

# Cherwell District Council

## Planning Committee

29 September 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 **16/00042/F 42 Grimsbury Square, Banbury, OX16 3HP.** Appeal by Mr S Hussain against the refusal of planning permission for two storey extension and conversion to form four flats.

**16/00291/F 25 Eden Way, Bicester, OX26 2RP.** Appeal by Mr Dunford against the refusal of planning permission for change of use of land to residential curtilage and erection of new fence.

**16/00413/F Airlie Hill, Banbury Hill, Shutford, OX15 6PE.** Appeal by Mr and Mrs Stubbs against condition 4 imposed on the planning permission.

**16/00567/F Land at Third Acre, Shutford Road, Balscote.** Appeal by Mr Heapy of Farmia Properties Ltd against the refusal of planning permission for the erection of 1 no. dwelling with associated parking and garden (resubmission of 15/01996/F).

**16/00619/F Land West of Horn Hill Road, Adderbury.** Appeal by Mr Gough against the refusal of planning permission for a residential development of a single

dwelling with associated landscaping and land for an extension to the existing village burial ground – Resubmission of 15/01048/F.

**16/00626/F + 16/00201/EUNDEV, Withycombe Barn, Wigginton Heath, OX15 5HH.** Appeal and enforcement notice appeal by Mrs MacPherson against the refusal of planning permission and serving of enforcement notice for retrospective erection of one bedroom self-contained annex above existing store rooms.

**16/01128/F 4 The Stables, Launton Road, Stratton Audley, OX27 9AX.** Appeal by Mr and Mrs Roberts against the refusal of a single storey rear extension.

**16/01294/F 55 Croft Avenue, Kidlington, OX5 2HT.** Appeal by Mr Barakzai against the refusal of planning permission for the replacement of existing porch and concrete roof over bay; demolition of garage and erection of single storey rear and two storey side extension.

2.2 Forthcoming Public Inquiries and Hearings between 29<sup>th</sup> September and 27<sup>th</sup> October 2016.

None.

## 2.3 Results

Inspectors appointed by the Secretary of State have:

**1) Dismissed the appeal by David Wilson Homes (Mercia) against the refusal of discharge of condition 4 Drainage Strategy of 13/00301/OUT. Land North of Gaveston Gardens and Rear of Manor Farm, Banbury Road, Deddington. 16/00137/DISC (Delegated).**

Condition 4 required the submission of a drainage strategy detailing drainage works for foul and surface water. The submitted drawings provided details of the proposed sewers and a surface water storage lagoon.

The Inspector found that the main issue in this case was whether or not the proposed foul and surface water drainage schemes would be acceptable.

The Flood Risk Assessment (FRA) provided with the outline application included a preliminary assessment of ground conditions and states that sustainable drainage measures are proposed. No details of such measures were provided with application 16/00137/DISC but condition 5 of the outline permission requires specific details in this respect. The Inspector found that, whilst the FRA does include preliminary drainage calculations, Oxfordshire County Council's comments were made without sight of the FRA. Whilst the County Council requested further detailed information it is not clear to what extent the information in the FRA would satisfy that authority. The Inspector further advised that the FRA states that the proposed development would give rise to a design flow of 3.7 litres per second and that Thames Water would need to determine an adequate point of connection to the existing foul water system. Thames Water had raised concerns that the existing sewer at Horse Fair was unlikely to have

capacity to take the flows from the development and requested the submission of an Impact Study to ascertain the effect on the existing foul water infrastructure.

The Inspector considered that there was no further information which demonstrated the acceptability of the proposed drainage works. Given the objections from the County Council and Thames Water, it was concluded that the proposed foul and surface water drainage schemes have not been demonstrated to be acceptable. The appeal was dismissed.

**2) Allowed the appeal by David Wilson Homes (Mercia) against the refusal of discharge of condition 10 Landscaping of 13/00301/OUT and condition 18 Landscaping of 14/02111/REM. Land North of Gaveston Gardens and Rear of Manor Farm, Banbury Road, Deddington. 16/00141/DISC (Delegated).**

The Inspector found that the main issues in this case were whether or not the landscaping scheme would be acceptable having regard to the character and appearance of the area.

The Inspector stated that the reasons for refusal included insufficient information regarding the existing trees and hedgerows on the land, together with measures for their protection during the course of development. It was considered that the details of tree protection measures were secured through condition 20 of the Reserved Matters. Furthermore, Condition 11 of the reserved matters approval requires the submission and approval of details of hard surfacing to roads and footpaths and the Inspector found that the absence of these details from the applications did not prejudice the achievement of an acceptable scheme.

The Inspector states that the site is in a prominent location (at the entrance to the village) but is surrounded by tree belts which would substantially screen the development from view across the wider area (the tree belt along the northern boundary of the site is protected by a group Tree Preservation Order). The development would include a central public open space (which is to include a LEAP) and an open area with a surface water storage lagoon (which would be in the corner of the site next to the main road and behind the tree belt).

In regard to the details submitted, the inspector considered that the trees around the boundaries of the site would provide a strong landscape structure and that the proposed landscaping scheme would also provide structure within the site (by including trees along both sides of the main access road and around the public open space). Furthermore, the landscaping around the lagoon would be less formal including trees and a wildflower/grass mix and the proposed dwellings would be built close to the road frontages, leaving little space for trees or specimen shrubs (but shrub mixes would be planted in front of the dwellings).

Having taken into account the concerns expressed by the Council's Landscape Officer (including the suggested improvements in terms of bulb planting densities, shrub mixes and the planting of more specimen shrubs to provide additional structure), the Inspector considered that the proposed landscaping scheme would be sufficient to achieve a suitably high quality design as required by the National Planning Policy Framework. The appeals for applications 16/00141/DISC and 16/00143/DISC were allowed.

**3) Dismissed the application for costs by David Wilson Homes (Mercia) against the refusal of discharge of conditions 4 and 10 of 13/00301/OUT and condition 18 of 14/02111/REM. Land North of Gaveston Gardens and Rear of Manor Farm, Banbury Road, Deddington. 16/00137/DISC, 16/00141/DISC and 16/00143/DISC (Delegated).**

The costs applications were made on the basis that the Council refused the applications for approval of details within a short time scale (without first giving the applicants chance to provide additional or amended details) and that the responses received as a result of the consultation process were not passed on to the applicants. The Council believes that it determined the applications within the statutory periods that the additional information required was complex and that it would have been unlikely that this could have been prepared and submitted within the remaining part of the statutory periods.

The Inspector considered that the Council's decisions were based to a large extent on the amount of information submitted. The separate submission and approval of an Arboricultural Method Statement may indicate that the Council's defence of its refusal on the basis of a lack of information regarding tree protection was unreasonable. The Council also refused the landscaping details having taken the advice of its Landscape Planning Officer, but did not offer the applicants a chance to amend the scheme within the remaining part of the determination period which would have been reasonable.

The Inspector allowed the appeals concerning the landscaping scheme but dismissed the appeal concerning drainage. It was considered that the resolution of the matters subject to the appeals could have been achieved through discussion between the parties and submission of further information. For these reasons, the submission of appeals was not the only realistic course of action available to the applicants. The Inspector concluded that whether or not there was unreasonable behaviour on the part of the Council, this would not necessarily have resulted in unnecessary or wasted expense in submitting appeals. For these reasons it was considered that unreasonable behaviour resulting in unnecessary or wasted expense as described in the Planning Practice Guidance had not been demonstrated. All three costs applications for the award of costs were refused.

**4) Dismissed the appeal by Mr Grimes against the refusal of planning permission for the erection of a two-storey building which will contain 1 one studio flat, 2 single garages, a bicycle and bin store and associated parking. Land to Rear of 181 and 183 The Moors, Kidlington. 16/00529/F (Delegated).**

The Inspector concluded that the main issue in the appeal was the effect of the proposed development on the character and appearance of the area.

The Inspector noted that taken in the context of the modest scale of the building, the three proposed dormers would be bulky and dominant with a somewhat crowded appearance. The Inspector went on to note that the dormers would not align with the ground floor openings and there would be a lack of unity in this respect. The Inspector stated that the proposal would jar visually with the

remainder of the development and would not provide a high quality design as required by Policy ESD15 of the Cherwell Local Plan (2011-2031) Part 1.

The Inspector concluded that the proposal would unacceptably harm the character and appearance of the area, contrary to Policies ESD15 and Policy Villages 1 of the Cherwell Local Plan (2011-2031) Part 1, saved Policies C28 and C30 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

### **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:

Denise Taylor, Group Accountant, 01295 221982,  
[Denise.Taylor@cherwellandsouthnorthants.gov.uk](mailto:Denise.Taylor@cherwellandsouthnorthants.gov.uk)

#### **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:

Nigel Bell, Team Leader – Planning, Law and Governance, 01295 221687,  
[nigel.bell@cherwellandsouthnorthants.gov.uk](mailto:nigel.bell@cherwellandsouthnorthants.gov.uk)

#### **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:  
Nigel Bell, Team Leader – Planning, Law and Governance, 01295 221687,  
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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                |  |
| Report Author       | Tom Plant, Appeals Administrator, Development Directorate                                      |
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