

URGENT BUSINESS AND SUPPLEMENTARY INFORMATION

Planning Committee

4 November 2010

Page	Title
(Pages 1 - 12)	Written Update

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Agenda Item 17

CHERWELL DISTRICT COUNCIL PLANNING COMMITTEE

4th November 2010

WRITTEN UPDATES

Agenda Item 6 **10/00640/F** **Former USAF Housing South of Camp
Road Upper Heyford**

Since the report was drafted a number of matters require to be brought to Committee's attention:

- 1 A further outline application has been submitted for the settlement area (ref 10/01642/OUT) proposing:
 “Proposed new settlement for 1075 dwellings, together with associated works and facilities, including employment uses, a school, playing fields and other physical and social infrastructure”.

This application has only just been registered so is unlikely to be presented to Committee until the New Year

- 2 The Committee report needs to be corrected and clarified in three places:

The County Council's Developer Funding Officer has negotiated further with the applicant. As a result there are a new set of Heads of Terms (superseding para 3.1). These are reproduced in full below and should be incorporated into the heads of terms set out for the section 106 agreement in para 6.30:

**Heyford Park
Former USAF Housing & Facilities, south of camp Road Upper Heyford**

**Heads of Terms proposed by Dorchester Group in respect of an
application for Change of Use to permanent residential units
(10/00640/F)**

**Amended to show agreed position as at Friday 22 October 2010
These do not focus on the Transport Heads**

The overall development at Heyford Park has around 315 existing dwellings. Most of those are occupied under a temporary planning permission which runs to March 2015.

The Dorchester Group (DG) has submitted a planning application for a change of use for 253 of the dwellings with temporary permission to provide permanent planning permission for their occupation. All the 253 dwellings lie to the south of Camp Road – they are predominantly bungalows and also include the houses in Carswell Circle.

There are 4 current planning obligations which relate the dwellings, namely;

- UH 04 The main UU debated at the public inquiry dated Jan 2009
- UH 05 A supplemental to the main UU dated Nov 2009
- UH 06 An agreement related to the temporary permission to occupy the housing in question dated Mar 2010
- UH 07 A deed of variation to the Main UU and the supplemental UU dated Jun 2010

The Dorchester group has proposed Heads of Terms for an obligation to accompany a planning permission for 10/00640/F

CDC has had discussions with DG which in short means that if permission is granted for the permanent change of use for the 253 dwellings then CDC would require (to be secured by S106) the provision of a further 108 affordable housing dwellings to be facilitated off-site (i.e. outside of the current planning application boundary – but within Heyford Park) along Camp Road.

In short:

- Existing number of dwellings = 315
- Number of the 315 for which permanent planning permission is sought = 253
 - Of the remaining 62
 - 46 have certificates of lawful use
 - 16 remain with temporary permission until March 2015 and we would expect these to either remain (with appropriate permissions) or be replaced depending upon masterplan design detail.
- That would leave a net new build estimated at 760 dwellings, of which
 - The delivery of around 108 are essentially tied to permanent permission for the 253 units and
 - The remaining 652 would/could be brought forward by DG or other party at a later stage.

If the residential development were to have proceeded as expected (demolish some existing dwellings and replace them) then a head of steam would have been built up and subsequent build out of the development would follow, albeit at a variable pace. But, with the transfer to permanent permission of the 253 units that head of steam for new build would not be there in the same degree and hence the likely build out of the overall development may take longer than otherwise may have been the case.

The County's response regarding the planning obligations is as follows:

The current temporary planning permission for occupation of the housing south of Camp Road expires in March 2015. By then the housing at Heyford Park will have had (assuming no more temp permissions are issued) three consecutive temporary planning permissions – running for around 12 years. The temporary permission for occupation of the housing and the associated planning obligations (UH 06 and earlier versions) address a temporary period

of time where it is acknowledged that effectively the infrastructure needs to satisfactorily meet the demands arising from the existing use of the housing would be provided for that temporary period of time via specific mechanisms such as via the provision of temporary school accommodation at Tackley Primary school.

The measures in the planning obligations associated with the temporary permissions were (and are) not seen as necessarily satisfactory and/or sufficient to meet the long term needs arising from a permanent redevelopment and occupation.

The main UU (UH 04) and its related obligations (UH 05 & UH 07) was substantially agreed at the PI to cater for the long term (permanent) redevelopment of the base.

Consequently, the necessary Heads of terms associated with a permanent permission to occupy the 253 dwellings would need to include the following:

General:

The Heads will need to address at least two scenarios:

For clarity I refer the proposed Heads alpha-numerically; also COUP = Change of Use Permission

- G1 Granting and subsequent Implementation of the Change of Use should constitute the delivery of 253 (or thereabouts if numbers change e.g. 251 dwellings) “New Build Dwellings” as defined in the main UU (UH 04).
- G2 Granting, Implementation and occupation of any of the 253 dwellings shall constitute commencement of development of a new building within the Development Area (pursuant to the planning permission within main UU).

For the avoidance of doubt this will mean that the Construction Start Date, the Commencement Date and the Development Area Commencement Date shall be deemed to have taken place.
- G3 The window to submit the Councils Undertaking should be extended to [12] months after the Implementation of the Change of Use permission for the 253 dwellings
- G4 Monitoring and admin fee for the s106 - £1,500
- G5 Prior to Implementation of a Change of Use Permission (COUP) the extant planning obligations shall remain in force.

Education related:

The following relates to the current planning obligations listed above.

- Transporting children to/from schools
- E1 Prior to the COUP: The Primary School Transport Costs (under UH 06) for transporting children to/from Tackley primary school should continue to be paid monthly (upon request from the County). These monies will continue to be deducted from the £200k in the main UU (UH 04).
- E2 On the Implementation of the 108 dwellings the costs of transporting primary aged children to/from primary schools (not just Tackley) shall be paid.
A capital sum of £90,000.
- E3 If within 5 years of payment of the transportation sum (E2) the on-site primary school opens then a pro rata sum shall be reduced from the Primary School Contribution (total £5.5M).
- E4 The Secondary School Transport Costs (for transporting children to/from secondaries in Bicester and Woodstock should continue to be paid monthly (upon request by the county). These monies (under E4) will continue to be deducted from the £200k in the main UU (UH 04)
- School Provision site and contributions - Primary
- E5 The School Site Option Period will need to extend to a date 5 years after the commencement of development of the 423rd (46 + 16 + 253 + 108) dwelling at Heyford Park. The school site option would need to be provided prior to the implementation of the COUP (Also too the school site boundaries and the surveys/levels scheme).
- E6, E7 & E13** On implementation of the COUP and implementation of the first of the 108 affordable housing dwellings a contribution towards Primary (including Early years provision), Secondary and Sixth form school infrastructure shall be paid. Total amount agreed **£1.74M** (index linked)
- E8 Payment made under E7 & E6 relating to primary/early years provision any part not spent at the date of letting a contract for the primary school (on-site) shall be deductible from the Primary School Contribution (£5.5M).
- E9 Prior to the implementation of the COUP the Temp classroom maintenance and renewal costs i.e. part of the Infrastructure Contributions (under UH 06) are not to be deducted from the main UU; their payments are to be phased as per UH 06.
- E10 If COUP implemented the Primary School Site – to be cleared and cleaned/decontaminated etc. by the earlier of:
a) 36 months of implementation of the implementation of the 108 Affordable Housing (units) and
b) Commencement of housing development at Heyford Park for more than 407 dwellings (46 + 253 + 108)
Note- in respect of a) the 36 months may be extended at the discretion of the County Council.

- E11 Primary School Site precise boundaries to be agreed (if not already done so under extant S106).
School site to be transferred to County at County's request after E10.
- E12 Payment of On-site (£5.53M) and/or Off-site (£4.94M) Primary School contributions to County – triggers deferred to no earlier than 407th dwelling built at Heyford Park (407 = 46 + 253 + 108).
- Provided mechanisms exist to guarantee the delivery of the 108 units to CDC's satisfaction. If lower figure of dwellings provided then deferral reduces accordingly.
- School Provision site and contributions – Secondary (including 6th form)
- E 13** Secondary School Contributions
If COUP implemented:
Pay **£650,887** within 28 days of notice from County that approval given for additional secondary educational facilities.
Pay **£386,838** following Notice (above) and implementation of the first of the 108 units.
These sums are part of the £1.74M identified in E6 & E7 (& E13) above.
These sums to be deductible from the Secondary School Contribution (£5.5M)
- E 14 Payment of the Secondary School Contributions in the main/varied UU and (net of E 13) to be deferred to no earlier than 407th dwelling built. Provided mechanisms re delivery of 108 units are secure.
- E 15 Main Education sums to be bonded from prior to Implementation (nil cost to county).

Other elements

- O1 Same phasing for the children's Centre contributions (part of the Infrastructure Contributions) in UH 06.
- O2 Children's Centre works (see attached) to be completed within (x) months of issue of permission, or if permission issued after [date] the county's costs for carrying out the works to be repaid within 1 month of permission.
- O3 Countryside Access payment #2 in extant UU (HU 04) to be split with £27,500 paid upon occupation of the 100th Additional AH unit. That would leave the Countryside Access payment number #2 in the UU to be reduced by the corresponding amount to £119,550.

- O4 County Council Infrastructure Payment instalment #1 (£180,000) to be split such that
- £136,000 to be paid at occupation of 400 dwellings (i.e. 46 + 253 + 108)
 - £ 44,000 to be paid at occupation of 550 dwellings (i.e as per the extant UU).

End.
HC. 04 November 2010.

The Transport Development Control Manager, Oxfordshire County Council has also added:

Please accept my highway comments as supplemental to those sent on 25th June 2010:

The only stumbling point has been on the level of public transport contributions. A public transport contribution has been ascertained by the inspector on the previous application for the whole of the site. A current contribution is made towards public transport with a large increase occurring at the trigger of the 50th new build. In my view the COU does not alter the number of dwellings at the site and does not change the need to introduce any changes to the contributions. However I am mindful that other requirements are insisting the developer builds affordable houses within the first stages. In terms of transport these new dwellings will require public transport provision. Given the circumstances of the site and the likely build scenario put forward by the developer I have reduced my requirements of the public transport contribution. I require a contribution of £100,000 to be applied at the building of the 350th dwelling (effectively the same trigger as before ie 50th new build plus the existing stock with the effect of the COU). This is on the basis that the full contribution of £200,000 is put back to the 407th dwelling.

The service level on which the £100,000 is based is a minimal increase in peak time improvements between Bicester and Oxford and in real terms cannot be reduced any further.

I am not objecting to the application but insisting that some contribution to public transport is made to cater for those dwellings built after 350. I would suggest that the application is agreed in principle with the proviso that a public transport contribution is agreed.

Paragraph 3.2 refers to the transfer value of affordable housing will be £12,750 per sq.m. There is a typographical error caused by the decimal point moving one place and the correct figure is set out in Paragraph 6.31 i.e. £1,275 per sq.m.

Paragraph 6.28 reads as though all the applicants will be able to stay put until the new build is ready. This is not necessarily correct and some residents may not find a suitable housing solution on site. It is essential however, that the process is managed in order to safeguard the interests of the existing residents of the bungalows and to avoid a surge in homeless applications as all the bungalows are let on Assured Shorthold Tenancies. Under the section 106 agreement, the Council can protect the 30% of residents who may be classed as most in need. This would be until such time as the new build affordable units are available. The downside of this is that some residents may continue to live in properties the physical fabric of which is declining, and the other 70% would not be protected becoming particularly vulnerable once the detailed application was submitted although the owners would only be able to issue a phased percentage of notices per annum. This equates, they feel, to the present annual turnover of tenants.

The applicants have agreed that existing residents have priority of access to housing provided within the development of Heyford Park although housing need will have to be assessed by the Housing Department after a full survey of tenants. They have also agreed to a restriction being placed on the title of the existing units preventing their disposal unless the provisions of the Section 106 Agreement have been complied with. In practice, this means that the owner will not be able to sell any of the units in circumstances where it is in breach of the agreement as any purchaser will naturally require a certificate.

- 3 One further additional comment has been received from:
Oxford Trust for Contemporary History

We have considered the officer report to the Committee of 4 November 2010 supporting the grant of permission for the above development. The report includes the representations from the Oxford Trust for Contemporary.

The main thrust of the OTCH letter was to explain how any approval could comply with development plan policy OSPH2 which states that the redevelopment of the site is conditional on achieving three planning objectives:- environmental improvements, conservation of the Cold War heritage and creating a suitable living environment. The letter ends with the remarks,

"If the application is supported by the LPA it will be interesting to see what conditions/obligations are attached and the formal reasons for the approval which address the points made in this letter."

Having considered the report we cannot see any attempt to rebut the points being put by OTCH especially their legal basis as required by the GDPO. However, neither the application nor the conditions/obligations being recommended do anything to achieve the objective of conserving the Cold War heritage referred to in OSPH2. The suggestion in the applicant's submissions that the re-use of this housing would in some way be conservation of Cold War heritage is not supported by the Council and English Heritage positions in respect of the importance of these dwellings.

Without any such obligations we would suggest that the approval of the application would be contrary to OSPH2 and, in the absence of any overriding material considerations (none are raised in the report and balanced with the clear intention of the development plan to have the redevelopment enable the heritage to be conserved) a decision in accordance with the recommendation would be contrary to the duty set out at s.38(6) and would be open to legal challenge. We note that the officers anticipate some difficulty in agreeing even those obligations which are being recommended and we would suggest that the Council should now be adopting a comprehensive approach to this matter as required by OSPH2, to specifically include the heritage obligation.

Agenda Item 7 10/00839/F OS Parcel 2678 adj A34 by Hampton Gay and Hampton Poyle

An additional statement has been produced by Islip Parish Council and is reproduced in full:

Islip Parish Council for CDC Planning Committee 4.11.10 – Application 10/00839/F

Islip Parish Council has submitted a full objection to the application. The Parish Council expects the Committee to have read this in full, and to take all points into account.

Salient points arising from the officers' report are now raised; the references are to those of the report.

1. CDC's Provision of Gypsy and Traveller Accommodation:

The officers' report says:

5.2.3 A Gypsy and Traveller Accommodation Needs Assessment (GTAA) was produced in 2006 by consultants (Tribal) for all authorities in the Thames Valley area. Cherwell's need was identified as being 11 additional permanent pitches (2006-2011).....since then there has been a net loss. Planning permission (07/02707/F) has been granted for non-Gypsy use of part of the Bicester Trailer Park site (resulting in a loss of about 10 pitches).....

The provision was reduced as a direct result of CDC's action **after** the GTAA was produced.

The officers do not explain that the net loss of sites was because CDC considered *there was no demand for gypsy use* of the pitches at Bicester Trailer Park.

The officers say that this reduction in pitches by CDC (despite the GTAA) now results in an increased need for new pitches to twenty or so, but finally conclude:

5.2.7 At the time of writing, it is not known whether a new GTAA will be prepared or when new regulations and guidance will be produced. However,

the net loss of 8 or 7 pitches since 2006 in itself suggests, more or less, a need for the 8 pitches proposed in the current application.

The net loss might indeed suggest a need for eight pitches - but not necessarily those in the current application. The net loss suggests that CDC might indeed need to provide more pitches, but this is not a planning argument for consent to this application.

2. Democratic Accountability:

Circular 1/2006 section 58 makes clear that specific sites should be selected in development plans *with sites identified in DPDs being used before windfall sites*ⁱ. Sites identified in DPD would, of course, be open to democratic review. It is unacceptable for officers to suggest that a windfall site (if approved) would ease the obligation on CDC to plan for and to provide pitches; such a suggestion should not form part of the evaluation of the current application – which should be judged on its own merits and on planning grounds directly relevant to this application only.

3. CDC's Obligations:

The officers' report says:

5.3.4 Paragraph 49 of circular 1/2006 makes clear that alternatives should be explored before Green Belt locations are considered. At this time it is believed there is no capacity on existing sites and nor would there be 8 pitches available elsewhere in Cherwell. A lack of capacity is another possible factor in demonstrating very special circumstances to permit this development.

The officers "believe" there is no capacity on existing sites, though the grounds for this act of faith are not stated. The officers fail to point out that PPG2 does not say that existing pitches must first be sought outside the green belt. What PPG2 says is that only *exceptional limited alteration to the defined Green Belt boundary* (i.e. an exception site) would be proper only where "no other suitable sites outside the Green Belt exist."ⁱⁱ

The officers' belief that there might be no vacancies on existing sites is not material to the current application. If necessary, what the officers should be looking for are potential **new** sites for the accommodation of gypsies and travellers outside the green belt. If such a search has not been carried out (as it should be in the preparation of a DPD), then CDC is in no position to prove that no other suitable sites outside the Green Belt exist in Cherwell District.

4. Exception Site

The officers conflate the personal needs of the applicant and the obligations of CDC to specify sites under a DPD which would be subject to democratic review:

5.3.2 The applicant have stressed that the special need in this case comes from the personal circumstances of the applicant's family there being elderly relatives

and young children needing regular and specialist hospital treatment at the John Radcliffe hospital. Certainly paragraph 58 of circular 01/2006 makes clear that the personal circumstances of the applicant can be material. This and the need for additional permanent pitches explained above would potentially contribute to demonstrating very special circumstances.

Setting CDC's obligations aside, the personal circumstances of the applicant's family are stressed. The PC sincerely hopes that these needs have been met to date, and will continue to be met - whether the application succeeds or not.

However, the PC does not believe that educational and medical need warrant an exception site. Circular 1/2006 supports the Parish Council's view: *Alternatives should be explored before Green Belt locations are considered. Pressure for development of sites on Green Belt land can usually be avoided if the local planning authority allocates sufficient sites elsewhere in its area, in its LDF, to meet identified need*ⁱⁱⁱ.

6. Conclusion

We disagree with the officers' conclusions.

Reference is made to H26 from the NSCLP 2011, specifically if ... *'There is a demonstrable need that cannot be met on existing or appropriate alternative sites'*.

There has been no attempt to review alternative sites outside the green belt through a democratic process.

Indeed, CDC has been directly responsible for the reduction in the number of sites through the decision in Planning permission (07/02707/F).

The officers' report conflates two separate issues: first is the current application; second is CDC's not meeting its obligation to provide pitches. The PC believes that CDC would be wrong to take the second issue into account in deciding this application, but the officers' report and recommendation relies heavily on the second issue. The current application should be judged on its own merit and on planning grounds directly related to the application only.

If any other factor is taken into account, then there would appear to be a *prima facie* case of maladministration.

¹ Circular 1/2006

58. DPDs together with the RSS form part of the "development plan" and the Planning Act (2004) provides that determinations of applications for planning permission must be in accordance with the development plan unless material considerations indicate otherwise. Local planning authorities should be able to release sites for development sequentially, with sites identified in DPDs being used before windfall sites. Windfall sites are those which have not been specifically identified as available in DPDs. Other considerations for gypsy and traveller site applications are likely to include the likely impact on the

surrounding area, the existing level of provision and need for sites in the area, the availability (or lack of) alternative accommodation for the applicants and other personal circumstances.

¹ Planning Policy Guidance 2: 'Green Belts' (PPG2).

"The circular makes clear that an "exceptional limited alteration to the defined Green Belt boundary" (i.e. an exception site) would be proper only where "no other suitable sites outside the Green Belt exist."

¹ Circular 1/2006

48. All rural exception sites intended for use as gypsy and traveller caravan sites should be identified as being for this use. Rural exception site policies for gypsies and travellers should operate in the same way as rural exception site policies for housing, as set out in Annex B of PPG31 (as updated in January 2005). In applying the rural exception site policy, local planning authorities should consider in particular the needs of households who are either current residents or have an existing family or employment connection.

49. There is a general presumption against inappropriate development within Green Belts. New gypsy and traveller sites in the Green Belt are normally inappropriate development, as defined in Planning Policy Guidance 2: 'Green Belts' (PPG2). National planning policy on Green Belts applies equally to applications for planning permission from gypsies and travellers, and the settled population. Alternatives should be explored before Green Belt locations are considered. Pressure for development of sites on Green Belt land can usually be avoided if the local planning authority allocates sufficient sites elsewhere in its area, in its LDF, to meet identified need.

Agenda Item 8 10/01302/F Erection of Extra Care Home

The applicants have submitted additional information in relation to the parking provision and the way in which extra care housing schemes are run and a revised parking layout. The Local Highway Authority remained concerned about the level of parking provision but is satisfied that the concerns can be overcome if the use of the building is restricted to over 65 and for the specified use only. There are appropriate conditions already set out in the report.

Condition 2

Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the following plans and documents:

- Drawing no. PL10 Rev B – Site Location Plan, Proposed Site/Roof Plan
- Drawing no. PL11 Rev A – Proposed Floor Plans
- Drawing no. PL12 – Proposed Elevations (Context)
- Drawing no. PL13 Rev A – Proposed Elevations sheet 1 of 3
- Drawing no. PL14 – Proposed Elevations sheet 2 of 3
- Drawing no. PL15 – Proposed Elevations sheet 3 of 3

Reason: As in report

Agenda Item 9 **10/01371/F** **175A Warwick Road, Banbury**

Paragraph 2.2 contains a drafting error; the words “to the originally proposed hours” should be ignored.

Banbury Town Council have no objections to the proposal.

Agenda Item 11

As clarified by a letter and plan from the applicants advising that they have amended the plan to show two parking spaces for Dingers Cottage and agree not to build the extension on the gable end allowing for permanent parking space.

They confirm they are seeking the lifting of the S106 agreement to allow the letting or sale of the two properties in due course.

Agenda Item 12

In a previous phone call Mr Gosnall has acknowledged CDC followed correct procedures in serving the TPO and that he has unfortunately missed the 28 day objection period allowed following the serving of a TPO however he has submitted an email providing, what he feels is relevant background material which the committee may wish to consider. This is summarised below:

- Because he was not the occupier at the time the notice was served he never received any documentation advising him of the TPO or the objection process until he recently moved in.
 - Whilst he appreciates the circumstances were quite complicated he feels that, as the owner of the property at the time, he was placed at a disadvantage by the process.
 - He wishes to stress that it has never been his intention to cut down the trees unless it was shown that they were dead or a danger to surrounding properties.
 - To his knowledge, no trimming of the trees has taken place, and there is major works required to bring them back under good management.
 - He would therefore like this information to be put before panel for their consideration, and ideally would like the TPO not to be made permanent.
 -
-