

Cherwell District Council

Planning Committee

16 March 2017

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 **16/01978/F – Land adj to 8 Cherry Fields, Cropredy.** Appeal by Mr and Mrs Cherry against the refusal of planning permission for the erection of one dwelling.

16/01209/OUT – Heatherstone Lodge, Banbury Road, Finmere. Appeal by Siteplan UK LLP against the refusal of planning permission for residential development and associated infrastructure.

16/02175/F – 1 Buchanan Road, Upper Arncott, Bicester. Appeal by Mr Hardiman against the refusal of planning permission for a two storey side extension providing garage and bedroom accommodation and new orangery to rear – revised scheme of 16/01299/F.

- 2.2 Forthcoming Public Inquiries and Hearings between 16th March 2017 and 13th April 2017.

None.

2.3 Results

Inspectors appointed by the Secretary of State have:

- 1) Dismissed the appeal by Mr Tredwell against the refusal of outline planning permission for the erection of up to 26 dwellings including creation of a new access, associated landscaping, open space and drainage infrastructure. Land North of Southfield Farm, North Lane, Weston-On-The-Green. 15/01953/OUT – (Committee).**

The appeal sought outline planning permission for 26 dwellings and associated infrastructure as Phase 2 to an earlier approval of 20 dwellings on paddock land west of Northampton Road, Weston-on-the-Green at the northern edge of the village. The Inspector considered the following to be the main issues:

- The principle of the scale of the development having regard to the site's location and relation to services/facilities;
- Effect on the character and setting of the village as well as landscape character;
- Did the proposal constitute sustainable development – i.e. did the environmental, social and economic benefits outweigh harm?

The Inspector found that categorising villages, as set out in the CLP2031, can be a crude way grouping of settlements given the variations in settlement size, facilities and public transport availability. Therefore although not explicit in Policy Villages 2, there is a need to apply judgement on whether the size of the proposed development is appropriate to the settlement. Weston-on-the-Green has only a basic core of services. Whilst the proposed development was adequately accessible to these services, daily travel from the village was essential for other basic facilities. The loss of the bus service in 2016 changed the sustainability merits of the village and was a significant material consideration. It was implied, by the Inspector, that this made the village's Category A questionable. Residents of the proposed development would have no option but to rely on the private car. There was no evidence that additional housing was needed to maintain the existing limited village facilities/services. Cumulatively, with the already approved Phase 1 of the scheme, the proposed development would result in a disproportionate expansion of the village in population terms which, without public transport and only limited facilities, would be inherently unsustainable. Given the Council's 5 year housing supply position, as well as significant approvals/delivery under Policy Villages 2 already, there is no overriding need for the development. Therefore, the scheme was found to be contrary to Policies Villages 2, ESD1 and SLE4 of the CLP2031.

The proposed development would also significantly urbanise the rural countryside setting of the village and represent a clear incursion of built form into the countryside. Also, whilst the application was in outline only, there was no evidence to suggest it would result in anything other than a typical suburban estate development that would not preserve the village character. Cumulatively with Phase 1, the quantum of development would not blend in appropriately with the context of the small village which has grown slowly and organically over

time. The scheme therefore failed to accord with Policies ESD13 and ESD15 of the CLP2031.

The Inspector concluded that the economic and social benefits (new housing, affordable housing, new homes bonus, construction employment) would not outweigh environmental harm identified above and consequently, the appeal was dismissed.

2) Quashed the enforcement notice appeal by Mr and Mrs Durnin against the serving of enforcement at OS Parcel 4400 South of Manor Farm House and East of North Aston Hall Farm, Somerton Road. 16/00018/EUNDEV – (Delegated).

This enforcement notice relates to the unauthorised erection of a mobile home, access track and associated domestic paraphernalia on an agricultural field to the north east of North Aston. The two key issues in this appeal case were whether the enforcement notice was served correctly (Ground E) and whether the alleged breach of planning control had occurred as a matter of fact (Ground B).

The Inspector concluded, as regards Ground E, that the enforcement notice was properly served and that there was no need the Council to serve a planning contravention notice as a 'prerequisite to issuing an enforcement notice' as suggested by the appellants. Turning to Ground B, the appellants maintained that the structure in the field was not a dwelling as stated in the enforcement notice. The Inspector identified three factors to determine whether the structure resulted from a building operation: size; physical attachment to the ground; and permanence. In respect of the first criterion, the Inspector decided that size was not a determining factor. However as regards physical attachment, although the mobile home was accessed through a porch, had a wooden skirt along its front and rear, and abutted a wooden veranda, it was concluded that as the utility services could be easily detached, the structure remained 'mobile' and that it was not a building. The Inspector also did not accept the Council's argument that the associated works and the difficulty in repositioning the structure, which was on a slope, afforded a degree of permanence. The Inspector further concluded that the appellants would be at a 'distinct disadvantage' if the notice were simply to be corrected. The Enforcement Notice was therefore quashed and costs were awarded.

3) Dismissed the appeal by Ms Taylor against the refusal of prior-approval for the change of use of 3 barns to 3 dwellings including operational development. Field Barn, Whichford Road, Hook Norton, OX15 5DJ. 16/00281/Q56 – (Delegated).

The appeal related to the proposed alteration to and conversion of three barns to three dwellings, at a site east of the road between Hook Norton and Sibford Ferris.

The main issue was whether the appeal proposal was permitted development.

The Inspector noted that the permitted development (PD) right under Class Q assumes that the agricultural building is capable of functioning as a dwelling (as

clarified by the Hibbitt judgement (Hibbitt v Secretary of State for Communities and Local Government [2016] EWHC 2853), and that it is not the intention of the PD right to include the construction of new structural elements for the building. Consequently, it is only where the existing building is structurally strong enough to take the loading which comes with the external works to provide the residential use that the building would be considered to have the permitted development right.

The Inspector agreed with the Council that the replacement of the existing roof structure of Barns 2 and 3 would consist of structural alterations falling outside of those permitted by Class Q(b) and paragraph Q.1(i).

The Council had not refused the application on the same grounds in respect of Barn 1. However, the Inspector went further than the Council in finding that the replacement and/or addition of rafters, purlins, posts and straddle stones would consist of structural alterations to Barn 1 falling outside of those permitted by Class Q. The Inspector found that the Council's granting of a separate prior approval application for Barn 1 did not remove the requirement for him to reach his own conclusion on the proposal.

The appellant submitted amended plans as part of her appeal. The Inspector noted the Planning Inspectorate's guidance on late submission of amended plans, but concluded that no party would be prejudiced by their consideration, primarily because the Council had determined a second application based on those plans.

The Inspector made a partial award of costs to the appellant on the basis of the Council's failure to consider amended/additional information it had received (the case officer had taken receipt but had not uploaded the information to the website or forwarded it to their team leader issuing the decision) and the delay in responding to an appellant's email. The Inspector also found that the Council had acted unreasonably in invalidating the original application, but that this did not result in unnecessary expense for the appellant. The Council will learn from and apply the lessons from this decision.

4) Allowed the appeal by Mr Freeman against the refusal of planning permission for the erection of 1 No. new dwelling – re-submission of 15/01538/F. Land Adj to 33 Nuffield Drive, Banbury, OX16 1BU. 16/00468/F – (Delegated).

The appeal relates to a proposed new dwelling to the end of a terrace of properties on Nuffield Drive in Banbury. The Inspector identified the main issue in this case as being the effect of the proposal on the character and appearance of the surrounding area.

The Inspector observed that the open grassed amenity area, spaces between dwellings, and open greenside verges gives the area an open character. He went on to state that whilst the proposed dwelling would occupy a conspicuous location, the open grass verge between the site and the junction would ensure that the open character of the area would be retained. The Inspector also noted that the size of the rear and front garden and siting of the dwelling would also help retain the open character, given that it would be similar to Nos. 1 and 13

Daimler Avenue, which are also end of terrace properties which would form the backdrop of views from public vantage points to the east. The Inspector went on to point out that the angled aspect of the proposed dwelling would have a similar appearance to the side elevations of aforementioned Nos. 1 and 13 Daimler Close.

As regards the front elevation, the Inspector conceded that it would not be as wide as those properties in the rest of the terrace. However, the Inspector concluded that the difference in size would be minor, and that the proposed frontage would not appear conspicuous. Regarding the angled window design to the first floor rear elevation, the Inspector considered that the size and position would be similar to those on the adjoining terrace, adding that the proposed windows to the north elevation would not look out of place when viewed alongside the openings in the frontages of Nos. 2-12 Daimler Avenue.

Based on this assessment, the appeal was allowed.

5) Dismissed the 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. Land West of Horn Hill Road, Adderbury. 16/00619/F – (Delegated).

The appeal sought full planning permission for a single dwelling with associated landscaping and an extension to the existing village burial ground, on land west of Horn Hill Road, Adderbury. The Inspector considering the following to be the main issues:

- Whether part of the appeal site would be suitable for use for burials, having regard to the risk of groundwater pollution.
- The effect of the proposal on the character and appearance of the area.
- Whether this would be an appropriate location for housing having regard to the settlement strategy, the Development Plan and the NPPF.

On the first issue the site is known to be in an area which can experience high levels of groundwater, which would impact on the use of the land for burials; this was not disputed by the appellant during the appeal. The Inspector noted that no detailed evidence regarding the groundwater conditions had been submitted with the application/appeal site and that the use of the site just as memorial garden (as suggested by the appellants) would conflict with the Parish Council's intentions for the land. The Inspector concluded that it would be unreasonable to apply conditions in this respect, given that it could impact on the potential benefits of the proposals and without the ability to impose reasonable conditions the proposed extension to the burial ground would not accord with Policy ESD8 of the adopted CLP2031, as it would adversely affect the water environment. The burial ground extension would also not accord with Policy ENV1 of the CLP1996, as it would be likely to have an unacceptable effect in terms of environmental pollution. The failure to prevent unacceptable risks from pollution would also be inconsistent with the NPPF at paragraphs 17 and 120.

With regard to the impact of the proposed dwelling on the character and appearance of the area, the Inspector notes the loose-knit settlement pattern within the vicinity of the site and that: *'the appeal site more readily relates to open countryside than the more developed characteristics of the nearby housing'*. He further notes that: *'the proposed dwelling would be physically and visually separated from the adjoining and nearby buildings and would result in a substantial residential built form appearing in what is otherwise currently a countryside setting. The proposed dwelling would therefore have a suburbanising effect in respect of the appeal site and its immediate environs'*. Despite this, the Inspector concluded that given the context of the site and its proposed siting, views of the proposed dwelling would be limited and as such the visual impacts arising from the proposed dwelling would be nothing other than minor and localised and any impact would be off-set by the high quality design and proposed landscaping.

With regard to the principle of development the Inspector is not explicit about whether he considers the proposed new dwelling as being within the settlement or not, however he considers that the reliance on the built-up limits of a settlement as a means of controlling residential development in rural areas does not fully reflect the approach in the NPPF, in terms of sustainable development, and questions the consistency of Policy Villages 1 of the CLP2031 and Policy H18 of the CLP1996 with the NPPF and in particular paragraph 55. The Inspector considers the site to be in a sustainable location given its proximity to existing dwellings and access to village services, and further, considers that the proposals offer both social and economic benefits and a small contribution to Cherwell's 5-year housing land supply, whilst there would be limited environmental harm as a result of the construction of the proposed dwelling.

Contributions to the Parish Council, in the form of the gifting of land for the extension to the burial site and £100,000 toward the upkeep of a grade II* listed building (adjacent the site within the cemetery), were considered by the Inspector to be CIL compliant, a material consideration in the determination of the application and necessary to make the development acceptable; and that these contributions could be secured through an appropriate Planning Obligation.

In summary, whilst the Inspector considered the actual proposed development of a residential dwelling on the site to constitute a sustainable form of development, which would bring forward both social and economic benefits, with limited environmental harm, he considered that the unresolved risks associated with environmental pollution in respect of the proposed burial ground extension, resulted in an overall scheme which failed to protect and enhance the natural environment by minimising the risk of pollution, and that this harm would significantly and demonstrably outweigh the benefits of the proposals as a whole. Consequently, the Inspector considered that the proposed dwelling would not amount to sustainable development and would not accord with the Development Plan and as such dismissed the appeal. Notwithstanding this decision, Officers intend to write to the Inspectorate to query the Inspector's policy assessment in respect of the principle of development and their understanding of the CIL regulations.

6) Dismissed the appeal by Mr Jones against the refusal of planning permission for change of use from dwelling to bed and breakfast accommodation. 109 Courtington Lane, Bloxham, OX15 4HS. 16/00913/F – (Delegated).

The application was for the change of use of the property from dwelling to bed and breakfast accommodation. The property benefits from planning permission for a large extension. In its extended form the property would have eight bedrooms. The proposal would include the use of four bedrooms for the B&B and four for the family. The main issue is the effect of the proposal on highway safety conditions along Courtington Lane.

The OCC parking requirement would be for one parking space for each of the B&B rooms and 2 spaces for the remaining family accommodation – a total requirement of 6 spaces.

The appellant argued that, based on nationally predicted occupancy levels it would be more reasonable to only provide three spaces for the B&B accommodation. The Inspector did not agree based on the lack of B&B accommodation in Bloxham also put forward by the appellant.

The Inspector concluded that there was insufficient space within the application site to successfully accommodate parking for five vehicles as set out in a number of layouts by the appellant. There would be insufficient space to manoeuvre vehicles and leave the site in a forward gear.

The Inspector identified issues with on street parking in the vicinity of the site and commented that inadequate parking within the site would lead to further on street parking resulting in further obstruction of the highway causing additional inconvenience to other road users.

Although visibility from the site access was good the manoeuvring of additional vehicles in proximity to the junction is likely to conflict with other traffic movements. The situation is further worsened during school pick up and drop of times.

The proposal was found to be contrary to Policy ESD15 as it would not deliver a high quality, safe place to live or work and it would not improve the quality of the area. It would not be consistent with the NPPF as it would not achieve a safe and suitable access for all people required by para. 32 and would not contribute to making places better for people as required by para. 56.

7) Allowed the appeal by Bonmarche against the refusal of advertisement consent for 1 No. internally illuminated fascia sign and 1 No. double-sided internally illuminated projecting sign. Bon Marche, 30 Bridge Street, Banbury, OX16 5PN. 16/01756/ADV – (Delegated).

This appeal relates to a proposed internally illuminated fascia sign and a double-sided internally illuminated projecting sign. The scheme was resisted on the grounds that it would be out of keeping with the street scene and would unduly impact on the character and appearance of the Banbury Conservation Area.

The Inspector however, whilst acknowledging that the proposed signage would be larger than the existing, considered that the signage would be 'well integrated with the existing horizontal fascia of the building and similar in material and design to many other advertisements nearby'. The Inspector further concluded the 'satin finished aluminium would give a subdued appearance in the street and that the halo lighting would not be overly prominent or intrusive in the context of the modern building and the range of similar modern advertisements surrounding'.

The proposed signage was therefore found to be acceptable and the appeal was therefore allowed.

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,
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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:

Nigel Bell, Team Leader – Planning, Law and Governance, 01295 221687,
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:

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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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