consultation.
 - d. LDO adopted and copy sent to Secretary of State.

3.0 Report Details

Benefits and Disadvantages of LDOs

- 3.1 A survey of 2,051 people carried out in October 2011 on behalf of the Building Societies Association showed that over half (53%) of people in the UK would consider building their own home in the UK if they had the opportunity. The majority were attracted by the ability to have control over the design and layout of their home (53%), and the ability to build more cheaply than buying on the open market (43%).
- 3.2 In an effort to establish self-build as a mainstream housing option, the former Minister for Housing and Local Government, Grant Shapps, asked the self-build industry to look at what needs to be done to help more ordinary people build their own home. The Self Build Government-Industry Working Group, chaired by Kevin McCloud published a report in July 2011, entitled ‘An Action Plan to promote the growth of self-builds housing’. This called for a concerted effort to help people to overcome hurdles to self-build.

- 3.3 In respect of planning, the report identified the benefits of innovative 'light touch' planning, as utilised in Germany and the Netherlands to help enable large scale self-build projects that deliver good urban design, community place-making, sustainable homes and social cohesion:

“Two important themes emerged from our analysis of the impact of the planning regime on self-builders. Firstly, that national and local planning policy, as it now stands, does little to encourage self build housing. Secondly, that the planning process is overly complex, risk averse and has become far too bureaucratic... we feel strongly that the self builder is more disadvantaged than the typical professional because he or she, almost by definition, often knows little of the procedures beforehand, and needless time and money gets wasted as they struggle to negotiate sensible outcomes.”

- 3.4 A number of changes to national policy were set out, many of which fed into the National Planning Policy Framework. At the local level, the report argues:

“To provide greater certainty for self builders and reduce the risks they face with the planning consent process, we would also call for the promotion of the use of Neighbourhood and Local Development Orders as a means of facilitating group self builds or where sites are designated for housing development in development plans. These tools already exist but are not widely used - yet they have potential to simplify the planning requirements for more complex, multiple sites”

- 3.5 A report published by the Planning Advisory Service, January 2014 ('Report into the use, value for money and effectiveness of LDOs in implementing Local Authority objectives') gives an insight into the experience of LPAs based on a survey of 311 English councils. It notes that as of December 2013 there were some 65 adopted LDOs, across 41 Councils. The survey showed that Councils felt that LDOs:

- improve perceptions and give a message that Councils are positive and “open for business”- an LDO is a strong marketing tool;
- have a positive impact on planning departments and staff - showing that Planning can be proactive and contribute positively to Council strategies;
- are a front loaded approach which will speed up development;
- will attract development;
- will remove uncertainties for developers;
- will speed up development; and
- can improve links and partnerships with private land owners and developers.

- 3.6 It is important to note that of the 65 adopted LDOs in this report, 52 (80%) of these related to employment development. Furthermore, 38 (58%) of all

adopted LDOs related to enterprise zones. **There were no LDOs which related to new build residential development.**

3.7 The report also states:

“Council Members are important in providing a leadership role and driving forward the process of adopting LDOs. Experience suggests that LDOs are good for partnerships and facilitate a more collaborative approach between industry, local authorities and local needs/drivers for economic growth and development. Where available, the feedback from developers and landowners is positive.” (PAS January 2014)

3.8 When asked whether Councils were considering the preparation of LDOs, just 10 (16%) responded positively to say they were preparing or considering preparing an LDO.

3.9 Councils deciding against preparing an LDO were asked the reasons for this decision. Whilst there was no dominant reason, issues included:

1. Requirement for Environmental Impact Assessment (EIA) for larger sites
2. Preference for outline planning permission;
3. Concern about winning Member support;
4. Changes to permitted development rights overtaking the decision;
5. Concerns about loss of planning control;
6. Resources and cost concerns;

3.10 Each of these reasons are considered below:

Requirement for Environmental Impact Assessment (EIA) for larger sites and preference for outline planning permission

3.11 In this case, at Graven Hill, the proposed LDO is a response to the existing outline planning permission, which was itself the subject of EIA; however, the adoption of self build as the preferred method of construction could have different implications compared to housing development by a handful of large companies, irrespective of the adoption of a Local Development Order.

3.12 Requirements for the provision of payments and infrastructure in the Section 106 Agreement relating to the outline planning permission for Graven Hill are triggered by the construction of a specific number of dwellings on site. The question has therefore been raised as to whether the construction of a dwelling under the proposed LDO would contribute towards these triggers. Legal advice shows that the Agreement defines “Dwelling” simply as a building constructed for residential occupation on the Site; any dwelling constructed on the Site therefore, including a dwelling constructed pursuant to the LDO would qualify as a “Dwelling” which should be included in

determining the number of Dwellings occupied for the purposes of the Section 106 Agreement.

3.13 In respect of the EIA, these implications relate to traffic and transport, air quality, noise and vibration, community and socio-economics, the historic environment, landscape and visual effects, protected species, water resources and land quality.

3.14 The EIA envisages that a Construction Environment Management Plan (CEMP) will deal with these effects. Para 3.3.10 of the Environmental Assessment Main Report states:

“The CEMP will:

- identify potential environmental effects associated with construction activities of the proposed development;
- eliminate or minimise those significant effects that could harm the environment, or which may have negative social or economic repercussions;
- enhance those effects identified as being positive and beneficial; and
- monitor and audit environmental management progress (e.g. implementation of measures to mitigate environmental effects) against specific objectives.”

3.15 Both a CEMP and Construction Transport Management Plan are required to be submitted to and approved by the Local Planning Authority by conditions attached to the original Outline Planning Permission prior to the commencement of development.

Concern about winning Member support

3.16 Members have previously shown that they support the principle of self build housing, and the Graven Hill Development Company has been specifically set up for this purpose; it is submitted that LDOs will help to make self build housing more achievable.

Changes to permitted development rights overtaking the decision

3.17 Not relevant in this case.

Concerns about loss of planning control

3.18 In response to concerns in respect of the loss of planning control, it is important to note that the majority of LDOs in the survey remain the subject of conditions requiring prior approval. For example, Templefield North East LDO has 49 conditions, 22 of which require prior approval.

3.19 The proposed Graven Hill LDO will need to be carefully constructed so that it accords with the requirements of the outline planning permission on the site, providing certainty regarding the quality of design and amenity impacts. It will

need to provide certainty in terms of the eaves and ridge heights, levels, orientation, use of materials, pattern and type of fenestration, relationship with neighbours, boundary treatments and parking provision. It is noteworthy that 80% of adopted LDOs relate to employment uses where there is less sensitivity regarding the design, scale and form of development. Even where the development parameters are more straightforward, these adopted LDOs have still required the extensive use of conditions.

Resource and cost concerns

- 3.20 The report quotes several Councils as commenting that loss of income from planning applications and building control fees had been a consideration at the beginning of the process, but that, in their view, the anticipated advantages of development, whether measured in terms of reduced vacancies, increased rates or jobs created, far outweighed any loss of income.
- 3.21 With respect to planning fees, the only difference between delivery through an LDO or through reserved matters applications will be the planning fee generated by reserved matters applications for housing within the area proposed to be covered by the LDO. In this case, there will be no loss of income, as planning fees otherwise met by individual applicants will be met by fees submitted by the development company for reserved matters applications for infrastructure works in respect of the outline planning permission.
- 3.22 Fees for planning applications are set out in The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012. Schedule 1 Part 1 Chapter 2 confirms that each separate application for approval of any number of reserved matters is charged at the same rate as for a full planning application.
- 3.23 The fee is calculated with reference to the category or categories appropriate to the development as a whole, whatever the reserved matters involved. In this case, full applications for individual dwellings are charged according to the number of dwellings to be created.
- 3.24 The Scale of Fees set out at Part 2 confirms that the rate for the first fifty is £385 per dwelling. If more than fifty dwellings are planned, a fixed total of £19,049 would be payable for the first fifty houses, plus £115 for each dwelling in excess of fifty, subject to a maximum in total of £250,000.
- 3.25 Accordingly rather than planning fees equating to £385 per dwelling, the maximum fee for the dwellings would be £232,000 ($50 \times £385 + 1850 \times £115$), not £731,500 ($1900 \times £385$) because of the discount relating to the construction of more than 50 dwellings.
- 3.26 Therefore, where each householder has to make an application for their own reserved matters, there is a disincentive for self builders to be first, since the first fifty would be unduly penalised, compared to the rest. In the LDO

proposal, it is intended that the development company pay the applicable fee by agreeing housing layout as part of reserved matters applications for the development.

- 3.27 The experience of other Councils shows that the planning fee required did not always cover the cost of providing the service; as a result, the report notes that some Councils actually noted a cost saving from the use of LDOs, freeing up Officers to deal with more complex applications.
- 3.28 In terms of resources, in all the Councils surveyed for the detailed case studies within the report, the formal planning application process was, to a greater or lesser degree, replicated by the requirement on a developer to confirm compliance with the LDO, as well as the imposition of detailed conditions, which in a great many cases required on-going and prior approval.

Proposed Graven Hill Local Development Order

- 3.29 The traditional approach for the delivery of self-build homes at Graven Hill would be through each plot owner seeking planning permission for the erection of each dwelling. The following implications are likely in the event that this traditional approach is adopted:
- i. Local Planning Authority:
 - Workload; expected rate of 12 individual self build housing applications per month for the life of the development (in addition to applications for other reserved matters issues in respect of site development, clearing of conditions etc.).
 - No additional income compared to larger scale applications
 - Greater control over individual aspects of development.
 - Would assist if the LPA could prepare standard advice to self-builders regarding what is required.
 - ii. Self builders
 - Need to make reserved matters applications for each house
 - Added complexity
 - Length of process; at least 6-8 weeks; Cost; £385 or £115 rather than free
 - Risk; no guarantee of timescale for application or certainty of decision
- 3.30 A number of the risks associated with the above, can be addressed through the use of Planning Performance Agreements (PPA). A PPA is a project management tool which sets timescales for actions between the local planning authority and the applicant. It should cover the pre-application and application stages, but also may extend through to the post submission stage. A PPA provides greater certainty and transparency in the in the process for

determining applications. Local planning authorities may make a charge for the work involved in agreeing and implementing a PPA.

3.31 As stated previously, the purpose of the proposed LDO at Graven Hill is to allow purchasers of the self-build plots to build their homes in the knowledge that if they meet the requirements of a set design framework. (e.g., maximum height and built area within the plot), they can proceed with development without further cost or delay.

3.32 The following implications are likely in the event that an LDO is adopted:

i. Local Planning Authority:

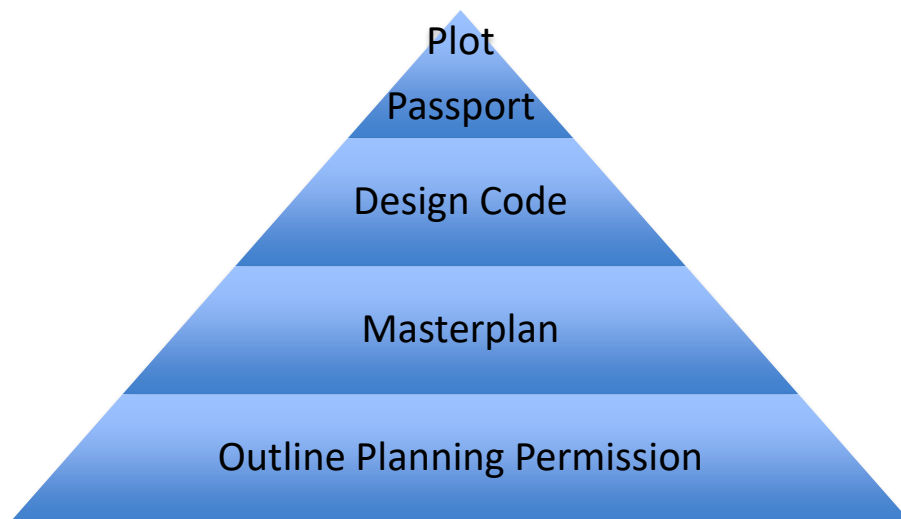
- Workload; expected rate of 12 individual 'prior approval' applications to demonstrate compliance with the adopted LDO and associated conditions;
- No additional income stream;
- Less control over the quality of built development;
- Positive perception that the Council is promoting development

ii. Self builders:

- Submission of 'prior approval' application to demonstrate compliance with the LDO and associated conditions;
- Evidence from other case studies has identified the extensive use of conditions for less sensitive land uses;
- Length of process – 28 days;
- No cost associated with the LDO;
- Due to the requirement for prescriptive conditions to ensure consistency of development, less opportunity to deliver an innovative or bespoke dwelling.

3.33 In accordance with Condition 26 of the outline planning permission, (see Appendix 1) the entire site, whether covered by the LDO or not, will be subject to the requirements of the design code, which itself will be subject to the requirements of the masterplan. These documents are now in preparation to meet the requirements of the outline planning permission.

3.34 If approved, it is intended that this would be a 'bottom up' approach; the Local Development Order would sit within the context of the existing outline planning permission as follows:



- 3.35 It is proposed that the LDO would be prepared in stages relating to each phase of development. This would have a number of benefits, including ensuring that the LPA retains control should a future phase of the site be sold on, and allowing lessons learned in each phase to be utilised in the next. The proposed LDO for Graven Hill is already guided by the requirements of the existing outline planning permission. A plan showing each phase and the extent of the LDO is attached at Appendix 2. The total number of units in phase 1 will be circa 545. Given that an LDO has not been adopted for new build residential development of any scale anywhere in the country, phase 1 would represent a very large pilot project. As a result a smaller subsection taken from phase 1a, of between 100 and 200 houses, is proposed for the LDO.
- 3.36 The areas to be subject of the LDO will be carefully determined, excluding development to be provided by the strategic developer, such as the village centre, including the school, the pavilion and community centre as well as other locations along key routes within the site and the employment area. This will help to ensure a greater degree of control only where considered absolutely necessary, maximising the benefits of the LDO.
- 3.37 The area covered by the LDO will be divided into plots, each of which will be subject to the provisions of the design code and will also have a 'Plot Passport'. The 'Plot Passport' will be the subject of conditions, many of which will require the prior approval of the Council. .
- 3.38 Each plot will also be subject to the provisions of the design code and the Plot Passport, which will provide certainty in terms of the eaves and ridge heights, levels, orientation, use of materials, pattern and type of fenestration, relationship with neighbours, boundary treatments and parking. These requirements as they relate to each plot will be summarised as part of the Plot Passport. Proposals meeting the requirements of the Plot Passport will require the submission of details to demonstrate compliance with the LDO with the notification of compliance provided within a 28 day period. An example of a Plot Passport is attached at Appendix 3.

3.39 It is envisaged that the LDO would need to be in place by October 2015 at the latest. It is considered that good progress could be made given the work already done. In addition to the four stages required for the preparation of an LDO, it is suggested that a training session for Officers and Members take place. The following timetable is therefore suggested following Executive resolution to LDO preparation:

- i) Training Session for Members and Officers: March 2015
- ii) Draft LDO prepared by May 2015
- iii) LPA consultation with interested parties for a 4 week period (ends June 2015)
- iv) LPA considers whether any modifications are needed in response to consultation or if the draft should be finalised. If not, LDO is sent to Secretary of State for approval in July 2015.
- v) If the LPA determines any modifications required are so significant as to require re-consultation, LPA consideration and incorporation of modifications by August 2015 plus a further 4 week consultation and review concluding in September 2015, allowing LDO to be sent to Secretary of State for approval in October 2015.

4.0 Conclusion and Reasons for Recommendations

- 4.1 Local Development Orders give a grant of planning permission to specific types of development within a defined area. They can enable the planning process to be streamlined by removing the need for developers to make a planning application.
- 4.2 At Graven Hill, an LDO would allow prospective purchasers of the self-build plots to know that if they meet the requirements of a set design framework. (e.g., maximum height and built area within the plot), they can proceed with development without further cost or delay.
- 4.3 It is therefore recommended that the Executive agree that an LDO for the delivery of self-build homes at Graven Hill is prepared (and subsequently adopted)

5.0 Consultation

- 5.1 Councillor Michael Gibbard (Lead Member for Planning)
Karen Curtin: Commercial Director (Bicester)
Kevin Lane: Head of Law and Governance

6.0 Alternative Options and Reasons for Rejection

- 6.1 On the basis that this will be the first LDO to deliver new build residential development in the UK, together with the risks and uncertainty associated with both delivery and the quality of the build environment, Members could consider running a pilot project in respect of only phase 0 of the Graven Hill development. Phase 1 could then be delivered through the traditional planning system with a PPA in place, ensuring certainty and transparency in both the process and the quality of built development. This would enable the success of both delivery methods to be measured.
- 6.2 This option is rejected because it would not allow full delivery of enough houses via the LDO approach and could result in a detrimental impact on prospective self build purchasers.
- 6.3 Members could consider delivering the entire the entire self-build development at Graven Hill through the traditional planning system with a PPA in place, ensuring certainty and transparency in both the process and the quality of built development.
- 6.4 This option is rejected because it would not allow delivery of any houses via the LDO approach and could result in a detrimental impact on prospective self build purchasers.

7.0 Implications

Financial and Resource Implications

- 7.1 There are no financial implications arising directly from this report. The assessment of resources and costs in paragraphs 3.20 to 3.28 concludes that the application of an LDO will not impact on the likely fee income.

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Legal Implications

- 7.2 There are no legal implications arising directly from this report.

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8.0 Decision Information

Key Decision

Financial Threshold Met: **No**

Community Impact Threshold Met: Yes

Wards Affected

All Bicester wards

Links to Corporate Plan and Policy Framework

The key corporate priority linked to this decision is “A District of Opportunity” and in particular, the role of the Development Management Service in the following:

- Securing employment-generating development with necessary transport / other infrastructure;
- Meeting local performance targets in terms of speed of determination of all forms of application;

Lead Councillor

Councillor Michael Gibbard

Document Information

Appendix No	Title
Appendix 1	Outline Planning Permission
Appendix 2	Site layout showing phases
Appendix 3	Plot Passport example
Background Papers	
None	
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