

Springfield Farm, Ambrosden

14/01205/HYBRID

Ward: Ambrosden and Chesterton

District Councillor: Cllr Andrew Fulljames

Case Officer: Rebecca Horley

Recommendation: Approval

Applicant: Bloor Homes

Application Description: Variation of condition 28 of 13/00344/HYBRD requiring level 4 of the Code for Sustainable Homes.

Committee Referral: Major application previously determined at Committee

Committee Date: 18th December 2014

1. Site Description, Background and Proposed Development

- 1.1 Members will recall that this application was deferred from 30th October 2014 Committee to obtain a legal opinion as to the weight that could be given to the requirements for Code 4 or other zero target carbon emissions being sought through the Proposed Submission Local Plan, notably Policy ESD3. That advice has now been received and discussed in section 5 of this report. A further update can be provided in that it should be noted that works at the site have commenced with 38 starts (development including foundations upwards) but no completions. The 2 show homes are nearly complete and some monies have been received through the section 106 agreement.
- 1.2 This 7.94 ha site is located on land at Springfield Farm, adjacent to the south eastern edge of Ambrosden. The site comprises a farmhouse, associated agricultural buildings and farm land. The northern boundary of the site follows the road to Blackthorn (Blackthorn Road), opposite Five Acres Primary School. The Ploughley Road forms the western boundary and the irregular shaped southeastern boundary is largely dictated by the requirement to avoid the areas of high risk flood.
- 1.3 Following the grant of planning permission for as a single 'hybrid' application (i.e. part full and part outline – 13/00344/HYBRID refers) for 90 dwellings, associated works and an area reserved for community use and the clearance of conditions, development is now underway. This application is seeking non-compliance with condition 28 of 13/00344/HYBRID which requires that the development meet code level 4 for sustainable homes.
- 1.4 The condition reads:

Prior to the first occupation of any dwelling on the site, a final Code Certificate, certifying that the dwellings in question achieve Level 4 of the Code for Sustainable Homes shall be issued, proof of which shall be submitted to and approved in writing by the Local Planning Authority.

Reason - To ensure sustainable construction and reduce carbon emissions in accordance with Government guidance contained within the National Planning Policy Framework.

1.5 There are no site constraints relating to this proposal.

2. Application Publicity

2.1 The application has been advertised by way of neighbour letter, site notice and press notice. The final date for comment was 21st August 2014. No comments have been received.

3. Consultations

3.1 Ambrosden Parish Council: Objects

The PC supported the original application because of its high ecological standards and community benefits. The planning dept and the Council have back tracked on the provision of a community building and now only the land is to be given over due to the level of financial contributions the developer has had to pay. While not the developers fault, the parish is also having to suffer the Ambrosden Court permission due to the Council's inability to provide an up to date local plan and the PC is under pressure to fight to uphold extant terms and conditions of recent planning permissions to protect the environment and character of the village.

There is no technical reason why Code 4 can't be complied with and it is only a cost cutting exercise which is a retrograde step and again the local community suggest this is showing a lack of concern by the developer which is also highlighted by leaving pumps and generators running overnight, burning rubbish on the site and the large deposits of mud on the road and blocking field drainage ditch serving the village. These are subject of separate complaints.

Non-compliance with Code 4 will increase water usage, and gas and electric consumption by potentially using lower standards.

If the consumption of water is at a higher level than Code 4 it will increase foul water discharge – the PC and residents have previously highlighted the foul drainage issues within the village. If this standard is being lowered we must insist that Thames Water is re-consulted on capacity for foul drainage. Also gas and electric providers should be consulted on capacity and the EA consulted on surface water discharge.

The applicants make reference to an appeal decision which is outdated. Part L of the building regs were upgraded in April 2014 to the equivalent of Code 4.

A significant number of pre-commencement conditions have not been discharged so work should cease. We will be contacting the enforcement team.

Cherwell District Council Consultees

3.2 **Planning Policy Officer:** No comment received.

Oxfordshire County Council Consultees

3.3 None

Other Consultees

3.4 None

4. Relevant National and Local Policy and Guidance

4.1 Development Plan Policy

Adopted Cherwell Local Plan (Saved Policies) (ACLPL)
No relevant policies

4.2 Other Material Considerations - Policy and Guidance

- National Planning Policy Framework
- Planning Practice Guidance
- Submission Cherwell Local Plan (January 2014)
The Submission Local Plan (SLP) 2011-2031 incorporating Proposed Modifications (August 2014). Part 1 was submitted to the SofS on 31st January 2014. The examination hearings were suspended on 4th June 2014 and recommenced on 9th December 2014 thereby enabling the Council to put forward proposed modifications to the Plan involving increased new housing delivery over the plan period to meet the full, up to date, objectively assessed, needs of the district as required by the NPPF and based on the Oxfordshire Strategic Housing Market Assessment 2014 (SHMA). Proposed modifications were published for comment on 22nd August 2014. The policies listed below are considered to be material to this case:
Policy ESD3: Sustainable Construction (as modified)
- Next Steps to zero carbon homes – Allowable Solutions (Government response and summary of responses to the consultation – July 2014
<https://www.gov.uk/government/consultations/next-steps-to-zero-carbon-homes-allowable-solutions>

5. Appraisal

5.1 The key issue for consideration in this application is the impact the proposal will have on the policy to ensure sustainable construction and reduce carbon emissions. All other material planning considerations were previously considered under 13/00344/HYBRID (see report).

Relevant Planning History

5.2 13/00344/HYBRID **Full** planning permission for demolition of the existing buildings and development of 90 new homes, new vehicular accesses, public and private open space with car and cycle parking, landscaping and associated servicing. **Outline** planning permission for community building with all matters reserved with associated car and cycle parking and landscaping (all matters reserved except points of access).

- 5.3 14/00090/DISC – permission granted approving details for conditions 3, 4, 6, 8, 11, 12, 13, 14, 16, 17, 18, 19, 22, 23, 26, 27 and 31 of 13/00344/HYBRID
- 5.4 14/00121/DISC – permission granted approving details for conditions 9 and 25 of 13/00344/HYBRID
- 5.5 14/00306/DISC – Pending consideration of conditions 5, 20 and 24.
- 5.6 14/00075/NMA - Substitution of 4 housing plots: 35, 37, 38 & 40
- 5.7 14/01742/F – Application pending for 27 units (7 additional units to those 20 approved at the part of the site under 13/00344/HYBRID)

Principle of Development

- 5.8 The principle of the development has already been properly established as acceptable through the approval of the core application (13/00344/HYBRID refers) which is extant. The application is seeking only that the development of the properties need not comply with the requirements of Code 4 and how it should be implemented. The NPPF directs that planning conditions should only be imposed where they are:
- necessary,
 - relevant to planning and to the development to be permitted,
 - enforceable,
 - precise and
 - reasonable in all other respects.
- 5.9 The applicant has argued that due to the procedures of obtaining a Code Level 4 certificate, it is not possible to meet the terms of the condition. The applicant claims that the condition is unworkable as it can be read as restricting the occupation more than individual dwellings by reference to the expression “the dwellings in question”. There are also a number of practical problems with the condition, for example there is often a delay between the post construction review stage which can only occur once the particular house is complete and the production of a certificate from the BRE. The industry practice is to inspect dwellings in manageable group types. The applicant argues, therefore, that the condition is both imprecise and unenforceable and as such fails the Government’s policy tests.

Effect on policy

- 5.10 The policy basis for the imposition of the standard condition for Code 4, as imposed on the core planning consent, came from Policy ESD3 of the Submission Local Plan which, in the original wording stated, inter alia that “All new homes will be expected to meet at least Code Level 4 of the Code for Sustainable Homes with immediate effect.....” This policy has since been re-drafted in the later edition of the Modifications document issued in August last. Whilst the Council still continues to place a high priority on the achievements of sustainable construction, the policy no longer refers to such specific requirements stating instead “All new residential development will be expected to incorporate sustainable design and construction technology to achieve zero carbon development.....” In essence the emerging policy stance is seeking a higher level target for developers to achieve.

- 5.11 The adopted Local Plan, being the “development plan” is silent on the matter and for decision taking the NPPF advises that in such circumstances planning permission should be granted unless any adverse impacts 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.
- 5.12 The NPPF offers further advice with regard to meeting the challenge of climate change, flooding and coastal change. Planning plays a key role in supporting the delivery of renewable and low carbon energy and this is central to the economic, social and environmental dimensions of sustainable development. The NPPF goes on to say ‘Planning plays a key role in helping 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 and low carbon energy and associated infrastructure.’ In determining planning applications LPAs should expect new development to comply with adopted Local Plan policies and take account of landform, layout, building orientation, massing and landscaping to minimise energy consumption. On the first point, there is currently no adopted local plan policy. The nearest the Council has in the Submission Local Plan which currently only carries limited weight. On the second point, the development details for the residential development has been approved with most details in the conditions agreed the landform, layout, building orientation, massing and landscaping is already set. The current application only seeks to vary the condition requiring Code 4 and therefore it does not seek to reopen consideration of issues related to layout and design.
- 5.13 The emerging policy in the Submission Local Plan is compliant with the requirements of the NPPF but there is little current policy strength to support the requirements laid down by the Condition 28 of the original consent. When considering the proposal as a whole and balancing all the issues, the requirement to comply with Code Level 4 is not sufficient to tip the balance in its favour such that the whole scheme should fail on this point. Whilst the condition itself may comply or could be reworded to comply with the requirements of planning conditions as laid down in para 5.8 above, it is considered that it does not have sufficient policy backing to support it in principle at this time. Although the NPPF suggests the planning system has a part to play in the ‘radical’ reduction greenhouse gases and addressing the issues of climate change, which the original condition sought to achieve, ultimately, in taking the NPPF as a whole, it is considered that any adverse impacts of allowing this application would not significantly and demonstrably outweigh the benefits that the whole development would bring.
- 5.14 On the request of Members, a legal opinion has been sought from Counsel (exempt annexe) as to whether or not officers have correctly weighted the policies with particular regard to modified Policy ESD3 and ultimately drawn the correct balanced judgement on the matter. That advice has now been received and attached to the agenda as a confidential paper together with a supporting email. In assessing the weight that can be attributed to the emerging policy, Counsel draws attention to paragraph 95 of the NPPF which advises that when setting any local requirements for a buildings sustainability, it should be done in a way which is consistent with the Government’s zero carbon buildings policy and adopt nationally described standards. Also, para 216 of the NPPF provides advice about the weight to be given

to emerging plans. In order to do this, consideration should be given to a number of factors including:

(i) how advanced the Local Plan is.

The Plan is at a reasonably advanced stage but still is only given 'some' weight.

(ii) Whether there are unresolved objections to modified Policy ESD3.

It can be confirmed that there are.

(iii) Its consistency with national policy.

It can be agreed that it is consistent but only in general terms and this would need to be thoroughly analysed through the local plan procedure.

5.15 Your officers remain of the view that as there are still unresolved objections to the policy and there is uncertainty over its full consistency with national policy at this time only some weight can be given to modified Policy ESD3 which is the position we were at previously.

5.16 Given that work has started on the site, added to this is the further opinion received from Counsel advising that it would be unreasonable to impose a condition with which the developer could not comply without demolishing and rebuilding the structures so far constructed. Any replacement condition imposed should be reasonably capable of being complied with.

5.17 To reflect this advice, your officers consider that the reworded condition 13 fulfils the requirements of enabling the developer to comply with the NPPF which supports a "low carbon future" without being overly prescriptive about how that can be achieved.

Other matters

5.18 The original permission was issued alongside a Sec 106 agreement which will continue to be linked to the new planning permission which has updated conditions to reflect those that have already been agreed.

Engagement

5.19 With regard to the duty set out in paragraphs 186 and 187 of the Framework, no problems or issues have arisen during the application. It is considered that the duty to be positive and proactive has been discharged through discussions with the applicant throughout the application process.

Conclusion

5.20 Based on the assessment above, it is concluded that there is insufficient policy support to retain Condition 28 and when balanced alongside the planning issues arising from the original planning permission the application is recommended for approval in line with the details below.

6. Recommendation

Approval, subject to:

- a) completion of the S106 linking agreement

b) the following conditions:

The following conditions relate to the Full permission

1. The development to which this permission relates shall be begun not later than 3rd March 2016 being the date of the expiration of 13/00344/HYBRID.

Reason - To comply with the provisions of Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the following plans and documents: PL-01 Rev B (Site location plan) received 13.05.13;

PL-03 Rev N (Planning Layout) received 12.12.13

PL-04 Rev C (Materials Layout) received 19.06.13

PL-05 Rev C (Areas for Adoption) received 19.06.13

SS-01 (Street Scenes) received with the application

SE-01 Rev A (Site Sections) received 06.06.13

EXT-01 Rev A (External Works Finishes) received 13.05.13

House Type Drgs:

HT-BH303-01 Rev B

HT-BH305-01 Rev C

HT-BH401-01 Rev A

HT-BH350-01 Rev B

HT-BH350-02 Rev B

HT-BH351-01 Rev A

HT-BH405-01 Rev A

HT-BH406-01 Rev C

HT-BH412-01 Rev B

HT-BH412-02 Rev A

HT-BH421-01 Rev B

HT-BH419-01 Rev C

HT-BH419-02 Rev C

HT-BH422-01 Rev A

HT-BH422-02 Rev B

HT-BH422-03 Rev A

HT-BH423-01 Rev C

HT-BH423-02 Rev B

HT-BH423-03 Rev C

HT-BH505-01 Rev C

HT-BH506-01 Rev C

HT-BH506-02 Rev B

HT-BH506-03 Rev B

HT-2B4P(R)-01 Rev B

HT-3B5P(R)-01 Rev A

HT-3B5P(R)-02 Rev A

HT-3B6P(R)-01 Rev B

HT-3B6P(R)-02 Rev B

HT-4B7P(R)-01 Rev B

HT-2B4P(SO)-01 Rev A

HT-3B5P(SO)-01

HT-1B-BUNG-01 Rev A
HT-1B-FLAT-01 Rev B
HT-1B-FLAT-02 Rev A
HT-GAR-01 Rev A
HT-GAR-02 Rev A
HT-GAR-03 Rev A
HT-GAR-04 Rev A
HT-GAR-05

Or as amended by application 14/00075/NMA with regard to plots 35, 37, 38 and 40.

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

3. The development shall be carried out in accordance with the details agreed under 14/00090/DISC and 14/00121/DISC unless otherwise agreed in writing by the Local Planning Authority.

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

4. Unless otherwise agree under 14/00306/DISC, no dwelling shall be occupied 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, in order to avoid adverse environmental impact upon the community and to comply with government guidance contained in the National Planning Policy Framework.

5. Prior to the commencement of any approved tree works, any operations that present a risk to retained trees, or any operations to facilitate specialised tree planting (eg: tree surgery, trenching operations close to the Root Protection Areas of retained trees or construction of load-bearing structured cell planting pits), the applicant shall give the Local Planning Authority seven days written notice that works are due to commence.

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

6. All agreed service trenches, pipe runs, drains or any other excavation to

be constructed within the agreed Root Protection Area (RPA) of the tree/trees on the site shall be undertaken in accordance with National Joint Utility Group 'Guidelines for the Planning, Installation and Maintenance of Utility apparatus in Proximity to Trees - Volume 4 and all subsequent revisions and amendments thereof.

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

7. No removal of hedgerows, trees or shrubs nor works to, or demolition of buildings or structures that may be used by breeding birds, shall take place between the 1st March and 31st August inclusive, unless the Local Planning Authority has confirmed in writing that such works can proceed, based on the submission of a recent survey (no older than one month) that has been undertaken by a competent ecologist to assess the nesting bird activity on site, together with details of measures to protect the nesting bird interest on the site.

Reason - To ensure that the development does not cause harm to any protected species or their habitats in accordance with Policy C2 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

8. Unless otherwise agreed under 14/00306/DISC, details (including the siting) of the public art scheme shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The development shall be carried out in accordance with the details so approved.

Reason - To ensure the satisfactory appearance of the completed development and to comply with Policy C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

9. The development permitted by this planning permission shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) Ref WB02358, Rev D, Final, dated 05 March 2013 and the following mitigation measures detailed within the FRA:

- Limiting the surface water run-off generated by all events up to and including the 100 year plus climate change critical storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site.

The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority.

Reason - To prevent flooding by ensuring the satisfactory storage

of/disposal of surface water from the site in accordance with the National Planning Policy Framework.

10. Unless otherwise agreed under 14/00306/DISC, prior to the occupation of any of the dwellings hereby approved, full specification details of the vehicular accesses, car parking, driveways and turning areas to serve the dwellings, which shall include construction, layout, surfacing and drainage, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter and prior to the first occupation of any of the dwellings, the access, driveways and turning areas shall be constructed in accordance with the approved details.

Reason - In the interests of highway safety, to ensure a satisfactory standard of construction and layout for the development and to comply with Government guidance contained within the National Planning Policy Framework.

11. Notwithstanding the provisions of Class A of Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order 1995 and its subsequent amendments, no gate, fence, wall or other means of enclosure shall be erected, constructed or placed between the dwelling(s) and the highway without the prior express planning consent of the Local Planning Authority.

Reason - To retain the open character of the development and the area in accordance with Policy C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

12. The garage(s) shown on the approved plans shall not be converted to provide additional living accommodation without the prior express planning consent of the Local Planning Authority.

Reason - To ensure that satisfactory provision is made for the parking of vehicles on site and clear of the highway in accordance with Government guidance contained within the National Planning Policy Framework.

13. Prior to the occupation of any dwellings an Energy Strategy shall be submitted to and approved by the Local Planning Authority. This strategy shall be in line with the mandatory requirements of Code 4 in respect of ENE1 2010 or otherwise agreed with the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved Energy Strategy.

Reason: To ensure sustainable construction and reduce carbon emissions in accordance with Government guidance contained within the National Planning Policy Framework.

The following conditions relate only to the Outline permission (site for community building)

14. That no development shall be commenced until full details of the layout, scale, appearance and landscaping (hereafter referred to as reserved matters) have been submitted to and approved in writing by the Local

Planning Authority.

Reason - This permission is in outline only and is granted to comply with the provisions of Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004, and Article 4(1) of the Town and Country Planning (Development Management Procedure)(England) Order 2010.

15. That in the case of the reserved matters, application for approval shall be made not later than the expiration of three years beginning with the date of this permission.

Reason - This permission is in outline only and is granted to comply with the provisions of Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004, and Article 4(1) of the Town and Country Planning (Development Management Procedure)(England) Order 2010.

16. That the development to which this permission relates shall be begun not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last reserved matters to be approved.

Reason - This permission is in outline only and is granted to comply with the provisions of Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004, and Article 4(1) of the Town and Country Planning (Development Management Procedure)(England) Order 2010.

17. That the development shall be used as a community facility only and for no other purpose whatsoever.

Reason - To ensure the satisfactory appearance of the completed development and to comply with Policy C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

18. That any building shall be no higher than two storey (8m).

Reason - To ensure the satisfactory appearance of the completed development and to comply with Policy C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

PLANNING NOTES

1. Your attention is drawn to the content of the letter from 2 No. letters from Thames Water both dated 11 April 2013 in respect of the application, a copy of which can be found via the Council's website www.cherwell-dc.gov.uk
2. Your attention is drawn to the content of the letter from Oxfordshire County Council as Highways Authority dated 2nd May 2013 in respect of the application, a copy of which can be found via the Council's website www.cherwell-dc.gov.uk

3. Thames Water recommend the following informative be attached to this planning permission. Thames Water will aim to provide customers with a minimum pressure of 10m head (approx 1 bar) and a flow rate of 9 litres/minute at the point where it leaves Thames Waters pipes. The developer should take account of this minimum pressure in the design of the proposed development.
4. Legal agreement
5. Archaeology
6. Construction Sites

STATEMENT OF ENGAGEMENT

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