

URGENT BUSINESS AND SUPPLEMENTARY INFORMATION

Planning Committee

19 May 2011

Title

Written Update

If you need any further information about the meeting please contact Michael Sands, Legal and Democratic Services michael.sands@cherwell-dc.gov.uk (01295) 221554

Agenda Item 20

CHERWELL DISTRICT COUNCIL PLANNING COMMITTEE

19 May 2011

WRITTEN UPDATES

Agenda Item 7 10/01667/OUT

Land adj Gavray Drive, Bicester

1. A standard condition has been omitted from those laid out in the report and should be included. Also, should any further conditions be recommended by the EA delegated authority be given to officers to include them as required. Finally, the decision should be subject to the section 106. It is recommended, therefore that the following be inserted in the recommendation for approval:

Subject to:

- 1) the applicant entering into an agreement to link the existing Section 106 to this permission to secure the required contributions.
- 2) Any further conditions as recommended by the EA (to be delegated to officers)
- 3) The following additional condition:
Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the application site plan drawing no. JJG014/101 submitted with the application.
Reason – For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and to comply with PPS1 – Delivering Sustainable Development.

2. One letter has been received objecting on the following grounds:
 - Government guidance does not say that experts should be actively obstructed.
 - We have not seen the report about the EPS (otter) and no response has been received from Natural England on this who are a statutory consultee.
 - If permission is granted then due to clear failings of due process represent grounds that are likely to have traction in respect of any legal challenge.
 - Incomplete consideration has been given to whether the imposition of an extended permission of a reduced upper limit on the numbers of residential units represents a 'satisfactory alternative' in respect of the Habitats Directive tests or if a reduced development footprint on the site would represent a preferable option from biodiversity and sustainability point of view.
 - The objections are to the scale and location of the development within the site not on this site per se. There is no consideration of alternatives.
3. Further correspondence has been received from Butterfly Conservation who object to the application raising the following points:
 - The Brown and Black Hairstreak butterfly is listed as a Species of Conservation Concern in CDC's Biodiversity Action Plan (BAP) 2005.

They were also listed in the governments BAP 1995. In 2007 the Brown Hairstreak was given priority status. The fact that there is no longer any funding from Defra for the production of actions plans should not imply a downgraded status.

- The Black Hairstreak should be classified as Endangered under the criteria applied to a new Red List published in 2010.
- These butterflies have materially changed their presence at this site since Butterfly Conservation withdrew their objection to the original application in 2006.
- The Black Hairstreak was not discovered until the Public Inquiry so it didn't figure in the Inspectors decision and no mitigation was agreed in the subsequently approved Master Plan, ECMS or WMP. This butterfly requires mature blackthorn hedges which will be removed or disturbed by the development to their detriment. Mitigation with new hedges is of no value.
- The Brown Hairstreak was discovered before the Public Inquiry but levels were low (22 eggs found). In January 2011 478 eggs were found which is very high. Existing hedgerows need to be preserved to enable the local expansion of this nationally endangered butterfly.
- PPS9 and the NERC Act puts a duty of care on the LPA to protect and enhance habitats and species. The scale of the development is too large. A smaller development will allow the hedgerows to remain undisturbed.

4. The applicant wishes to make the following points in response:

- Gallagher Estates have agreed to a payment of £210,377 for the future management and maintenance of the open space on site which includes the retention of the County Wildlife site and a management plan for the protection of the butterflies. An off site contribution to the Oxfordshire Marsh Fritillary Project Plan has also been agreed of £427,167. These sums are included in the current S106 agreement.
- Butterfly Conservation were an integral party in the process which determined the agreed Master Plan, ECMS and Management Plan submitted under the extant permission. Issues surrounding the Black and Brown Hairstreak were addressed in all three documents.
- An email from Rob Rowland of EDP to Cherwell District Council was sent on 5 June which summarised the conclusion of the otter and water vole surveys. None were found. The full survey was subsequently submitted. The proposals, therefore, do not impinge on the strict legal protection that otters and water voles benefit from.

Planning Officer's response

- It is suggested by both objectors that a smaller development should be pursued.

The government guidance with regards extension of time applications state clearly that the application has to be for the same development. The application forms simply refer back to the earlier application. This authority does not, therefore, have the discretion to negotiate or debate alternatives of this nature.

The guidance goes on to state that 'Local Planning Authorities should take a

positive and constructive approach towards applications which improve the prospect of sustainable development being taken forward quickly. The development proposed in an application for extension will by definition have been judged to be acceptable in principle at an earlier date'.

Despite previous approval of the Masterplan, the conditions recommended include that a Masterplan and ECMS be submitted again and agreed. If required this can address ongoing detailed matters.

- Update on the Evergreen scheme: the applicant and Chiltern rail had agreed a small part of land for works to be set aside which is included in the S106 Agreement. The Compulsory Purchase public inquiry ended in January 2011 and a response is awaited – expected September 2011. In the meantime finer details are being worked up by Chiltern Rail. The construction period will take a maximum of 2 years with a completion date around May 2013.

Agenda Item 8 10/01921/F

Butchers Meadow, Balscote

- **Environment Agency response** - no objection subject to the inclusion of suggested conditions regarding land contamination and drainage. The issues raised by the Environment Agency are already addressed at conditions 10-13 (contamination) and condition 18 (drainage). In the event that the application is approved the Environment Agency's letter will be attached to the decision notice for the applicant's information.

Agenda Item 10 11/00177/F

Land N of Fringford, Shelswell Park

- Letters received from Mr D Markham, Mrs C Markham of the Old Rectory, Newton Purcell and the Tenant Farmers Association have withdrawn their objections in light of the agreement that replacement land will be provided by the landlord to the tenant if the solar farm scheme proceeds.

Para. 5.14 of the report on tenancy of land is no longer a relevant material consideration as the objections of the tenant farmer have been removed.

- The Environment Agency raises no objections subject to conditions therefore the recommendation is one of approval subject to conditions (see below).
- Amendments to drafted conditions as a result of comments and clarification from applicants agent
 1. As report
 2. Except where otherwise stipulated by conditions attached to this permission or unless otherwise agreed in writing by the local planning authority, the development shall be carried out strictly in accordance with the following plans and documents:
 - a. Planning application boundary 1:10,000 and 1:5,000 (Rev. B)
 - b. C210 Rev. 02 General layout Plan

- c. C310 Rev. 02 Site Access Roads
- d. C410 Rev. 02 Fencing and security systems layout and CCTV mast detail
- e. C510 Rev. 02 Sections 1 of 2
- f. C511 Rev. 02 Sections 2 of 2
- g. C610 Rev. 02 Vegetation removal plan
- h. C705 Rev. 02 Typical solar panel details
- i. C706 Rev. 02 Inverter/Transformer unit layouts
- j. C707 Rev. 02 Typical fencing and security system details
- k. C731 Rev. 01 Switch gear & meter housing cabins
- l. C910 Rev. 02 Cabin drainage details
- m. 228503/LA/P01 Rev. A Planting plan

Reason: For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and to comply with PPS1 – Delivering Sustainable Development.

- 3. When the solar farm ceases its operational use the panels, support structures, associated buildings and associated infrastructure shall be removed in their entirety and the land shall be restored to its original condition.
- 4-7 As report
- 8. That throughout the construction phase of the development hereby approved wheel washing facilities shall be provided for vehicles exiting to the site. (RC13BB)
- 9-14 As report
- 15. SC 9.5A site clearance outside of the bird nesting/breeding season (RC86A)
- 16-19 as report
- 20. All cabling on the site and to and from the solar farm shall be underground (RC 10A)

Additional conditions suggested by the Environment Agency

21. The development permitted by this planning permission shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) by Buro Happold dated January 2011 and the following mitigation measures detailed within the FRA:

- 1. All surface water shall be infiltrated to ground as detailed in Section 7.3 of the FRA.
- 2. The surface water drainage system shall include swales and infiltration trenches as detailed in Sections 7.3 and 7.4 of the FRA.

Reason: To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site and provide water quality enhancements.

22. Development shall not begin until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented in accordance with the approved

details before the development is completed.

Reason: To prevent the increased risk of flooding, to improve and protect water quality, improve habitat and amenity, and ensure future maintenance of the scheme.

Agenda Item 12 11/00266/F

**Unit 1 adj Topps Tiles, Southam Rd.
Banbury**

- In light of the late comments received with respect to 11/00267/F and the need to give them greater consideration it is considered appropriate to also defer consideration of this application which is linked to that proposal

It is therefore **Recommended** that the application be **DEFERRED**

Agenda Item 13 11/00267/F

**Unit 1 adj Topps Tiles, Southam Rd.
Banbury**

- Two responses have been received to the Committee Report

Firstly from Colliers (applicants agent)

1. There are no sequentially preferable sites which are suitable or available
- 2.. Store should not be arbitrarily disaggregated
3. No reference to CBRE report (significant omission both in advising Members of the retail context and in Officer's approach to assessing application)
4. Should only be refused where there is clear evidence that the proposal would be likely to have a significant adverse impact (report does not identify such evidence)
5. Proposal would not lead to the closure of any stores (which is surely logical conclusion to significant impact).

Secondly from Dunhelm (proposed tenants)

1. Certainty of Job Creation
2. Can already sell majority of goods range under terms of existing goods restriction
3. Business Model is a one stop shop for furnishings and homewares
4. Have been flexible in format (smallest store to be taken by Dunhelm in last 10 years)
5. Planning Policy does not require disaggregation of a single store
6. 85% of offer complies with the existing restriction – would not lead to closure of any other stores

- Furthermore an additional Sequential Test has been carried out in relation to Town Centre House, Car Park at Upper Windsor Street, Land at Cherwell Street, Sites at lower Cherwell Street, Station Approach, Former Spiceball Leisure Centre, Crown House, Christchurch Court, Unit 1B, 10 Calthorpe Street
- In the light of these comments, which have only been with the case officer since Tuesday, it is **Recommended** that the application be **DEFERRED**

Agenda Item 14 11/00293

Corner Meadow, Mollington

- One further objection received from local resident stating that the site has grown to 12 caravans and commenting strongly about
 1. Impact on community and people of Mollington
 2. Alleging regularly harassment of villagers
 3. Alleged selling of vans and vehicles from layby outside house
 4. Alleged sheep killed by gypsies dogs
 5. Reporting difficulty in ability to sell house

- Public and Environmental Health Team (licensing) raises no objections

Agenda Item 15 11/00483/F

The Old Rectory, Mere Rd, Finmere

1. 12 further letters of objection from local residents raising the following additional points:
 - Highway safety. Overflow parking will be on the public highway rendering much of the village one-way. Also HGVs are used in this rural area of intensive agricultural activity particularly at this time of year.
 - Residential amenity. Due to noise nuisance and unavoidable and loud music which may go on into the next day. Litter nuisance despite on site provision. Behavioural nuisance due to alcohol consumption which might lead to some erratic behaviour in the aftermath affecting the safety and amenity of visitors and residents.
 - Inappropriate location – alternative venues like Finmere Airfield or Stowe School would be better.
 - Emergency vehicle access will be significantly delayed through the village posing risk to public safety.
 - The site is elevated and overlooks much of the village. The paddock lies on very low and rough land which is wet for much of the year so vehicles would need to use tractors to assist getting them in or out leaving mud on the road which is dangerous to other users.
 - The village has a population of just over 330 people which is tiny and therefore unsuitable for such a large event.
 - Applicant has previously sought permission for an events venue which was withdrawn because the planning officer had said it would be refused.
 - The applicant is trying to set a precedent.
 - 160 people objected to the Premises Licence application. Finmere PC held a public meeting attended by over 100 villagers regarding the licence.
 - The application is contrary to at least 7 CDC non-stat local plan policies.
 - There is no mention of sequential testing to see if a more sustainable location can be found which is a policy requirement – there are many other venues including Silverstone Racing Circuit complex, Stowe School, Blenheim Palace, Chesterton Golf & Country Club.
 - The chosen location in Finmere, a small rural village, is unsustainable and contrary to a raft of local and national planning policies.

2. One letter of support has been received from a local resident at Finmere Grounds Farm summarised as follows:
A large proportion of the traffic movements and potential highway user conflict may be accounted for by our agricultural vehicles through the village and in order to demonstrate our support for the venture we will reduce tractor/implement movements to an absolute minimum and cease altogether if possible before, during and after the concert when the event is being set up and broken down.
3. The applicant has sent a letter of support for the application stating the following planning points:
 - The application is for a single event
 - There have been other similar events elsewhere with no reports of public nuisance, crime & disorder, diminution of public safety or harm to children
 - This is a charity event – not for profit
 - There will be no alcohol for sale
 - The land is all private land
 - The event is sought on Armed Forces Day – the only event in Oxfordshire on that day but there are others throughout the country
 - The upper limit for attendees is 1000
 - This is an armed forces event and likely to attract retired servicemen and women whose attire is typically formal and they are used to discipline
 - The tickets are sold to named individuals
 - The event will have educational benefits
 - Previous concerts in Finmere (Sept 2010) had no complaints about public nuisance. Cars parked at the Old Rectory fields and the format was similar
 - There are many crime and disorder prevention techniques (18 in total), public safety methods (7 in total) and many (28) recommendations relating to public nuisance avoidance methods against noise and vibration, queue management and dispersal procedures, hours of operation, smells, litter, light pollution and protection of children from harm.
4. The applicant's agent has also submitted a further statement offering some clarity to points that may have been misunderstood:
 - The marquee is for the sponsors and a rest area for the band
 - The site is not visible from the public footpath network.
 - The event could not easily be re-sited
 - This is a non-profit making event for a registered charity
 - The village roads do contain pavements and wide verges
 - Charity events have a lower threshold of requirements under the premises licenses applications so the sequential approach to site location was not required.
 - The premises license laid down the routes for coaches so the Highways report is inaccurate
 - The traffic management plan shows low levels of movements, not consistent with the highway comments. There will be stewards and the police did not say the roads would be unsafe.
 - The police and CDC's antisocial behaviour manager were at the

licence hearing and had no adverse comments to make.

- The lavatory block includes disabled access so is intentionally sited
- The proposal complies with the District Tourism Plan and the Cherwell Recreation Development Strategy.
- The Safety Advisory Group met on 17 May and has approved the Event and Traffic Management Plan with minor changes relating to signage and parking distances between vehicles. SAG is represented by Thames Valley Police, Oxfordshire County Council Highways and CDC.