

# LR Ebbs Neuk, Hogg End, Bloxham

13/00148/F

**Ward:** Bloxham

**District Councillor:** Mrs Heath  
Mrs Thirzie Smart

**Case Officer:** Paul Ihringer

**Recommendation:** Approval

**Applicant:** Stewart Developments Ltd

**Application Description:** Two new dwellings and ancillary works

**Committee Referral:** Member Request

## 1. Site Description and Proposed Development

- 1.1 Ebbs Neuk is a large brick detached property located on a small cul de sac, off Chapel Street, on Bloxham's eastern boundary. The village lies inside an Area of High Landscape Value. Immediately behind the neighbouring property to the west, The Beeches (4 Hogg End) is Potter's Mill which is accessed via a drive to the west of the Beeches.
- 1.2 This application seeks permission to erect two four bedroom properties, on part of the large rear garden, roughly parallel to the aforementioned Potter's Mill. Discounting the access on to Hogg End, the application plot has a length of 60-69m and a width of 27m. With matching handed designs, the proposed two storey houses are of an elongated design having front and rear gables protruding from the main body of the building. The houses would be served by double garages to the front.
- 1.3 The access to the proposed dwellings would be to the side of Ebbs Neuk and The Beeches. The works would require the removal of a number of trees, none of which are protected. The applicant is proposing to plant a number of trees/hedges and erect boundary fencing in order to lessen the impact of the development on the surrounding residents.

## 2. Application Publicity

- 2.1 The application has been advertised by way of neighbour letter and site notice. The final date for comment was the 14<sup>th</sup> March 2013.

2 letters have been received. The following issues were raised

Material planning comments:

- The principle has already been rejected
- Loss of trees
- Out of keeping with surrounding houses
- Loss of amenity
- Noise and disturbance from traffic accessing the site
- Potential drainage issues

The development is contrary to Government guidance relating to 'garden grabbing'

### **3. Consultations**

- 3.1 **Bloxham Parish Council:** Object - "Contrary to Paragraph 53 of the NPPF and PPS3"

#### **Cherwell District Council Consultees**

- 3.2 **Arboricultural Officer:** "I have no objections to any of the proposals on arboricultural grounds."

#### **Oxfordshire County Council Consultees**

- 3.3 **Highways Liaison Officer:** Satisfied with the principle of the development, but required a number of amendments before removing a holding objection.
- 3.4 **Drainage Officer:** No objections subject to condition

### **4. Relevant National and Local Policy and Guidance**

#### **4.1 Development Plan Policy**

Adopted Cherwell Local Plan (Saved Policies)

H13: Development in category 1 settlements

C13: Area of High Landscape Value

C28: Layout, design and external appearance of new development

C30: Design of new residential development

#### **4.2 Other Material Policy and Guidance**

National Planning Policy Framework

Cherwell Local Plan - Proposed Submission (August 2012)

The Local Plan (August 2012) is currently out for public consultation. Although this plan does not have Development Plan status, it can be considered as a material planning consideration. The plan sets out the Council's strategy for the District to 2031. The policies listed below are considered to be material to this case and are not replicated by saved Development Plan policy:

Policy Villages 1: Village Categorisation

Policy Villages 2: Distributing Growth across the Rural Areas

Non-Statutory Cherwell Local Plan 2011

In December 2004 the Council resolved that all work to proceed towards the statutory adoption of a draft Cherwell Local Plan 2011 be

discontinued. However, on 13 December 2004 the Council approved the Non-Statutory Cherwell Local Plan 2011 as interim planning policy for development control purposes. Therefore this plan does not have Development Plan status, but it can be considered as a material planning consideration. The policies listed below are considered to be material to this case and are not replicated by saved Development Plan policy:

H1A Location of New Housing  
H15: Category 1 Villages  
TR5: Highway Safety  
TR11: Parking

## **5. Appraisal**

5.1 The key issues for consideration in this application are:

- Planning history
- The principle
- Design and siting
- Neighbour amenity
- Highway safety and parking
- Drainage
- Precedent

### **Planning history**

- 5.2 In 1971 an outline planning application (B.489/71 refers) was refused for the erection of a single dwelling on a site comprising part of the current application site and part of the rear garden of the neighbour property to the immediate east (Davicani). The proposal was refused on the grounds that it constituted backland development and that it would harm the amenities of the neighbouring residents. The width of the proposed access was also considered too narrow, making it difficult to service by public and private bodies.
- 5.3 Planning permission was subsequently granted on appeal. The Inspector considered that the main issue was the impact the development would have on the surrounding neighbours - there was no commentary of the backland location. He concluded that with careful design the amenities of the surrounding residents would not be unduly affected. In 1974 a reserved matters application (B.177/74 refers) received approval.
- 5.4 More recently in 2001, after the permission referred to above had long since lapsed, an application (01/00277/OUT refers) to build a single dwelling was submitted. Unlike the earlier approval, the application site did not include any part of the garden belonging to the owners of Davicani, but did comprise more of Ebbs Neuk's garden. All matters other than the means of access were reserved. The application was refused on the following grounds:

"The proposed development would be contrary to Policies H13, H18 and C30 of the adopted Cherwell Local Plan as it would constitute undesirable backland development and an unwarranted extension of the village, detrimental to the appearance of the site and the amenities

of adjacent residential properties by reason of noise and general disturbance associated therewith. The proposed development would also set an undesirable precedent.”

- 5.5 The case officer at this time disregarded the Inspector’s previous assessment by arguing that this decision predated the adopted Cherwell Local Plan (CLP). It was concluded that the development did not accord with any of the criteria set out in Policy H13 of the CLP which governs the type of residential development that is acceptable in the District’s larger villages. They went on to argue that the site could be beyond the built limits of the settlement anyway and should therefore be assessed against Policy H18 (new dwellings in the countryside). They also conclude that as the average number of vehicles movements to and from houses had increased since the 1970s appeal decision, the additional impact of the noise generated was enough to warrant refusal on amenity grounds. This decision was not challenged at appeal.

**The principle**

- 5.6 The 2001 decision notice unfortunately includes two mutually exclusive policies - either the site is inside the built-up limits of the settlement or it isn’t, it can’t be both. Officers are satisfied, given the current use of the land as a residential garden coupled with the appeal history, that it is reasonable to conclude that the land lies inside the village boundary and that consequently the development should be assessed against Policy H13 of the CLP, the thrust of which remains unchanged in the corresponding policy contained in both the Non-Statutory Cherwell Local Plan and the emerging Local Plan.
- 5.7 Whilst the officer for the 2001 application was technically correct that the development did not comply with the literal interpretation of “*minor development comprising small groups of dwellings on sites within the built-up area of the settlement*” subsequent appeal decisions, elsewhere in the district, established that developments comprising a single dwelling were not precluded from compliance with this criterion of Policy H13. This particular debate is obviously redundant in this current case as the application is for two dwellings.
- 5.8 Whether the site constitutes a suitable site, given its backland position is more questionable. Although the principle of backland sites had become more relaxed since the 2001 refusal (as also evidenced in a number of appeal decisions), the coalition Government has sought to check such development, firstly by amending PPS3 to remove garden land from the description of previously developed land, and more latterly in the guidance contained in the National Planning Policy Framework (NPPF), which superseded PPS3. Paragraph 53 of the NPPF reads as follows:

*“Local planning authorities should consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area.”*

- 5.9 Although this paragraph guards against *inappropriate development* it does not rule out the principle of backland development. If development does not cause harm to the appearance of the local area then it is reasonable to conclude that it complies with the NPPF, particularly as the emphasis of that document is supportive of promoting residential development in sustainable locations such

as Bloxham. As will become apparent, Officers conclude that it possible to develop this site without unduly compromising the locality. The principle of the proposal is therefore considered not to be contrary to Policy H13 of the CLP.

#### **Design and siting**

- 5.10 The other properties in the cul de sac and immediate vicinity are made up of a variety of different designs and are on differing plot sizes. The proposed dwellings, which would be well screened from the public domain, would not, in the opinion of officers, appear incongruous in this setting, particularly as they would sit alongside Potter's Mill.
- 5.11 The design of the dwellings, as is the case with Potter's Mill, has been compromised to limit the impact on the surrounding gardens. There are, for instance, no first floor windows in the side elevations facing the neighbouring gardens and the front and rear gable protrusions are on the boundary shared between the two properties (i.e. not abutting the neighbouring gardens). Although quite sizeable, they are not disproportionately large in comparison with some of the surrounding properties. Given their context, the proposed gardens are deemed to be of an acceptable size. The appearance and layout of the buildings are therefore considered to comply with Policy C28 of the CLP. Furthermore the development is not considered to unduly affect the Area of High Landscape Value and therefore accords with Policy C13 of the CLP.

#### **Neighbour amenity**

- 5.12 The key issue in this case is, therefore, the impact on the neighbouring residents. As regards potential overlooking, officers are satisfied that the design of the properties (the first floor windows facing Ebbs Neuk are more than 22m away) and the existing and proposed boundary treatment will successfully limit the impact on the surrounding residents.
- 5.13 Although the 2001 application was resisted on the noise and disturbance grounds, officers are now of the opinion that, as with the 1970s appeal application, such an argument would have been difficult to sustain at appeal. The current proposal would however intensify vehicular activity and would affect the amenities of both the occupiers of The Beeches and more significantly Ebbs Neuk, which is closer to the proposed access and does not benefit from an established green screen, made up of a number of coniferous shrubs and trees.
- 5.14 In order to lessen the impact on the host property, the applicant is proposing to reposition a facing window, erect a close boarded fence along the side and rear boundaries and plant hedges and trees. The applicant is also proposing to plant a hornbeam hedge along the length of the boundary with The Beeches as well plant a number of new trees and bushes/hedges elsewhere in the site. A new fence will run along the boundary with Davicani.
- 5.15 As regards the number of movements to and from the site which informs the loss of amenity, the Highways Officer comments as follows:

*There are nine existing dwellings on Hogg End, and this proposal will increase the total to 11 dwellings. Vehicular trips from the site are likely to increase by approx. one car movement in the am and pm peak network times. This is not considered to be a significant*

*increase in traffic. According to the National Planning Policy Framework, development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.*

- 5.16 Although a balanced decision, the planting and fencing will not act as a totally effective noise screen, officers are nonetheless of the opinion that the loss of amenity will not be so great to warrant a refusal. The proposal is therefore considered to comply with Policy C30 of the CLP.

#### **Highway safety and parking**

- 5.17 The Highways Officer objected to the originally submitted scheme on a number of grounds. The revised plans attempted to address concerns in respect of: the proposed gates for the parking area in front of Ebbs Neuk; the width of the proposed access road; the size of the turning head; and the internal dimensions of the garage. Although the Highways Officer had not responded at the time of writing it is probable that the objection will ultimately be removed as the issues raised are not insurmountable.

#### **Drainage**

- 5.18 The County's Senior Drainage Officer is satisfied that any issues relating to drainage and potential flooding can be addressed with an appropriate drainage scheme (see condition 11) and therefore comply with the relevant guidance contained within the NPPF.

#### **Precedent**

- 5.19 The last sentence of the 2001 refusal guards against the potential precedent that could be set if the application were approved. Whilst the case officer would have been wary about how a backland permission would have been received by local developers at this time, specific reference was made to land to the east of the application site. It is assumed that the officer was referring to rear garden of Davicani which isn't quite as deep or wide as the applicant's garden.
- 5.20 It is questionable whether an access between the side of Ebbs Neuk and Davicani would be countenanced given the limited distance between the two properties and the amount of facing fenestration. The only other realistic option would be to make use of the access currently being proposed. However, the extra traffic generated by any additional dwellings would quite probably tip the balance against such a proposal. The applicant was advised that should they consider a joint venture, officers would most likely only support two better spaced dwellings.
- 5.21 As a matter of record, the land further to the east of Davicani's garden is a field, roughly rectangular in shape. To the north of the field and to the east of Ridgeway House is a paddock. These two plots of land are considered to be beyond the built limits of the settlement.

#### **Consultation with applicant**

- 5.22 The applicant and agent were kept up-to-date with the progress of the application.

#### **Conclusion**

5.23 Although this is a balanced decision, officers have concluded that the principle of the development is acceptable and that the proposed houses will not unduly affect the Area of High Landscape Value, the street scene, neighbour amenity, highway safety or pose an increased risk of flooding. As a result the development accords with Policies H13, C13 C28 and C30 of the CLP and Government guidance contained within the NPPF.

## **6. Recommendation**

**Approval**, subject to:

a) the revised plans meeting the requirements of the Highways Officer and;

b) 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 highway report dated 22 January 2013 produced by Abington Consulting Engineers, the tree report dated January 2013 produced by Sacha Barnes Ltd and the following approved plans: site location plan; 1181-01A; 1181-07B; 1181-08B; 1181-09B; and 1181-10B.

Reason - For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority, and in accordance with Government guidance contained within the National Planning Policy Framework.

- 3 That samples of the bricks to be used in the construction of the walls of the dwellinghouses and garages shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The development shall be carried out in accordance with the samples so approved.

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

- 4 That samples of the tiles to be used in the covering of the roof of the dwellinghouses and garages shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The development shall be carried out in accordance with the samples so approved.

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

- 5 The boundary treatment shall be in accordance with approved plan 1181-07B and shall be in planted/erected prior to the occupation of the dwellings hereby approved.

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.

- 6 Prior to the construction of the parking area hereby approved, the proposed means of access between the land and the highway shall be formed, laid out and constructed strictly in accordance with Oxfordshire County Council's specification and guidance.

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

- 7 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.

- 8 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 C28 of the adopted Cherwell Local Plan.



9 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 C28 of the adopted Cherwell Local Plan.

10 The development hereby approved shall be carried out strictly in accordance with the recommendations and specifications set out in the Arboricultural Method Statement (AMS) and/or the Tree Protection Plan prepared by Sacha Barnes Ltd. on 10/01/2013.

Reason - To ensure the continued health of retained trees/hedges and to ensure that they are not adversely affected by the construction works, in the interests of the visual amenity of the area, to ensure the integration of the development into the existing landscape and to comply with Policy C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

11 Details of the drainage system shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development.

Reason - To ensure satisfactory drainage of the site in the interests of public health and to avoid flooding of adjacent land and property.

12 Details of the drainage system shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development.

Reason - To ensure satisfactory drainage of the site in the interests of public health and to avoid flooding of adjacent land and property.

13 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 the National Planning Policy Framework.

#### **PLANNING NOTES**

- 1 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.
- 2 Your attention is drawn to the need to have regard to the requirements of UK and European legislation relating to the protection of certain wild plants and animals. Approval under that legislation will be required and a licence may be necessary if protected species or habitats are affected by the development. If protected species are discovered you must be aware that to proceed with the development without seeking advice from Natural England could result in prosecution. For further information or to obtain approval contact Natural England on 0300 060 2501.
- 3 With reference to condition 6, the guidance is available on Oxfordshire County Council website.

**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 dwellings are acceptable in principle and are of a design, size and style that is appropriate and will not unduly impact on the neighbouring properties, or compromise highway safety. As such the proposal is in accordance with Policies H13, C13, C28 and C30 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework. 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.