

Land to the rear of 17 to 23 Vicarage & Land Adjacent to 26 Webbs Way, Kidlington **13/00990/F Road**

Ward: Kidlington North

District Councillor: Councillor Rose
Councillor
Williamson

Case Officer: Bob Duxbury

Recommendation: Refusal

Applicant: Mr and Mrs Flint

Application Description: New dwelling and access

Committee Referral: In the light of the level of local interest

Committee Date 31 October 2013

1. Site Description and Proposed Development

- 1.1 The site comprises a strip of land, roughly rectangular in shape, which is located between Vicarage Road to the south east, The Coach House (43 Mill Street) to the south west; 29 Mill Street to the north west; and a field to the north east. The applicant intends to use part of the adjacent field to form an access track linking the site to a turning head on Webbs Way (northern end of Vicarage Road).
- 1.2 The entire site is located inside the Kidlington (Church Street) Conservation Area. Although not abutting the site boundaries, there are a number of listed structures within the vicinity including two grade II* listed buildings.
- 1.3 Prior to the submission of two previous applications the site, which was overgrown with trees and bushes, was cleared. No consent was sought to remove the trees which had protection afforded to them by their conservation area status. Since 2009 a fence has been erected sub-dividing the northern portion of the land from the western area of grazing land to the west. As the land between the fence and Webbs Way is no longer used for grazing it has become overgrown – this land is located inside the Oxford Green Belt (unlike the land forming the main body of the application site).
- 1.4 Planning permission is being sought for a new dwelling and detached garage served by a new access track constructed of turf reinforced mesh across the Green Belt land. The application also includes a provision to plant a new hedge to replace the fence referred to in the previous paragraph and a proposal to relocate the badger population to a nearby field.
- 1.5 Planning permission was previously refused for two similar proposal submitted in outline form. Both applications were dismissed at appeal (APP/C3105/A/11/2159035).

11/00234/OUT - erection of two dwellings and new access
11/00812/OUT - erection of single dwelling and new access
- 1.6 A copy of that appeal decision is attached as an Annex.

It will be noted that in the appeal related to one House (appeal B) the Inspector concluded that the proposal would not be detrimental to the Conservation Area (Para 8) and also agrees that there would be no detrimental impact upon the amenities of nearby residential properties (para 17). The issue that led to the dismissal of that appeal therefore related to the impact of the access upon the Green Belt (paras 9-15).

- 1.7 This application was deferred at the last meeting to allow the applicants to submit further information regarding the proposed construction of the access way, and to allow a formal site visit to be undertaken immediately before this meeting. The additional material was received on Friday 18 October, as the agenda was due to close therefore limiting the extent of consideration that could be given to this information before the written report was compiled. The latest information gives technical information on the turf reinforcement system that is proposed (together with a maintenance regime for it), and photomontages of the paddock and accessing. The DCTL intends to find a nearby example of the use of the turf reinforcement system proposed.

2. Application Publicity

- 2.1 The application has been advertised by way of neighbour letter and site notice. The final date for comment was 22 August 2013.

22 letters have been received. The following issues were raised.

Material planning comments:

- Access contrary to Green Belt policy
- Urbanising affect
- Visual impact on the Conservation Area
- Ecology concerns (impact on a variety of animals most notably badgers)
- Potential flooding
- No change to the previous situation
- NPPF does not change the situation
- New track does not address the fundamental issue
- No VSC case that would outweigh the harm
- Potential precedent
- Loss of amenity to the occupiers of 26 Webbs Way (traffic and overlooking)
- Increase in traffic
- Landscape and Visual Assessment ignores the fact that the site is in a conservation area

Non material comments:

- Mr Flint (applicant) is the Managing Director of Pye Homes
- Will make the future development of the rest of the surrounding land owned by Pye Homes easier to develop
- Loss of view
- Encroaching onto land outside the applicants' control
- Shouldn't have been registered waste of taxpayers money
- No consultation with local people other than a letter
- Council should not have given pre-app advice on a development of this size
- Pye asked the Council to remove this field from the Green Belt in October 2012
- Told that no development would take place on land when buying house
- Object to personal mailing by the applicant
- Contrary to the aims of the Kidlington Masterplan

Can an applicant apply for planning permission on land they don't own?

3. Consultations

3.1 Kidlington Parish Council: Objects

"The Parish Council objects to the application and supports the comments of the Planning Officer* that:

"the insertion of a boundary treatment encloses the open field, the access is still across Green Belt land, and the design of the property does not create a good transition from the denser, smaller houses to the east to the larger properties to the west."

*Comments made by the Conservation Officer not the Planning Officer.

Cherwell District Council Consultees

3.2 Conservation Officer: Comments as follows

"Unfortunately I do not believe that this new proposal addresses the reasons for refusal, either the previous application or the appeal decision. The insertion of a boundary treatment encloses the open field, the access is still across Green Belt land, and the design of the property does not create a good transition from the denser, smaller houses to the east to the larger properties to the west. As such, it is considered to be harmful to the conservation area."

The design was amended as a result of these comments.

3.3 Ecology Officer: Comments as follows:

"The submitted ecological surveys are sufficient at this stage however the badger survey may need updating at a later point. The applicant should also submit a full landscaping plan which includes how they intend to manage the land and hedgerows (both retained and newly planted) off site in particular those which would contain the replacement badger sett."

3.4 Arboricultural Officer: No objections (verbal).

Oxfordshire County Council Consultees

3.5 Highways Liaison Officer: No objections.

The access drive will need to be constructed to an agreed standard notwithstanding the description included within the design and access statement"

3.6 Archaeology Officer: Comments as follows:

"The site of the proposed development lies between three 16th-century buildings, the vicarage, rectory and an associated dovecote. Further to this it is located approximately 100m south of an enclosure identified from crop marks (PRN 15099). It is possible that this enclosure ditch could delineate a larger complex and as such the development could disturb significant later medieval features.

“We would, therefore, recommend that, should planning permission be granted, the applicant should be responsible for ensuring the implementation of an archaeological monitoring and recording action (watching brief) to be maintained during the period of construction.” (comments made in respect of 11/00812/OUT)

Applicant’s Agent

- 3.7 A letter has been received from the Applicant’s Agent outlining her views with regard to the access track (see para 5.2 below), commenting on the level of disturbance to properties in Webbs Way and stating that privacy will not be compromised. The letter draws attention to changes from the previous submissions and changes to policy brought about by the NPPF which leads them to consider the proposal acceptable.

4. Relevant National and Local Policy and Guidance

4.1 Development Plan Policy

Adopted Cherwell Local Plan (Saved Policies)

GB1: Development in the Green Belt

C2: Development affecting protected species

C4: Creation of new habitats

C7: Landscape conservation

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

Proposed Submission Local Plan Incorporating Proposed Changes (March 2013)

The Proposed Submission Local Plan incorporating Proposed Changes (March 2013) has been out for public consultation and representations are due to be reported to full Council shortly, following which the plan is due to be submitted. 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:

Natural Environment ESD10

Green Belt Policy ESD14

Built Environment ESD16

Policy Villages 1: Village Categorisation

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:

Green Belt Policy GB1 &GB1a
Protected Species EN25
Housing H1, H15
Listed Buildings & Conservation Areas NE39 , EN40, EN44
H15: Category 1 Villages

5. Appraisal

The principle of the access track

- 5.1 The key issue in this case, as with the 2011 applications dismissed at appeal, is the acceptability of the access track which is located inside the Green Belt. The applicants' case is based on the fact that the National Planning Policy Framework (NPPF), which replaced the Planning Policy Guidance/Statements, supports the principle of engineering operations. PPG2: Green Belts, the Government guidance under which the appeals were assessed, did not explicitly include engineering operations in the description of acceptable development. Furthermore it is argued that the realignment of the track so that it runs along the boundary of the field and the using turf reinforced mesh in the construction of the track would mitigate any harm.
- 5.2 In documentation recently received the applicant agents make the following points:

"Access Track

1. *A fundamental change to planning policy contained within the NPPF now includes engineering operations in the list of developments that would not be inappropriate in the Green Belt: by definition this means that, all things considered, the access track in principle is acceptable.*
2. *This policy change requires the development to be assessed in a totally different light to the manner in which the previous refusals were assessed. As we mentioned this morning, we are concerned that the full implications of this policy change is not totally appreciated by the Case Officer dealing with the application.*
3. *The application does not require "very special circumstances" to be put forward for the scheme to be acceptable.*
4. *The access track running parallel to the south-east boundary will not physically intrude into the paddock; the construction materials, reinforced turf, where grass and wild flowers grow through, will further mitigate any visual intrusion of the access track.*
5. *Whereas, the track included in the earlier scheme meandered centrally across the paddock, which compromised the paddocks existing use, and therefore had a greater impact upon the Green belt. Contrary to this, the siting of the access track subject of this application does not compromise the existing function of the paddock. **The access track will not materially encroach into the countryside.***
6. *The planting of a hedge on the north eastern boundary effectively separates the garden and dwelling located within the settlement boundary of Kidlington and the paddock located within a more rural setting. This visual and physical separation will allow each of the different character elements: (1) the paddock to be viewed*

*in a rural context and: (2) the dwelling and garden in a more urban one. (This is quite different to the previous refused scheme where there was no delineation between the urban and rural elements of the development) **The access track will not result in any urbanisation of the paddock.***

7. *Any "perceived impact" has been removed by the design of the track and the physical and visual separation of the paddock and dwelling. **There will be no perceived encroachment of the countryside by the proposed access track.***
8. *The proposed dwelling and garden will be separated from the paddock by a hedge and a gate. The access track will be separated from the houses on Webbs Way by a gate. In general terms, access tracks through the countryside are often not fenced (please see page 10 of the Design and Access Statement). There is no reason why the part of the access track that runs across the paddock needs the protection of a fence.*
9. *The proposed gate at the end of Webbs Way requires a small amount of landscaping to be removed where a gate will be fixed. The new opening will significantly improve the openness of this part of Webbs Way and views across the countryside.*
10. *There have been comments from third parties that the hedge included within the application that runs north-south across the paddock will impact the openness of the paddock. We would be happy for this element of the application to be removed on Officers advice.*
- i. *There are no public vantage points to the paddock and the proposed track. The only public vantage point to the track will be standing by, and looks over the gate, at a 90 degree angle."*

5.2A The fundamental consideration in this case is whether the engineering operation which consists of the formation of the access drive is appropriate development. As will be seen below engineering operations can be appropriate provided they do not conflict with the 5 purposes of the Green Belt set out at para 80 of the NPPF namely;

- to check the unrestricted sprawl of large built up areas;
- to prevent neighbouring towns from merging with one another;
- to assist in safeguarding the countryside from encroachment;
- to preserve the setting and special character of historic towns;
- to assist in urban regeneration by encouraging the recycling of derelict and other urban land.

5.3 As stated by the applicant's agent above paragraph 90 of the NPPF does state that engineering operations are not inappropriate in the Green Belt but this is qualified with the proviso that "*they preserve the openness of the Green Belt and do not conflict with the purposes of including land in the Green Belt.*"

5.4 This guidance replaced the following advice in paragraph 3.12 of PPG2 which reads as follows:

"The statutory definition of development includes engineering and other operations, and the making of any material change in the use of land. The carrying out of such operations and the making of material changes in the use of land are inappropriate

development unless they maintain openness and do not conflict with the purposes of including land in the Green Belt.”

- 5.5 Therefore the overall affect of the guidance documents is similar. Both state, albeit in differing ways, that engineering operations are acceptable providing that they do not conflict with *the purposes of including land in the Green Belt*. The next step in the consideration therefore becomes an assessment of the impact of the proposal upon either the openness of the Green Belt, or upon any of the purposes of the Green Belt. In your officers opinion the openness of the Green Belt is not fundamentally affected. However, it is considered that the access way can be considered to be a will be an encroachment into the Green Belt unless the proposed access can be built in such a way as to be inconspicuous or body discernable.
- 5.6 In the report to the 3 October meeting I stated that I did not consider that the change of material and/or the re-alignment of the track to have materially affected the acceptability of the scheme and I draw attention to Paragraph 15 of the Inspectors report which is quite clear on this point and states:
- “I consider it is inevitable that a road in this location, however discreet, would have a visual impact on the landscape and encroach upon the countryside in a sensitive location on the edge of the settlement. Even though the road and the land it would cross might not form part of a domestic curtilage it would be perceived as such and have an urbanising effect. In the absence of other factors which would outweigh the harm caused to the Green Belt by inappropriate development I consider both schemes would be contrary to the provisions of national guidance and policy GB1 of the Cherwell Local Plan.”*
- 5.7 The latest information received (for a product from a company called Gridforce) appears to offer the prospect of a form of driving contractor that would have a significantly reduced impact upon that appearance of the driveway proposed as part of the appeal schemes. Further research will be needed in advance of Committee however before I am happy to confirm this opinion. It is possible therefore that the recommendation of refusal may be changed to an appeal.
- 5.8 As with the second appeal on this site, the proposal does not include any boundary treatment to segregate the access from the rest of the field. This is seen as an attempt to limit the visual harm on the Green Belt. Whilst the field has evidently not been used for livestock in some time, it is possible that the field will be used in the future. It is also noticeable that the applicant recognises the need to have gates at either end of the access to keep any animals from accessing both Webbs Way and the domestic curtilage of the proposed new dwelling.
- 5.9 The justification for the proposed hedge, dividing off a section of the field parallel to the proposed dwelling boundary, is that it will limit the impact on the openness of the Green Belt. However as the Inspector previously acknowledged the access need not detract from the openness of the Green Belt – the appeals failed because the track represents an encroachment into the countryside. The Inspector in considering the last appeal concluded as in 5.6 above.

I consider it is inevitable that a road in this location, however discreet, would have a visual impact on the landscape and encroach upon the countryside in a sensitive location on the edge of the settlement. Even though the road and the land it would cross might not form part of a domestic curtilage it would be perceived as such and have an urbanising effect.

- 5.10 I continue to believe that this represents encroachment into the Green Belt unless as explained in para 5.7 above, it is concluded that the submitted reinforced turf driveway is indeed not discernable.

The applicants' agent suggests that the encroachment is not significant in actual fact or perceived. However your officers consider that the opening of the access to Webbs Way will also open up views into the farmland of the Green Belt for the first time from this urban area and the access will therefore be obvious, albeit that it is accepted that this impact will only be experienced from standing close to the gateway. Nevertheless the inspector's reasoning quoted above is still sound.

The principle of the dwelling

- 5.11 Policies H9 and H10 of the adopted Cherwell Local Plan (CLP) were not saved following a review of the Plan by the Secretary of State in 2007. The principle of residential development in Kidlington therefore is assessed against Policy Villages 1 of the Proposed Submission Local Plan Incorporating Proposed Changes (March 2013) (PSLP) and Policy H15 of the Non-Statutory Cherwell Local Plan 2011 (NSCLP). These policies limit development to infilling, minor development comprising small groups of dwellings within the built up limits and conversions of non residential buildings (NSCLP 22).
- 5.12 The above policies carry limited weight as they are not part of an adopted plan. Consideration therefore is given to the NPPF. The overarching objective of this guidance, in respect of new residential development, is the promotion of sustainable development for which there is an explicit presumption in favour. The NPPF also attaches great importance to good design and advises that it is a key part of sustainable development. The NPPF also advises that consideration should be given to connections and integration of new development into the natural, built & historic environment. It is concluded that a dwelling on the site could be acceptable if an acceptable access could be obtained.

Design and neighbour amenity

- 5.13 The Inspector in considering the previous appeal accepted the Council's original assessment that, notwithstanding the access, a single dwelling on the plot of land was acceptable. The applicants' did cede to the Conservation Officers request to delete the exposed chimney breasts from the design. Although I have slight reservations about elements of the design (the pastiche barn opening) I am satisfied that the design of the new dwelling will not harm the character and appearance of the conservation area (the large houses in the vicinity incorporate a number of different influences). I am therefore satisfied that the proposed dwelling is of an acceptable design that will not harm the character and appearance of the conservation area or unduly affect the setting of the nearby listed buildings.
- 5.14 In respect of neighbour amenity, I am satisfied that given the distance between the neighbouring properties and with the right landscaping scheme, the new dwelling would not unduly affect any of the neighbouring residents. It should be noted that whilst some of the residents in Vicarage Road currently enjoy views of the field and church beyond; loss of a view is not a material planning consideration.

- 5.15 Careful consideration has been given to the impact vehicles using the access track would have on the occupiers of 26 Webbs Way. The proposed track runs down the side of 26 Webbs Way. Whilst this does introduce some new disturbance to the side of the house which has none currently, the distances between the house and the driveway, and the intervening hedgerow will in my opinion be sufficient to that the level of disturbance is not of a scale that would warrant refusal.

Highway matters

- 5.16 Notwithstanding the objections from the neighbouring residents the Highways Liaison Officer has not queried the acceptability of the scheme as there are no highway safety issues and the applicant is proposing an acceptable level of parking. The development therefore accords with Government guidance contained within the NPPF.

Ecology

- 5.17 Although I note the concerns of the neighbouring residents in terms of the impact the development will have on the local wildlife, the Council's Ecologist is nonetheless satisfied that subject to condition the proposed works will not unduly affect any protected species on the site. Consequently it is considered that art.12(1) of the EC Habitats Directive has been duly considered in that the welfare of any protected species found to be present at the site and surrounding land will continue and be safeguarded notwithstanding the proposed development. The proposal therefore accords with Policy C2 of the CLP and Government guidance contained within the NPPF.

Other Matters

- 5.18 Perhaps not unsurprisingly given the history of the site and the surrounding fields, a number of the neighbouring residents are concerned that if permission were to be granted, it would allow Pye Homes, who own the application site and the surrounding land, more leverage in getting an approval to develop more widely. This is not the case. The Green Belt status afforded the fields in question offer significant protection.

Consultation with applicant

- 5.19 Officers have maintained communications with the agent to ensure that the issues that could be addressed were successfully dealt with during the application process.

Conclusion

- 5.20 Based on the assessment before the submission of the further technical information it was concluded that the proposed access would constitute an unacceptable encroachment into the Green Belt. The proposal is therefore recommended for refusal, however as noted in paras 5.7 and 5.10 above it is possible that this conclusion may alter depending upon the final view upon the effectiveness of the turf reinforcement system to minimise the visual impact of the accessing

6. Recommendation

Subject to the further assessment of the recently submitted technical information;

Refusal, for the following reason:

- 1) The proposed access track which is located within the Green Belt land is inappropriate development as it would represent an encroachment into the countryside adversely affecting the rural character of the Green Belt and resulting in an urbanising effect. It is therefore contrary to saved Policy GB1 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

Statement of Engagement

In accordance with the Town and Country Planning (Development Management Procedure) (England) (Amendment No 2) Order 2012 and paragraphs 186 and 187 of the National Planning Policy Framework (March 2012), this decision has been taken by the Council having worked with the applicant/agent in a positive and proactive way as set out in the application report.