

Cherwell District Council

Planning Committee

9 June 2016

Appeals Progress Report

Report of Head of Development Management

This report is public

Purpose of report

This report aims to keep members informed upon applications which have been determined by the Council, where new appeals have been lodged. Public Inquiries/hearings scheduled or appeal results achieved.

1.0 Recommendations

The meeting is recommended:

- 1.1 To accept the position statement.

2.0 Report Details

New Appeals

- 2.1 **16/00137/DISC – Land North of Gaveston Gardens, Banbury Road, Deddington.** Appeal by David Wilson Homes (Mercia), against the refusal of discharge of Condition 4 (Drainage Strategy) of 13/00301/OUT.

16/00141/DISC – Land North of Gaveston Gardens, Banbury Road, Deddington. . Appeal by David Wilson Homes (Mercia), against the refusal of discharge of Condition 10 (Landscaping) of 13/00301/OUT.

16/00143/DISC – Land North of Gaveston Gardens, Banbury Road, Deddington. Appeal by David Wilson Homes (Merica), against the refusal of discharge of Condition 18 (Landscape drawings) of 14/02111/REM.

16/00526/F – The Gables, 4 Westbourne Court, Bloxham, Banbury, OX15 4HD. Appeal by Mr Tibbetts against refusal of planning permission for single storey extension to ancillary building with garage and garden store (revised scheme of 15/01513/F).

- 2.2 Forthcoming Public Inquires and Hearings between June 9th and 7th July 2016.

Public Inquiry commencing Tuesday 14th June 2016 at 10am Banbury Cricket Club, White Post Road, Bodicote, OX15 4AA. Appeal by CPG Development Projects Ltd against the refusal of outline planning permission (15/00250/OUT for 3 No Class A1 (retail); 3 No Class A3 (cafe and restaurants); 1 No Class D2 (gym); surface level car park, access, servicing and associated works. Land South of and adjoin Bicester Services, Oxford Road, Bicester.

2.3 Results

Inspectors appointed by the Secretary of State have:

1) Dismissed the appeal by Mr Hardy against the refusal of planning permission for the erection of one dwelling. Land to the rear of 62 High Street, Kidlington. 15/01683/F - (Delegated).

The appeal related to the erection of a one and a half storey dwelling in the rear garden of 62 High Street, on the corner of Exeter Road and High Street in Kidlington. The Inspector identified the main issues as being the effect of the proposed development on the character and appearance of the area.

The Inspector noted that “until recently the gap between the rear of the houses along High Street and the first dwellings on both sides of Exeter Road meant that long rear gardens were a visible feature that gave the area a distinctive and spacious layout. On this basis, a previous Inspector found that a proposal on the appeal site for a house and a separate proposal for a flat with a garage below would be incompatible with existing development”. However, since this previous appeal decision two detached houses opposite the appeal site have been developed across the gardens to the rear of 64 and 66 High Street and thus the view of long rear gardens is no longer a prominent feature of the streetscene, and it was considered that the proposal would complement rather than be at odds with the pattern of development in the area.

The proposed dwelling had large rectangular dormers on its front elevation facing Exeter Road. The Inspector noted that the fenestration of dwellings along the road – including the new dwellings opposite the appeal site – had a predominately horizontal emphasis and that dormers were not a common feature of the area. Where they did exist, they were small and subservient to the size of the roof. The dormers on the proposed dwelling were considered to dominate the roof and have a top heavy and incongruous design.

The Inspector concluded that the poor design of the dormers in the proposed development would unacceptably harm the character and appearance of the area. This would be contrary to Policy Villages 1 and policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, saved policies C28 and C30 of the Cherwell Local Plan and a core planning principle of the Framework.

2) Allowed the appeal by Mr White against the refusal of planning permission for construction of 3 new houses and associated parking with access from Westbeech Court - Re-submission of 15/00300/F. Garage Block Adjacent 29. Westbeech Court, Banbury. 15/01144/F – (Committee).

The proposal was for a construction of a pair of semi-detached dwellings and a detached dwelling in Westbeech Court close to Banbury town centre. The application was reported to Planning Committee with a recommendation for approval however Councillors refused the application as they considered it would adversely impact on the character and appearance of the area.

The inspector considered that whilst the buildings would be situated forward of the neighbouring properties and would be taller they would not appear unduly prominent. The gable projections and fenestration would add interest to the street. The proposal was within the setting of the Conservation Area but given its design was not harmful to the significance of the Conservation Area. Overall it was considered that the scale form and architectural features of the proposed houses would mean the proposal would be a well-designed development.

Whilst the Council did not refuse the application on parking grounds residents had raised concern over parking. In this respect the inspector noted that whilst the width of Westbeech Court was substandard compared to current requirements, given the number of dwellings already served by the road the new development would not increase vehicles to the extent that highway safety would be harmed. It was also concluded that 2 off road spaces for each dwelling was adequate and whilst the loss of 3 on street parking spaces would be inconvenient to residents in an area where parking pressure already exists, given the existing parking controls and the low speed of traffic this would not result in displacement of parking to the extent that highway safety would be harmed.

In relation to conditions the inspector noted that the requirement for details relating to foul and surface water drainage was covered by Building Regulations and therefore failed the test of necessity contained within paragraph 206 of the Framework. The Inspector also considered that exceptional circumstances did not exist to justify removing permitted development rights in relation to houses.

3) Dismissed the appeal by Gladman Developments for the refusal of outline planning permission for demolition of existing bungalow and agricultural buildings and residential development of up to 75 dwellings including highway works, landscaping and public open space. Land West Of Oxford Close And North Of Corner Farm, Station Road, Kirtlington. 14/02139/OUT – (Committee).

The appeal related to an outline application for up to 75 dwellings on land off Lince Lane, Kirtlington. An appeal for up to 95 dwellings on the same site was dismissed following a public inquiry held in August last year. However the Inspector considered that the appeal proposal before him was “materially different from the scheme for the site that was dismissed at appeal in 2015 (Ref: APP/C3105/W/14/3001612)”. The Inspector also considered that there were “Justified grounds” to reconsider the Council’s 5 year housing land supply position given the publication of the Council’s Annual Monitoring Report for 2015 in January 2016.

The Inspector identified the two main issues to be whether the local planning policies for the supply of housing are up-to-date, and the effect on the character and appearance of the area.

Housing land supply

On the first issue, the Inspector had regard to the matter of whether a 5% or 20% buffer was appropriate (dependant on whether the Council had a record of persistent under-delivery), and the matter of supply.

On the matter of the buffer, although the Inspector noted that the Council had fallen short of meeting its housing targets in recent years, he also considered that “before reaching any conclusions as to whether persistent under-delivery exists there is a need to take account of local circumstances, including the Council’s approach to boosting significantly the supply of housing”. The Inspector acknowledged that the Cherwell Local Plan 2011-2031 Part 1 promotes a high level of employment and housing growth in the District, and seeks to “increase substantially” the amount of housing to be delivered. He observed that such a significant change “cannot occur on the ground over-night” particularly in view of the reliance on the delivery of strategic sites, and as such he considered that “it is inevitable that there will be some time before the large sites start to contribute in a meaningful way to meeting the District’s housing needs”. Therefore the Inspector was satisfied that persistent under-delivery had not yet occurred and a 5% buffer remains appropriate, albeit “the tipping point (for persistent under-delivery) is not too far distant if the number of homes provided continues to fall below (the Local Plan’s) housing requirement”.

On the matter of supply, the Inspector adopted a more cautious approach than that advocated by the Council in respect of some of the strategic sites (north west Bicester Phase 2, land at Salt Way and west of Bloxham Road, and Graven Hill). He also considered it was appropriate to apply the 5% buffer to the shortfall since 2011. Nevertheless he still concluded that the District is currently capable of delivering “some 8,654 dwellings over the next 5 years”. The requirement is for 8, 637 and on this basis the Inspector was satisfied that the Council can, at present, demonstrate a 5 year supply of housing land.

Having found that the Council can demonstrate a 5 year supply of housing land, the Inspector concluded on the first issue that the local planning polices for the supply of housing are up-to-date.

Character and appearance of the area

On the second issue, the Inspector expressed “serious reservations” about the impact on the local landscape and the setting of the village. He considered that at present “the site makes an important contribution to the pleasant rural setting of the southern part of Kirtlington”. Whilst he noted the scheme was an improvement on the scheme for 95 dwellings dismissed in 2015, he concluded that “the construction of up to 75 dwellings on the eastern part of the appeal site would substantially reduce the open nature of the field and suburbanise this edge of the village to an undesirable extent”. He found that this would result in unacceptable and significant harm, and this could not be addressed by detailed design, siting, layout, or landscaping.

Other matters and the Planning Balance

The Inspector did not consider there were other matters or issues (e.g. highway safety, social cohesion, biodiversity) that would justify dismissing the appeal. Nevertheless, in coming to the overall planning balance, the Inspector did give

“considerable weight” to the appeal scheme being at odds with the local planning policies relating to the supply of housing, insofar as the proposal would have resulted in significant development outside the built-up limits of the village and in the absence of an essential need for the development, this ran contrary to the Plan strategy of steering most new housing towards the main towns. Whilst the Inspector did give substantial weight to various economic, social and environmental benefits he identified as resulting from the scheme, including those that would be secured via the planning obligation, he concluded that “in view of the fundamental conflict with the adopted strategy for the location of housing in the District and the significant environmental harm identified I do not consider the proposed scheme constitutes sustainable development”.

Costs Decision

The Council had sought a partial award of costs on the basis that the appellant had acted unreasonably in appealing a decision that raised substantially similar issues to those that were only recently considered in depth at a public inquiry into the 95 scheme that was dismissed. However the Inspector refused a partial award of costs on the grounds that he had found the appeal scheme for 75 dwellings to be materially different, and new evidence was available in respect of the Council’s housing land supply position, in the form of the AMR 2015.

4) Allowed the appeal and awarded costs to Mr D Berlouis against the non-determination of alterations and erection of extension. Orchard Way, Heyford Road, Somerton, OX25 6LN. 15/01895/F – (Committee).

The application sought consent for the erection of a single storey extension to an existing building to include a log store and canopy at Orchard Way, Heyford Road, Somerton. Internal alterations would also be made to the building, and a flue and rooflights would be installed. The existing building is used as a home office although it also benefits from planning permission for a self-contained dwelling.

The application was refused contrary to Officer recommendation by Members at Planning Committee meeting on 21 January 2016. The application was refused as the proposed extension to the home office use would, by virtue of its siting, design and scale, result in a visually prominent and intrusive addition on a loosely developed and elevation important gap of land that forms part of the character of the loose knit settlement of Somerton and the setting of the designated Conservation Area, resulting in harm to the significance of the setting of the heritage asset where no public benefits arising from the proposal have been identified.

An appeal was lodged against the failure to give notice within the prescribed period of a decision on an application for planning permission. An application for costs against Cherwell District Council was also made.

The Council’s case can be summarised as follows: The village of Somerton has a loose knit settlement pattern, and as the Appeal site is relatively open and undeveloped, it is considered to contribute positively to the character and setting of the designated Conservation Area. Expansion of the building was considered to increase the prominence of the building and further erode this important area of land, causing less than significant harm to the character and appearance of the Conservation Area. Government guidance advises that where a

development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. It was considered that the public benefit gained would not outweigh the harm that would be caused in this instance. Furthermore, the submission did not include information on the existing tree coverage at the site, preventing a full assessment of the impact of the development upon the trees. If any trees were to be removed from the site this would detrimentally impact upon the visual amenities of the site, the setting of the Conservation Area and result in a net loss to biodiversity at the site.

The Inspector disagreed with the Officer's assessment and allowed the appeal. The siting of the extension to the rear of Somerfields, coupled with its modest size and scale, was held to significantly restrict views of the proposed extension from the public realm. The extension was considered to integrate well with the existing building and its impact upon both immediate surroundings and the nearby Conservation Area was held to be limited. The contribution of the site to the overall character of the area was acknowledged, although the modest extension was not considered to alter this in a material way. Furthermore, although the concerns regarding the impact of the development upon the trees were acknowledged, it was considered that any harm likely to arise could be adequately guarded against by the imposition of a condition requiring the submission of an arboricultural survey and method statement. In summary, the extension was not considered to result in an unacceptable form of development which would result in harm to the settlement of Somerton, or the Conservation Area or its setting.

With regard to costs, the application was made based on the delay in issuing a decision notice and the Council's failure to notify the applicant of the decision made.

Due to an administration error, the minutes for the meeting incorrectly stated that the application had been approved in accordance with Officer recommendation. A delay in excess of two weeks was also experienced as the Development Services Manager and Chairman of the Planning Committee discussed the final reason for refusal.

Whilst the Inspector acknowledged that it is sometimes necessary for discussions to take place following the Committee meeting in order to determine the reason for refusal, the reasons for refusal stated at Committee are a matter of fact and should be clear and cogent in planning terms. Accordingly, such post decision discussions need not normally be prolonged or extensive, and the Council was unable to provide any further explanation for this delay. Furthermore, the Inspector considered that, having regard to the provision of the development plan, national planning policy and material considerations, the development proposed should have been permitted without unnecessary delay. The Inspector concluded that the refusal of the planning application, together with the delay in issuing a decision notice, constituted unreasonable behaviour that resulted in the appellant having incurred wasted expense in pursuing the appeal. The application for costs was allowed.

5) Dismissed the appeal by Green Lives against the refusal of planning permission for the erection of a detached dwelling and garaging with access, parking and amenity space – re-submission of 15/01344/F. Land to the rear of May House, Station Road, Lower Heyford. 15/01967/F. (Delegated).

The proposal was for the erection of a large farm house within Lower Heyford in the Rousham Conservation Area.

The inspector noted that Lower Heyford was characterised by a mostly sporadic and loose-knit pattern of development with most properties either directly fronting onto the highway or set back by modest degrees. The Inspector considered the application as 'minor development' and assessed it against Policy Villages 1 and the criteria for assessing whether development constituted 'acceptable minor development' at paragraph C.262 of the Local Plan.

The inspector considered the proposal would be characteristic of a traditional farmhouse and would be constructed of appropriate material. He noted the site was set amongst smaller modest properties with a close and more intimate relationship with the street scene. The inspector considered the proposed set back position of the dwelling from the road, the centralised position in the plot and the size of the dwelling would be in stark contrast to that of the adjacent properties and significantly out of keeping the predominant pattern of development. This would be harmful to the character and appearance of the area and which would be exacerbated by a tree lined drive which added a sense of grandeur to the overall scheme. Furthermore the inspector considered the development would fail to accord with the established pattern of development in the village.

3.0 Consultation

None

4.0 Alternative Options and Reasons for Rejection

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

Option 1: To accept the position statement.

Option 2: Not to accept the position statement. This is not recommended as the report is submitted for Members' information only.

5.0 Implications

Financial and Resource Implications

5.1 The cost of defending appeals can normally be met from within existing budgets. Where this is not possible a separate report is made to the Executive to consider the need for a supplementary estimate.

Comments checked by:

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Legal Implications

- 5.2 There are no additional legal implications arising for the Council from accepting this recommendation as this is a monitoring report.

Comments checked by:

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Risk Management

- 5.3 This is a monitoring report where no additional action is proposed. As such there are no risks arising from accepting the recommendation.

Comments checked by:

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6.0 Decision Information

Wards Affected

All

Links to Corporate Plan and Policy Framework

A district of opportunity

Lead Councillor

None

Document Information

Appendix No	Title
None	
Background Papers	
None	
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