

**Land Adj To Cotswold Country Club And South Of
Properties On Bunkers Hill Shipton On Cherwell**

21/02503/M106

Case Officer: Shona King

Applicant: Keble Homes

Proposal: Request for variation to S106 for 18/01491/OUT

Ward: Launton and Otmoor

Councillors: Councillor Hallchurch, Councillor Holland and Councillor Hughes

Reason for Referral: Referred by the Assistant Director, Planning and Development

Expiry Date: 5 November 2021

Committee Date: 04 November 2021

SUMMARY OF RECOMMENDATION: REFUSE

1. APPLICATION SITE AND LOCALITY

1.1 The site is located to the rear of a row of dwellings which front onto the A4095 and comprises an area of hardstanding, former Club building and a disused bowling green and associated changing rooms and maintenance shed. Access to the highway is via a narrow track onto the A4095 at the western end of the site. The site is bounded to the north and west by countryside and to the east by an established nursery/garden centre.

2. DESCRIPTION OF PROPOSAL

2.1. An application has been made seeking a variation to the s106 Agreement to permission 18/01491/OUT. The s106 required the demolition of a disused water tower adjacent to the site and the applicants now do not wish to carry out these works.

3. RELEVANT PLANNING HISTORY

3.1. The following planning history is considered relevant to the current proposal:

14/01565/OUT

Outline - Development of eight houses and access improvements
Application Refused

14/02132/OUT

Outline - Development of eight houses and access improvements.
Application Permitted

17/02148/OUT

OUTLINE - Demolition of existing club house, bowling club pavilion and ancillary store. Erection of 10no dwellings and access improvements
Application Refused

18/01491/OUT

OUTLINE - Demolition of existing club house, bowling club pavilion and ancillary store. Erection of 10 no. dwellings and access improvements (further to outline planning permission 14/02132/OUT, dated 8th April 2016) and having a lesser proposed cumulative floor area than that permission.

Approved

19/01410/REM

Reserved matters to 18/01491/OUT - Seeking approval of layout, landscaping, appearance and scale. Access details approved as part of outline permission

Approved

20/01755/DISC

Discharge of Conditions 5 (finished floor levels); 6 (Arboricultural Method Statement); 7 (supervision measures); 8 (services and trenches); 9 (open space provision); 10 (means of access); 11 (visibility splays); 12 (internal access road details); 13 (refuse vehicle tracking); 14 (drainage details); 15 (Construction Traffic Management Plan); 16 (bat, bird, owl and invertebrate box details); 19 (facing materials) & 20 (Landscaping details) of 18/01491/OUT

Approved

20/01756/REM

Removal of Conditions 17 (Archaeological Written Scheme of Investigation), 18 (staged programme of archaeological evaluation and mitigation) and 27 (hardstanding) of 18/01491/OUT

Approved

20/01757/DISC

Discharge of Condition 2 (materials) of 19/01410/REM

Approved

20/01758/REM Removal of conditions 3 (stone sample panel) & 4 (doors & windows) of 19/01410/REM

Approved

21/00904/DISC Discharge of conditions 23 (Environmental Risk Assessment and Remedial Strategy), 24 (verification report) and 25 (remediation strategy) of 18/01491/OUT

Approved

21/00905/DISC

Discharge of Condition 14 (Drainage) of 18/01491/OUT

Approved

4. PRE-APPLICATION DISCUSSIONS

- 4.1. No pre-application discussions have taken place with regard to this proposal.

5. RESPONSE TO PUBLICITY

- 5.1. This application has been publicised by way of a site notice displayed near the site, and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records. The final date for comments was 22 September 2021.

- 5.2. The issues raised by third parties are summarised as follows:

- Health and safety issues – new pumps housed under the water tower which was to be demolished due to its condition
- Not in the best interests of the residents of Bunkers Hill
- Residents not consulted by the Management Company
- Original development was supported by most of the community because of the benefits for the area. Few benefits have been delivered.
- The water tower is a risk and liability for the future shareholders.
- Water equipment was to be located in a purpose-built plant room. It has been located under the old water tower and not in a newly constructed plant room.
- Knocking down the water tower is not a pre-requisite to providing the water supply improvements
- The idea of the s106 was to take away the future risk and responsibilities associated with the water tower, removing the danger to the equipment underneath it.
- The original proposals to relocate the water supply and equipment eliminated the need for the water tower to exist
- Exception is taken to the poor provision of water that the ‘cobbled together’ solution provides for both existing and new dwellings.
- Modification of the s106 shouldn’t be signed off until the sewerage connections are completed.
- The money saved from not demolishing the water tower should go back into the community.

6. RESPONSE TO CONSULTATION

- 6.1. Below is a summary of the consultation responses received at the time of writing this report. Responses are available to view in full on the Council’s website, via the online Planning Register.

PARISH/TOWN COUNCIL AND NEIGHBOURHOOD FORUMS

- 6.2. SHIPTON ON CHERWELL PARISH COUNCIL: No objection

7. RELEVANT PLANNING POLICY AND GUIDANCE

- 7.1 Section 106A and Section 106B of the Town and Country Planning Act 1990 (as amended)

8. APPRAISAL

Background

- 8.1. Planning permission was originally granted on the site for 8 dwellings in April 2016 (ref. 14/02132/OUT).

- 8.2. Officers recommended refusal of the scheme as it was considered to represent development within the countryside and would constitute unsustainable, new build residential development in a rural location divorced from established centres of population, not well served by public transport and reliant on the use of the private car. It was considered to be contrary to saved Policies H18 and C8, of the Cherwell Local Plan 1996, Policy Villages 1 of the Cherwell Local Plan 2011-2031 and Government guidance contained in the National Planning Policy Framework.
- 8.3. The Planning Committee, however, considered that, cumulatively, the public benefits put forward as part of the application outweighed the adverse impacts of the development and the application was approved.
- 8.4. The benefits put forward in the legal agreement were as follows:
- Contribution towards off-site provision of affordable housing - £40,000
 - Provision of a LAP on the site and commuted sum towards maintenance
 - Sewage treatment facility and 20 year service contract
 - New mains-fed water supply
 - Provision of a community building and £10,000 towards maintenance
 - Demolition of the obsolete water tower
- 8.5. The decision of the Planning Committee, and therefore Cherwell District Council as Local Planning Authority (LPA), was that these obligations were necessary to make the development acceptable, and formed the basis upon which the LPA made its decision.
- 8.6. Planning permission was subsequently granted for 10 dwellings on the site under application 18/01491/OUT and it is this permission that has been implemented. In approving the application the Planning Committee considered that cumulatively the public benefits put forward as part of the application outweighed the adverse impacts of the development and the application was approved.
- 8.7. The s106 agreement required:
- Contribution towards off-site provision of affordable housing
 - Provision of a LAP on the site with a commuted sum for maintenance
 - Sewage treatment facility
 - Improvements to the water supply
 - Contribution towards Shipton-on-Cherwell Millennium Hall
 - Demolition of the obsolete water tower
 - Contribution to OCC towards increasing frequency of buses on A4260
 - New bus stop flag and timetable signage on the A4260
 - Contribution towards the cost of administering a Traffic Regulation Order to enable the relocation of the existing 40mph/de-restricted speed limit on the A4095 Bunkers Hill from its current location immediately south of the proposed access to a point 50m southwards.
 - Contributions towards off-site indoor and outdoor sports facilities
- 8.8. At the time of determination of the planning application the water tower was considered to be in an unsafe condition and the removal of it, along with the other benefits put forward by the applicant, was considered necessary to outweigh the harm of allowing the two additional dwellings.
- 8.9. Additional contributions had been required for the second scheme given it was for 10 or more dwellings and met additional triggers, whereas the first scheme was for less than 10 dwellings.

Legislation

- 8.10. Under s106A of the Town and Country Planning Act 1990 (as amended) the application falls to be determined in one of three ways:
- a) The obligation continues to have effect without modification
 - b) If the obligation no longer serves a useful purpose it should be discharged
 - c) If it continues to serve a useful purpose but would serve that purpose equally well if the s106 had effect subject to the modification in the application, it should be modified
- 8.11. The legislation requires that the s106 must be over 5 years old for consideration to be given to a modification. However, the Council's Legal Team has advised that such a modification can be considered earlier with the agreement of the parties to the s106. Officers recommend that consideration be given to this proposed change.
- 8.12. If the Council concludes that the s106 should not be modified there is no right of appeal in this instance as the application has been submitted within 5 years of the date into which the obligation was entered.

Assessment

- 8.13. In determining the application, it is necessary to consider whether anything has changed in respect of the condition of the water tower and its appearance or impact in the wider landscape and whether there are any other consequences with regards to the completed s106 arising from the proposed modification.
- 8.14. The modification sought is to release the developer from the requirement to demolish the water tower and to replace this modification with:
- "To supply and install a filtration tank and system to the landowners current water supply and to commission the existing pump".*
- 8.15. Notably, the filtration tank and system has already been installed and the pump commissioned. It is housed in an existing building below the water tower, where the previous system was located, and is under the control and ownership of the Bunkers Hill Management Company (BHMC). The deed of variation as proposed has been signed by BHMC prior to the submission of the application.
- 8.16. In effect, therefore, the proposal is simply to remove from the s106 agreement the obligation to remove the water tower.
- 8.17. The Council's Environmental Protection Team is satisfied that the water supply is acceptable.
- 8.18. Comments received from residents imply that the water tower remains in a poor condition.
- 8.19. No information has been provided to support the application in terms of the condition of the water tower, although officers note:
- (1) There has been a recent campaign by a resident seeking to retain the water tower, due to personal circumstances and the potential impact on wildlife/habitat, which involved the placing of a camper van on the top of the tower; and

- (2) The new water infrastructure has been placed in a building immediately below the tower which may make the demolition of the water tower more difficult than it might otherwise have been.

8.20. It is also noted that the water tower has the potential to provide habitat for bats and as such further consents may be required under the Wildlife and Countryside Act 1981 if the tower is to be demolished, though this was the case at the time of the previous decisions which required the removal of the water tower.

8.21. As stated in the committee report for 14/02132/OUT, the water tower is not prominent in public views as it is surrounded by mature trees and vegetation which screens it, and it does not significantly detract from the visual amenities of the area. This remains the case. However, it was considered at the time of previous decisions that its demolition would provide public benefit to the local community.

9. CONCLUSION

9.1 Having regard to the site's planning history and the Council's decisions to allow the redevelopment of the site subject to the packages of public benefits, of which the demolition of the water tower was one, and notwithstanding the loss of vegetation and potential habitat and the Deed of Variation having been signed by BHMC, it is recommended that the application to modify the s106 agreement with the retention of the water tower and the provision of the new water infrastructure in accordance with the submitted Deed of Variation is refused.

9.2 This is on the basis that circumstances have not changed since the s106 was completed and that the development would not have been approved without the benefits put forward by the applicants at the time due to the harm of allowing development in an unsustainable location.

10. RECOMMENDATION – REFUSAL

That the Deed of Variation application be refused for the following reason:

1. That the obligation continues to have effect without modification on the basis that circumstances have not changed since the s106 was completed and that the development would not have been approved without the benefits put forward by the applicants at the time due to the harm of allowing development in an unsustainable location.