

# 19 Milton Road, Bloxham

13/01426/F

**Ward:** Bloxham & Bodicote

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

**Case Officer:** Paul Ihringer

**Recommendation:** Approval

**Applicant:** Stewart Development Ltd

**Application Description:** New dwelling

**Committee Referral:** Member Request

**Committee Date:** 28 November 2013

## 1. Site Description and Proposed Development

- 1.1 19 Milton Road is a large detached property constructed with artificial stone. Built in the 1960s, it forms part of a development of five bespoke homes sited on the village's eastern edge. Bloxham lies inside an Area of High Landscape Value. The property's northern boundary backs on to a dismantled railway which has become an area of mature woodland. Running along the eastern boundary is an access track and footpath (FP136/4).
- 1.2 Until recently the track was largely unused other than by walkers. However, in 2011 permission was granted (11/00192/F) to build two houses behind a telephone exchange which is located to the other side of the access track to application site and to the west of a modern housing estate completed in the last five years. As a result of this development, the track leading to the two new dwellings was laid to gravel to improve the vehicular access. Although the track is now known as Exchange Lane, it has not been formerly adopted by the County Council.
- 1.3 Planning permission is being sought for a new two storey dwelling located in the rear garden of 19 Milton Road. The proposed dwelling would face the two aforementioned new dwellings and would also make use of Exchange Lane to provide an access on to Milton Road.

## 2. Application Publicity

- 2.1 The application has been advertised by way of neighbour letter and site notice. The final date for comment was 31 October 2013. No correspondence has been received as a result of this consultation process.

## 3. Consultations

- 3.1 **Bloxham Parish Council:** Object on the following grounds:
  - “Contrary to NPPF 53
  - Garden grabbing
  - Alongside public footpath and too close to old railway line
  - Would overlook private gardens
  - Bin lorry and other service vehicles cannot access house on the unadopted road”

## **Cherwell District Council Consultees**

### **3.2 Arboricultural Officer:** Comments as follows:

“There are a number of trees on site, particularly along the northern boundary. It is proposed that seven trees be removed. None of these trees warrant protection. The remaining trees are to be retained and protected during the course of the development in accordance with the submitted Tree Protection Plan. Some minor tree works are planned.”

### **3.3 Biodiversity and Countryside Officer:** No objections subject to condition

### **3.4 Environmental Protection Officer:** No objections subject to condition

“The site is adjacent to potentially contaminative historical land uses and it is a sensitive development, which may be affected if contamination is present. I recommend the full conditions are applied to this application.”

## **Oxfordshire County Council Consultees**

### **3.5 Highways Liaison Officer:** No objections subject to condition (the second of the two recommended conditions is not required as the maintenance of the vision splay at the junction of Exchange Lane and Milton Road is already required as part of an earlier approval – see 11/00192/F)

### **3.6 Footpaths Officer:** Comments as follows:

“Bloxham public footpath 4 runs along the track that would form the access into the proposed property. I discussed the application with the Biodiversity and Countryside Officer at CDC who made comments on the 18<sup>th</sup> of October. I can confirm that I agree with the comments in her email.”

## **Other Consultees**

### **3.7 Thames Water:** No objections

## **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

C2: Development affecting protected species

C4: Creation of new habitats

C13: Area of High Landscape Value

C28: Layout, design and external appearance of new development

C30: Design of new residential development

ENV12: Contaminated land

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

National Planning Policy Framework

## 5. Appraisal

5.1 The key issues for consideration in this application are:

- The principle
- Design/neighbour amenity
- Other matters

### **The principle**

- 5.2 The principle of residential development in Bloxham is assessed against saved Policy H13 of the adopted Cherwell Local Plan (CLP). This policy limits new dwellings in category 1 settlements to infilling, conversions and “*minor development comprising small groups of dwellings on sites within the built-up area of the settlement*”. This final criterion does not preclude development for single dwellings, a point that has been established, at appeal, elsewhere in the district.
- 5.3 Notwithstanding the above, it is accepted that less weight can be attributed to CLP policy following the enactment of the NPPF. The overarching objective of the NPPF, in respect of new residential development, is the promotion of sustainably located housing for which there is an explicit presumption in favour. It should also be noted that Paragraph 14 of the NPPF states that where a local plan is out-of-date, permission should be granted unless *any adverse impact of doing so would significantly and demonstrably outweigh the benefits*.
- 5.4 Whether the site constitutes a suitable site, given its backland position is perhaps more questionable. Although the principle of backland development has become more relaxed in recent years (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 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.”*
- 5.5 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 there is a significant emphasis in the NPPF on the promotion of residential development in sustainable locations, such as Bloxham.
- 5.6 Indeed, although the Inspectorate recently dismissed an appeal for two dwellings in the rear garden of Ebbs Neuk, Hogg Lane, Bloxham (13/00148/F), the Inspector acknowledged that the principle of a new dwelling was acceptable. When reaching his decision the Inspector commented as follows on the issue of the principle:

*"I did note that there are examples of backland, or in depth, development to be seen and I would agree that this form of development should not be ruled out as an in principle starting point but rather any scheme should be determined on its own merits."*

- 5.7 Given the relationship with the two dwellings on the opposite side of Exchange Lane and that the access track is already in place, Officers consider that a dwelling in the proposed location will not appear incongruous. The principle of the proposed development is therefore considered to be acceptable and that it complies with Government guidance contained within the NPPF as well as Policy H13 of the CLP.

**Design/neighbour amenity**

- 5.8 The scheme has been designed in such away that the amenities of the neighbouring residents are not unduly compromised. In doing so, by limiting the number, function and position of openings in the rear and side (western and southern) elevations, officers are satisfied, on balance, that the appearance of these elevations will not be unduly compromised (the windows on the landing and in the two en suite bathrooms would be obscurely glazed). Although quite a large property it would not appear out of scale with most of the surrounding houses. The proposal will also not cause any visual harm to the Area of High Landscape Value.
- 5.9 Although the blank southern elevation, of the proposed property, is just 1m from the proposed new rear boundary of 19 Milton Road, there is sufficient space (just under 19m) to the rear elevation of 19 Milton Road to ensure that the Council's relevant amenity standard (14m) is complied with. Officers are further satisfied that this elevation would not either be too overbearing or result in a significant loss of light, particularly given the orientation (the proposed dwelling is to the north of 19 Milton Road). The residents of two new dwellings on the opposite side of the Exchange Lane would not be overly affected by the development. Based on this assessment, and in the absence of any neighbour objections, it is concluded that the proposed dwelling complies with Policies C13, C28 and C30 of the CLP.

**Other matters**

- 5.10 The Council's Arboriculturalist is satisfied that, subject to condition, the proposed dwelling will not affect the woodland to the north. This would perhaps go some way to alleviating the concern of the Parish Council in respect of the proximity of the new dwelling to the disused railway line. Likewise, a condition should ensure that the development does not overly affect walkers using the footpath both during construction and in perpetuity and thus deal with the points raised by the Biodiversity and Countryside Officer.
- 5.11 Although residents will have to take their bins to the junction with Milton Road given Exchange Lane's unadopted status (as noted by the Parish Council), this situation is replicated for residents living on most unadopted roads. It also needs to be remembered that the use of Exchange Lane for residential purposes has already been established. Officers concur with the Highways Officer recommendation that, subject to condition, this application is acceptable from a highway safety perspective.

### **Consultation with applicant**

- 5.12 Good communications were maintained with the agent to ensure that the issues that arose were successfully dealt with.

### **Conclusion**

- 5.13 Based on the assessment above it is concluded that the proposed dwelling is: acceptable in principle; is of an appropriate design that will not unduly affect the amenities of any of the neighbouring residents; will not pose a highway safety or contaminated land risk; and will not unduly affect protected species. The development therefore accords with Policies H13, ENV12, C2, C4, C13, C28 and C30 of the CLP as well as Government guidance contained within the NPPF.

## **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 Tree Report produced by Sacha Barnes Ltd (ref: SB/JS/313) and dated September 2013 and the following approved plans: 1179-02.A; 1179-03.C; 1179-04.C; and SB/JS/313/TS.

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 the external walls and roof of the dwelling shall be constructed in accordance with a schedule of materials and finishes which shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the works hereby 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 full details of the enclosures along all boundaries of the site shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development, and such means of enclosure shall be erected prior to the first occupation of the dwelling.

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.

- 5 Prior to the commencement of the development hereby approved, full specification details (including construction, layout, surfacing and drainage) of the parking and manoeuvring areas shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, and prior to the first occupation of the development, the parking and manoeuvring areas shall be provided on the site in accordance with the approved details 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 guidance contained within the National Planning Policy Framework.

- 6 That the legally defined line of the footpath affected shall not be obstructed during or after the construction of the dwelling.

Reason: To ensure the public right of way remains available and convenient for public use.

- 7 a) No retained tree shall be cut down, uprooted, damaged or destroyed, nor shall any retained tree be pruned in any manner, be it branches, stems or roots, other than in accordance with the approved plans and particulars, without the prior written approval of the Local Planning Authority. All tree works shall be carried out in accordance with BS3998: Recommendations for Tree Works.

b) If any retained tree is cut down, uprooted, destroyed or dies, another tree shall be planted in the same place in the next planting season following the removal of that tree, full details of which shall be firstly submitted to and approved in writing by the Local Planning Authority.

In this condition a "retained tree" is an existing tree which shall be retained in accordance with the approved plans and particulars; and paragraphs (a) and (b) shall have effect until the expiration of five years from the date of the decision.

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 and Government guidance contained within the National Planning Policy Framework.

- 8 The development hereby approved shall be carried out strictly in accordance with the recommendations and specifications set out in the submitted Tree Report produced by Sacha Barnes Ltd (ref: SB/JS/313) and dated September 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.

- 9 Prior to the commencement of the development hereby permitted a desk study and site walk over to identify all potential contaminative uses on site, and to inform the conceptual site model shall be carried out 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 shall be 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 that it is satisfied that no potential risk from contamination has been identified.

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 and Government guidance contained within the National Planning Policy Framework.

- 10 If a potential risk from contamination is identified as a result of the work carried out under condition 9, prior to the commencement of the development hereby permitted, a comprehensive intrusive 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 and Government guidance contained within the National Planning Policy Framework.

11 If contamination is found by undertaking the work carried out under condition 10, 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 and Government guidance contained within the National Planning Policy Framework.

12 If remedial works have been identified in condition 11, the development shall not be occupied until the remedial works have been carried out in accordance with the scheme approved under condition 11. A verification 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 and Government guidance contained within the National Planning Policy Framework.

13 That the landing and first floor windows in the western elevation shall be glazed at all times with obscured glass that complies with British Standard Category C.

Reason - To safeguard the privacy and amenities of the occupants of the adjoining premises and to comply with Policy C30 of the adopted Cherwell Local Plan.

14 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 western and southern elevations 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.



- 15 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 and to protect the retained trees in accordance with Policies C2, C28 and C30 of the adopted Cherwell Local Plan.

### **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.

### **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.