

Land adjacent and north of St. Swithun's Church, Merton

13/01873/OUT

Ward: Otmoor

District Councillor: Cllr T Hallchurch

Case Officer: Tracey Morrissey

Recommendation: Refusal

Applicant: Welland Design and Build – Mr Mark Collins

Application Description: Proposed residential development of up to 9 dwellings

Committee Referral: Contentious application

Committee Date: 19.06.14

1. Site Description, Background and Proposed Development

- 1.1 The application was deferred from the March Planning Committee meeting to enable the applicant to submit additional information in respect to a Heritage Impact Assessment and Landscape Visual Impact Assessment. This information has been received and re-consulted upon along with a revised illustrative layout.
- 1.2 Outline permission is sought for the construction of 9 residential units (including 3 affordable dwellings) on a 1.38 ha site to the north east of Merton village. Located north of St. Swithun's Church, a Grade I listed building and to the west of the Manor House Care Home, a Grade II listed building. To the south west of the site are two small residential closes; Church Close and Manor Farm Close, open countryside lays to the north and west. The site comprises a flat area of rough grassland bounded by mature hedgerow to the north, west and partially to the east, with a public footpath 295/2 running diagonally across from the southern corner adjacent to St Swithun's Church to the northern corner. A stone wall forms the boundary with the church.
- 1.3 Access to the site is via a field gate between no. 4 Manor Farm Close and the Dovecote. The site is within an area of significant archaeological interest, potentially contaminated land and a minor aquifer. There are Brown long-eared bats and swifts in the area and the potential for GCN in the 3 ponds adjacent to the site. Other than being within close proximity to other listed buildings there are no other notable planning constraints.
- 1.4 The application has been submitted in outline form with all matters reserved. A Planning Design and Access Statement, Written Scheme of Archaeological Investigation, Ecological Appraisal, Flood Risk Assessment, Environmental Desk top Study an illustrative layout with access taken from the existing field entrance, has been submitted, along with a Heritage Statement, Landscape and Visual Impact Appraisal and a TRICS analysis of vehicle movements.

2. Application Publicity

- 2.1 The application has been advertised by way of neighbour letter, site notices and press notice. The final date for comment was 11th June 2014. At the time of writing there was three letters in support and 45 letters/emails have been

received along with a 91 signature petition listing a 26 point concern statement. The objections/concerns include:

Planning Policy

- The Planning Authority proffered informal advice to the applicant's agents in November 2011 that such proposals would not be supported and would be deemed contrary to current adopted policy.
- Neither the new draft local plan of Cherwell, nor the NPPF 2012 planning guidance, alter this situation and therefore such proposals are contrary to both local and national policy.
- There has been very little neighbourhood consultation, with a one off village meeting as mentioned in the submitted report.
- The Localism Bill should be used to reflect on any decision of planning within the settlement.
- The Planning Authority determines that Merton is classed as a Category 2 settlement.

Therefore, Policy H14 limits development:

- i) to infill
- ii) conversions and
- iii) where other small scale development can be shown to secure significant environmental improvement within the settlement

The proposals are not in categories (i) or (ii) above.

For (iii) there is no report or evidence produced or submitted that unequivocally demonstrates that these proposals meet (or how they may meet) and accord with such environmental improvements.

- In consideration of the site:
 - i) Development is Backland development
 - ii) The site is existing agricultural land
 - iii) The site is not within the defined village framework
 - iv) Therefore, these proposals can only be termed development in open countryside and contrary to current adopted policy
- Merton is a linear village the proposal is a significant deviation from this built form

Need and alternative sites from effect

- Merton is not classed as a growth settlement in the current 1996 Local Plan, nor will its status be changed under the new draft Local Plan.
- Although not in green belt, the village is on the edge of the designated area that washes across open countryside from Oxford, therefore, any such development may have a serious and harmful impact on the important green belt area.
- While the NPPF 2012 does support development of such small scale proposals, there are many more sites that suit such development in the wider southern area of the district and in more sustainable locations.
- In fact, such need in the locality has been met by developments in Arncott and Ambrosden, which are considerably more sustainable settlements, as well as the new under construction sites at Kingsmere in Bicester and the proposed planned development to the north of the town towards Caversfield.

- The changes within the NPPF framework are of insufficient weight to override the current and proposed local plan of CDC.
- There is no suggested or proven need for dwellings for agriculture or forestry.
- There is no proven need for such development in Merton. If there was, there are far more superior sites that could be considered on the edge of the settlement to extend the natural ribbon development nature of the settlement.

Sustainable development

- Merton is not a sustainable settlement:
 - i) There is no village shop, public house or school
 - ii) Public transport is limited
 - iii) Any local economic benefit will be limited to profit of the landowner and developer and a temporary benefit for construction work, with employment not guaranteed to be given to local persons.
- There is no indication on how infrastructure or local services will be improved or how the village will benefit in such a manner.
- To offset private homes with 3 social homes is not of sufficient planning merit to accept such proposals.

Infrastructure and services

- Concern is raised on the ability of existing services to meet any possible development, in particular, with respect to foul and storm water drainage. In addition there may be limitations on a regular and suitable clean water supply as water pressure would be affected
- If the road is non adoptable, then there will also be a constant need for annual payments to a management company for upkeep of the access road and landscaping, a situation not suitable for social housing needs.
- Given the location of the village within the district, private transport will be required and there is no guarantee that the social homes will be affordable at final construction, or for perpetuity in the dwellings lifespan.

Highways and access

- There are number of highway concerns with:
 - Only a 4800mm access lane with 3000mm vehicular lane and 1800 service strip
 - Inadequate width – not appropriate for service and emergency vehicles
 - No passing points
 - No footway
- Does not meet OCC Highway criteria and standards, therefore will not be adoptable
- Non adoptable or private access drives can only serve up to 5 dwellings
- Close proximity to other accesses and busy Manor House nursing home
- Public footpath across the site would lose its amenity value.

Listed building/Homes in close proximity

- The site proposals will adversely affect the setting of listed buildings, namely St Swithuns Church and Manor House Nursing Home.

- There will also be significant impact on homes in close proximity to the site, namely at Church Close and Manor Farm Close and to the Dovecote. In particular, the proposed access to the site will have considerable noise impact via vehicular traffic on numbers 3 and 4 Manor Farm Close and on the adjacent Nursing Home.
- Parking for houses will be in very close proximity to gardens

Ecology/Archaeology

- There are many ecological concerns on the site (with confirmed species seen and noted by villagers) and as such, there is no detailed specialist report noting habitat, habitation or mitigating measures. Salamanders in the area along with bats.
- Given the historic nature of the site and the surrounding area, there is concern that the submitted archaeological report, site investigation and assessment is a desktop study only, therefore there important artefacts may be impacted on or lost.
- It is now common archaeological practice in Europe to protect archaeological sites and defer their further excavation until such time as proper resources and above all continually improving methods and archaeological techniques become available. Numerous reasons apart from the archaeology have emerged to suggest that the Merton site should certainly to be protected from speculative building or other interference.
- The site is lower lying in formation level than adjacent built up areas, with an adjacent field known to flood. The concern is that development may compound the problem

Ownership

- Concern is raised over the legality of ownership of land at the access point of the main public highway. Submitted documents show ownership by the applicant but in fact it is owned by No. 4 Manor Farm Close. Therefore, it appears due serving of notice on all landowners has not been made.
- Vision splay is within this land in dispute

Other

- The parish council approved the application despite the strong objection from the village residents

In support of the application and in response to the objections/concerns by local residents, the applicant has provided a rebuttal statement which is attached at Appendix A

3. Consultations

- 3.1 Consultation responses are summarised below. The full versions can be found on the Council's website.

Merton Parish Council: Initially no objection to the application and to specify conditions which include:

Access. The Highways Authority should be satisfied that the width and setting of the access from the main road is adequate for construction and emergency vehicles.

The developer should commission a traffic speed & density survey and be responsible for any necessary measures specified by the Highways Authority.

The legal ownership of the land must be proven.

Utilities. Sewage and water supply quality and capacity should be positively specified by Thames Water. The lack of a positive response by Thames Water should not be accepted. The developer should be required to ensure that the village has proper provision.

Mains electricity supply should also be adequate and formally specified. This is particularly important in a village without mains gas.

Burial Ground: The developer should ensure provision of appropriate capacity due to increases in population.

Drainage: Evidence should be provided that the various ponds in the area are not fed in such a way that works interfere and potentially cause flooding. The developer should provide permeable surfaces for drives and parking spaces (eg green paving).

Archaeology & Protected Species: Existing policies and mitigation strategies should be ensured.

Further comments on the revised illustrative layout are awaited.

Cherwell District Council Consultees

3.2 Conservation Officer: Following receipt of a Heritage Statement, LVIA and revised layout, objection still maintained on the following grounds:

- Unfortunately, I believe that the submitted LVIA only supports my earlier comments. It clearly shows that the setting of the Grade I listed church would be irrevocably harmed by the development, and that the historic narrative of the village would be eroded almost to the point of loss.
- Due to this loss of significance, harm to setting, and the lack of public benefit that would result from the development, I cannot support the principle of the proposal. It still raises concerns about the loss of the historic relationships, settlement pattern, and setting of the historic buildings.
- Constraints: Archaeology plays a significant part in this site, with large and established earthworks present on the site. Following earlier comments, geophysical, resistivity mapping, and trial trenches have been undertaken which show archaeological features. The archaeology report acknowledges that earlier remains are possible beneath the Medieval features discovered.

As a result, the proposed development site has been contracted to the east to prevent disturbance of these prominent features, but would not protect the whole of the site. I therefore conclude that there would not be demonstrable physical harm to the prominent western earthworks and archaeology. This does not mean that there would be no harm at all, but that it is unknown what kind of harm would be caused to the potential archaeology to the eastern part of the site.

- Unfortunately, I believe that there are too many constraints on this site which cannot be overcome, particularly not with this design. I believe that even an amendment to the layout and house design so that it was sympathetic to the existing village would be insufficient to overcome the issues regarding the setting of the Grade I Listed church.
- Should the principle be accepted, then I would strongly urge the development to be reduced in size and scale – preferably restricted to the north eastern corner of the site where there are no earthworks to disturb, meaning that the 13th/14th century relationship between the church and the wider landscape/lost settlement area can be retained. Strong restrictions should be placed on extensions, additional garden furniture (e.g. sheds, garages) in order to attempt to protect the historic landscape, particularly in the most northwestern plots, which would have archaeological features within their gardens. I believe that this would unfortunately make the scheme unviable though.

3.3 **Housing Officer:**

Due to its location there is a 35% affordable housing requirement which amounts to 3 units which should be delivered on site. These units have been denoted on the indicative plan for the site and also in the Design and Access Statement.

Due to the number of affordable units involved I would seek to secure all the units for affordable rent with the following unit breakdown

2x2b4pH
1x3b5pH

The affordable units should be built in line with the HCA's Design and Quality Standards and to a minimum of Code for Sustainable Homes Level 3.

The units should be transferred to an RP that is agreed with the local authority.

3.4 **Landscape Officer:** Following receipt of a Heritage Statement, LVIA and revised layout, objection still maintained on the following grounds:

This site in Merton is situated at the rear of Manor Farm Close, Church Close and St Swithun's Church. The site constraints include the setting of the Church, adjacent properties, a species rich hedgerow on a bank to the NW adjacent low lying grazing and a public footpath which dissects the site roughly N-S.

The ecological survey recommends that buffer planting is introduced to enhance the existing hedge and that lighting is kept away from the hedge to protect bat flight lines. Yet a dwelling has been located very close to the hedge. Another dwelling has been placed very close to the church. The public footpath would run along the access road completely changing its character. Green Space is required under the SPD at a rate of 2.3ha per 1000 people with a minimum of 200m²

I consider that the level of detail in the LVIA to be acceptable, although it is disappointing that there are no montages or wireframes.

The character of the area is that of a low lying clay valley. The surrounding area is generally flat with thin gappy native hedgerows. There is not extensive visibility of the site outside its immediate boundaries.

The site is surrounded on the NE by the Manor Nursing Home which is a large bulky 3 storey building. To the SE there are 2 small closes of houses which take the form of tight groups of buildings. Just to the SW is the Grade 1 listed St Swithun's Church. To the N and NW are arable fields. There is a small pond on site which will be retained.

Part of the site consists of earthworks thought to be part of the foundations of a mediaeval part of the village. This area now provides the setting for the Church and a reminder of the the way in which the village has developed. Removing part of the earthworks would affect the context of the Church.

A PROW runs diagonally across the site and therefore affect the visual appreciation of the site. There is a large Lime tree at the corner of the churchyard which has been ignored.

The viewpoints show that within the immediate vicinity of the site from VP's 1, 2, 3, 4, 6 the scale of visual effects will be high and the sensitivity moderate. From outside the site in the built up area of Merton the effects from VP's 7,8 and 10 will be low and sensitivity medium. Effects from VP 5 the PROW outside the site will be low due mainly to screening from the conifer hedge

I understand that this application is outline and the design not fully developed, but the proposal has a layout which does not appear to be designed to reflect any of the considerable site constraints or address any of the impacts that it would create. I struggle to see how the LVIA concludes that there will be a minor adverse impact after 15 years without any significant improvement to the design; layout and landscaping of the scheme.

With this site there are a number of Landscape and Visual effects and elements which have to be balanced. While the development would be strongly visible from the PROW within the site it would not have major significance or effect outside the immediate environs of the site. However balanced against this are the direct effects on users of the PROW which runs through the site, the alteration to the character of the PROW. In addition the setting of the Grade 1 listed Parish Church and the historic remains of earlier dwellings. Merton is a largely linear village and back land development is out of character.

Balancing all these constraints together I conclude that this application should be refused on the grounds of Landscape and Visual Impact.

- 3.5 **Arboriculturalist:** My main concern with this application is the close proximity of proposed plot No 7 to the northern boundary of St Swithuns Church and, in particular the mature lime tree located within that boundary. From the main road, this tree is visible above the roofline of the church and its southern aspect to the proposed plot may result in excessive shading cast across the dwelling and garden area as well as the common nuisance issue of honeydew. These issues will place increasing pressures upon such a valued tree for inappropriate tree works.

It should also be noted that this area of the churchyard is still used for burials (judging by dates on recent headstones) and that it may be inappropriate to have a residential garden within metres of such sensitive ceremonies.

The garage plot for the proposed plot No 7 is also exceedingly close to existing hedgerow vegetation located within adjacent neighbouring boundaries. Such close proximity will increase the risks to this proposed garage of indirect / direct damage by this vegetation which includes shrubs and young developing trees. The same issues regarding risks and nuisance issues may be said about plot No and its proximity to existing gardens in Manor Farm Close.

Should plots 1 and 7 be relocated to a more suitable distance away from adjacent, existing boundaries it would reduce my concerns regarding the above issues.

- 3.6 **Ecology Officer:** The findings of the November 2013 ecological appraisal are outlined below:

- The grassland within the field is species-poor.
- The hedgerow along the northern boundary is species rich and meets the criteria to be designated a 'nationally important hedgerow' under the Hedgerow Regulations 1997. This hedge is also likely to provide habitat for birds, great crested newts and foraging bats and badgers.
- Badgers forage within the site but no setts were found.
- There are no ponds within the site but nearby ponds may be used by great crested newts (gcn), as such they may also be present within the application site. If gcn are present nearby mitigation to exclude them from the site during development would be possible.
- Swifts are known to nest nearby.

Given this, I would recommend the following:

- The layout preserves the existing northern hedgerow and hedge bank. Currently one dwelling is indicated as being very close to it which may result in its compromise in the future due to its proximity to the dwelling.
- A great crested newt survey should be carried out before any works start on site, in order to determine any mitigation that may be required.
- Swift nest boxes and bat boxes should be incorporated into the new dwellings as a biodiversity enhancement.
- All new landscaping should consist of native species only.

- 3.7 **Countryside Officer** – No objection in respect to public rights of way subject to appropriate condition
- 3.8 **Environmental Officer (land contamination)** - No objections to the application subject to conditions.

Oxfordshire County Council Consultees

- 3.9 **Highways:** No objection to original or revised illustrative layout. The main street passing through Merton is of sufficient width for two vehicles to pass, has no street lighting and in the vicinity of the development site has a pedestrian footway on its northern side. The road operates under a 30mph speed limit and carries only a light amount of traffic. Given the development site location and conditions on the main street in Merton a Type 7 access lane as set out in OCC's Residential Road Design Guide, and as specified in the Design and Access Statement, would seem appropriate. Visibility at the existing gated access meets standards. The proposal is unlikely to have a significant adverse impact on the highway network.

The recent TRICS information does not change the original comment made.

- 3.10 **Archaeology:** Following receipt of a Heritage Statement and LVIA, the earlier comments are not changed: The site is located in an area of archaeological potential as shown by the applicant's desk based archaeological assessment and a number of phases of archaeological evaluation. The site is located immediately north of the C13th St Swithun's Church (PRN 4123). This is likely to have formed the focus of the medieval development of the village. The site also contains a series of earthworks representing a deserted medieval settlement and house platforms (PRN 24717). A probable Knights Templar's Preceptory or Grange has been identified through aerial photographs 120m NE of the site (PRN 13903). Saxon through to medieval archaeological features have also been recorded 130m NE of the site during the development of the Manor House Nursing Home (PRN 16821). Roman pottery has been recovered to the south of the site (PRN 4219) and to the east (PRN 1806).

The archaeological evaluation undertaken on the site recorded a number of archaeological features and earthworks related to the shrunken medieval village on the western side of the site and a smaller amount of features occurring on the eastern side, within the area of the proposed development. The features included ditches and pits but no evidence of the stone buildings suggested by the geophysical survey. The report concludes that the western part of the site was occupied from at least the C11th and may have been occupied through to the C18th. The eastern side of the site may have been used for agricultural or pastoral purposes and that an earthwork bank between the two areas may have formed a boundary between these areas. The majority of the development will be undertaken within the eastern side of the site.

Whilst archaeological features have been recorded on the site it is not felt that these are '*demonstrably of equivalent significance to scheduled monuments*', as set out in the NPPF paragraph 139, particularly those deposits located on the eastern side of the site which will be directly impacted by the development. Further archaeological investigation and recording will need to be undertaken

however ahead of this proposed development in line with paragraph 141 of the NPPF.

We would, therefore, recommend that, should planning permission be granted, the applicant should be responsible for ensuring the implementation of a staged programme of archaeological investigation to be maintained during the period of construction. This can be ensured through the attachment of a suitable negative condition

Other consultees

3.11 English Heritage: Comments received on the original and second revised illustrative layout are as follows, comments on the latest revised illustrative layout are awaited:

The proposed development lies within the setting of the listed church of St Swithun's, and within an area of undesignated earthworks which appear, from the evidence of the evaluation carried out to inform the application, to relate to settlement dating between the eleventh and fourteenth century. The church itself, one of the grandest and most ornate in the county and listed at Grade I, is largely of the thirteenth and fourteenth centuries and so it formed the focus of a settlement which might have reached its greatest prosperity at that time. Subsequent shrinkage of the settlement, probably before the early sixteenth century, has left evidence in the form of the earthworks.

The significance of the church lies partly in its illustrative value. It allows an appreciation of the former prosperity of the settlement from which the church drew its income (the advowson of the church (the right to appoint the vicar and to take the income) lay with Eynsham Abbey). The earthworks in the setting contribute to this significance by showing how the medieval settlement was once larger and has now contracted. When looking out from the churchyard it is possible to gain an awareness of the changing fortunes of the parish over time and that people once lived in a place which is now simply a field and worshipped at the nearby church.

As proposed, the development would remove a section of the earthworks and would substantially remove the contribution made by this element of the setting to the significance of the church, and would therefore harm the significance of the designated asset. It would also obviously harm the significance of the non-designated asset represented by the earthworks themselves.

Paragraph 134 of the NPPF advises that harm to the significance of a designated heritage asset needs to be weighed against the public benefits of the proposed development, and that 'a balanced judgment' needs to be made with respect to non-designated assets. Undertaking the proposed programme of archaeological investigations before determining this planning application would allow a clearer understanding of the significance of the site and its relationship to the church and this allow a more informed decision to be made.

The Heritage Statement which has now been submitted confirms at 2.19 that the archaeological remains make a positive contribution to the significance of the Grade 1 listed church. The most significant of the remains lie in the south-

western section of the site and the north-eastern section has less significant remains. At 5.10 it is stated that the proposed development is deliberately confined to this north-eastern part of the site, but the Illustrative Layout included with the application clearly contradicts this, with at least two of the dwellings shown located directly on top of two key features (Platform 1 and Bank 1 in the evaluation). If these dwellings were either omitted, or all the dwellings restricted to an area further to the east that avoided the significant archaeological remains, then the level of harm might be reduced, both because the impact upon the significant earthworks would be removed and because the development would be removed from the immediate surroundings of the church. We would be happy to discuss a detailed layout which might achieve this.

Recommendation

We would urge you to address the above issues, and recommend that the application should be determined in accordance with national and local policy guidance, and on the basis of your specialist conservation advice. The Local Authority will need to weigh any significant public benefits offered by this proposal against the harm caused to the designated heritage asset.

3.12 Thames Water: comments on waste and water as follows:

Waste Comments

Following initial investigation, Thames Water has identified an inability of the existing waste water infrastructure to accommodate the needs of this application. Should the Local Planning Authority look to approve the application, Thames Water would like the following 'Grampian Style' condition imposed. "Development shall not commence until a drainage strategy detailing any on and/or off site drainage works, has been submitted to and approved by, the local planning authority in consultation with the sewerage undertaker. No discharge of foul or surface water from the site shall be accepted into the public system until the drainage works referred to in the strategy have been completed". Reason - The development may lead to sewage flooding; to ensure that sufficient capacity is made available to cope with the new development; and in order to avoid adverse environmental impact upon the community. Should the Local Planning Authority consider the above recommendation is inappropriate or are unable to include it in the decision notice, it is important that the Local Planning Authority liaises with Thames Water Development Control Department (telephone 0203 577 9998) prior to the Planning Application approval.

Water Comments

The existing water supply infrastructure has insufficient capacity to meet the additional demands for the proposed development. Thames Water therefore recommend the following condition be imposed: Development should not be commenced until: Impact studies of the existing water supply infrastructure have been submitted to, and approved in writing by, the local planning authority (in consultation with Thames Water). The studies should determine the magnitude of any new additional capacity required in the system and a suitable connection point. Reason: To ensure that the water supply infrastructure has sufficient capacity to cope with the/this additional demand.

4. Relevant National and Local Policy and Guidance

4.1 Development Plan Policy

Adopted Cherwell Local Plan (Saved Policies) (ACLP)

H5: Affordable housing
H12: Housing outside settlements in rural areas
H14: Category 2 Settlements
H18: New dwellings in the countryside
C2: Development affecting protected species
C4 Creation of new habitats
C7: Landscape conservation
C8: Sporadic development in the open countryside
C13: Areas of High Landscape Value
C27: Historic settlement pattern
C28: Layout, design and external appearance of new development
C30: Design of new residential development
C31: Compatibility of proposals in residential areas
C33: Retention of undeveloped gap of land
R12: Provision of public open space in association with new residential development
TR1: Transportation funding
ENV1: Pollution Control

Non-Statutory Cherwell Local Plan (NSCLP)

H4: Types/variety of housing
H7: Affordable Housing
H19: New dwellings in the countryside
TR2: Traffic generation
TR4: Transport mitigation measures
EN1: Impact on natural and built environment
EN22: Nature conservation and mitigation
EN25: Development affecting legally protected species
EN30: Sporadic development in the countryside
EN31: Development size, scale and type in a rural location
EN34: Conserve and enhance the character and appearance of the Landscape
D1: Urban design objectives
D3: Local distinctiveness
D9: Energy Efficient design
R6: New or extended sporting and recreation facilities
R8: Provision of children's play space
R9: Provision of amenity open space
R10A: Provision of sport and recreation facilities
OA1: General Infrastructure policy

4.2 Other Material Considerations - Policy and Guidance

Submission Cherwell Local Plan – January 2014 (SLP)

The Submission Local Plan (January 2014) has now been through public consultation and was submitted for examination in January 2014, although

this plan does not have Development Plan status, it is 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:

PSD1: Presumption in favour of sustainable development
BSC1: District Wide Housing Distribution
BSC2: The Effective & Efficient Use of Land - Brownfield land & Housing Density
BSC3: Affordable Housing
BSC4: Housing Mix
BSC8: Securing health and well being
ESD3: Sustainable Construction
ESD6: Sustainable Flood Risk Management
ESD7: Sustainable Drainage Systems
ESD10: Protection & Enhancement of Biodiversity & the Natural Environment
ESD13: Local Landscape Protection & Enhancement
ESD16: The Character of the Built & Historic Environment
ESD 18: Green Infrastructure
Policy Villages 1: Village Categorisation – Cat C

National Planning Policy Framework

Planning Practice Guidance

Conservation Principles, Policies and Guidance for the sustainable management of the historic environment – English Heritage 2008

Cherwell District Council's Planning Obligations Interim Planning Guidance April 2007

Cherwell District Council's Planning Obligations SPD July 2011 (Draft)

Cherwell District Council's Protocol for Preparing Neighbourhood Plans – March 2012

Cherwell District Council's Annual Monitoring Report (AMR) December 2013

The Oxfordshire Strategic Housing Market Assessment (SHMA), April 2014

Housing Land Supply Update May 2014 and June 2014

5. Appraisal

5.1 The key issues for consideration in this application are:

- Planning Policy and principle of the development
- 5 yr Housing Land Supply
- Impact on heritage assets
- Landscape impact and form and character of the area
- Impact on residential amenity
- Highway safety and sustainability

- Footpaths
- Ecology

Planning Policy and Principles of the development

- 5.2 The development plan for Cherwell comprises the saved policies in the adopted Cherwell Local Plan 1996. Section 70(2) of the Town and Country Planning Act 1990 provides that in dealing with applications for planning permission the local planning authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations. Section 38(6) of the Planning & Compulsory Purchase Act 2004 requires that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the development plan unless material planning considerations indicate otherwise.
- 5.3 The NPPF is one such material considerations and it clearly states in highlighted paragraph 14 that 'At the heart of the NPPF is a presumption in favour of sustainable development which should be seen as a golden thread running through both plan-making and decision-taking'. For decision taking this means approving development proposals that accord with the development plan without delay or where the development plan is absent silent or relevant policies are out of date, granting planning permission unless any adverse impact of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole or specific policies in the NPPF indicate development should be restricted.
- 5.4 With specific regard to housing proposals the NPPF, in paragraph 49, further advises that 'Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.' To achieve sustainable development, the NPPF sets out the economic, social and environmental roles of planning including contributing to building a strong, responsive and competitive economy; supporting strong, vibrant and healthy communities; and contributing to protecting and enhancing our natural, built and historic environment (para 7). It also provides (para 17) a set of core planning principles.
- 5.5 The NPPF does not change the statutory status of the development as the starting point for decision making. Proposed development that conflicts with the Local Plan should be refused unless other material considerations indicate otherwise. (para 12)
- 5.6 The Adopted Cherwell Local Plan and the Submission Local Plan do not contain any policies which seek to allocate the site for residential development. Sites other than those allocated, fall to be considered under Policy H12 of the adopted Local Plan which allows for development within the built-up limits of rural settlements in accordance with Policies H13, H14 and H15.
- 5.7 Merton is a small settlement designated as a Category 2 village to which saved Policy H14 of the ACLP applies. This policy restricts new residential development to infilling, or other small scale development that can be shown to secure significant environmental improvement within the settlement. Policy H16

of the NSCLP has similar provisions. However, Policy Villages 1 of the emerging Local Plan (SLP) identifies Merton as a Category C village which allows for conversions only. Categorising villages ensures the most sustainable distribution of growth across the rural areas and is an approach taken from the previous adopted Local Plan and featured in the Non Statutory Cherwell Local Plan with an underlying purpose of imposing tight restrictions on the scope of further residential development because villages such as Merton are inherently poor in terms of services and facilities. The proposal would also risk further harm to the character of this area which could arise from the precedent that may set.

- 5.8 The proposal clearly conflicts with Policy H14 as the site is beyond the built up limits of the village in open countryside. The proposed housing scheme, therefore, has to be assessed against Policy H18 of the ACLP. This policy states that new dwellings beyond the built up limits of settlements will only be permitted where they are essential for agricultural or other existing undertakings. No case has been made for consideration as a rural exception site or other essential undertaking. As the proposal cannot be justified on the basis of an identified need in an unsustainable location, the proposal clearly does not comply with this policy criterion and therefore represents a departure from the ACLP.
- 5.9 Other material planning considerations include policies in the emerging Local Plan, Policies ESD13, and ESD16 of the SLP are particularly relevant to this application as they deal with landscape impact and built development which will be considered later in the report.
- 5.10 Policy ESD13: Local Landscape Protection and Enhancement seeks to protect landscape character, visual intrusion in the open countryside and setting of settlements, buildings, structures or other landmark features and the historic value of the landscape.
- 5.11 Policy ESD16: The Character of the Built and Historic Environment. The site adjacent to Grade I and II listed buildings, the policy seeks to protect the significance of heritage assets and ensure that development respects existing built form through the integration of new development contributing to the existing streets, spaces and form and character.
- 5.12 The Framework at paragraph 14 states 'At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan making and decision taking...for decision taking this means:
- approving development proposals that accord with the development plan without delay; and
 - where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
 - any adverse impact of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or specific policies in this Framework indicate development should be restricted

- 5.13 In respect to housing policies, paragraph 49 of the Framework states, "Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites."

5 yr Housing Land Supply Position

- 5.14 On 28 May 2014, the Council published a Housing Land Supply Update which showed that there was a five year housing land supply, based on the Submission Local Plan requirement of 670 homes per annum from 2006 to 2031.
- 5.15 The examination of the Local Plan began on 3 June 2014. On that day, and the following day, 4 June 2014, the Local Plan's housing requirements were discussed in the context of the Oxfordshire Strategic Housing Market Assessment (SHMA) 2014, published on 16 April 2014 (after the submission of the Local Plan in January 2014).
- 5.16 The Oxfordshire Strategic Housing Market Assessment (SHMA) 2014 was commissioned by West Oxfordshire District Council, Oxford City Council, South Oxfordshire District Council, Vale of White Horse District Council and Cherwell District Council and provides an objective assessment of housing need. It concludes that Cherwell has a need for between 1,090 and 1,190 dwellings per annum. 1,140 dwellings per annum is identified as the mid-point figure within that range.
- 5.17 The Planning Inspector appointed to examine the Local Plan made clear his view that the SHMA document provided an objective assessment of housing need in accordance with the NPPF and suspended the Examination to provide the opportunity for the Council to propose 'Main Modifications' to the Plan in light of the higher level of need identified. The 1,140 per annum SHMA figure represents an objective assessment of need (not itself the housing requirement for Cherwell) and will need to be tested having regard to constraints and the process of Strategic Environmental Assessment / Sustainability Appraisal. However, the existing 670 dwellings per annum housing requirement of the Submission Local Plan (January 2014) should no longer be relied upon for the purpose of calculating the five year housing land supply. Until 'Main Modifications' are submitted to the Secretary of State for Communities and Local Government, the objectively assessed need figure of 1,140 homes per annum from the SHMA is considered to be the most robust and defensible basis for calculating the five year housing land supply.
- 5.18 A further Housing Land Supply Update (June 2014) has been approved by the Lead Member for Planning. It shows that the District now has a 3.4 year housing land supply which includes an additional 20% requirement as required by the NPPF where there has been persistent under-delivery. It also seeks to ensure that any shortfall in delivery is made-up within the five year period.
- 5.19 Given the out of date adopted housing policies and the limited weight that can be afforded to the emerging housing policies contained within the local plan and that the Council cannot demonstrate 5 year HLS Paragraphs 14 and 49 of the Framework are consequently engaged.

5.20 However, notwithstanding the Council's Housing Land Supply position as stated above, the proposal would give rise to conflict with a number of policies in the ACLP, NSCLP and SLP. Paragraph 14 of the Framework makes it clear that there is a presumption in favour of sustainable development and that permission should be granted unless any adverse impact of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. It does not however indicate that an absence of a five year land supply means that planning permission for housing should automatically be granted for sites outside of settlements. There remains a need to undertake a balancing exercise to examine any adverse impacts of a development that would significantly and demonstrably outweigh the benefits of it and also the harm that would be caused by a particular scheme in order to see whether it can be justified. In carrying out the balancing exercise it is, therefore, necessary to take into account policies in the development plan as well as those in the Framework. It is also necessary to recognise that Section 38 of the Act continues to require decisions to be made in accordance with the development plan and the Framework highlights the importance of the plan led system as a whole.

5.21 It is considered that there are adverse impacts in respect to heritage assets, landscape impacts, harm to neighbours amenity, landscape impacts, harm to amenity of public rights of way and form and character of the village though sporadic development in the open countryside. These are expanded further below but it is considered that the presumption should not apply.

Impact on heritage assets

5.22 In respect to adverse impacts, the site is within the setting of St Swithun's Church a Grade I listed building and the Manor Housing Nursing Home a Grade II listed building, other listed buildings are on the opposite side of the road (The Homestead and Little Chippers and a the Tithe Barn close to the Church).

5.23 Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard to the desirability of preserving a listed building or its setting should be taken. In this case it is the setting of the listed buildings that is to be considered. The applicant has submitted a Heritage Statement

5.24 The NPPF at paragraph 131 seeks to ensure the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation; the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and the desirability of new development making a positive contribution to local character and distinctiveness. Paragraph 134 of the Framework advises that harm to the significance of a designated heritage asset needs to be weighed against the public benefits of the proposed development, and that 'a balanced judgment' needs to be made with respect to non-designated assets.

5.25 Furthermore, in respect to the impact on significance, Paragraph 132 of the Framework states "when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are

irreplaceable, any harm or loss should require clear and convincing justification. Substantial harm to or loss of a grade II listed building, park or garden should be exceptional. Substantial harm to or loss of designated heritage assets of the highest significance, notably scheduled monuments, protected wreck sites, battlefields, grade I and II* listed buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly exceptional”

- 5.26 The Government’s most recent guidance on heritage assets is contained in paragraph 013 Reference ID: 18a-013-20140306 of the PPG advises that “A thorough assessment of the impact on setting needs to take into account, and be proportionate to, the significance of the heritage asset under consideration and the degree to which proposed changes enhance or detract from that significance and the ability to appreciate it.
- 5.27 Setting is the surroundings in which an asset is experienced, and may therefore be more extensive than its curtilage. All heritage assets have a setting, irrespective of the form in which they survive and whether they are designated or not.
- 5.28 The extent and importance of setting is often expressed by reference to visual considerations. Although views of or from an asset will play an important part, the way in which we experience an asset in its setting is also influenced by other environmental factors such as noise, dust and vibration from other land uses in the vicinity, and by our understanding of the historic relationship between places. For example, buildings that are in close proximity but are not visible from each other may have a historic or aesthetic connection that amplifies the experience of the significance of each.
- 5.29 The contribution that setting makes to the significance of the heritage asset does not depend on there being public rights or an ability to access or experience that setting. This will vary over time and according to circumstance”.
- 5.30 Whilst the proposal is in outline form only with all matters reserved for a later stage, the revised indicative layout has been submitted to demonstrate to the Council that the site could accommodate the residential development of up to 9 dwellings. The layout is such that all the properties would be located to the east of the site, avoiding the public right of way, which would become a footpath alongside the spine road and the archaeological remains that are quite significant within the site on the western aspect. There would be 6 no. detached market dwellings and terrace of three affordable dwellings with associated parking and garden land. The hollow in the north-eastern corner would become an attenuation pond as part of the SUDs scheme.
- 5.31 English Heritage have advised that “the proposed development lies within the setting of the listed church of St Swithun, and within an area of undesignated earthworks which appear, from the evidence of the evaluation carried out to inform the application, to relate to settlement dating between the eleventh and fourteenth century. The church itself, one of the grandest and most ornate in the county and listed at Grade I, is largely of the thirteenth and fourteenth centuries and so it formed the focus of a settlement which might have reached its greatest prosperity at that time. Subsequent shrinkage of the settlement, probably before the early sixteenth century, has left evidence in the form of the earthworks.

- 5.32 The significance of the church lies partly in its illustrative value. It allows an appreciation of the former prosperity of the settlement from which the church drew its income (the advowson of the church (the right to appoint the vicar and to take the income) lay with Eynsham Abbey). The earthworks in the setting contribute to this significance by showing how the medieval settlement was once larger and has now contracted. When looking out from the churchyard it is possible to gain an awareness of the changing fortunes of the parish over time and that people once lived in a place which is now simply a field and worshipped at the nearby church”.
- 5.33 The proposed illustrative layout has been amended to take account of the concerns raised by the Conservation Officer and English Heritage in respect the non-designated asset represented by the earthworks, the built development is shown to be further concentrated to the east of the site.
- 5.34 The County’s Archaeologist has advised that “whilst archaeological features have been recorded on the site it is not felt that these are ‘*demonstrably of equivalent significance to scheduled monuments*’, as set out in the NPPF paragraph 139, particularly those deposits located on the eastern side of the site which will be directly impacted by the development. Further archaeological investigation and recording will need to be undertaken however ahead of this proposed development in line with paragraph 141 of the NPPF”. The Council’s Conservation Officer does however have concerns about leaving the recordings to a later stage and considers that a further survey should be undertaken prior to the determination of the application given the significance of the archaeology and the scale of the development proposed.
- 5.35 In support of the application a Heritage Statement has now been submitted, within it at paragraph 2.19, it confirms that the archaeological remains make a positive contribution to the significance of the Grade 1 listed church. The most significant of the remains lie in the south-western section of the site and the north-eastern section has less significant remains. At paragraph 5.10 it confirms that the development will see the removal of archaeological remains in the north eastern area, however, the latest revised illustrative layout submitted 20 May 2014 has removed at least two of the dwellings that were shown located directly on top of two key features (Platform 1 and Bank 1 in the evaluation).
- 5.36 It is now considered that the proposal would not in principle cause harm to the archaeology, whilst only in outline form with nothing reserved, the proposed built development could be sited sufficiently far enough away from the more significant earthworks.
- 5.37 However your officers still have concerns regarding the setting of the Grade I listed church. In assessing Heritage Significance and the consideration of the contribution made by setting and context the English Heritage’s Conservation Principles, Policies and Guidance states that “‘Setting’ is an established concept that relates to the surroundings in which a place is experienced, its local context, embracing present and past relationships to the adjacent landscape. Definition of the setting of a significant place will normally be guided by the extent to which material change within it could affect (enhance or diminish) the place’s significance”.

5.38 The Design and Conservation Officer and the case officer have met with the applicant to discuss the principle of the development and impact on heritage assets. Whilst the archaeology appears to have been addressed sufficiently, the Design & conservation Officer still raises concerns on the following basis:

- The archaeology to the north and west of St Swithun's Church shows that the village used to be nucleated around the church, as was common in many early settlements. The church was begun in the 11th century, and there is evidence to suggest that the structures in the field to the north are contemporary to its major buildings phases. Inclosure occurred late in Merton, in 1763, at which time the road was moved to its present location. There is evidence to suggest that it was around that time that the structures to the north of the church began to fall into disuse. The resulting linear village developed to either side of the main road. There are very few instances of development away from these frontages, and those that do exist are either farmyards or late 20th century developments, breaking the natural line of the village. Even at these points though, the furthest properties can be seen from the road, meaning that they stay 'in touch' with the road, in much the same way as the manor house outbuildings did, and the church itself. There is very little to visually connect the former nucleated settlement with the existing linear one; even the earthworks and features in the fields to the north and west of the church are not visible unless within the churchyard or looking back from the open fields. To attempt to recreate the nucleated settlement by encouraging backland development behind would not be an ethical continuation of the settlement pattern, as this is a pattern which no longer exists. As such, the proposed development would be contrary to policy C27 of the adopted 1996 Local Plan (respecting historic settlement patterns) and policy ESD16 of the proposed 2006-2031 Local Plan (respecting traditional pattern of routes).
- Layout: Due to the location behind the church and away from the village street, the development effectively 'turns its back' on the remainder of the village. It is acknowledged that this is only an indicative layout at outline stage, but alternative designs in a more traditional form have not been offered. This layout is contrary to policy C30 of the adopted 1996 Local Plan (respecting the layout, scale, density, appearance of the existing dwellings) and policy ESD16 of the proposed 2006-2031 Local Plan (sensitively siting and integrating new development).
- Heritage Assets: the development would be seen in the setting of the listed Church of St Swithun. Setting is not merely the view of or from an asset. It is the surroundings within which a heritage asset is experienced. Regarding the church therefore, this is very difficult to define; a church is designed to stand out in its landscape, being tall, solid, and often surrounded by a patch of land and a wall. The result is that it can be appreciated 'in the round'. In this case, the Church of St Swithun is particularly visible from the north, as there is open countryside beyond, across which a public right of way runs. The church is therefore appreciated within an area of open countryside, which does not just extend directly northwards from the churchyard, but also to the

northwest and northeast. Should development be permitted on the area to the northeast, this would disrupt this setting. It is acknowledged that the archaeology plays an important part in the narrative of the village, standing as a reminder of the former settlement pattern, and that this has been discounted from the development area. However, as stated above, the LVIA only serves to support the fact that there would be demonstrable harm to the setting and significance of the Grade I Listed church, as it would erode the relationship between the church and the landscape beyond, including the archaeology. Although there is relatively little archaeology to the northeast of the site, this does not mean that it is not significant. Houses had land, or areas of open space, as houses do today. The indicative remnants of a ridge and furrow system show that the agricultural history of the village extended down inside this nucleated area, meaning that its loss would be an irreversible loss of historic narrative in the development of the village.

- 5.39 It is considered that the proposal will form a cluster of residential units that would enclose the listed church and Manor House, resulting in a very intensive urban form of development would be at odds with, and would harm, the rural setting of the listed buildings. Thus, the proposal would conflict with Policies EN39 and EN44 of the NSCLP. It would also conflict with advice in the Framework in paragraphs 132 and 134.

Landscape impact and form and character of the area

- 5.40 In terms of its built form, Merton is predominately a linear village and with the exception of a few farmsteads that spur out of the built up parts of the village, the village has built up with small closes of 4-6 dwellings just branching off the main street through the village. The proposal would not create a small close branching off the main street; it would involve the creation of an intensive back land form of development with an access road that winds between and around the rear of existing houses.
- 5.41 As stated in paragraph 5.7 above Merton is a small settlement designated as a Category 2 village to which saved Policy H14 of the ACLP applies. This policy restricts new residential development to infilling, or other small scale development that can be shown to secure significant environmental improvement within the settlement. The proposal seeks permission for residential development outside the village settlement on land that is not only undeveloped but forms part of the setting of the Grade I listed church.
- 5.42 Policy C33 of the ACLP seeks to retain any undeveloped gap of land which is important in preserving the character of a loose-knit settlement structure or in maintaining the proper setting for a listed building or in preserving a view or feature of recognised amenity or historical value. The supporting text of the policy states that *“not all undeveloped land within the structure of settlements can be built on without damage to their appearance and rural character. Where the existing pattern of development is loose-knit there will often be a compelling case for it to remain so for aesthetic, environmental or historical reasons.*

Proposals that would close or interrupt an important view of a historic building eg a church or other structure of historical significance, will be resisted under this policy. The Council will also have regard to the importance of maintaining the setting of a listed building and will resist infill development that would

diminish its relative importance or reduce its immediate open environs to the extent that an appreciation of its architectural or historical importance is impaired.

Proposals that would close or interrupt an important vista across open countryside will also be discouraged, as will the loss of trees of amenity value or the loss of features such as boundary walls where they constitute an important element of an attractive or enclosed streetscape.”

- 5.43 The proposed development would transform the rural setting of the listed buildings and prevailing linear pattern of residential dwellings along the main street, representing an incongruous form of development that would fail to respond appropriately to the essential character of the area. Therefore the development would conflict with Saved Policies C27, C28, C30 and C33 of the ACLP, which require, amongst other things, that developments respect historic settlement patterns and settings of listed buildings and are sympathetic to the character and appearance of the area. The scheme would also fail to meet the requirements of paragraph 58 of the government Framework which aims to ensure that development adds to the overall quality of the area.
- 5.44 Furthermore, given that the site is a field on the edge of the village with a well-used public footpath running across it, it can be established that the site will be visible from the public domain. A Landscape Visual Assessment has now been undertaken and submitted in support of the application for the Council to ascertain the landscape and visual impact of the development. This information was not included in the original submission, however now that due consideration has been given to the LVIA, it is considered the proposal will have a detrimental impact on the landscape and furthermore would also cause harm to the enjoyment of the footpath by the public as the footpath would go straight through a housing development instead of a rural field that affords views to and from the Grade I listed church and the countryside beyond.
- 5.45 It is considered that the potential benefits of providing the proposed development does not outweigh the significant harm having regard to what the Framework says about the importance of protecting and enhancing the built and historic environments and to consider the impact of a proposal on heritage assets with the need to avoid or minimise the conflict between development proposed and the heritage asset's conservation and also the characteristics of historical settlement patterns and the local environment, contrary to paragraph 132 of the Framework.
- 5.46 In this regard, therefore, the proposal would not constitute sustainable development and, consequently, the presumption in favour does not apply and that in accordance with Paragraph 14 of the Framework, the proposal would cause significant harm and adverse impacts that demonstrably outweigh the benefits.

Impact on residential amenity

- 5.47 Whilst in outline form the revised indicative layout demonstrates the possible form that the proposed layout could take if approved, which essentially avoids the public footpath and the majority of the archaeology within the site. The access to the site runs directly between three existing dwellings The Dovecote and nos. 3 and 4 Manor Farm Close. Given this close proximity, any vehicle

movements along the access are likely to result in a level of noise and disturbance within these adjacent dwellings and their relatively small back gardens, which occupiers would be likely to find intrusive. Any increase in the use of the access would increase the frequency of such disturbance. Other neighbouring properties affected include, The Manor House nursing home, no. 2 Manor Farm Close, 2 and 3 Church Close equally enjoy a tranquil environment, free from vehicle noise and disturbance and the general level of activity associated with a residential development.

5.48 The site is an unimproved field unused at present. No detail has been provided regarding the previous occupancy of the field, but essentially vehicle movements to the site would be limited. The proposal would result in permanent development, which would be likely to generate a permanent increase in vehicular movements. In support of the application TRICS information has been submitted that advises that vehicle movements into and out of the site would still be limited during the course of the day to AM peak (0800-0900) 6 trips, PM peak (1700-1800) 7 trips and inter peak (1300-1400) 4 trips. The location of the site is not so advantageous that future occupiers would not choose to own a vehicle(s). Whilst it is possible to partially mitigate some vehicle noise along the roadway from the installation of acoustic fencing, this would not be completely mitigated and the general disturbance would be significant from the proposed residential occupancy of a backland site.

5.49 This access arrangement between and to the rear of existing neighbouring dwellings has been fully considered by Inspectors on recent dismissed appeal decisions:

(i) During the consideration of 1 no. dwelling at 198 and 200 Woodstock Road, Yarnton, Oxfordshire OX5 1PP (application reference: 11/00029/F and appeal reference: APP/C3105/A/11/2160109) the Inspector concluded that *"I consider the noise and disturbance that would arise from either proposed arrangement would affect the quiet enjoyment of all the surrounding neighbours' private amenity areas and therefore harm the living conditions of the current and future occupants of all the neighbouring dwellings"*

(ii) During the consideration of 1 no. dwelling at 14 Charlbury Close, Kidlington, Oxfordshire OX5 2BW (application reference: 10/00584/OUT and appeal reference: APP/C3105/A/10/2139847/WF) the Inspector concluded that *"The access runs directly between the two existing dwellings, nos. 14 and 16 Charlbury Close ... given this close proximity, however, any vehicle movements along the access are likely to result in a level of noise and disturbance within these adjacent dwellings and their relatively small back gardens, which occupiers would be likely to find intrusive. Any increase in the use of the access would increase the frequency of such disturbance Whilst I acknowledge that present activities involve a level of usage of the access which would cause some disturbance, I consider these circumstances will not necessarily continue indefinitely. The proposal would result in permanent development, which would be likely to generate a permanent increase in vehicular movements. In my view, the location of the site is not so advantageous that future occupiers would not choose to own a motor*

vehicle or vehicles. As such, rather than result in a reduction in noise and disturbance, I consider the proposal would perpetuate unsatisfactory conditions to the detriment of living conditions within adjacent residential properties”.

5.50 The above appeal cases represent backland development for only a single house, not upto 9 as proposed and as such, the proposal would result in unsatisfactory conditions to the detriment of living conditions within adjacent residential properties through the introduction of increased vehicular activity in an otherwise quiet, tranquil backland site and contrary to Policies C30 and C31 of the ACLP and the government guidance contained within the Framework

5.51 It is considered that the siting of dwellings in a similar form indicated would not result in the loss of amenity to any neighbouring property by virtue of overlooking, loss of outlook or privacy or creation of an overbearing effect.

Highway Safety and Sustainability

5.52 The vehicular access point as shown on the submission is considered to be acceptable in highway safety terms, no objection has been raised in respect to this or the amount of parking provision to serve the development, subject to necessary conditions.

5.53 An ownership issue has arisen through the course of the application between the applicant and the neighbour at no. 4 Manor Farm Close, which affects the grass verge to the west of the access. In terms of visibility splay and the ownership of the land in question, the County’s Highway Engineer is aware of this issue but still raises no objection as visibility is sufficiently acceptable at this point and would not cause harm to highway safety.

5.54 In terms of sustainability, Merton is at least 5 miles from Bicester and 2 miles to the nearest village Ambrosden, it has limited public transport reliance would be on the private vehicle. Given its village categorisation there are limited facilities and therefore it is considered that the site is not sustainable in terms of accessibility and contrary to the government guidance contained within the Framework

Footpaths

5.55 Whilst there is no objection from OCC or the Council’s Countryside Officer regarding the development, it is considered that the proposal would cause harm to the enjoyment of the footpaths as the route would take the public through a residential development instead of an attractive field within the setting of the listed church and open countryside. In your Officers opinion the enjoyment by the public using the footpaths is significantly harmed and diminished as a consequence

Ecology

5.56 NPPF – Conserving and enhancing the natural environment requires that “the planning system should contribute to and enhance the natural and local environment by minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government’s commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures” (para 109)

5.57 Paragraphs 192 and 193 further add that “The right information is crucial to good decision-taking, particularly where formal assessments are required (such as Habitats Regulations Assessment) and that Local Planning Authorities should publish a list of their information requirements for applications, which should be proportionate to the nature and scale of development proposals. Local planning authorities should only request supporting information that is relevant, necessary and material to the application in question”. One of these requirements is the submission of appropriate protected species surveys which shall be undertaken prior to determination of a planning application. The presence of a protected species is a material consideration when a planning authority is considering a development proposal. It is essential that the presence or otherwise of a protected species, and the extent to that they may be affected by the proposed development is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. This is a requirement under Policy EN23 of the Non-Statutory Cherwell Local Plan 2011.

5.58 Paragraph 18 states that “When determining planning applications, local planning authorities should aim to conserve and enhance biodiversity by applying the following principle:

- if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused”

5.59 Paragraph. 98 of Circular 06/05: Biodiversity and Geological Conservation – statutory obligations and their impact within the planning system states that, “local planning authorities should consult Natural England before granting planning permission” and paragraph 99 goes onto advise that “it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.”

5.60 Section 40 of the Natural Environment and Rural Communities Act 2006 (NERC 2006) states that “every public authority must in exercising its functions, must have regard ... to the purpose of conserving (including restoring / enhancing) biodiversity” and;

Local planning authorities must also have regards to the requirements of the EC Habitats Directive when determining a planning application where European Protected Species (EPS) are affected, as prescribed in Regulation 9(5) of Conservation Regulations 2010, which states that “a competent authority, in exercising any of their functions, must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions”.

5.61 The Council’s Ecologist is satisfied that the work done to date with regard to ecology is sufficient, further reports would be required however in respect to the presence or otherwise of Great Crested Newts in nearby ponds.

5.62 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 the Framework and Policy C2 and C4 of the ACLP.

5.63 Affordable Housing

35% affordable housing would be required as part of this scheme which is indicated as a terrace of three close to the entrance of the site. These units would be secured as part of a legal agreement and would be for affordable rent with the following unit breakdown

2x2b4pH

1x3b5pH

The affordable units should be built in line with the HCA's Design and Quality Standards and to a minimum of Code for Sustainable Homes Level 3.

The units should be transferred to an RP that is agreed with the local authority.

5.64 Other Matters

Concern has been raised regarding the ownership of land to the west of the entrance to the site that will form the vision splay. Ownership and disputes of land is a legal matter, however for the purposes of the application, the applicant has advised that he is the owner and the correct certificate has been completed. Oxfordshire County Council as highway authority is aware of the dispute but do not consider it to be an issue in terms of highway safety.

5.65 It is considered that the majority of the third party representations issues and concerns have been addressed in the preceding report and full comments are available via the Council's website.

Engagement

5.66 With regard to the duty set out in paragraphs 186 and 187 of the Framework, some issues were required to be clarified by the applicant and the application was deferred from a previous committee meeting to allow the applicant to submit further information to support the proposal and revisions to the indicative layout have also been provided. It is considered that the duty to be positive and proactive has been discharged through the efficient and timely determination of the application.

Conclusion

5.67 Given that the adopted Cherwell Local Plan Housing Policies are out of date and the emerging housing policies can only be afforded limited weight and that the Council cannot demonstrate 5 year HLS, paragraphs 14 and 49 of the Framework are engaged. Paragraph 14 makes it clear that permission should be granted unless any adverse impact of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

5.68 The proposal seeks to provide up to 9 dwellings, 3 of which would be affordable and this is seen as benefit. In terms of adverse impact the site is within the setting of Heritage Assets and rural countryside. It is considered that it

represents unsustainable development beyond the built up limits of Merton with no case being made for its consideration as a rural exception site or other essential undertaking. As the proposal cannot be justified on the basis of an identified need in an unsustainable location, it represents sporadic development which encroaches into the open countryside and causes demonstrable harm to the setting and significance of designated Heritage Assets and also the enjoyment of the footpath that runs across the site by the public. It also fails to maintain the rural character and appearance of the area and to conserve, enhance and respect the environment and historic settlement pattern by introducing an incongruous, prominent, urbanising and discordant built form of development into this historic, rural setting, injurious to its character and appearance. Moreover, would also risk further harm to the character of this area which could arise from the precedent that may set.

- 5.69 The proposal conflicts with the adopted Local Plan and notwithstanding the Council's 5 year housing land supply position, this site is not suitable for residential development. It is considered that it represents unsustainable development beyond the built up limits of Merton with no case being made for its consideration as a rural exception site or other essential undertaking. On that basis it is considered that the proposal is not acceptable and in accordance with Paragraph 14 of the Framework, the adverse impacts of the development significantly and demonstrably outweigh the benefits that the housing would bring, having regard to what the Framework says about the importance of conserving and enhancing the built and historic environment. Therefore, in this regard the proposal would not constitute sustainable development and, consequently, the presumption in favour does not apply.

6. Recommendation

Refusal for the following reasons:

1. Notwithstanding the Council's present inability to demonstrate that it has a 5 year supply of housing land required by Paragraph 47 of the NPPF, the development of this site cannot be justified on the basis of the land supply shortfall alone. The proposal represents unsustainable development beyond the built up limits of Merton with no case being made for its consideration as a rural exception site or other essential undertaking. As the proposal cannot be justified on the basis of an identified need in an unsustainable location, it represents sporadic development which encroaches into the open countryside and causes demonstrable harm to the setting and significance of designated Heritage Asset, the Grade I listed St. Swithun's Church and also the enjoyment of the footpath that runs across the site by the public. It also fails to maintain the rural character and appearance of the area and to conserve, enhance and respect the environment and historic settlement pattern by introducing an incongruous, prominent, urbanising and discordant built form of development into this rural setting, injurious to its character and appearance and would also risk further harm to the character of this area which could arise from the precedent that may set. The application is, therefore, contrary to Policies H12, H14, H18, C7, C8, C27, C28 and C30 of the adopted Cherwell Local Plan, Policies ESD13 & ESD16 and

Villages 1 of the Submission Local Plan January 2014 and Government guidance contained in the National Planning Policy Framework.

2. The proposal would result in the residential development of land in an unsuitable backland position served by an access way between and behind residential dwellings, which is out of keeping with and causes harm to the existing residential form and character of the area. Furthermore, the development would be detrimental to the amenities of the adjacent residential properties by reason of the introduction of increased vehicular activity in an otherwise quiet and tranquil environment. The proposal is therefore contrary to the Policies C27, C30 and C31 of the adopted Cherwell Local Plan and Policy ESD16 of the Submission Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.
3. In the absence of a satisfactory planning obligation, the Local Planning Authority is not convinced that the affordable housing directly required as part of this scheme will be provided. This would be contrary to the Policy H5 of the adopted Cherwell Local Plan, Policy INF1 of the Submission 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 additional information and amendments to the indicative layout have been provided which seek to address the concerns raised by Officers and English Heritage.