

# **Cherwell District Council**

## **Executive**

**6 July 2015**

<b>Graven Hill Local Development Order</b>
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### **Report of Head of Development Management**

This report is public

#### **Purpose of report**

To seek the agreement of Executive to consult on the draft Local Development Order (LDO) prepared by officers in respect of Phase 0 and part of Phase 1 of the redevelopment of Graven Hill

#### **1.0 Recommendations**

- 1.1 To agree the draft LDO attached at Appendix A to this report for the purpose of public consultation.
- 1.2 To agree the statement of reasons for preparing the LDO attached at Appendix B to this report.
- 1.3 To agree to carry out consultation on the draft LDO as required by Article 38 of The Town and Country Planning (Development Management Procedure) Order 2015.
- 1.4 To note that the Head of Development Management will adopt a screening opinion in respect of the LDO as required by Regulation 29 of The Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (as amended)
- 1.5 To agree to receive a report back to a future meeting on the outcome of the consultation process.

#### **2.0 Introduction**

- 2.1 Executive previously considered a report setting out the benefits and disadvantages of LDOs, and giving the reasons why officers recommended that an LDO should be prepared in respect of the redevelopment of Graven Hill, at its meeting on 2 March 2015.
- 2.2 The main reason given for preparing a LDO in respect of Graven Hill was to facilitate the delivery of self-build dwellings on the site. It was envisaged that a LDO would achieve this by simplifying the planning process whilst providing certainty that individuality and variety in design would be supported within the parameters set by the Masterplan and Design Code, to be approved under the outline planning permission (ref: 11/01494/OUT).

- 2.3 Executive resolved to agree the principle of preparing a LDO in respect of Phase 0 and Phase 1a.

### **3.0 Report Details**

#### The Draft LDO

- 3.1 In response to the resolution of Executive to agree the principle of preparing a LDO, officers have prepared a draft for consultation which is attached at Appendix A to this report.
- 3.2 The draft LDO permits the following classes of development:
- Class A:* The erection or construction of a dwellinghouse that is either a custom build or self build dwellinghouse, pursuant to the outline planning permission for the redevelopment of the site (ref: 11/01494/OUT).
- Class B:* The enlargement, extension or alteration of a dwellinghouse that has been erected or constructed under the Order
- Class C:* The provision of buildings etc. incidental to the enjoyment of a dwellinghouse that is being erected or constructed under the Order
- 3.3 The development which would be permitted by the Order would be subject to limitations and conditions as detailed under Schedule 2 of the draft Order, including a requirement to apply for confirmation as to whether the development complies with the Masterplan and Design Code approved under the outline planning permission.
- 3.4 The procedure for applying for confirmation of compliance with the Masterplan and Design Code is detailed at Schedule 3 of the draft Order. A formal 'confirmation of compliance' procedure is considered essential to provide certainty for plot purchasers, the Council, and the general public that development proposals comply with and so can proceed under the LDO. Without formal confirmation, there is a higher risk of development proceeding that at a later date is found not to comply with the LDO. Such development would be unauthorised and would be liable to planning enforcement action.
- 3.5 It is important to note that 'confirmation of compliance' does not mean the Council would be assessing and critiquing the design quality *per se* of development proposals. Rather the Council would be checking and verifying that development proposals comply with the limitations and conditions of the LDO and so would be permitted by the LDO.
- 3.6 Officers recognise that it is important the 'confirmation of compliance' procedure is made as simple as possible for self builders to use. To this end officers are in discussions with the Graven Hill Development Company to agree arrangements for applications and decisions to be administered and communicated via the Development Company's site office.
- 3.7 Other limitations and conditions include restrictions to ensure new development does not cause undue harm to the amenities of existing residents, for example by restricting side facing windows overlooking neighbouring properties and restricting the depth of buildings projecting beyond the rear of existing buildings.

- 3.8 Self builders would also be required to complete developments within 3 years of receiving confirmation of compliance, to ensure developments are completed in a timely fashion and to avoid prolonged construction work blighting the development as a whole and the amenity of other residents.
- 3.9 The LDO would be time limited and would be in force for a period of 5 years from the date of adoption. This is in accordance with the Government's Planning Practice Guidance which advises that: *Local Development Orders in fast-developing areas may be time-limited so that they can be easily revised and updated in the future.* A time limit is particularly important in this case because of the large scale and phased delivery of the development and because there are no existing examples of LDOs for large scale self build developments nationally in the U.K from which to learn best practice.
- 3.10 Five years is considered reasonable to provide certainty for prospective plot purchasers that development proposals can be implemented under the LDO, whilst providing a timely opportunity for the Council to review the implementation of the LDO in practice.
- 3.11 Officers have prepared the draft LDO having regard to the restrictions on adopting a LDO contained in The Town and Country Planning (Development Management Procedure) Order 2015, The Town and Country Planning Act 1990 (as amended), and The Conservation of Habitats and Species Regulations 2010 (as amended), and are satisfied that those restrictions do not apply in this case.

#### Statement of Reasons

- 3.12 A statement of reasons for making the Order, as required by Article 38 of The Town and Country Planning (Development Management Procedure) Order 2015, is attached as Appendix B to this report.

#### Consultation on the draft LDO

- 3.13 Under Article 38 of The Town and Country Planning (Development Management Procedure) Order 2015, where a Local Planning Authority has prepared a draft LDO it must consult on that draft LDO giving a period of not less than 28 days for representations to be made.
- 3.14 When considering what modifications should be made to the draft Order or whether it should be adopted, the Local Planning Authority must take into account all representations made in relation to the draft Order.
- 3.15 If Executive agrees the draft LDO and statement of reasons attached as Appendices A and B to this report, subject to adopting a screening opinion as detailed at paragraphs 3.16 to 3.18 of this report, officers will proceed to consult on the draft LDO, as required under Article 38.

#### EIA Regulations

- 3.16 The Town and Country Planning (Environmental Impact Assessment) Regulations 2011 ('the EIA Regulations') set out the procedure for assessing the likely environmental impacts of major development. The EIA Regulations set out the types of development that are caught by the assessment procedures. If development is caught by the EIA Regulations, planning permission cannot be granted until the environmental impacts have been assessed in an Environmental Statement, consulted upon and taken into account in reaching a decision.

- 3.17 The outline planning permission for Graven Hill (ref: 11/01494/OUT) was EIA development and the application was accompanied by an Environmental Statement.
- 3.18 There is a requirement for the Council to adopt a screening opinion prior to making a LDO under Regulation 29 of The Town and Country Planning (Environmental Impact Assessment) the EIA Regulations. The Council will likely adopt a screening opinion to the effect that the Graven Hill development is EIA development as defined by the EIA Regulations. With any subsequent applications for EIA development, the original Environmental Statement can be updated and refreshed with any new evidence, rather than preparing a whole new Environmental Statement. This must then be consulted upon and taken into account when deciding to adopt the LDO and this process can be undertaken in parallel.
- 3.19 The consultation process in respect of LDOs is set out in articles 38 and 41 of the Town and Country Planning (Development Management Procedure) (England) Order 2015. A local planning authority must consult on the draft LDO and reasons for making the order with relevant interested parties such as Parish Councils, Natural England, Historic England, Environment Agency and Thames Water for a period not less than 28 days. The outcome of the consultation process will be reported to Executive in September. It is expected that the Design Code and Masterplan will be submitted to discharge the conditions attached to the outline planning permission by the 30<sup>th</sup> June 2015. It is intended that the Design Code and Masterplan will be reported to a special Planning Committee at the end of July.

#### **4.0 Conclusion and Reasons for Recommendations**

- 4.1 The draft Local Development Order would facilitate and encourage self build and custom build housing at Graven Hill by simplifying the planning process whilst providing certainty that individuality and variety in design would be supported within the parameters set by the Masterplan and Design Code to be approved under the outline planning permission.
- 4.2 It is therefore recommended that Executive agree the draft LDO and the statement of reasons for making the LDO. Officers can then proceed to preparing and adopting a screening opinion in respect of the LDO, before carrying out consultation on the draft LDO as required by legislation.

#### **5.0 Consultation**

- 5.1. Councillor Michael Gibbard (Lead Member for Planning)
- 5.2. EC Harris and JP Planning on behalf of the Graven Hill Development Company

#### **6.0 Alternative Options and Reasons for Rejection**

- 6.1 The following alternative options have been identified and rejected for the reasons as set out below.

Not to agree the draft LDO. Delivering the development through the traditional reserved matters route would not facilitate the desired level of individuality and variety in design.

## **7.0 Implications**

### **Financial and Resource Implications**

- 7.1 The Council has entered into a Planning Performance Agreement (PPA) with the Graven Hill Development Company to ensure that the Council is adequately resourced to carry out the work necessary to prepare and consult on the LDO.

Comments checked by: Paul Sutton

### **Legal Implications**

- 7.2 The Council is required to consult on the draft LDO prior to adoption

Comments checked by: Nigel Bell

## **8.0 Decision Information**

### **Key Decision**

Financial Threshold Met? No

Community Impact Threshold Met? Yes

### **Wards Affected**

All Bicester Wards, Launton

### **Links to Corporate Plan and Policy Framework**

A District of Opportunity, in particular:

- Securing employment-generating development with necessary transport/other infrastructure
- Meeting local performance targets in terms of speed of determination of all forms of application

### **Lead Councillor**

Councillor Michael Gibbard

### **Document Information**

<b>Appendix No</b>	<b>Title</b>
A	Draft LDO
B	Draft Statement of Reasons

<b>Background Papers</b>	
None	
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Graven Hill Phase 1

Local Development Order 2015

Cherwell District Council, in exercise of the powers conferred on the Council as local planning authority by sections 61A-61D of and Schedule 4A of The Town and Country Planning Act 1990 (as amended), and pursuant to Article 38 of The Town and Country Planning (Development Management Procedure) Order 2015, makes the following Order:

### **Citation, commencement and application**

1. (1) This Order may be cited as the Graven Hill Phase 1 Local Development Order 2015 and comes into force on.....
  - (2) This Order applies to the land at Graven Hill Bicester outlined in red on the plan included as Schedule 1 to the Order.
  - (3) Subject to the Council's power to revoke this Order under section 61A(6) of the Act, this Order will remain in force for a period of 5 years from the date the Order comes into force
  - (4) Nothing in this Order removes, cancels, or otherwise makes void the national permissions granted by the General Order.

### **Interpretation**

2. (1) In this Order –

“access” has the same meaning as in the Procedure Order

“the Act” means The Town and Country Planning Act 1990 (as amended)

“appearance” has the same meaning as in the Procedure Order

“construction” means the carrying out of building or engineering operations in, on, over or under land and “construct” and “constructed” shall be construed accordingly

“completion” means that to all intents and purposes the dwellinghouse has been completed and is either occupied or capable of being occupied as a dwellinghouse, and “complete” and “completed” shall be construed accordingly

“the Council” means Cherwell District Council

“confirmation of compliance” means a formal written notification of the local planning authority confirming that a proposed development complies with the Masterplan and Design Code approved under the outline planning permission

“custom build” means development carried out for and on behalf of, or in partnership with, an individual or group of individuals who upon completion intend to occupy the development and who will become a freehold owner, or

owner of a long lease of not less than 99 years duration, of the development and “custom built” and “custom builder” shall be construed accordingly

“developer” someone constructing a dwelling either through self build or custom build

“development” has the same meaning as in section 55 of the Act

“dwellinghouse” does not include a building containing one or more flats, or a flat contained within such a building

“erection” means the carrying out of operations to erect a structure or building on or over land

“General Order” means The Town and Country Planning (General Permitted Development) Order 2015 and any subsequent amendment to that Order

“highway” has the same meaning as in the Highways Act 1980 (as amended)

“landscaping” has the same meaning as in the Procedure Order

“layout” has the same meaning as in the Procedure Order

“Masterplan and Design Code” means the master plan and design code required to be approved under condition 26 of the outline planning permission

“original dwellinghouse” means the dwellinghouse as so built at the time of first occupation as a dwellinghouse

“outline planning permission” means the planning permission dated 08 August 2014 granted by the Council pursuant to the application for outline planning permission dated 29 September 2011 and allocated reference number 11/01494/OUT, and any subsequent planning permission granted pursuant to an application under section 73 of the Act relating to that outline planning permission

“the Procedure Order” means The Town and Country Planning (Development Management Procedure) Order 2015 and any subsequent amendment to that Order

“scale” has the same meaning as in the Procedure Order

“self-build” means development carried out by an individual or group of individuals who upon completion intend to occupy the development and who will become a freehold owner, or owner of a long lease of not less than 99 years duration, of the development and “self built” and “self builder” shall be construed accordingly

## **Permitted development**

3. (1) Planning permission is hereby granted for the classes of development described as permitted development in Schedule 2.

(2) Any permission granted by paragraph (1) is subject to any relevant exception, limitation or condition specified in Schedule 2.

(3) Nothing in this Order permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3 of the Act otherwise than by this Order.

(4) The permission granted by Schedule 2 does not apply if—

(a) in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful;

(b) in the case of permission granted in connection with an existing use, that use is unlawful.

(5) The permission granted by Schedule 2 does not authorise any development which creates an obstruction to the view of persons using any highway used by vehicular traffic, so as to be likely to cause danger to such persons.

(6) Where a person uses electronic communications for making any application required to be made under any Class of Schedule 2, that person is taken to have agreed—

(a) to the use of electronic communications for all purposes relating to that person's application which are capable of being effected using such communications;

(b) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, that person's application; and

(c) that the deemed agreement under this paragraph subsists until that person gives notice in writing revoking the agreement (and such revocation is final and takes effect on a date specified by the person but not less than 7 days after the date on which the notice is given).

**Adopted by Cherwell District Council on...**

The Common Seal of  
Cherwell District Council  
was affixed hereunto in  
the presence of:

Authorised Signatory

## **Schedule 1 – Land to which this Order applies**

## Schedule 2 – Permitted Development

*Class A – the erection or construction of a dwellinghouse*

### Development Permitted

**A. The erection or construction of a dwellinghouse, including access and landscaping, pursuant to the outline planning permission**

### Development Not Permitted

A.1 Development is not permitted by Class A if –

- (a) the dwellinghouse is not a custom build or self build dwellinghouse;
- (b) the dwellinghouse is to be erected or constructed on land that is not identified for development as a dwellinghouse in the Masterplan and Design Code approved under the outline planning permission; or
- (c) the dwellinghouse does not comply with the Masterplan and Design Code approved under the outline planning permission

### Conditions

A.2 Development is permitted by Class A subject to the following conditions –

- (a) Prior to development commencing, the developer must apply to the Local Planning Authority for a determination as to whether the development complies with the Masterplan and Design Code approved under the outline planning permission and the provisions of Schedule 3 of this Order apply in relation to that application
- (b) The principal elevation of the dwellinghouse must front a highway
- (c) Any upper-floor window located in a wall or roof slope forming a side elevation of the dwellinghouse and facing a boundary with a neighbouring dwelling that is either occupied or is being erected or constructed must be —
  - (i) obscure-glazed, and
  - (ii) non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed
- (d) Any part of the dwellinghouse that would –
  - (i) have more than a single storey; and
  - (ii) would be within 2 metres of the boundary with a neighbouring dwelling that is either occupied or is being erected or constructed

must not extend beyond the rear wall of the neighbouring dwelling by more than 3 metres

- (e) Any hard surface to be provided on land between a wall forming the principal elevation of the dwellinghouse and the highway must either be made of porous materials, or provision made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the dwellinghouse
- (f) Development under Class A must be completed within a period of 3 years starting with the confirmation of compliance date

*Class B – the enlargement, extension or alteration of a dwellinghouse*

### **Development Permitted**

#### ***B. The enlargement, extension or alteration of a dwellinghouse erected or constructed under Class A of this Order***

### **Development Not Permitted**

B.1 Development is not permitted by Class B if –

- (a) the enlargement, extension or alteration does not comply with the Masterplan and Design Code approved under the outline planning permission; or
- (b) the enlarged part of the dwellinghouse would have more than a single storey and would be –
  - (i) within 2 metres of the boundary with a neighbouring dwelling that has received either confirmation of compliance or planning permission; and
  - (ii) would extend beyond the rear wall of the neighbouring dwelling by more than 3 metres

### **Conditions**

B.2 Development is permitted by Class B subject to the following conditions –

- (a) Prior to development commencing, the developer must apply to the Local Planning Authority for a determination as to whether the development complies with the Masterplan and Design Code approved under the outline planning permission and the provisions of Schedule 3 of this Order apply in relation to that application
- (b) Any upper-floor window located in a wall or roof slope forming a side elevation of the dwellinghouse and facing a boundary with a neighbouring dwelling that has received either confirmation of compliance or planning permission must be –
  - (i) obscure-glazed, and

(ii) non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed

*Class C – buildings etc incidental to the enjoyment of a dwellinghouse*

### **Development Permitted**

***C. The provision within the curtilage of a dwellinghouse that is being erected or constructed under Class A of this Order of –***

***(a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such; or***

***(b) a container used for domestic heating purposes for the storage of oil or liquid petroleum gas***

### **Development Not Permitted**

C.1 Development is not permitted by Class C if –

- (a) the dwellinghouse has been completed;
- (b) the development EITHER does not comply with the Masterplan and Design Code approved under the outline planning permission OR any of the following criteria would apply:
  - (i) the total area of ground covered by buildings, enclosures and containers within the curtilage (other than the dwellinghouse that is being erected or constructed) would exceed 50% of the total area of the curtilage (excluding the ground area of the dwellinghouse that is being erected or constructed);
  - (ii) any part of the building, enclosure, pool or container would be situated on land forward of a wall forming, or proposed to form, the principal elevation of the dwellinghouse that is being erected or constructed;
  - (iii) the building would have more than a single storey;
  - (iv) the height of the building, enclosure or container would exceed –
    - (i) 4 metres in the case of a building with a dual-pitched roof
    - (ii) 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse, or
    - (iii) 3 metres in any other case;
  - (v) the height of the eaves of the building would exceed 2.5 metres;
  - (vi) it would include the construction or provision of a verandah, balcony or raised platform;

- (vii) it relates to a dwelling or a microwave antenna; or
- (viii) the capacity of the container would exceed 3, 500 litres

### **Conditions**

C.2 Development is permitted by Class C subject to the following conditions –

- (a) Prior to development commencing and where any of the criteria at Paragraph C.1(b) of this Class would apply, the developer must apply to the Local Planning Authority for a determination as to whether the development complies with the Masterplan and Design Code approved under the outline planning permission and the provisions of Schedule 3 of this Order apply in relation to that application

### **Interpretation of Class C**

C.3 For the purposes of Class C, “purpose incidental to the enjoyment of the dwellinghouse as such” includes the keeping of poultry, bees, pet animals, birds or other livestock for domestic needs or personal enjoyment of the occupants of the dwellinghouse

## **Schedule 3 – Procedure for Confirmation of Compliance under Schedule 2**

(1) The following provisions apply where under this Order a developer is required to make an application to the Local Planning Authority for a determination as to whether the development complies with the Masterplan and Design Code approved under the outline planning permission.

(2) The application must be accompanied by—

- (a) a written description of the proposed development, which must include any building or other operations;
- (b) a plan indicating the site and showing the proposed development;
- (c) a plan or plans showing the details of access, appearance, landscaping, layout and scale of the proposed development;
- (d) the developer's contact address, contact telephone number; and
- (e) the developer's email address if the developer is content to receive communications electronically

(3) The local planning authority may refuse an application where, in the opinion of the Authority—

- (a) the proposed development does not comply with, or
- (b) the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with,

any conditions, limitations or restrictions specified in this Order as being applicable to the development in question.

(4) Where the Local Planning Authority refuses an application under paragraph (3), for the purposes of section 78 (appeals) of the Act such a refusal is to be treated as a refusal of an application for approval.

(5) The development must not begin before the occurrence of one of the following—

- (a) the receipt by the applicant from the Local Planning Authority of a written notice of their determination that the development complies with the Masterplan and Design Code approved under the outline planning permission;
- (b) the expiry of 28 days following the date on which the application under sub-paragraph (2) was received by the Local Planning Authority without the authority notifying the applicant as to whether confirmation of compliance is given or is refused.

(6) The development must be carried out in accordance with the details provided in the application referred to in sub-paragraph (2) unless the Local Planning Authority and the developer agree otherwise in writing.