

Cherwell District Council

Planning Committee

15 December 2016

Appeals Progress Report

Report of Head of Development Management

This report is public

Purpose of report

This report aims to keep members informed upon applications which have been determined by the Council, where new appeals have been lodged. Public Inquiries/hearings scheduled or appeal results achieved.

1.0 Recommendations

The meeting is recommended:

- 1.1 To accept the position statement.

2.0 Report Details

New Appeals

- 2.1 **14/01675/OUT OS Parcel 4200 Adjoining and North East Of A4095 and Adjoining land South West of Howes Lane, Bicester.** Appeal by Albion Land Ltd against the refusal of planning permission for outline consent of Erection of up to 53,000 sqm of floor space to be for B8 and B2 with ancillary B1 (use classes) employment provision within two employment zones covering an area of 9.45ha; parking and service areas to serve the employment zones; a new access off the Middleton Stoney Road (B4030); temporary access of Howes Lane pending the delivery of the realigned Howes Lane; 4.5ha of residential land; internal roads, paths and cycleways; landscaping including strategic green infrastructure (G1); provision of sustainable urban systems (suds) incorporating landscaped areas with balancing ponds and swales. Associated utilities and infrastructure.

16/01116/Q56 Springhill Farm, Barford St Michael, OX15 0PL. Appeal by R C Baker Ltd against the refusal of prior approval for the conversion of part of existing barn to two dwellings with associated development.

16/01598/F Jack Barn, West End, Launton, OX26 5DG. Appeal by Mr Howson against the non-determination of planning application for the demolition of development at Jack's Barn and the erection of 10 dwellings.

16/01756/ADV Bon Marche, 30 Bridge Street, Banbury, OX16 5PN. Appeal by Bonmarche against the refusal of advertisement consent for 1 no. internally illuminated fascia sign and 1 no. double sided internally illuminated projecting sign.

2.2 Forthcoming Public Inquires and Hearings between 24th November 2016 and 15th December 2016.

None.

2.3 **Results**

Inspectors appointed by the Secretary of State have:

1) Dismissed the appeal by Mr and Mrs Jones following the serving of an enforcement notice. Land at Field Farm, Stratton Audley Road, Stoke Lyne, OX27 8RL. 15/00304/EUNDEV.

This was an appeal against an enforcement notice which requires the removal of a mobile home at Field Farm, Nr Stoke Lyne – a site within the open countryside, immediately adjoining Bainton crossroads.

Planning permission was granted, on appeal (ref APP/C3105/A/12/2170866), for the temporary (3 years) stationing of a mobile home (referred to as an Eco-Pod), associated decking and ancillary outbuilding in August 2012. The Eco-Pod is a cigar-shaped structure clad in cedar shingle that sits on timber supports. The Eco-Pod was used in connection with a bio-mass facility which occupies buildings elsewhere on the site - notwithstanding the name of the site, the site currently is not used for farming. The business processed wooden pallets and other scrap wood into “heat logs” and “heat pellets”. The dangerous nature of the operation provided the justification for an on site presence (the appellants’ son). Indeed the facility has not been operational following a fire in 2012, which preceded the appeal decision.

Following lengthy unsuccessful discussions with the appellants an enforcement notice was served on 26th May 2016 requiring the appellants to remove the Eco-Pod and associated structures from the site. They were also required to remove the materials used to construct a track to the Eco-Pod.

The subsequent appeal against this notice was made on three separate Grounds:

Ground A (that permission should be given for what is alleged in the notice)

Ground D (that at the time the notice was issued, it was too late to take action against the track) and Ground G (that the time for compliance is too short).

Ground A - The Inspector concluded that irrespective of whether it was well screened from the road, as had been argued, the Eco-Pod remains an incongruous domestic intrusion in open countryside. It was therefore concluded that in the absence of a current need there were no mitigating factors to justify its retention.

Ground D – In absence of any substantive evidence provided by the appellants, the Inspector was convinced by the case submitted by the Council, most notably the aerial imagery, which demonstrated that the track was constructed within the last four years and was therefore not immune from enforcement action.

Ground G - The Inspector found that given the time of year, it would be unreasonable to require the occupier of the Eco-Pod to vacate the site in the timeframe sought by the Council. The Inspector therefore amended the enforcement notice to increase the length of the compliance period from eight weeks to six months.

The appeal was therefore dismissed subject to amendments to the enforcement notice.

2) Allowed the appeal by Mr Kevill against the non-determination for prior approval for conversion of 2 No. agricultural grain silos to 2 No. single storey residential properties. Grains Silos, Godington Hall, Godington, OX27 9AE. 15/01827/Q56– (Delegated).

The proposal was the conversion of two grain silos to dwellings with associated operational development. Due to an administrative error the Council had not determined the application within 56 days of the date of valid receipt of the application, but the Inspector agreed with the Council that in order to be permitted development the proposal must meet the criteria of Q.1 and that the Council's administrative error had no relevance as to whether or not it was permitted development (see below, costs decision). It was relevant only insofar as the assessment related to matters under Q.2 – to which the Council had no objection.

The appeal was allowed.

The main issue was therefore whether the proposed was permitted development under Class Q.1 of the GPDO.

The Inspector considered there was no requirement on an applicant to request any change of use for the curtilage. This finding appears to run contrary to the restrictions of the GPDO at Paragraph X of Part 3 which (among other things) defines 'curtilage'. The Inspector appeared to consider the onus remained on the applicant to ensure development carried out complied with the restrictions of Class Q and Paragraph X, though did not expressly say so.

Further, and although the curtilage measured 107.3 sq m and the buildings 105.6 sq m, and the former must not exceed the latter, the Inspector considered that "to all intents and purposes it is correct to considered the proposed curtilage as being so close in size to the area occupied by the buildings that the aforementioned requirement of the GPDO is met". This finding also appears to run contrary to the normal application of the GPDO, that is that restrictions must applied strictly, with proposals either meeting or not meeting those restrictions and those that do not meet those restrictions not being considered permitted development because they are 'close enough'. The Council is considering making submissions to PINS to question the Inspector's conclusions in this regard.

The Inspector refused the appellant's costs application, concluding that the late issue of the Council's decision was an administrative oversight and did not constitute unreasonable behaviour, and finding that "the decision being out of time meant that prior approval was deemed to have been granted [but did] not necessarily mean that the development would be lawful. Prior approval can only be granted to development which falls within a permitted development right".

The Inspector also helpfully clarified that, while the Council may seek additional evidence when the application is live, "a substantial responsibility lies with the applicant to provide the necessary information", that, "in this case what was required should have been fairly evident without a need for the Council to have had to probe for it and even then it did not obtain all that was ideally required", and that, "[the Council's] actions in effect alerted the appellant to concerns, justified on the relative paucity of evidence then submitted, as to whether the [proposal] was permitted development and would be lawful if undertaken."

3) Dismissed the appeal by Mr Stubbs and Dr Levers against the refusal of listed building consent for the replacement of windows and 1 and 2 Tithe Barn, Street Through Merton, Merton, OX25 2NF. 16/00205/LB + 16/00206/LB – (Delegated).

Planning Permission was sought for the replacement of a total of 12 wooden casement windows, 7 of these at 1 Tithe Barn and 5 at the adjacent 2 Tithe Barn, with an increase in the head and jamb details by 7mm and the depth increased by the double glazing by 15mm. The Inspector identifies the main issue as being whether the proposed works would preserve the architectural or historical interest of the Grade II Listed Building.

The Inspector considered that such increases in size, whilst seemingly small, would nonetheless be discernible given the differing appearance of the proposed windows. The Inspector also noted that the windows shown on the brochure page are of a differing design to the existing windows, with prominent features that do not appear on the existing windows. The Inspector considered that the appearance of the windows would contrast with the existing windows within the appeal properties, and also resulting in half of the Tithe Barn having dissimilar windows compared to the part at Nos 3 and 4, where no windows would be replaced.

The Inspector concluded that the proposals would therefore have a negative impact on the listed buildings, and therefore fail to preserve the special interest of the building, and resulting in less than substantial harm to the designated heritage asset in the form of the listed building, with no public benefit.

4) Dismissed the appeals by Mr Ali and Mr Ali Sadiq against the refusal of planning and listed building consent. 1-2 St John's Place, South Bar Street, Banbury, OX16 5HP. 16/00401/F + 16/00402/LB (Delegated). Partial award of Costs given in relation to the withdrawn enforcement notice 16/00030/ELISTD.

The applications had been for retrospective consent for the erection of a single storey extension including re-cladding and removal of window.

Both appeals were dismissed.

The main issue was whether the proposal would preserve the listed building and whether or not it would preserve the character or appearance of the Conservation Area.

The Inspector examined the issue in some detail, finding the side elevation to be “an important element in the building’s designed composition” and “enabling a clear appreciation of the building’s fundamentally simple and robust form”. The Inspector found that the gap between the appeal listed building and St John’s Priory School was particularly sensitive given the latter was also a Grade II listed building and an “impressive structure” in its own right, and that the gap was “important in distinguishing the two buildings, defining their relationship and facilitating appreciation of their very different characters”. The Inspector adjudged that, although views are limited, the extension is apparent in public views.

There was discussion of the appeal site’s history. The Inspector found the appellants to have provided insufficient evidence in support of their assertions regarding the presence of a previous structure, and that it was unlikely the plans for the 2007 scheme would have omitted a “discrete element of the building which it was intended to remain”, and therefore concluded on the basis of the available evidence that at the time of the 2007 application “there was no substantive structure within the area of the present extension at ground floor level”.

The Inspector concluded that the erected extension fails to preserve the special architectural interest of the listed building or the character and appearance of the conservation area. In weighing public benefits, the Inspector found that the extension did not materially increase the usefulness of the building or result in any other material public benefit.

The Inspector considered saved Policy C18 of the 1996 Local Plan to be “of considerable age and its rejection of extensions to listed buildings on the simple basis of whether they are minor is somewhat at odds with the Framework’s approach of assessing impact”, but said, “the Policy also requires extensions to be sympathetic to the architectural character of the building. That requirement seems to me consistent with the Framework.”

The Inspector refused the appellant’s costs application in respect of the planning and listed building consent applications, but concluded that the costs application should succeed only insofar as it related to grounds (b), (f) and (g) of the enforcement appeals.

In respect of the former, the Inspector noted, “the subject matter of the appeals (the appeal extension) involves the carrying out of unauthorised works to a listed building, which is a very serious matter within the planning system.” The Inspector noted paragraphs 186-187 require LPAs to approach decision taking in a positive way and to look for solutions rather than problems, but opined, “what that duty means in practice will depend on the circumstances and planning merits of the matter in question. It does not amount to an expectation that all proposals should be the subject of prolonged negotiation or that adequate negotiation is only to be considered achieved where the outcome is permission and consent”.

The appellants alleged that the Council had failed to take certain matters into account in its assessment. The Inspector disagreed, stating “the reasons for refusal given in the decision notices are in summary form, but this is usual and they are clear. Moreover, they are supported by the analysis in the officer reports, to which they applicants clearly had access in advance of making the appeals, and at appeal the Council has further explained its stance.”

However, the Inspector found that the enforcement notice contained a serious drafting error, rendering it ineffective, and noted that the Council did not seek to claim that its withdrawal of the enforcement notice, after the appeals had been lodged, “arose for reasons other than its own lack of care”.

5) Allowed the appeal by Mr O’Neill against the refusal of reserved matters on application 15/00640/OUT layout, scale, appearance and access. The Green Barn, Stoke Lyne Road, Stratton Audley, OX27 9AT. 16/00366/REM (Delegated).

The appeal related to a refusal of reserved matters in respect of an outline scheme for 3 dwellings on the edge of Stratton Audley, which affects the setting of the village Conservation Area. The Inspector considered the main issue to be the effect of the proposed development on the character and appearance of the area.

The Inspector considered the existing Dutch barn on the site to be a dominant feature that is “highly conspicuous from Stoke Lyne Road, on the approach into and out of the village”. The Inspector also considered the appeal site to be well connected to the built up area of the village. As regards the merits of the appeal scheme, the Inspector observed that “The layout of the proposed development would reflect the traditional courtyard arrangement of a farm complex and would therefore be in keeping with the rural character of the area and the agricultural history of the site and wider village”.

The Inspector disagreed with the Council’s concerns about the scale of development, in particular Plot 3 (which is adjacent existing buildings in the village), considering that it would be in keeping with the ridge heights and general scale of existing dwellings in the vicinity of the appeal site and would not appear unduly prominent. The Inspector also disagreed with the Council’s concerns about the siting and design of Plot 1 (which is on the outer edge of the development site). The Inspector commented that “whilst the Council maintains that it has been clear about the importance of this part of the site in terms of its openness, the principle of development for 3 dwellings has been established on the entire appeal site”. Moreover, the Inspector considered that the rural setting of the village would be maintained and that the removal of the existing Dutch barn “would somewhat off-set any restriction of views caused by the siting of the dwelling on Plot 1”. As regards the design of Plot 1, which seeks to appear as a traditional converted barn, the Inspector concluded that whilst it would not precisely replicate a traditional barn “When considered in the context of the other relatively modern looking, 2 storey properties that are located around Stoke Lyne Road on approach to the appeal site, the dwelling on Plot 1 would not appear unduly stark when entering the village from the north-west”.

Overall the Inspector concluded that the proposal would not have a harmful effect on the character and appearance of the area, and would not have a

harmful impact on the Stratton Audley Conservation Area or its setting. The appeal was therefore allowed.

6) Dismissed the appeal by Mr Tibbetts against the refusal of planning and listed building consent for the conversion of dovecote to library. Tythe Barn, Goose Walk, Bloxham, OX15 4JD. 16/00719/F + 16/00720/LB – (Delegated).

The proposal was alterations to convert the dovecote into a library. Two doorways would be inserted into the structure in its east and west walls to allow access to the internal area of the buildings beyond. Existing modern doors to the front of the dovecote would be replaced by non-opening doors which would be similar in design to the existing, albeit with larger areas of glazing to provide more natural light to the library.

Both appeals were dismissed.

The main issue in both appeals was whether the proposals would preserve the special architectural and historical interest of the Grade II* curtilage listed building.

The Inspector found that the larger expanses of glass would cause the property to appear overly domesticated, making the building appear even less like a dovecote and more like a domestic extension; he found that the introduction of an access to the east wall of the dovecote would not harm its functional significance but that the creation of the access to the west wall would result in the loss of historic fabric, would create a new route through the building and would be a domesticating feature, adversely affecting the significance of the building.

The Inspector concluded that since the building was already in and surrounded by residential use and appeared in sound condition and therefore that any public benefits of the proposal were clearly outweighed by the harm that would be caused by the west wall opening and the glass to the front elevation. The Inspector therefore concluded that the proposal would not preserve the special architectural and historical interest of the Grade II* curtilage listed building and for the same reasons would not preserve or enhance the character and appearance of the Bloxham Conservation Area.

7) Allowed the appeal by Mr Tolputt against the refusal of planning permission for the erection of a greenhouse to principal elevation (retrospective). 37 Dashwood Rise, Duns Tew, OX25 6JQ. 16/00615/F – (Delegated).

Retrospective planning permission was sought for the erection of a greenhouse to the front of the dwelling. The application was refused as it was considered that the greenhouse, by reason of its siting, form and materials, results in an alien and visually incongruous development that causes significant and demonstrable harm to the character of the area, contrary to Policy ESD 15 of the Cherwell Local Plan 2011-2031 and saved Policy C28 of the Cherwell Local Plan 1996.

The appeal was allowed.

The Inspector identified the main issue as being the effect of the greenhouse on the character and appearance of the surrounding area.

The Inspector concluded that whilst it was obvious that the new greenhouse had been built in front of the existing bungalow, in front of the “building line” and in front of a bedroom window, that did not make the greenhouse unacceptable in itself. The Inspector found the greenhouse to be modest in scale, even by comparison with the bungalow (which is not a large building), and lightweight and transparent in appearance. The Inspector concluded it was not unduly intrusive in the street scene, having the appearance of a modest, domestic garden feature rather than being an “alien” element in the street scene. It did not, therefore, harm the street scene or the character and appearance of the surrounding area to a degree that could be considered unacceptable in planning terms. Further, the Inspector concluded it provided a useful adjunct to the property and was evidently valued by the current householders in the enjoyment of their home. The latter is not normally a material consideration, going against the grain of the way Inspectors consider such proposals.

8) Allowed the appeal by Mr and Mrs Roberts against the refusal of planning permission for a single storey rear extension. 4 The Stables, Launton Road, Stratton Audley, OX27 9AX. 16/01128/F – (Delegated).

The proposal was a single storey extension to a converted barn.

The appeal was allowed.

The main issue was the proposal’s impact on the character and appearance of the host building as a non-designated heritage asset and on the character and appearance of the Conservation Area.

The Inspector found that the residential conversion had involved some modification to the building, including extensions plus the creation of an archway in to the original building, but that, although the original character had been compromised, the buildings were traditional in form and material and made a positive contribution to the Conservation Area.

The Council had considered the extension to overly domestic and not in keeping with its form and overall character. The Inspector disagreed, considering the proposal to be of acceptable form and design and to be sufficiently harmonious with the host building, extending it in a relatively unobtrusive way and that, although being apparent in the street scene, would maintain the character and appearance of the original building and its surroundings.

3.0 Consultation

None

4.0 Alternative Options and Reasons for Rejection

4.1 The following alternative options have been identified and rejected for the reasons as set out below.

Option 1: To accept the position statement.

Option 2: Not to accept the position statement. This is not recommended as the report is submitted for Members' information only.

5.0 Implications

Financial and Resource Implications

- 5.1 The cost of defending appeals can normally be met from within existing budgets. Where this is not possible a separate report is made to the Executive to consider the need for a supplementary estimate.

Comments checked by:

Denise Taylor, Group Accountant, 01295 221982,
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Legal Implications

- 5.2 There are no additional legal implications arising for the Council from accepting this recommendation as this is a monitoring report.

Comments checked by:

Nigel Bell, Team Leader – Planning, Law and Governance, 01295 221687,
nigel.bell@cherwellandsouthnorthants.gov.uk

Risk Management

- 5.3 This is a monitoring report where no additional action is proposed. As such there are no risks arising from accepting the recommendation.

Comments checked by:

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6.0 Decision Information

Wards Affected

All

Links to Corporate Plan and Policy Framework

A district of opportunity

Lead Councillor

None

Document Information

Appendix No	Title
None	
Background Papers	
None	
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