

Cherwell District Council

Planning Committee

21 May 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

19/00969/F - Bowler House, New Street, Deddington, OX15 0SS – Single storey rear extension forming new Sun Room
Officer recommendation – Refusal (Delegated)

19/00831/OUT - Land South Of Home Farm House, Clifton Road, Deddington, OX15 0TP - OUTLINE - Residential development of up to 15 dwellings
Officer recommendation – Refusal (Committee)
Method of determination: Written Representations

19/02444/OUT - Land South Of Home Farm House, Clifton Road, Deddington, OX15 0TP - Outline planning permission for the residential development of up to 14 dwellings - all matters save for the means of access are reserved for subsequent approval - revised scheme of 19/00831/OUT
Officer recommendation – Refusal (Committee)
Method of determination: Written Representations

19/02075/F – The Old Vicarage, Fringford Road, Caversfield, OX27 8TH - Erection of 4no dwelling houses with associated garages, access and landscaping

Officer recommendation – Refusal (Delegated)

19/02861/F – 2 Hudson Street, Bicester, OX26 2EP - Erection of 2no one bedroom dwellings - revised scheme of 18/02046/F

Officer recommendation – Refusal (Delegated)

19/02194/F – Swallows Barn, Manor Farm Lane, Balscote, OX15 6JJ - Construction of new greenhouse (retrospective)

Officer recommendation – Refusal (Delegated)

19/02501/F – Land to the Rear of Otmoor Lodge, Horton Cum Studley - Erection of a detached dwelling with parking, access, landscaping and associated works

Officer recommendation – Refusal (Delegated)

19/02831/ADV - 10 Banbury Cross Retail Park, Lockheed Close, Banbury, OX16 1LX - Scanlite Digital Electronic LED Full Colour Ticker Display

Officer recommendation – Non-determination within prescribed period

2.2 New Enforcement Appeals

None

2.3 Appeals in progress

19/00634/F – Plot of Land South of 1 Greystones Court, Kidlington – New dwelling

Method of determination: Written Reps.

Key Dates:

Start Date: 27.01.2020 **Statement Due:** 02.03.2020 **Decision:** Awaited

Officer recommendation – Refusal (Delegated)

19/00970/LB – Bowler House, New Street, Deddington, OX15 0SS - Single storey rear extension forming new Sun Room

Method of determination: Written Reps.

Key Dates:

Start Date: 20.02.2020 **Statement Due:** 26.03.2020 **Decision:** Awaited

Enforcement appeals

None

2.4 Forthcoming Public Inquires and Hearings between 21st May 2020 and 18th June 2020

None

2.5 Results

Inspectors appointed by the Secretary of State have:

1. Dismissed the appeal by Mr L Faulkner for Two storey side extension. Rose Cottage, Woodstock Road, Kidlington, OX20 1QE. Officer recommendation – Refusal (Delegated) 19/01913/F

The Inspector considered the main issues to be the proposal's disproportionate size and design and the harm that would be caused to the Oxford Green Belt.

The Inspector concluded that there would be harm to the Green Belt and in respect of the design concluded that it "*would not respect or be sympathetic to the character and appearance of the host property*". In the absence of a certificate of lawfulness, confirming the extent to which the building could be enlarged without the need for planning permission, the Inspector considered that the permitted development fallback against this harm could only be given moderate weight.

The Inspector was asked to consider a recent development in the Green Belt nearby, where a new dwelling was erected but found "*there is little detail of this submitted to suggest that the circumstances of that development are similar to the appeal site*" giving this no weight.

In summing up the Inspector found that "*the proposals conflict with the NPPF when this is read as a whole. Very special circumstances have not been shown to arise in this case*" and therefore dismissed the appeal.

2. Dismissed the appeal by Mr M Morton for Two storey extension to front of property. 2 Springfield Avenue, Banbury, OX16 9HT Officer recommendation – Refusal (Delegated). 19/02020/F

The Inspector considered that the main issue of the appeal was the effect of the scheme on the character and appearance of the area. The application was for a two storey front extension.

The Inspector stated that aside from porches, the key feature of the streetscene on Springfield Avenue was the relative uniformity with little variation on the even numbered side of the street. As the appeal site occupies the end position, any significant change was considered to break the rhythm of the run of properties.

The Inspector concluded that the scheme would be harmful to the distinctive character and appearance of the area by breaking the rhythm and balance of both the appeal property and the wider run of semi-detached dwellings, leading to an incongruous form of development. The proposal was considered to be contrary to Policy ESD15 of the CLP 2031 Part 1 and saved Policies C28 and C30 of the CLP 1996. The appeal was therefore dismissed.

3. Dismissed the appeal by Mr and Mrs Arnold for Continued use of transportable building to be made permanent (Retrospective). Huckleberry Farm, Heathfield, Kidlington, OX5 3DU. 19/00621/F Officer recommendation – Refusal (Delegated)

The Inspector considered the main issues to be (1) whether the development is inappropriate development in the Green Belt, (2) the effect of the proposed development on the character and appearance of the area, (3) whether the location is suitable for new housing, having regard to the proximity of services and facilities, and (4) if the proposal is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

On issue (1) the Inspector agreed with the Council that the proposed dwelling was not a building for agriculture or forestry and would not meet the definition of Affordable Housing in the NPPF. The Inspector therefore found the proposal would not meet any of the exceptions under paragraph 145 of the NPPF and would reduce the openness of the Green Belt both in spatial and visual terms, was therefore inappropriate development in the Green Belt and would conflict with Local Plan Policy ESD14 and with the NPPF.

On issue (2) the Inspector agreed with the Council that the appeal scheme would be viewed as part of the open countryside and that the presence of the residential accommodation over recent years, with the associated domestic paraphernalia, demonstrated that the appeal proposal (for permanent accommodation) would be incongruous with and harmful to the appearance of the area. The Inspector considered whether this visual impact could be mitigated by a landscaping condition but held that the existence of screening is not a good justification to allow a development that would cause harm. The Inspector concluded that the proposal would unacceptably harm the character and appearance of the area.

On issue (3) and again agreeing with the Council the Inspector found that the site was not a suitable site for housing, having regard to its proximity to services and facilities, and that it would be contrary to the NPPF in relation to minimising pollution and the environmental impacts of traffic.

The Inspector then turned to consider whether there was an essential need for the dwelling. The Inspector examined the different elements of the enterprise in turn. The Inspector found that several elements did not justify a need to live on site, e.g. the chickens, ducks and rabbits, and that security did not amount to a concern of any significant weight in favour of the proposal. The Inspector found that it had not been demonstrated whether the business was currently viable or that it would be viable for the foreseeable future. Neither had it been demonstrated that there was no suitable alternative accommodation close to the site.

The Inspector noted that a temporary planning permission was given in 2013 and that government guidance states it will rarely be justifiable to grant a second temporary permission and that the business has not developed as previously stated. He therefore concluded that it had not been demonstrated that there is an essential need for a rural worker to live at or near the site and that the development conflicted with saved Policy H18 of the Cherwell Local Plan 1996.

The Inspector acknowledged the personal circumstances of the case relating to those currently living at the site along with the needs and desire of them to continue to do so and recognised that the failure of the appeal would put the occupation of the existing dwelling by the appellants at risk, but stated that the harm identified in respect of the main issues outweighed the personal matters. The Inspector held that the contribution to the district's housing land supply would be minimal and was satisfied that the Council could find the appellants and their family a home if required in the future to do so.

The Inspector concluded that very special circumstances did not exist to justify the inappropriate development in the Green Belt and dismissed the appeal.

**4. Dismissed the appeal by Mr R Hoddinott for Change of Use from an office to a one bedroom bungalow. Old Forge, Wroxton Lane, Horley, OX15 6BB. 19/01214/F
Officer recommendation – Refusal (Delegated)**

The Inspector considered the main issues to be (1) the proposal's effect on the living conditions of future occupants with regard to whether the internal layout provides a suitable amount of space and (2) whether the appeal site is an appropriate location for the development having regard to local planning policies.

On the first issue, the Inspector had particular concerns regarding the space provided for the bathroom and bedroom, doubting that a double bed or sufficient storage could be accommodated in the bedroom, and was concerned that access to the bathroom being through the bedroom was less than ideal to cater for any visitors that the future occupants may have. The Inspector found that the day to day living experience of future occupants would be cramped and inconvenient.

The Inspector acknowledged the Council's guidance within Sub Division of Buildings for Residential Use, Supplementary Planning Document, February 2011 (SPD) and that it reflected reasonable basic requirements to serve daily living similar to those that would be generated by the scheme, but which the proposal would fail to achieve. However, in reaching her decision on this aspect of the appeal the Inspector gave the SPD document little weight as it did not form part of an adopted policy in the development plan. The Inspector noted that the nationally described space standards did not form part of an adopted local plan policy.

The Inspector therefore found that the proposal would not provide adequate internal space and would therefore be unacceptably harmful to the living conditions of the future occupants.

On the second issue, the Inspector noted that the appeal site lies to the south of the village of Horley, and that the proposal did not comply with Policy Villages 1 of the 2015 Local Plan, but found that saved 1996 Local Plan Policy H19 was relevant and that it could be afforded significant weight. The Inspector found the final criteria of Policy H19 to carry less weight as it was

not sufficiently clear and unambiguous. The Inspector held that the proposal was in accord with the first three criteria of Policy H19, in particular that the building was capable of conversion, was not proposed to be significantly altered and would preserve the significance of the Horley Conservation Area, and was therefore an appropriate location for the proposed development.

Turning to other matters, the Inspector found it had not been demonstrated that the appeal proposal was the only way to address concerns regarding security and health and safety, and that the economic benefits of one additional dwelling would be modest and attributed them limited weight.

The Inspector concluded that the proposal would be unacceptably harmful to the living conditions of future occupants and accordingly upheld the Council's decision and dismissed the appeal.

**5. Allowed the appeal by Messrs C Smith and R Butcher for 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. Land West Of M40 Adj To A4095, Kirtlington Road, Chesterton. 18/01332/F
Officer recommendation – Refusal (Committee)**

The Inspector considered there to be four main issues: (1) Whether the proposal is an unsustainable form of development, in relation to accessibility to shopping, leisure facilities, employment and other services. (2) Whether the proposal would provide satisfactory living conditions for the future residents of the site in relation to noise from the M40. (3) The effect of the proposal on the character and appearance of the area. (4) The effect of other considerations, including the need for gypsy and traveller accommodation and the personal circumstances of the occupiers, on the overall planning balance.

The Inspector noted that Chesterton was designated a Category A village and that the site was around 2.2km from the edge of Bicester and within 3km of many of its facilities, albeit that there was no bus service realistically linking the area around the site to Bicester. On the first issue, the Inspector concluded that for the purpose of assessing gypsy and traveller sites the appeal site was not in a location away from settlements where traveller sites should be very strictly limited.

On the second issue, the Inspector agreed that there is a significant level of noise on the site and the appeal development "would be sensitive to the prevailing acoustic environment". The Inspector noted the parties' agreement that, subject to manufacture, the noise environment inside the static caravans would be acceptable, and held that subject to a condition preventing overnight use of the touring caravans their use on the site would not be unacceptable. The Inspector found that the external amenity areas would not experience significant adverse effects or materially detrimental levels of noise.

The Inspector adjudged the proposal's landscape impact to be slight, and found that the proposed bund would be assimilated into the surroundings

within a short period of time and that the proposal overall would not be particularly out of place in its setting thought it would cause some harm to visual amenity.

On the fourth issue, the Inspector noted the Council's acceptance that it had a significant unmet need and that there were no allocated or emerging alternative sites, and that significant weight should be attached to this unmet need and the lack of allocation, and found that granting permission for the appeal proposal would "provide some limited assistance in meeting that need".

The Inspector noted the personal circumstances of the appellant families, including their forced eviction from the Newlands Bloxham site and noted the Council's acceptance that the appellant families were in serious need of proper permanent accommodation which, the Inspector held, added significantly to the weight to be given to personal circumstances.

The Inspector disagreed with the appellant that LP Policy BSC6 was out of date. The Inspector considered other matters raised by the Council and by local residents but concluded that the planning balance was "clearly in favour" of granting planning permission and that the harm to the character and appearance of the area was outweighed by the benefits of the proposal, the lack of allocation of gypsy traveller sites and the appellants' personal circumstances. Accordingly the Inspector allowed the appeal, subject to conditions.

6. Dismissed the appeal by Mr C Shellard against the enforcement notice served on the address The Kings Head, 92 East Street, Fritwell, OX27 7QF for Change of use to residential. 18/00057/ENFC

An appeal was submitted against an enforcement notice issued by the Council on 14 March 2019. The appeal was dismissed on 1 April 20 subject to a minor amendment. The breach of planning control specified in the notice is 'the change of use from a public house to use as a single dwelling house' and the requirement of the enforcement notice was to cease the use of the public house as a single dwellinghouse.

The appellant argued that the unauthorised change of use had been ongoing in excess of 4 years and was therefore immune from any enforcement action being taken. The appellants failed to provide sufficient evidence to substantiate their claim, particularly as the Council and Parish Council both provided evidence to disprove the claim. There was also conflicting evidence of what the appellant had told the Council during the course of the investigation.

The Inspector amended the notice at section 5 (requirements of the notice) by the deletion of the word 'public house' to 'property' and upheld the enforcement notice with that correction. The owners now have 3 months from 1 April 2020 to comply with the enforcement notice.

Please note that due to current Covid-19 restrictions, it is likely the Council may need to exercise some flexibility in this timescale.

7. Dismissed the appeal by Mr B Franklin against refusal of planning permission for Change of use of land for the siting of a mobile home (log cabin). Land OS Parcel 8751 South West Of Moorlands Farm, Murcott. 19/00464/F
Officer recommendation – Refusal (Delegated)

The Inspector considered the main issues to be (1) whether the proposal would be inappropriate development in the Green Belt, and the proposal's effect on the openness and purposes of the Green Belt, (2) its effect on the character and appearance of the area, (3) whether the proposal would be in a suitable location, with regard to access to services and facilities, (4) whether the proposal would be in a suitable location, with regard to flood risk, and (5) if the development is inappropriate development in the Green Belt, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by any very special circumstances.

On issue (1) the Inspector agreed with the Council that the proposal would be inappropriate development in the Green Belt and would not qualify under any of the exceptions in the NPPF relating the provision of appropriate facilities for outdoor sport and recreation as the use would be primarily residential. The Inspector agreed that the proposal would lead to moderate harm to the openness of the Green Belt (in spatial terms more than visually) and would also conflict with the purposes of including land in the Green Belt as a result of encroachment into the open countryside.

On issue (2) the Inspector agreed with the Council that the proposal would result in an urbanising impact on the character and appearance of the area but held that the extent of this harm would be modest.

On issue (3) the Inspector noted that the appeal site would be outside the built up limits of any village and that future occupiers of the mobile home would be dependent on the private motor car to access everyday services and facilities and would conflict with the Council's rural housing strategy, albeit that this needed to be considered in the context that Policy H18 of the CLP 1996 allows for rural workers dwellings where there is a demonstrated essential need.

On issue (4) of flood risk, the site being in Flood Zone 2, the Council had argued that given no essential need for an agricultural workers dwellings had been demonstrated on the site the sequential test should be applied on a district wide level as if its purpose was to meet general housing need. However, the Inspector disagreed, finding that the dwelling sought was intrinsically linked to the proposed livery business and the existing equine building and facilities at the site, and held that the proposal satisfied the sequential test. Nevertheless, the Inspector agreed with the Council with regard to the exception test, finding that the wider sustainability balance – and thus the exception test – would only be passed if there was a proven essential need on the site.

The Inspector then turned to consider whether there was an essential need for the dwelling. The Inspector agreed with the Council that whilst the NPPF does not include an explicit financial test it is reasonable to expect evidence concerning the financial soundness of a business and its ability to endure, at least for the lifespan of the permission sought as it would be difficult to conclude that there was an 'essential need' in relation to a business that had little or no prospect of sustaining.

The appellant had contended that the proposal would enable the currently vacant equine facilities adjacent to the site to be utilised for the proposed equine enterprise, and that an on-site mobile dwelling was an essential pre-requisite for the intended livery business. The Council had submitted that there was no suggestion at the time of the 2014 application for the equine facilities that an on-site dwelling was essential, and that the enterprise proposed at that time appeared never to have been pursued.

The Inspector was unable to ascertain from the appellant why the DIY livery proposed in 2014 was no longer considered feasible. The Inspector noted that the proposal was now for a full livery scheme with specialist rehabilitation for injured horses along with training and foaling services. The Council had submitted this proposal could "potentially" justify an essential need for a rural worker to live on site.

However, the Inspector noted the inconsistencies in the appellant's evidence, the omission of an employee's wages in the submitted business plan, and that by the time of the appeal hearing a different scheme was being proposed, the intention now being for the wife of the appellant's grandson to run the new equine venture, along with an alternative set of business costings.

The Inspector found that it remained unclear as to who the eventual occupier of the site would actually be, and that there was limited information about the relevant abilities, experience and skills of the person now proposed to take charge of the business, and that this was clearly a relevant factor in assessment of viability.

Overall the Inspector was not persuaded that sufficiently clear or persuasive evidence had been submitted to have confidence that the enterprise would be viable in the short or medium term or that sufficient evidence existed to demonstrate an essential need for a rural worker to live permanently at or near their place of work in the countryside. The Inspector therefore also concluded that the wider benefits to the community did not exist to outweigh the flood risk so the exception test was failed. The Inspector gave the benefits of an additional dwelling only limited weight given the environmentally unsustainable location and the doubts over the viability of the latest proposal.

In undertaking the Green Belt and Planning Balance the Inspector gave substantial weight to the harm to the Green Belt. Given the finding on essential need the Inspector considered the exceptions of Policy H18 or the NPPF not to apply in relation to the sustainability of the location or the harm to the character and appearance of the area. The Inspector found that these

considerations outweighed the proposal's limited benefits. The Inspector therefore concluded that very special circumstances did not exist and accordingly dismissed the appeal.

**8. Dismissed the appeal by Mr J Benjafield against refusal of planning permission for Erection of new two storey dwelling including new vehicle access. 30 Somerville Drive, Bicester, OX26 4TU. 19/01623/F
Officer recommendation – Refusal (Delegated)**

The Inspector considered the main issue to be the proposal's effect on the character and appearance of the area.

The Inspector found the appeal site to have an openness that contributes positively to the character and appearance of the area and that the proposed dwelling would encroach onto the open space, the loss of the side garden substantially reducing the feeling of openness.

The Inspector noted that the proposed dwelling would be narrower than surrounding houses and its gable front would be discordant, the result being a cramped form of development, an apparent attempt to fit a dwelling into a constrained plot.

The Inspector found the proposal to replace the hedge with a 2 metre tall wooden fence would add to this harm, the latter being "a stark and obtrusive addition".

Although the Inspector noted (as the Council had done) that a new dwelling may be acceptable in principle on the appeal site, and that one additional dwelling would provide a modest social and economic benefit, and attached moderate weight to the private benefit of providing a dwelling for the appellant's disabled son, the Inspector concluded that these benefits would not outweigh the harm that would be caused to the character and appearance of the area and accordingly 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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