

# Cherwell District Council

## Planning Committee

18 January 2018

### Appeals Progress Report

#### Report of Interim Director for Planning and Regeneration

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 **17/01233/OUT - Caravan Park, Station Approach, Banbury, OX16 5AB.** Appeal by Land Group (Banbury) Ltd against the refusal of outline planning permission for the development of land to the west of Banbury Railway Station to comprise 44 apartments all within Use Class C3; provision of vehicular and cycle parking together with all necessary internal roads and footpaths; provision of open space and associated landscape works; and ancillary works and structures.

**17/01466/F – Heyford Park Parcel B2A, Camp Road, Upper Heyford.** Appeal by Bovis Homes against the refusal of planning permission for the addition of approximately 310m of metal 'field' style railings painted black (Retrospective).

**17/01922/F – 1 Austins Way, Hook Norton, OX15 5LQ.** Appeal by Mr & Mrs Kirk against the conditions opposed to planning permission for a single storey extension.

**17/01981/ F – The Pheasant Pluckers Inn, Street Through Burdrop, Burdrop, OX15 5RQ.** Appeal by Mr Noquest against the refusal of planning permission for the change of use from A4 to C3 (AVC Listed).

2.2 Forthcoming Public Inquires and Hearings between 18 January 2018 and 15 February 2018.

None.

### 2.3 **Results**

Inspectors appointed by the Secretary of State have:

**1) Allowed the appeal by Albion Land Ltd against the refusal of outline planning permission for the Erection of up to 53,000 sqm of floor space to be for B8 and B2 with ancillary B1 (use classes) employment provision within two employment zones covering an area of 9.45ha; parking and service areas to serve the employment zones; a new access off the Middleton Stoney Road (B4030); temporary access of Howes Lane pending the delivery of the realigned Howes Lane; 4.5ha of residential land; internal roads, paths and cycleways; landscaping including strategic green infrastructure (G1); provision of sustainable urban systems (suds) incorporating landscaped areas with balancing ponds and swales. Associated utilities and infrastructure. OS Parcel 4200 Adjoining And North East Of A4095 And Adjoining And South West Of Howes Lane, Bicester. 14/01675/OUT (committee).**

The appeal related to a 20ha area of land forming part of the NW Bicester site allocated by Policy Bicester 1 for a zero carbon mixed use development. The appeal site is in the south east corner of the site adjacent to Howes Land and the Middleton Stoney Road and is set aside within the Masterplan for commercial and residential development as well as including land required for the realignment of Howes Lane as part of the strategic highway improvements. Following the refusal of the application and before the inquiry, the Council had granted planning permission in response to two further applications which, in sum, duplicated the appeal proposals. The inquiry therefore centred on the submitted Unilateral Undertaking and the extent to which it adequately or otherwise contributed to mitigating the impacts of the development and securing the provision of necessary infrastructure as well as the required planning conditions.

The Inspector considered the main issues and in respect of the employment mix proposed, he concluded that notwithstanding the conflict with local plan policy requirements for an emphasis on B1 uses, that the proposal would produce an acceptable degree of employment generation in accordance with the numerical aims of the policy. He also concluded that based upon the parameter plans and the existing landscape characteristics, that the proposal would have an acceptable effect on the character of the area according with Development Plan

policies. The Inspector also concluded that the scheme would have an acceptable effect on transport infrastructure and that there would not be unacceptable impacts upon living conditions of existing neighbours by air quality and noise.

The appellant's submitted unilateral undertaking contained most of the matters the Council sought to secure through it (and as were secured through the planning permissions for the two permitted applications), but with a 'blue pencil clause' attached to each schedule allowing the Inspector to consider the justification and requirement for each matter in accordance with the Statutory tests and to either impose or strike out the obligation. This arose from the appellant's concern as to the 'burdensome' nature of the planning obligations resulting from the S106 agreements attached to the two permitted applications. The Council sought to justify all of its requests for matters to be secured through the UU and also raised concern with some of the detailed legal drafting matters of the UU.

The decision considered each of the detailed points of the Unilateral Undertaking. The Inspector concluded that various obligations to be sought through the agreement met the statutory tests but concluded that a number of other obligations did not and struck them out including some community provision (however some matters were secured via planning condition instead; such as the provision of affordable housing and the securing of the zero carbon standards). The Inspector agreed with the Council that the safeguarding of the land for the strategic highway and contributions to its funding are critical and he imposed a Grampian condition to control the level of development that can be constructed in advance of that road being constructed and opened to vehicular traffic. The Inspector also considered the other recommended planning conditions and imposed a number but also did not consider all necessary omitting some.

The Inspector concluded overall that the development could be permitted with a lesser extent of obligations and conditions than the fall-back position but without compromise to the objectives of the eco town concept or the substantive outcome of the development.

- 2) Allowed the appeal by Gladman Developments Limited against the non-determination of an outline planning application for up to 280 dwellings (including 30% affordable housing), introduction of structural planting and landscaping, formal and informal public open space and play areas, surface water flood mitigation and attenuation, new priority junction arrangements to White Post Road, creation of section of spine road to link Bloxham Road with White Post Road as well a creation of 34 space car park and other associated ancillary works. All matters reserved except for access. OS Parcels 6741 and 5426 West of Cricket Field and North of Wykham Lane, Bodicote. 15/01326/OUT (committee).**

The appeal was allowed and was against the Council's non-determination of the planning application which proposed, in outline, up to 280 dwellings and associated infrastructure on land including alterations to White Post Road.

The appeal site formed part of a larger residential allocation in the Cherwell Local Plan 2011-2031 Part 1 known as Banbury 17 which provides for an urban extension to the south of Banbury. The Council had already concluded that the principle of the proposed development was acceptable at its August 2016 Planning Committee subject to satisfactorily securing necessary on and off site infrastructure through a legal agreement prior to issuing of a decision.

The appellant lost patience with negotiations surrounding the content of the legal agreement and lodged an appeal against non-determination of the application.

At appeal the Council did not object to the proposals subject to satisfactory planning obligations and imposition of the conditions recommended by the Council. Following extensive discussions with the appellant a Unilateral Undertaking that was considered to be acceptable to both Cherwell District Council and Oxfordshire County Council was submitted as part of the appeal together with a list of agreed conditions.

The Inspector duly concurred with the Council that the appeal proposals were consistent with Policy Banbury 17 (both in principle and elements of detail) and in turn allowed the appeal and confirmed that all of the planning obligations were lawful and had full effect. The vast majority of the conditions recommended by the Council were also imposed on the planning permission. The planning permission together with the associated planning obligations secures the section of new link road and its delivery by the occupation of 150 dwellings as well as on-site sport and recreation facilities, contributions towards education and community infrastructure to be provided on the wider Banbury 17 site as well as wider transport improvements.

- 3) Allowed the appeal by Midcounties Co-Operative Society and Cantay Estates Limited against the refusal of planning permission for the erection of new buildings off Sterling Road Approach to contain 46 x 2 bedroom flats, conversion of offices above existing retail store to form 8 x 2 bedroom flats, and alterations to existing retail store. Construction of new accesses, car parking, service and turning areas and landscaping. CO-OP, 26 High Street, Kidlington, OX5 2DH. 15/01872/F (committee).**

The application had been refused on two main grounds and the Inspector consequently said that the principal issues were (i) whether the proposal would meet the policy requirements of Kidlington Policy 2 of the CLP 2031 Part 1 and the Kidlington Framework Masterplan to strengthen and regenerate the village centre, and (ii) whether the proposal makes adequate provision for the necessary supporting infrastructure, including affordable housing.

On the first issue the Inspector noted that Policy Kidlington 2 states that residential development will be supported in appropriate locations in the village centre except where it would lead to a loss of retail and other main town centre uses. He also noted that the NPPF recognises that residential development can play an important role in insuring the vitality of centres. Policy Kidlington 2 states that the change of use of sites used for main town centre uses in the village

centre for residential development will normally be permitted if proposals contribute significantly to its regeneration. The Inspector concluded that in respect of meeting the terms of Policy Kidlington 2 the evidence persuaded him that the 44 new residential units on the existing car park would contribute significantly to the regeneration of the centre by helping boost its vitality and providing revenue to existing commercial uses. He also found that whilst the proposal would result in the loss of retail and office floorspace it would retain the primary shopping frontage towards the High Street and therefore that the proposal complied with that Policy.

With regards to the Kidlington Framework Masterplan the Inspector argued that this proposal is of a use that the Masterplan suggests, and that the NPPF is not prescriptive. He gives only limited weight to the Council's allegation that the scheme would conflict with the aspirations of NPPF, and the necessary connectivity through the site, because of the absence of a more detailed Masterplan for the village centre. The Inspector also gave limited weight to the argument that we deployed about the need to ensure that Kidlington village centre will need to meet the needs of a growing population that may come about as a function of the proposals contained in the CLP Part 1 Review. In the Inspector's opinion this could be resolved through CLP Part 2.

In respect of the second issue, this turned on the viability of the scheme. Both appellant and the Council provided updated evidence in respect of that which had been available to officers and Members at the application stage. The parties differed over the sales values of the flats created and the construction costs. On values the Inspector concluded that current economic uncertainty and fiscal changes might dampen the price levels gained for the flats and he was not persuaded to reject the appellant's estimates. On construction costs he concluded that the small level of variance provided insufficient basis for him not to accept the appellants assessment of costs and therefore of viability. As a result of this assessment the unilateral undertaking provides 3 units of affordable housing.

Whilst this decision on affordable housing and infrastructure funding is unfortunate it is not considered to set a precedent for anything other than cases of redevelopment on high land value sites – e.g. in this case retail use in a commercial centre location as they are generally only acceptable in such locations as part of mixed use schemes. In this case the existing use value of the site was particularly high. This decision should not affect future negotiations on other village centre sites in Kidlington or in our town centres, or indeed on green field sites.

In terms of the effect upon the Kidlington Framework Masterplan it is noticeable that the Inspector afforded it little weight due to the absence of a village centre Masterplan and because the existing document was not prescriptive of the layout of land uses etc. This needs to be corrected as soon as other pressures on policy formulation allow, to avoid other proposals in the village centre having to be determined in a similar policy absence.

Based on the assessment above, the appeal was allowed subject to the legal undertaking and conditions.

**4) Dismissed the appeal by Mr Smith against the refusal of outline planning permission for the development of existing domestic tennis court, stable and land to provide new residential dwelling and associated parking and amenity areas. Land Adj to Ridgeway House, Hogg End, Bloxham. 16/02334/OUT (delegated).**

This appeal related to refusal of outline planning permission for the redevelopment of an existing domestic tennis court, stable and land to provide a new residential house and associated parking and amenity areas. Access was the only matter for consideration at outline stage.

The Inspector considered that the main issues were the principle of development and the impact on the character and appearance of the area.

The appeal site is currently used as an area of paddock and a tennis court serving a dwelling on Hogg End, whilst the site itself would be accessed from The Ridgeway.

With regard to the principle of development, the Inspector considered that the site was located outside of the built-limits of Bloxham and that there was no evidence that the proposal would comply with the restrictions set out in saved Policy H18 of the CLP 1996. The Inspector considered that H18 is more restrictive than Paragraph 55 of the NPPF, as it does recognise that rural housing can contribute to sustainable development where it would enhance or maintain the vitality of rural communities and therefore only moderate weight was given to this policy. The Inspector considered that the proposal would also conflict with Policies ESD1 and Villages 1 of the CLP 2031 Part 1 and that the failure to comply with the Development Plan meant that the proposal would not be sustainable development.

With regard to the impact on the character and appearance of the area, the Inspector considered that the site related more to the surrounding countryside than the residential development on Hogg End and that the site made an important contribution to the rural setting of Bloxham. The Inspector considered that the dwelling would appear inconsistent with the existing pattern of development and the domestic paraphernalia associated with a residential use would add to this harm.

The Inspector recognised that there were benefits to the proposal, however these did not outweigh the harm caused and the conflicts with the Development Plan. The appeal was dismissed.

**5) Dismissed the appeal by Mr Bart Dalla Mura against the refusal of prior-approval for the conversion of agricultural building into a dwellinghouse. Field Barn, Epwell Ground Farm, Shutford Road, Epwell. 17/00532/Q56 (delegated).**

The appeal related to the refusal of a prior approval application for the conversion of an agricultural building into a dwelling (change of use only).

The Inspector identified the main issues to be whether the proposal would be permitted development under the provisions of the GPDO and if it is, then whether prior approval is required.

The prior approval application was refused for four reasons: that insufficient information was provided to demonstrate that the proposal meets the criteria of paragraphs Q.1 (a), (b), (c), (d), (e), or (f); that insufficient information has been submitted to demonstrate that the existing building is capable of conversion under paragraph Q.1 (i); that the actual curtilage exceeds that of the original building and that identified under Paragraph X; and that the proposal represent an impractical and undesirable location.

Reason 1 – the Inspector agreed that insufficient information had been provided to establish that the proposal meets the criteria of Q.1 (b), (c) and (f).

Reason 2 – the Inspector concluded that the applicants had only applied for the change of use and therefore the buildings capability of conversion was not a consideration (despite the condition of the building).

Reason 3 – the Council did not contest this reason (relating to the curtilage) as previous Inspectors have concluded that this issue can be dealt with by way of a condition. As such, the Inspector did not consider this issue.

Reason 4 – Given that the Inspector’s conclusion in respect of the first reason for refusal, they did not need to consider the practicality of the location.

Having regard to the above, the Inspector concluded that the appeal should be dismissed.

### **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**

Councillor Colin Clark



## Document Information

<b>Appendix No</b>	<b>Title</b>
None	
<b>Background Papers</b>	
None	
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