

Cherwell District Council

Planning Committee

16 January 2020

Appeals Progress Report

Report of Assistant Director Planning and Development

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

2.1.1 New Appeals

19/00464/F - Land OS Parcel 8751 South West Of Moorlands Farm, Murcott - Change of use of land for the siting of a mobile home (log cabin)

19/02020/F – 2 Springfield Avenue, Banbury, OX16 9HT - Two storey extension to front of property

2.2 New Enforcement Appeals

None

2.3 Appeals in progress

18/01332/F - Land West Of M40 Adj To A4095, Kirtlington Road, Chesterton – Appeal by Mr C Smith and Mr R Butcher - Change of use of land to use as a residential caravan site for 3 gypsy families, each with two caravans and an amenity building; improvement of existing access, construction of driveway, laying of hardstanding, installation of package sewage treatment plant and acoustic bund

Method of determination: Public Inquiry

Key Dates:

Start Date: 29.01.2019 **Inquiry date:** 15.10.2019 **Decision:** Awaited

19/00301/OUT - Land And Buildings, The Junction Of Spring Lane, Chapel Lane, Little Bourton - OUTLINE - New dwellings, garaging, access and external works

Method of determination: Written Reps.

Key Dates:

Start Date: 26.11.2019 **Statement Due:** 31.12.2019 **Decision:** Awaited

19/00444/F – 2 Boxhedge Terrace, Boxhedge Road, Banbury, OX16 0BX - Erection of single storey porch (Retrospective)

Method of determination: Householder (Fast Track)

Key Dates:

Start Date: 30.08.2019 **Statement Due:** N/A **Decision:** Awaited

19/00621/F – Huckleberry Farm, Heathfield, Kidlington, OC5 3DU - Continued use of transportable building to be made permanent (Retrospective)

Method of determination: Hearing – 11th February 2020

Key Dates:

Start Date: 08.11.2019 **Statement Due:** 13.12.2019 **Decision:** Awaited

19/00848/F – 3 Denbigh Close, Banbury, OX16 0BQ - Change of Use from HMO within Class C4 to 7 bed HMO (sui generis) and new access from Broughton Road

Method of determination: Written Reps.

Key Dates:

Start Date: 22.10.2019 **Statement Due:** 26.11.2019 **Decision:** Awaited

19/00910/F - OS Parcel 6091 East Of Duiker House, Fencott, OX5 2RD - Erection of 1no single storey dwelling and ancillary carport/garden workshop

Method of determination: Written Reps.

Key Dates:

Start Date: 03.09.2019 **Statement Due:** 08.10.2019 **Decision:** Awaited

Enforcement appeals

None

- 2.4 Forthcoming Public Inquires and Hearings between 17 January and 13 February 2020

19/00621/F – Huckleberry Farm, Heathfield, Kidlington, OC5 3DU - Continued use of transportable building to be made permanent (Retrospective) – Tuesday 11th February 2020. Council Chamber, Bodicote House. 10.00 start.

2.5 **Results**

Inspectors appointed by the Secretary of State have:

**1. Dismissed the appeal by Mr and Mrs Durnin for Change of use of an agricultural building to dwellinghouse. Godwins Farm, Somerton Road, North Aston, OX25 6AA – 19/00667/Q56.
Officer recommendation – Refusal (Delegated)**

The Inspector considered the main issue to be whether the proposed building operations would fall within the scope of Class Q and whether the proposal would otherwise comply with the limitations and restrictions for being permitted development.

The Inspector noted that the appeal building comprises a series of vertical timber posts which he likened to telegraph poles, strapped to similar posts, which perform the function of rafters, and that there are five of these independent frames, which are linked by timber purlins supporting a sheet metal roof. The southern half of the building is open to the sides and at the end, while the northern part of the barn is enclosed. The Inspector noted that the majority of the existing blockwork separating the enclosed part of the remainder would be removed and that it was proposed to erect new external walls on three sides of an open bay.

The Inspector remarked that a development proposal “must maintain the character and substance of a conversion in order to benefit from Class Q permitted development rights” and concluded that the appeal building would not be capable of functioning as a dwelling without the construction of external walls on three sides and went “well beyond what could reasonably be described as a conversion” and “would not fall within the parameters of Class Q”. He also found that “the addition of timber cladding would...bring the scheme into conflict with paragraph Q.1(h), which stipulates that development under Class Q must not exceed the external dimensions of the building at any given point.

Accordingly the Inspector upheld the Council’s decision and dismissed the appeal.

**2. Dismissed the appeal by Riverhall Ltd for Erection of building to form 1-bed dwelling, on the siting of the previously demolished barn, with courtyard garden and dedicated parking space - re-submission of 18/01644/F. Sycamore House, Shepherds Close, Weston On The Green, OX25 3RF – 19/00962/F
Officer recommendation – Refusal (Delegated)**

The Inspector considered that the main issue was whether the proposed development would afford its occupiers with an acceptable living environment, with particular regard to the standard of external amenity space.

The appeal site is essentially an open area, with two new dwellings in the process of being constructed to the south. Other residential properties lie close by to both the east and west. This appeal followed a previously dismissed appeal on the site, however sought to address concerns by relocating the dwellings amenity space from the southern end to a position immediately east of the dwelling.

Whilst the appellant asserted that the proposal complied with the Cherwell Residential Design Guide SPD 2018 in relation to separation distances, the Inspector considered that the guidance was not devised for this particular scenario, whereby a two and a half storey dwelling faces directly towards a modest courtyard garden. Furthermore, he found that at this distance, the building would be overbearing for future occupiers of the appeal scheme, also providing the opportunity for overlooking from upper floor windows and the dormers in the roof – with almost every part of the amenity area being overlooked, providing users with limited privacy. The Inspector considered that in most cases where the SPD separation distance guidance is complied with, there is the opportunity for mutual overlooking. However, the appeal proposal does not allow for this. He held that there would essentially be no outside space with any real privacy during winter months when the proposed trees were not in leaf, whilst a tree would likely cause shading to the detriment of the recreational value of the space for the rest of the year.

The Inspector therefore found the amenity space to be of poor quality, and concluded that the proposal did not provide an acceptable living environment for future occupiers. Weighing the planning balance, the Inspector concluded that the proposal's contribution to housing supply did not outweigh the harm identified in respect of residential amenity, and accordingly dismissed the appeal.

**3. Dismissed the appeal by Mrs N Benjamin for RETROSPECTIVE - Change of Use of attached garage to independent dwelling unit. Purbeck End, 5 Vicarage Road, Kidlington, OX5 2EL – 19/00661/F
Officer recommendation – Refusal (Delegated)**

The Inspector considered the main issues to be the impact on the character and appearance of the area and the living conditions of the occupiers of the appeal dwelling and No 5 Vicarage Road, with particular regard to privacy and amenity space.

The Inspector agreed with the Council that the small size of the dwelling and its siting attached to the front elevation of No 5 fails to respect the form, scale and siting of neighbouring properties in Vicarage Road and that the dwelling not having its own frontage facing Vicarage Road appears out of character with the linear arrangement of dwellings in the street. Furthermore, the red line plan only went around the building itself and the dwelling therefore had no garden, which the Inspector agreed with the Council was out of character with the prevailing form of development in the area, which consists of sizeable gardens set behind houses.

The Inspector recognised that the front door of the appeal dwelling is positioned close to the front door of No 5 Vicarage Road, but considered that with the small amount of movements to each dwelling this would not be harmful to the privacy of the occupiers of either dwelling. However, the Inspector agreed with the Council that the relationship between the first floor front bedroom window of the appeal dwelling and the first floor front bedroom window of No 5 would enable close-range views which would have an

adverse effect on the privacy of the occupiers of the appeal dwelling and No 5 Vicarage Road.

Accordingly the Inspector upheld the Council's decision and dismissed the appeal. Since the appeal development has already been carried out, i.e. retrospective consent had been sought, the matter will be passed to the Council's enforcement team to take appropriate action.

**4. Dismissed the appeal by Greystoke Land Residential development of up to 18 dwellings with associated access, internal roads, car parking, public open space, landscaping, drainage and other associated infrastructure. Land North Of Southfield Farm, North Lane, Weston On The Green – 19/00596/OUT
Officer recommendation – Approval (Committee)**

The Inspector considered the main issues to be:

- Whether the proposal would constitute an appropriate form of development with particular regard to the provisions of local and national policy in respect of the location of the development and the effect of the proposal on the character and appearance of the surrounding area;
- Whether the proposed development is in a suitable location for housing with particular reference to the accessibility of services and facilities; and,
- Whether the proposed development makes adequate provision for any additional need for infrastructure, services and facilities arising from the development.

With regard to Policy Villages 2 ("PV2") and the principle of development, the Inspector disagreed with the Tappers Farm Inspector and instead concurred with the Ambrosden Inspector's conclusion that (i) such proposals do not harm the strategy of concentrating development in Bicester and Banbury and (ii) that development at Category A Villages which exceeds the 750 homes figure need not place any undue constraint on other villages to meet any specific or identified housing needs, as other policies contained within the development plan, for example Policy Villages 1 and Policy Villages 3 of the CLPP1, would be relevant considerations to cater for any such needs. [NB. The Council is not challenging the Tappers Farm decision, but is challenging the Ambrosden and Sibford Ferris decisions. The WOTG Inspector did not wish to be informed of the Tappers Farm or Sibford decisions and did not take them into account in reaching his decision, but as (i) he dismissed the appeal and (ii) his remarks do not agree with those of the Tappers Farm Inspector, it might be argued his conclusions re housing strategy are not injurious to the Council.]

Furthermore, the Inspector held that, given the advanced stage of the Weston on the Green Neighbourhood Plan ("eNP"), additional housing - and specifically affordable housing - is needed in the village. The Council and the appellant disagreed on the level of growth identified in the eNP. The Inspector did not express a view, but noted it was clear that any future growth in the village would necessitate exceeding the 'total of 750 homes' at Category A Villages within the District permitted by PV2. The Inspector held that the appeal proposal would not necessarily undermine the District's housing strategy and that the scheme would provide some affordable housing units which would assist in meeting the objectives of the eNP.

With regard to the impact on the character and appearance of the area, the Inspector recognised that existing hedgerows and vegetation would partially screen the site from views from the surrounding locality and, consistent with the findings of the Inspector in the previous appeal decision, also acknowledged the conclusions of the Landscape and Visual Impact Appraisal that the effect on the wider landscape would be limited. However, the Inspector found that the proposal would still alter the agricultural appearance of the site to that of a domestic residential one and, consequently, would have an urbanising effect on the countryside. The Inspector found that the proposal would represent an undue visual intrusion into the open countryside and would thereby detract from the rural character of the surrounding area. Furthermore, the Inspector held that the proposal would appear as a modern estate which would not reflect the mixture of older and newer housing that can be found throughout Weston-on-the-Green and, consequently, would be harmful to the character and setting of this village.

With regard to access to services and facilities, the Inspector agreed with the Council that the services available in Weston on the Green are limited and residents would be reliant on private car use to access these services. The appellant had stated that children would have access to free transport to the nearest available schools and that there are alternative community services, such as the Oxfordshire Comet bookable transport service, which would provide choice for future residents, but the Inspector disagreed, finding that residents would have no real choice of transport other than by private vehicle or community transport and this would bring into question the sustainability of the village and the proposed development itself. The Inspector recognised that there is expected to be some dependence on private vehicles in rural locations but that this proposal would only exacerbate this and would be likely to cause environmental harm as a result of increased car journeys and hence carbon emissions.

The Inspector considered that the suggested contributions were reasonable and necessary but that, as no legal agreement was submitted which secured these contributions, the proposal was unacceptable in this regard.

Accordingly the Inspector upheld the Council's decision and dismissed the appeal.

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:

Kelly Wheeler, Business Partner, 01295 225170,
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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:

David Mytton, Solicitor, For and on behalf of Nick Graham, Director of Law and Governance and Monitoring Officer
David.Mytton@Oxfordshire.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:

David Mytton, Solicitor, For and on behalf of Nick Graham, Director of Law and Governance and Monitoring Officer
David.Mytton@Oxfordshire.gov.uk

6.0 Decision Information

Wards Affected

All

Links to Corporate Plan and Policy Framework

A district of opportunity

Lead Councillor

Councillor Colin Clarke

Document Information

Appendix No	Title
None	
Background Papers	
None	
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