

Cherwell District Council

Planning Committee

19 September 2019

Appeals Progress Report

Report of Assistant Director Planning 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

2.1 New Appeals

19/00444/F – 2 Boxhedge Terrace, Boxhedge Road, Banbury, OX16 0BX -
Erection of single storey porch (Retrospective)

19/00596/OUT – Land to the West of Northampton Road, Weston On The Green - Residential development of up to 18 dwellings with associated access, internal roads, car parking, public open space, landscaping, drainage and other associated infrastructure.

18/02079/F - 59 West End, Launton, Bicester, OX26 5DG - Conversion of pool house into a two-bedroom dwelling (existing unauthorised) (revised scheme of 17/01008/F)

19/00910/F - OS Parcel 6091 East Of Duiker House, Fencott, OX5 2RD -
Erection of 1no single storey dwelling and ancillary carport/garden workshop

2.2 New Enforcement Appeals

None

2.3 Appeals in progress

17/01962/F - OS Parcel 9635 North East Of HM Bullingdon Prison, Widnell Lane, Piddington - Appeal by Mr H.L Foster against the refusal of Planning Permission for the material change of use of land to use as a residential caravan site for 6 gypsy families, each with two caravans, including improvement of access and laying of hardstanding.

Method of determination: Public Inquiry

Key Dates

Start Date: 04.09.2018 **Inquiry Date:** 29.07.2019 **Decision:** Awaited

18/00792/OUT - Land At Tappers Farm, Oxford Road, Bodicote, Banbury, OX15 4BN - Outline application (all matters reserved except for access) for the demolition of existing buildings and erection of up to 46 no dwellings, with associated works and provision of open space

Method of determination: Hearing – Wednesday 4th September

Key Dates:

Start Date: 20.06.2019 **Statement Due:** 25.07.2019 **Decision:** Awaited

18/01332/F - Land West Of M40 Adj To A4095, Kirtlington Road, Chesterton – Appeal by Mr C Smith and Mr R Butcher - Change of use of land to use as a residential caravan site for 3 gypsy families, each with two caravans and an amenity building; improvement of existing access, construction of driveway, laying of hardstanding, installation of package sewage treatment plant and acoustic bund

Method of determination: Public Inquiry

Key Dates:

Start Date: 29.01.2019 **Inquiry date:** 15.10.2019 **Decision:** Awaited

18/01727/F – 126 Churchill Road, Bicester, OX26 4XD - Externally re-clad and re-image an existing office and the attached industrial brick factory, storage and distribution unit. This includes splitting the existing industrial unit into 5 separate areas with additional DDA access and Accessible WC provision to all areas.

Method of determination: Written Reps.

Key Dates:

Start Date: 02.07.2019 **Statement Due:** 06.08.2019 **Decision:** Awaited

18/01822/F - Bicester Service Station, Oxford Road, Bicester, OX26 1BT - Re-development of the existing service station including the retention of the existing petrol filling station (PFS) and kiosk; demolition of existing restaurant building and construction of a drive-thru coffee-shop; construction of a restaurant building on land currently used for HGV parking; associated parking provision; retention of existing vehicular access from Oxford Road and reconfiguration of internal access routes to serve the development; creation of separate pedestrian/cycle access; all associated engineering and landscape works - re-submission of 17/01967/F

Method of determination: Written Reps.

Key Dates:

Start Date: 24.06.2019 **Statement Due:** 29.07.2019 **Decision:** Awaited

18/01841/F - 22 Campbell Close, Bicester, OX26 6RY - Demolition of part of existing house and garage and erection of new two-bedroom dwelling (re-submission of 18/00402/F)

Method of determination: Written Reps.

Key Dates:

Start Date: 09.07.2019 **Statement Due:** 13.08.2019 **Decision:** Awaited

18/01894/OUT - OS Parcel 4300 North Of Shortlands And South Of High Rock, Hook Norton Road, Sibford Ferris, Oxfordshire, OX15 5QW - Outline planning permission with all matters reserved for up to 25 dwellings with associated open space, parking and sustainable drainage

Method of determination: Hearing – Wednesday 25th September

Key Dates:

Start Date: 23.07.2019 **Statement Due:** 27.08.2019 **Decision:** Awaited

19/00163/F - Part Land East And Adj To Roundabout At Junction Of Bicester Road, Launton - Erection of accommodation building and associated ancillary external works to accommodate gas fuelled demand response electric generation facility to support the National Grid.

Method of determination: Written Reps.

Key Dates:

Start Date: 30.04.2019 **Statement Due:** 04.06.2019 **Decision:** Awaited

19/00231/Q56 - Brockford Farm Agricultural Building, Tadmarton Heath Road, Hook Norton, OX15 5BU - Change of use of building and curtilage from agriculture to single dwellinghouse with associated physical works.

Method of determination: Written Reps.

Key Dates:

Start Date: 26.07.2019 **Statement Due:** 30.08.2019 **Decision:** Awaited

Enforcement appeals

None

- 2.3 Forthcoming Public Inquiries and Hearings between 20 September and 24 October 2019

18/01894/OUT - OS Parcel 4300 North Of Shortlands And South Of High Rock, Hook Norton Road, Sibford Ferris, Oxfordshire, OX15 5QW - Outline planning permission with all matters reserved for up to 25 dwellings with associated open space, parking and sustainable drainage

Hearing date – 25.09.2019

18/01332/F - Land West Of M40 Adj To A4095, Kirtlington Road, Chesterton – Appeal by Mr C Smith and Mr R Butcher - Change of use of land to use as a residential caravan site for 3 gypsy families, each with two caravans and an amenity building; improvement of existing access, construction of driveway, laying of hardstanding, installation of package sewage treatment plant and acoustic bund

Start date of Public Inquiry – Tuesday 15th October (Due to last 3 days)

2.4 Results

Inspectors appointed by the Secretary of State have:

1. Dismissed the appeal by Sharon Haddy & Mandy Borton for Erection of three residential dwellings. Land Adjacent And West Of Roba, Camp Road, Upper Heyford – 18/01436/F (Delegated)

The Inspector considered that the main issues were whether the principle of residential development is acceptable in the location and whether the proposal would preserve or enhance the character or appearance of the Rousham and Upper Heyford Conservation Areas.

The Inspector found that the site lay beyond the built-up limits of the village and the development would be contrary to Policy H18 of the Cherwell Local Plan 1996 and was is not in a location where infill and conversions would be acceptable under Policy Villages 1 of the Cherwell Local Plan 2011-2031. It was considered that the visual built edge of the village extended up to the appeal site but did not include it. The appeal proposal would encroach into the open countryside between Heyford Park and Upper Heyford and despite being outside the Zone of Coalescence it would fail to protect the intrinsic value of the countryside and would result in isolated new homes.

The site is located within the Rousham Conservation Area but outside the Upper Heyford Conservation Area. The Inspector considered that the development proposal would result in less than significant harm to the character of both Conservation Areas as it would introduce a tighter grain of development with a regular pattern and a prominent frontage which would erode the rural character of the surroundings which contributes positively to the setting of the Conservation Areas.

The Inspector concluded that whilst the public benefits of providing three dwellings, namely an increased population making use of village services and facilities as well as limited construction jobs, would not outweigh the harm identified and accordingly dismissed the appeal.

2. Dismissed the appeal by Mr G Noquet for Change of use from Class A4 (ACV Listed) to Class C3 dwellinghouse. The Pheasant Pluckers Inn, Burdrop, Banbury, OX15 5RQ – 18/01501/F (Committee)

The Inspector considered the main issues to be: (1) Whether it was demonstrated that the public house, as an Asset of Community Value (ACV), cannot be financially viable in the longer term; and (2) the effect of the proposed development upon locally and nationally designated heritage assets.

The Inspector noted the long planning history of the site and that the local community regarded the Pheasant Pluckers Inn as a valued facility; and that the value of the pub to the local community was evidenced in its designation as an Asset of Community Value (an ACV) and acknowledged in the 2012,

2013 and 2018 appeal decisions and further in representations submitted to the application and appeal which indicated continued support for retaining the facility.

The Inspector noted that sustainability and viability issues had been assessed in previous applications and appeals, with conclusions being drawn that there were insufficient grounds to conclude the pub would not be viable in the long term. The Inspector noted that the basis of the present appeal, and the application which preceded it, was the concluding remarks from the Inspector of the previous appeal, suggesting the community make a considered bid for the premises; but the Inspector also noted the lack of any new detailed expert evidence in respect of viability.

The Inspector discussed issues raised in representations during the application and appeal as to whether Localism Act 2011 and ACV Regulations 2011 had been adhered to; concluding that he did not have enough information before him to determine this. However, he noted that this matter was not a determinative test as to whether or not the pub is financially viable in the longer term.

The Inspector concluded that no meaningful evidence had been submitted by the appellant to demonstrate the pub is unviable in the longer term, and thereby agreed with the Council's position that it had not been demonstrated that the pub was not financially viable in the longer term and that the proposed development was contrary to Policy S29 of the CLP and Policy BSC12 of the CLPP1 and national policy guidance within the NPPF which seek to retain and enhance community facilities which serve the basic needs of the local community and guard against the unnecessary loss of valued and accessible facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs.

In respect of the impact on Heritage Assets, the Inspector noted the site's location within the Sibford Gower and Burdrop Conservation Area, that the building is identified as a Locally Significant Asset within the Conservation Area Appraisal (2012), and that there were a number of listed buildings in proximity to the site. The Inspector noted the changes that had already taken place at the site including the removal of pub signage, considering that the proposed change of use would have a small adverse effect upon the character and appearance of the Conservation Area, because of permanently losing a traditional focal point of the community. Further for the same reason it would result in a small amount of harm to its special architectural and historic interest as a Locally Significant Asset. The Inspector found no perceptible impact upon the significance of the listed buildings.

The Inspector concluded that, whilst acknowledging the 2018 Inspector's concerns about the size of the population of the villages to sustain a second pub, there was and still is a requirement on the appellant to demonstrate that the pub would not be viable in the long term. He found this had not been demonstrated and that the proposal conflicted with the Local Plan and the NPPF and that the adverse impacts of granting permission would significantly

and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole. The appeal was therefore dismissed.

3. Allowed the appeal by Gladman Developments Ltd for OUTLINE - Erection of up to 84no dwellings with public open space, landscaping and sustainable drainage system (SuDS) and vehicular access point from Merton Rd - All matters reserved except for means of access – 18/02056/OUT (Committee)

The Inspector noted that in the lead up to the Inquiry the Council had agreed the ecology refusal reason to have been adequately addressed and therefore considered the main issues to be: (1)

(1) whether the proposal would lead to an over-concentration of new housing development in Ambrosden which would undermine the Council's housing strategy and prejudice a more balanced distribution of housing growth, contrary to Cherwell Local Plan policy and policies in the National Planning Policy Framework (the Framework);

(2) the effect of the proposed development on the character and appearance of the surrounding area and on the significance of the Grade II* listed Church of St Mary the Virgin through change in its setting; and

(3) whether the proposal makes adequate provision for necessary infrastructure directly arising from its development

The Inspector noted the agreement between the Appellant and the Council that Ambrosden lay outside of the area of the district proposed to meet Oxford's unmet need and which had been accepted in the LP Inspector's preliminary conclusions.

The Inspector noted the Appellant's acceptance that CDC could currently demonstrate both a 3 year and 5 year supply of deliverable housing land within the district.

The Inspector noted the Council's acceptance during the inquiry that there was only alleged conflict with LP policies cited within the refusal reasons and not, for instance, with BSC1.

Refusal Reason 1 – housing strategy

The Inspector was not convinced by the Appellant's evidence that the 750 figure in Policy Villages 2 (PV2) had no significance and noted that the Inspector who dismissed the Chesterton appeal (51 dwellings) considered "the use of figure of 750 in PV2 must have some form of constraining effect on total numbers, otherwise the policy would be meaningless in terms of its contribution towards the overall strategy of the plan".

However, he questioned "what planning harm would arise" from a breach of the 750 figure, and noted that PV2 did not contain any temporal dimension (i.e. when during the plan period housing should be delivered), no phasing element (i.e. apportionment of the 750 to years 1-5, 6-10, etc.) and no spatial

dimension (i.e. where the 750 should be delivered, other than at Category A villages).

The Inspector appears to have concluded that it is only where there is conflict with the criteria in the second half of PV2 that the Council's overall housing strategy will have been offended. This conclusion runs contrary to the findings of other Inspectors e.g. Kirtlington, Weston on the Green, Finmere, and Chesterton, to which the Inspector refers in detail (see above).

The Inspector found Ambrosden to be one of the most sustainable Category A Settlements and noted it was the fifth largest Cat A village in terms of population, and benefited from a range of services including pre-school nurseries, primary school, food shop, post office / general store, village hall, two churches, hairdresser's, public house, recreational facilities and a limited opening doctor's surgery, as well as having two bus services connecting to Bicester to Oxford and an off-road cycle path connecting the village to Bicester. The Inspector considered that employment development on the edge of Bicester was "within ready cycling distances". The Inspector concluded that "against a background of no spatial apportionment of additional housing between Category A villages" there was no issue with Ambrosden taking 25% of all PV2 development.

The Inspector disagreed with the Council that PV2 responds to a recognised need to meet rural housing need, despite the text in supporting paragraph C.272: *"In the interests of meeting local housing need in rural areas, an allocation is also being made to enable the development of some new sites (for 10 or more dwellings) in the most sustainable locations..."* The implication seems to be that this should be reflected in the wording of the policy itself.

The Inspector noted that his colleagues had expressed concerns in the various other appeal decisions (Kirtlington, Weston on the Green, Finmere, Fringford, etc.) regarding those appeal proposals contributing to unconstrained growth but opined that those decisions were made at a time when the 750 breach was "hypothetical". This appeal proposal will result in *actual* (rather than hypothetical) exceedance of the 750.

The Inspector considered that, *"the Council [had] demonstrated how in its own right allowing the appeal would lead to the undermining of the Council's overall housing rebalancing strategy contrary to the intent of Policy PV2. The purpose of limiting growth within the rural 'rest of the district' is not an end in itself but is intended to ensure delivery of the rebalancing strategy of an urban focus of new development in Banbury and Bicester. I find that agreeing to the proposal need not make the maintenance of its strategy materially more difficult."* However, the Inspector does not explain how this is so.

Refusal Reason 2 - Character and appearance and impact on heritage assets

The Inspector found that the proposal would result in some harm arising from the *"transformative effect"* of the change from open countryside to built development, but that the site did not have any *"readily perceptible associated*

landscape or visual qualities” and that it was part of *“a pleasant but unremarkable rural landscape”*. He concluded the site as having *“comparatively lesser environmental value”*.

The Inspector found that the proposal would have a *“moderate adverse”* impact both on the local landscape and on views of St Mary’s Church, and that impacts on the latter would be *“substantially adverse”* in the early stages of the development until landscaping had matured.

The Inspector noted that the proposal would result in a significant extension of the village to its south-western side but that was not objectionable in itself, partly because of the development at Ambrosden Court.

The Inspector concluded that through careful attention to layout, design, external appearance and landscaping, development of the site could be designed as not to have *“any significant adverse impact on the character and appearance of its surroundings”* and that the overall impact on the significance of the church was *“very minor”*.

Refusal Reason 3 - Provision for necessary infrastructure

The Inspector noted the provision in the signed unilateral undertaking in relation to outdoor and indoor sports, community facilities, waste and recycling, management of open space and SuDS, affordable housing, biodiversity offsetting, bus service improvement, capacity enhancement of the junction of Ploughley Road and the A41, primary school expansion and travel plan monitoring. The Inspector disagreed with the Council with regarding to the necessity of a payment towards the costs of provision of a footpath link to footpath 295/7 to the south-west of the site.

Other matters

The Inspector referred in particular to the concern raised at the inquiry by local residents in relation to the nature of the footpath link along Merton Road into the village. He noted the narrowing ‘pinch point’ in the footway adjacent to Holly Tree Cottage caused by the presence of telegraph poles. The Inspector noted the non-compliance with Condition 12 of the Ambrosden Court development which would address the issue and found that the matter could be satisfactorily addressed through condition of permission here.

The Inspector found the proposal acceptable in relation to flooding, drainage and light pollution. The Inspector noted the Parish Council survey of village residents in relation to the appeal proposal but found the response rate of 66 *“relatively low and not indicative of widespread concern about the proposal”*.

Conclusion

The Inspector found *“no conflict with the thrust and intent of Policy PV2”*, some limited degree of landscape and visual impact and some harm to the significance of the Grade II* listed church but concluded that the proposal would not harm the setting of Ambrosden or be inconsistent with local

character. He remarked on the locally widening gap in the ratio of house prices to earnings and gave “*significant weight*” to the need to address affordability ratios in Cherwell district as well as “*moderate weight*” to the benefit of significantly boosting the supply of homes and “*modest weight*” to biodiversity and potential for improvement in terms of run-off rates.

Overall the Inspector concluded that the proposal was a sustainable form of development and accordingly allowed the appeal.

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:

Kelly Wheeler, Business Partner, 01295 225170,
Kelly.wheeler@cherwell-dc.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:

David Mytton, Solicitor, For and on behalf of Nick Graham, Director of Law and Governance and Monitoring Officer
David.Mytton@Oxfordshire.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:

David Mytton, Solicitor, For and on behalf of Nick Graham, Director of Law and Governance and Monitoring Officer
David.Mytton@Oxfordshire.gov.uk

6.0 Decision Information

Wards Affected

All

Links to Corporate Plan and Policy Framework

A district of opportunity

Lead Councillor

Councillor Colin Clarke

Document Information

| Appendix No | Title |
|---------------------|--|
| None | |
| Background Papers | |
| None | |
| Report Author | Sarah Stevens, Interim Senior Manager, Development Management |
| Contact Information | sarah.stevens@cherwell-dc.gov.uk |