

# Cherwell District Council

## Planning Committee

23 August 2018

### Appeals Progress Report

#### Report of Assistant Director Planning Policy and Development

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 **18/00228/F – 107 Middleton Road, Banbury, OX16 3QS.** Appeal by Mr J Kent-Baguley against refusal of planning permission for Sub-division of existing 4 flats into 7 individual self-contained units (part retrospective)
- 2.2 Forthcoming Public Inquires and Hearings between 23 August and the 20 September 2018.

None

#### 2.3 Results

Inspectors appointed by the Secretary of State have:

1. **Dismissed the Appeal by Gallagher Estates, Charles Brown And Simon Digby for OUTLINE - Residential development of up to 180 dwellings to include affordable housing, public open space, localised land**

**remodelling, compensatory flood storage and structural planting. Part  
Land On The North East Side Of Gavray Drive, Bicester – 15/00837/OUT  
(Committee)**

Following a Public Inquiry in June the appointed Inspector identified the main issue as whether the appeal proposal accords with the requirements of the Cherwell Local Plan and relevant national planning policy and guidance, with particular regard to a) the necessity for a comprehensive development proposal for the wider allocation site and b) its effect upon, and the future management of, the Gavray Meadows Local Wildlife Site.

He concludes that

“53. Bicester 13 very clearly expects development proposals for Gavray Drive to address a range of requirements, which are quite deliberately, and without equivocation, applied to the allocation site as a whole. It is evident that this is in order to secure ecological enhancements in tandem with housing delivery, having regard to the entire site context.

54. The appeal proposal attempts to address Local Plan policy requirements on a small piece of the allocation site. In my judgement, however, by considering part of the site in isolation it very clearly falls short of what is required by adopted development plan policy. This would give rise to adverse impacts upon ecological interests and fails to demonstrate with any degree of certainty how a central plank of Bicester 13 would be delivered.

55. It is not unusual for large allocation sites to be developed in phases, but those phases are in the context of coherent site wide planning. Taking the appellants’ arguments to their logical conclusion, one could carve the allocation into discrete parcels, and submit standalone applications for residential development upon each of them, claiming to comply with Bicester 13 solely in the context of those parcels, without ever having to deliver what are clearly allocation wide requirements. This would serve to hollow out the policy, the clearly articulated ambitions of which would fall by the wayside.

56. I conclude, therefore, that the appeal proposal fails to accord with the requirements of the Cherwell Local Plan and relevant national planning policy and guidance, with particular regard to a) the necessity for a comprehensive development proposal for the wider allocation site and b) its effect upon, and the future management of, the Gavray Meadows Local Wildlife Site. It would conflict with Local Plan policies Bicester 13, ESD 10 and ESD 11, the requirements of which are set out above”.

The Inspector then considered the matter of land supply and indicates that the proposal would deliver a reasonable amount of both market and affordable housing, but whilst he affords moderate weight to that he notes the Council’s undisputed five year land supply.

Having performed the planning balance his overall conclusion is that “The appeal proposal is clearly in conflict with the development plan when taken as a whole. This is a matter that attracts very significant weight against the scheme. Government planning policy seeks to boost significantly the supply of housing. It also firmly favours a plan-led system. In these circumstances there

is not, in my judgement, a body of material considerations powerful enough to override the appeal proposal's conflict with the adopted development plan."

**2. Dismissed the Appeal by Land Group (Banbury) Ltd for Outline application 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. Caravan Park, Station Approach, Banbury, OX16 5AB – 17/01233/OUT (Committee)**

The Inspector considered that the main issues were

- i. Whether the proposal would prejudice the development of other sites in the Canalside regeneration area including infrastructure links
- ii. Whether the development provides a safe and suitable access
- iii. Infrastructure requirements

On the first matter he concluded that the principle of the residential development of the site is acceptable and would be in general accord with Policy Banbury 1. He said however that the absence of a specific SPD for the Canalside area is not a reason why planning permission should be delayed or withheld for an otherwise acceptable development and that whilst he understood some of the Council's concerns about the illustrative layout that these could be dealt with at reserved matters stage.

On the access issue he agreed with the Council that the access arrangements proposed were not suitable for the intensification of use that would result from the development in particular because of the lack of width for the shared surface access way. He therefore concluded that a safe and suitable access was not proposed and that the scheme should be refused on that basis.

With regards to infrastructure contributions the appellants had submitted a Unilateral Undertaking. This document had a technical fault and therefore the Inspector did not give it any weight. However, he did comment on the acceptability of the various contributions offered. He found that the appellants offers concerning affordable housing, canal path upgrade, cemetery provision, footbridge contribution and waste collection would have been justified and satisfactory. With regards to the other contributions offered he found himself unable to comment as there was insufficient information on infrastructure requirements. A main plank of the Council's case against the proposal was that in the absence of a SPD for Canalside it was not possible to establish a fair and equitable infrastructure contribution that individual sites should be making because the extent of the overall infrastructure needs of the regeneration area had not yet been established. The Inspector found this approach untenable. He said that whilst he agreed that it would be desirable to consider the wider infrastructure requirements as part of the overall Canalside regeneration area he did not consider that to be an essential criteria, and that the development must be assessed on its individual merits.

Therefore whilst the appeal was dismissed it was only successful on access reasons. The Council is in receipt of a further application on an expanded site (taking in land to the north) with an improved access arrangements (18/00293/OUT). That application has been the result of further recent discussions in the light of the appeal decision and will be reported to the next Committee.

### **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:

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

Appendix No	Title
None	
Background Papers	
None	
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