

Land to the rear of 68 – 76 East Street 12/00865/F and to the side of 167 Middleton Road, Banbury

Ward: Banbury Grimsbury and Castle

District Councillors: Cllr Beere, Cllr Bonner, Cllr Cullip

Case Officer: Simon Dean

Recommendation: Approval

Applicant: Taylor French Developments Ltd

Application Description: Variation of condition 2 of 11/01032/F

Committee Referral: Member Request

1. Site Description and Proposed Development

- 1.1 The application relates to the land to the West of the former Buffalo Bills public house (now a small Tesco store and hot-food takeaway). The site has an extant consent for 7 residential units, granted in 2011. This was in itself a resubmission of an earlier approved scheme from 2010. The principle of residential development on this site is therefore well established and accepted by this authority.
- 1.2 This proposal seeks to vary the 'plans' condition attached to the 2011 consent for two reasons. Firstly to correct and amend a number of minor details on the drawings relating to issues which have arisen as a result of progressing to building regulation and specification programming. The second element of the amendment seeks to remove from the scheme the previously reserved route from East Street to the rear of the Tesco store on Middleton Road.
- 1.3 Under the extant approval(s) the developers have reserved the walking route between East Street, East Close and the rear of the Tesco site. This route, whilst shown on Ordnance Survey plans, and annotated as "path" is not on the definitive footpath maps, and as such, the County Council do not consider that it is a formal right of way.
- 1.4 This application seeks to remove this route from the development, noting that removal of the route will improve the design of the scheme in terms of crime prevention, fear of crime and the reduction of anti-social behaviour.

2. Application Publicity

- 2.1 The application has been advertised by way of site notice and press notice. The final date for comment was the 3rd of August 2012. No correspondence has been received as a result of this consultation process.

3. Consultations

- 3.1 **Banbury Town Council:** *“Object to the loss of the public right of way and amenity for local residents provided by the footpath”*

Cherwell District Council Consultees

- 3.2 **Countryside/Rights of Way Officer:** *“I recommend that the application to vary the condition (insofar as it refers to the path from East Street) is refused. Having considered evidence relating to this application, there is a strong possibility that the path from East Street across the development site to what is now Tesco’s is a public right of way, even though it is not shown on the definitive map. This being the case, we must err on the side of caution to avoid potential challenges at a later stage. The applicant will need to apply for a Public Path Order to enable the development. Before development goes ahead which affects this path, the PPO would need to be confirmed and brought into force. To obstruct a public right of way is a criminal offence.”*

Oxfordshire County Council Consultees

- 3.3 **Highways Liaison Officer:** *“No objections subject to suitable conditions safeguarding the provision of vehicular access and parking provision for the proposed residences (as previously recommended)”*

Other Consultees

- 3.4 **Thames Valley Police:** *“Secured by Design does not encourage open public footpaths that run to the rear of and provide access to gardens and rear yards of dwellings as these have been proven to generate crime. There are a number of best practise guidelines for designing public footpaths contained within the Secured by Design New Homes Publication 2010 many of which are alluded to in the correspondence from Paul Waller CMI Consulting Ltd to Simon Dean dated 12th June 2012.”*

4. Relevant National and Local Policy and Guidance

4.1 Development Plan Policy

Adopted Cherwell Local Plan (Saved Policies)

C28: Layout, design and external appearance of new development

C30: Design of new residential development

ENV12: Contaminated land

South East Plan 2009

CC1: Sustainable development

T4: Parking

BE1: Management for an urban renaissance

4.2 Other Material Policy and Guidance

5. Appraisal

5.1 The key issues for consideration in this application are:

- Relevant planning history
- Principle of the development
- Rights of way issues
- Permeability and convenience

Relevant planning history

5.2 As noted in section 1 above, there is an extant consent for residential development on this site, and that extant consent does include provision for the route between East St, East Close and Tesco. This route was shown running between the existing boundary fences of the East Close bungalows and the boundary fences of the new residential development in a corridor 1.5m wide. The route is not straight, reflecting as it does the site boundary and ownership issues.

Principle of the development

5.3 The principle of the development is well established, and the minor changes to the elevations and layouts are acceptable and in line with the established scale, appearance and principles of the development.

Rights of way issues

5.4 Whether or not the walking route from East Street to East Close is a public right of way has been an issue since the first application on this site in 2010. However, the County Council confirmed that despite the annotation on the Ordnance Survey mapping, the route is an informal, permissive path, and not a definitive public right of way. Ordnance Survey mapping reflects only an observation of the conditions on the ground, not necessarily the lawful status of a path.

5.5 As set out in section 3, the Countryside and Rights of Way Officer has concerns over the legal status of this route, but the route is not on definitive records for rights of way. The status of the route is therefore uncertain. If it is identified as a public right of way in the future the applicants would need to go through a formal process to divert the path.

5.6 Notwithstanding that, it will be recommended that the applicant take further legal advice to confirm the position for themselves, and then apply for any necessary orders.

Permeability and convenience

5.7 The principle issue in this application therefore is whether the loss of the route to the Tesco site and Middleton Road from East St and East Close is an acceptable loss of convenience.

5.8 That the loss of this route would represent a loss of convenience is not at issue; the loss of the route would lengthen the distance from East Street and East Close to the Tesco site and Middleton Road. Following the route proposed for

removal in the application (the route previously approved between the boundary fences), it is approximately 125m from East St to the entrance to the Tesco store; the alternative, following the road down East St then along Middleton Road is approximately 195m. Distances for residents of East Close are slightly longer, owing to the layout of East Close, rising from approximately 132m to 300m.

- 5.9 In order to assess the acceptability of this loss of convenience, it is also necessary to consider the design implications for the scheme, with particular reference to 'designing out crime' and the 'Secured by Design' standards.
- 5.10 The applicant has stated in the covering letter to the application that the removal of this walking route would "*improve the design of the scheme in terms of crime prevention and the reduction of anti-social behaviour*". The applicant has also identified that "*the proposed footpath in its current form would not meet the following principles of Secured by Design and create an opportunity to generate crime*:"
- *SBD principles to no encourage long public footpaths to run along the rear of, or provide access to rear yards or gardens*
 - *the footpath is not wide enough, adequately lit or devoid of hiding places*
 - *the footpath has poor surveillance and is not overlooked by any surrounding activities or other properties*"
- 5.11 The applicant suggests the removal of the path from the scheme, and the associated loss of permeability is in fact outweighed by the improvements to the security and amenity of the surrounding properties and the improvements to public safety.
- 5.12 It can be seen from the consultation responses, that both the Thames Valley Police Crime Prevention Design Advisor and the County Council Highways Officer agree that whilst the proposal would represent a loss of convenience, this is outweighed by the public safety improvements arising from the removal of the pathway.
- 5.13 It falls then to this Council, as Local Planning Authority to determine whether or not that balance is acceptable. Although no public comments were received in the course of this application, the department received several phone calls when the site was first fenced off for site preparation, expressing concern at the loss of the route.
- 5.14 Although the route from East St and East Close appears to have been well used prior to the original grant of consent for the residential scheme on this site, it does not necessarily hold that a route re-instated along the route shown on the approved plans would see the same level of use for the reasons set out in 5.9 and 5.10 above. Previously the route went from East Street through a large gap between houses, then across an area of unused and derelict, but open land with clear views through the space, no hiding places and visible from the road.
- 5.15 However, as set out in the submission, the proposed new route would, by necessity, run between two boundary fences; lacking through-visibility, creating potential hiding places (around the corners in the route) and not be overlooked

by surrounding uses or properties. As such, the use of the route would be less attractive and potentially give rise to opportunities for crime and/or fear of crime.

- 5.16 It is not considered that there are any viable alternative routes which could be opened up to replace this one. Creating a link between East Close and this site could lead to all of the foot-traffic from the North-West of the site being directed through East Close. This is likely to represent an increase in through foot-traffic and disturbance which would be out of keeping with the established character and levels of amenity of East Close and would not therefore represent a suitable alternative.

Conclusion

- 5.17 It is clear that approval of this variation of condition will have an impact on the local area with regard to convenience as it will reduce permeability and increase walking distances (from East Close in particular). It does however appear that this site has always been in private ownership and that the use of the land as a walking route has in fact been on an informal basis. With specific regard to the loss of the route, the most significant impact of this will be on the residents of East Close, increasing their distance to travel to Middleton Road by approximately 200m. The alternative route though, following the footways along the highway edge is a safe and viable alternative to the route previously approved between the boundary fences. Added to the consideration of the impact of the loss of this route is the potential for crime/ anti-social behaviour and fear-of-crime that a passageway of this nature would give rise to.
- 5.18 Taking the above factors into account it is considered that on balance, this proposal is acceptable and is therefore recommended for approval.

6. Recommendation

Approval, subject to the following conditions:

- 1 That the development to which this permission relates shall be begun not later than the expiration of three years beginning with the date of this permission.

Reason - To comply with the provisions of Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 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 P10-147-P50B (received with the application)
- drawing P10-147-P51A (approved under 11/01032/F)
- drawing P10-147-P52B (received with the application)
- drawing P10-147-P53 (approved under 11/01032/F)

- drawing P10-147-P54A (received with the application)
- drawing P10-147-P55 (approved under 11/01032/F)
- drawing P10-147-P56A (received with the application)
- drawing P10-147-P57B (received with the application)
- the details in the Design & Access Statement and Application Forms (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 government guidance in the National Planning Policy Framework.

3 That the external walls and roof(s) of the development hereby permitted shall be constructed in accordance with the schedule of materials and finishes reference P10-147-MFS39 Rev C (submitted on 22 May 2012 pursuant to condition 3 of 11/01032/F under 12/00063/DISC).

Reason - To ensure the satisfactory appearance of the completed development and to comply with Policy BE1 of the South East Plan 2009 and Policy C28 of the adopted Cherwell Local Plan.

4 That no development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a scheme for landscaping the site which shall include:-

(a) details of the proposed tree and shrub planting including their species, number, sizes and positions, together with grass seeded/turfed areas,

(b) details of the existing trees and hedgerows to be retained as well as those to be felled, including existing and proposed soil levels at the base of each tree/hedgerow and the minimum distance between the base of the tree and the nearest edge of any excavation,

(c) details of the hard surface areas, pavements, pedestrian areas, crossing points and steps.

Reason - In the interests of the visual amenities of the area, to ensure the creation of a pleasant environment for the development and to comply with Policy C4 of the South East Plan 2009 and Policy C28 of the adopted Cherwell Local Plan.

5 That all planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building(s) or on the completion of the development, whichever is the sooner; and that any trees and shrubs which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent for any variation.

Reason - In the interests of the visual amenities of the area, to ensure the creation of a pleasant environment for the development and to comply with Policy C4 of the South East Plan 2009 and Policy C28 of the adopted Cherwell Local Plan.

6 That the enclosures along all boundaries and within the site shall be provided in line with the details shown on drawing P10-147-P100 (submitted on 09 December 2011 pursuant to condition 6 of 11/01032/F under 11/00330/DISC), and such means of enclosure, in respect of those dwellings which it is intended shall be screened, shall be erected prior to the first occupation of those dwellings.

Reason - To ensure the satisfactory appearance of the completed development, to safeguard the privacy of the occupants of the existing and proposed dwellings and to comply with Policies C28 and C30 of the adopted Cherwell Local Plan.

7 That prior to the occupation of the dwellings, the proposed means of access between the land and the highway shall be formed, laid out and constructed strictly in accordance with the specification of the means of access attached hereto, and that all ancillary works therein specified shall be undertaken in accordance with the said specification.

Reason - In the interests of highway safety and to comply with Government advice contained in the National Planning Policy Framework.

8 That before the development is first occupied, the parking and manoeuvring areas shall be provided in accordance with the plan hereby approved and shall be constructed, laid out, surfaced, drained and completed in accordance with specification details to be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development, and shall be retained unobstructed except for the parking and manoeuvring of vehicles at all times thereafter.

Reason - In the interests of highway safety and to comply with Government advice contained in the National Planning Policy Framework.

9 That, notwithstanding the provisions of Class A of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (Amendment) (No 2) (England) Order 2008 and its subsequent amendments, the garage(s) shown on the approved plans shall not be converted to provide additional living accommodation without the prior express planning consent of the Local Planning Authority.

Reason - To ensure that satisfactory provision is made for the parking of vehicles on site and clear of the highway in accordance with Policy T4 of the South East Plan 2009.

10 That, notwithstanding the provisions of Classes A to E (inc.) of Part 1, of the Town and Country Planning (General Permitted Development) (Amendment) (No 2) (England) Order 2008 and its subsequent amendments, the approved dwelling(s) shall not be extended (nor shall any structures be erected within the curtilage of the said dwelling(s) without the prior express planning consent of the Local Planning Authority.

Reason - To enable the Local Planning Authority to retain planning control over the development of this site in order to safeguard the amenities of the occupants of the adjoining dwellings in accordance with Policies C28 and C30 of the adopted Cherwell Local Plan.

11 That, notwithstanding the provisions of Classes A, B and C of Part 1, of the Town and Country Planning (General Permitted Development) (Amendment) (No

2) (England) Order 2008 and its subsequent amendments, no new window(s) or other openings, other than those shown on the approved plans, shall be inserted in the walls or roof of the building without the prior express planning consent of the Local Planning Authority.

Reason - To enable the Local Planning Authority to retain planning control over the development in order to safeguard the amenities of the occupants of the adjoining dwellings and prevent overlooking in accordance with Policy C30 of the adopted Cherwell Local Plan.

12 That the windows to be installed Plots 1 and 2 of the development hereby permitted shall be sliding sash type, not top-hung.

Reason – In the interests of the visual amenities of the area and to protect the setting of the adjacent Conservation Area, in order to comply with government guidance in the National Planning Policy Framework.

13 That the refuse storage areas within the site shall be provided in line with the details shown on drawing P10-147-P100 (submitted on 09 December 2011 pursuant to condition 13 of 11/01032/F under 11/00330/DISC), and such storage areas, in respect of those dwellings which it is intended shall be served by them, shall be erected prior to the first occupation of those dwellings.

Reason - In the interests of the visual amenities of the area, to ensure the creation of a pleasant environment for the development and to comply with Policy C28 of the adopted Cherwell Local Plan.

14 Prior to the commencement of the development hereby permitted, a comprehensive investigation in order to characterise the type, nature and extent of contamination present, the risks to receptors and to inform the remediation strategy proposals shall be documented as a report undertaken by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and submitted to and approved in writing by the Local Planning Authority. No development shall take place unless the Local Planning Authority has given its written approval that it is satisfied that the risk from contamination has been adequately characterised as required by this condition.

Reason - To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with Policy ENV12 of the adopted Cherwell Local Plan.

15 If contamination is found by undertaking the work carried out under Condition 14, prior to the commencement of the development hereby permitted, a scheme of remediation and/or monitoring to ensure the site is suitable for its proposed use shall be prepared by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and submitted to and approved in writing by the Local Planning Authority. No development shall take place until the Local Planning Authority has given its written approval of the scheme of remediation and/or

monitoring required by this condition.

Reason - To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with Policy ENV12 of the adopted Cherwell Local Plan.

16 If remedial works have been identified in Condition 15, the development shall not be occupied until the remedial works have been carried out in accordance with the scheme approved under condition 14. A verification report (referred to in PPS23 as a validation report) that demonstrates the effectiveness of the remediation carried out must be submitted to and approved in writing by the Local Planning Authority.

Reason - To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with Policy ENV12 of the adopted Cherwell Local Plan.

PLANNING NOTES

1 Planning permission only means that in planning terms a proposal is acceptable to the Local Planning Authority. Just because you have obtained planning permission, this does not mean you always have the right to carry out the development. Planning permission gives no additional rights to carry out the work, where that work is on someone else's land, or the work will affect someone else's rights in respect of the land. For example there may be a leaseholder or tenant, or someone who has a right of way over the land, or another owner. Their rights are still valid and you are therefore advised that you should seek legal advice before carrying out the planning permission where any other person's rights are involved.

2 The applicant's and/or the developer's attention is drawn to the requirements of the Control of Pollution Act 1974, the Environmental Protection Act 1990 and the Clean Air Act 1993, which relate to the control of any nuisance arising from construction sites. The applicant/developer is encouraged to undertake the proposed building operations in such a manner as to avoid causing any undue nuisance or disturbance to neighbouring residents. Under Section 61 of the Control of Pollution Act 1974, contractors may apply to the Council for 'prior consent' to carry out works, which would establish hours of operation, noise levels and methods of working. Please contact the Council's Anti-Social Behaviour Manager on 01295 221623 for further advice on this matter.

3 The applicant is advised to contact Oxfordshire County Council, as it will be necessary to enter into an agreement to pay a commuted sum for maintenance/adoption of soakaways if they are provided, in line with new requirements arising from the Flood and Water Management Act 2010.

4 As a footway crosses the site you are advised to liaise with the County Council Rights of Way Officer to discuss the details of accommodating this route in the development. It may be necessary to arrange a Public Paths Order to

complete the development. You are advised to seek legal advice on this matter in order to satisfy yourselves as to the status of this route before the commencement of development.

SUMMARY OF REASONS FOR THE GRANT OF PLANNING PERMISSION AND RELEVANT DEVELOPMENT PLAN POLICIES

The Council, as Local Planning Authority, has determined this application in accordance with the development plan unless material considerations indicated otherwise. The development is considered to be acceptable on its planning merits as the proposed development is appropriate and will not unduly impact on the neighbouring properties, public, private or any other amenity, or the appearance of the street-scene. The proposal provides housing in a sustainable location and represents efficient use of available land and is not considered to be detrimental to highway safety. Furthermore, the proposal does not harm the setting or significance of the designated Conservation Area. As such the proposal is in accordance with government guidance contained in the National Planning Policy Framework, Policies BE1, C4, CC1 and T4 of the South East Plan 2009 and Policies ENV12, C28 and C30 of the adopted Cherwell Local Plan. For the reasons given above and having regard to all other matters raised, the Council considers that the application should be approved and planning permission granted subject to appropriate conditions, as set out above.