

Cherwell District Council

Planning Committee

7th August 2014

Outline application for construction of up to an additional 100 dwellings above those permitted under 06/00967/OUT – Land at South West Bicester

Report of Head of Development Management

This report is public

Purpose of report

At the Planning Committee Meeting in July 2013, the above mentioned proposal was considered and it was resolved to approve the application subject to the completion of a legal agreement. At that meeting, Members also resolved to amend a recommended condition relating to code levels from Code Level 4 to Code Level 5. The applicants have objected to Code Level 5 and this report seeks to address the issue. The decision remains outstanding as the legal agreement has not yet been completed.

The previous committee report is attached for information which sets out the full range of considerations with regard to the application and this report will also seek to update Members on any material changes since the application was previously considered.

1.0 Recommendations

The meeting is recommended:

- 1.1 To agree that the permission be granted as previously resolved subject to the suggested conditions and the completion of a legal agreement as set out in the report to committee in July 2013 , with the condition relating to code levels to remain as Code Level 4.

2.0 Introduction

The Submission Cherwell Local Plan Policy ESD3 sets out the Council's approach to sustainable development, the delivery of which is a fundamental theme of the Local Plan and the Council places a high priority on the achievement of sustainable construction. Policy ESD3 states that all new homes will be expected to meet at least Code Level 4 of

the code for Sustainable Homes with immediate effect, unless exceeded by the standards set for NW Bicester Eco-Town.

It was under this basis, being in close proximity to Eco Bicester and the Council's vision for Eco-Bicester Town itself that members considered the Code Level 5 to be a requirement.

The NPPF advises 'Planning plays a key role in helping to shape places to secure radical reductions in greenhouse gas emissions, minimising vulnerability and providing resilience to the impacts of climate change, and supporting the delivery of renewable and low carbon energy and associated infrastructure. This is central to the economic, social and environmental dimensions of sustainable development'.

The NPPF goes on to advise local authorities to support a move to a low carbon future and plan for new development in ways that reduce greenhouse gas emissions and when setting local requirements to do so in a way that is consistent with the Government's zero carbon buildings policy and adopt nationally prescribed standards.

The applicants have subsequently requested that the condition relating to code level 5 be revised to Code Level 4 as originally recommended. This application has therefore been returned to Members for consideration as the permission has not yet been issued as the Legal Agreement has not yet been signed. The imposition of the condition relating to Code Level 4 was recommended in accordance with Policy ESD3 of the Submission Local Plan.

3.0 Report Details

3.1 The applicant's agent has formally written requesting that the condition be amended on the grounds that there is no national policy or statutory justification for the imposition of Code Level 5, and the imposition of code level 4 would be unlawful and would not meet the tests for imposition of conditions in Circular 11/95 and stating as follows:-

'You are no doubt aware that the Government have recently announced that Code for Sustainable homes will be removed and replaced with standards set out in the building Regulations. The changes to the Building Regulations are expected to be in force next April 2015. The consequence of that is that planning conditions securing compliance with standards if building will be obsolete.

'Notwithstanding the above, in the interests of moving forward my clients would be prepared to accept the imposition of a condition securing Code Level 4 on the absolute understanding that:

- It will be drafted in a way that the condition will no longer have effect when the Building Regulation changes take effect; and*
- That an informative will be added to the planning permission to make it clear that the intention is that the condition will no longer have effect in such circumstances and that should my clients wish to under S96A to remove the condition once the Building Regulations come into effect.*

A condition to this effect has been suggested by the applicant's agent, but this is not considered acceptable and it is suggested that the condition relating to Code Level 4 or its equivalent level in any superseding scheme be imposed, as suggested for the phase 2 application (13/00844/OUT) which is also on the agenda.

The applicants have not stated that the imposition of a condition requiring Code Level 4 would render the scheme unviable.

Members should also note that since the application was considered last July, that there has been a material change in respect of the Council's policy position and the 5 year housing land supply position. The Local Plan was submitted to the Secretary of State for Communities and Local Government in January 2014. An examination into the plan opened, is currently suspended and due to re open in December 2014. At the present time the plan carries some weight although it will not form part of the Statutory Development Plan until the Examination process is complete and the Plan is formally adopted by the Council. At the time of considering the proposal in July 2013, the council had a five year housing land supply, at the current time this is not the case. Approval and the subsequent construction of this scheme for an additional 100 units at South West Bicester will benefit the District by potentially increasing the housing delivery across this strategic site.

Since the application was considered by Committee in July 2013, discussions have been ongoing in respect of the Section 106 Agreement. That report did not include any details as none were available at that time. The agreed Heads of Terms are now as follows:-

CDC Contributions

- Affordable housing – 30% of the additional dwellings. The tenure split to be consistent with the wider phasing and parcelling and should be a 70/30 affordable rent/shared ownership. The standards and further requirements must also reflect the existing section 106 agreement with a minimum of 50% provided as Lifetime Homes
- Off site sports provision - £99,522 towards the provision of the Sports Village
- Indoor Sports provision - £75,252 towards the future increased capacity at Bicester and Ploughly Sports Centre
- Community Facility – build specification for the existing facility to be provided as part of phase 1 to be amended accordingly.
- Community Worker – £3,881 - the increased population will generate additional workload for the community development worker funded through phase 1
- Open Space – £20,681.94 – the increased population will increase the use of the existing phase 1 play areas, therefore a contribution towards future maintenance is necessary
- Children's play space - £128,127.79 for future maintenance and improvements to the facilities on phase 1.
- Refuse and Recycling - £67.50 per dwelling
- Monitoring Fee - £1000

OCC Contributions

- Transport - £78,040 @ July 2013 prices (index linked)
- Primary Education - £499,230 which will be used towards the delivery of the new school on Phase 2. It is anticipated that this school will provide sufficient capacity to accommodate pupil place demand from phase 2, this additional 100 units, the additional units on the reserve school site and any other additional pupils arising from phase 1 generated by additional bedroom threshold imposed on phase 1. Should phase 2 not go ahead, and the school not delivered, alternative obligations will apply requiring the payment of contributions to OCC to allow off-site primary education accommodation requirements to be put in place by the County Council.

- Secondary Education (including sixth Form) £388,188
- Special Education Needs - £14,360
- Early Intervention - £2,851
- Library Infrastructure - £19,227
- Day Care - £20,900
- Strategic Waste and Recycling - £14,477
- Museum Resource Centre - £1,131
- Administration and monitoring Fee - £5,000

These figures are based on 100 new dwellings and so maybe subject to change depending on how many units are actually delivered.

4.0 Conclusion and Reasons for Recommendations

4.1 Having regard to the above, it is considered that compliance with code level 5 does not accord with Policy ESD 3 of the Submission Cherwell Local Plan, but that conditions requiring Code Level 4 as follows should be imposed:-

‘Prior to the commencement of each parcel of the development, evidence that the development is registered with an accreditation body under the code for Sustainable homes and a Design Stage or Interim Code Certificate demonstrating that the development will achieve Code Level 4 (or the equivalent level of the relevant superseding scheme) for all dwellings shall have been submitted to and agreed in writing. The development shall be carried out in accordance with the submitted scheme’.

Reason – to ensure sustainable construction and reduce carbon emissions in accordance with Government guidance contained within the NPPF

Within 3 months of the first occupation of any dwelling hereby approved, a post-construction Final Code certificate issued by an accreditation body confirming that the dwelling has achieved a code for sustainable homes rating of code level 4 shall have been submitted to the Local planning Authority

Reason – To ensure sustainable construction and reduce carbon emissions in accordance with Government guidance contained within the NPPF.

5.0 Consultation

Consultation was undertaken as part of the consideration of the planning application and responses are summarized in the attached report.

6.0 Implications

Financial and Resource Implications

6.1 There are no additional financial costs associated with the determination of the application. If there was an appeal into the decision or a condition imposed the cost

of any subsequent appeal can be accommodated within existing budgetary provision.

Comments checked by:

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Legal Implications

6.2 There are no additional legal implications arising from the report.

Comments checked by:

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7.0 Decision Information

Key Decision

No

Financial Threshold Met: NO

Community Impact Threshold Met: No

Wards Affected

Ambrosden and Chesterton

Links to Corporate Plan and Policy Framework

Policy ESD3 of the Submission Local Plan (January 2014) and Section 10 of the NPPF – ‘Meeting the challenge of climate change, flooding and coastal change’

Lead Councillor

None

Document Information

Appendix No	Title
Appendix 1	Committee report July 2013
Background Papers	
06/00967/OUT	
Report Author	Linda Griffiths – Principal Planning Officer (Major Developments)
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Information

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