

Application No: 10/00388/OUT	Ward: Banbury Easington	Date Valid: 08/04/2010
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Applicant:	A T Kimberley (Holdings) Ltd
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Site Address:	Land adjoining and north west of 35 Crouch Hill Road, Banbury
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Proposal: Renewal of 06/02499/OUT – Residential building land

1. Site Description and Proposal

1.1 Site

The 0.6 hectare site is situated to the north east of Crouch Hill Road in Banbury. It is quite heavily treed to the north and east with some open areas of grassland and foliage to the southern part of the site.

1.2 Proposal

This application seeks an extension of time limit for the implementation of the application 06/02499/OUT which granted planning permission for residential building land in outline only with all matters reserved. The previous committee report is attached at appendix A and due to the nature of this application, the detail of the proposal is not repeated in this report. It should be noted that at the time of the previous application, the applicant considered that the land would be suitable for 25 – 30 dwellings.

1.3 Relevant Planning History

Various planning applications have been granted consent since 1949 for the development of the site for residential development in some form, however none of these have been implemented. Planning application CHN.224/74 for 32 flats was however refused due to over-development and poor parking provision.

2. Application Publicity

2.1 The application has been advertised by site notice, neighbour letter and press notice. The final date for comment was 20 May 2010. Two letters of representation have been received which raise the following issues:

- Loss of local amenity
- Parking problems
- Highway safety
- Drainage capacity
- Loss of trees
- How many houses?
- Where will services run?
- Will road be widened?
- Will all houses be built with garages?

3. Consultations

3.1 Banbury Town Council objects to the application stating that the Crouch Hill/Broughton Road Junction is already dangerous and additional traffic will make matters worse. Also concerned at the loss of amenity land.

3.2 Oxfordshire County Council Highway Authority raises no objection to the proposal, advising that the conditions attached to the previous application should be further recommended (formation of access, plan indicating parking provision, laying out and surfacing of roads, improvement of Crouch Hill Road).

3.3 The Council's Head of Urban and Rural Services has not yet commented in relation to the impact of the proposal upon the existing trees on the site.

3.4 The Council's Head of Building Control and Engineering Services raises no objection however requires the provision and maintenance of a sustainable drainage system for disposal of surface water from the site.

3.5 The Council's Head of Planning Policy states that the site presently contributes to the district's 5 year housing land supply as a site considered to be deliverable within the next 5 years. There are therefore no objections to the renewal of planning permission in principle. Please note that at the time of providing comments, the

district has less than a 5 year supply. Please be aware that not granting permission at this time would exacerbate this situation.

- 3.6 The Council's Head of Planning Housing and Economy notes that 30% affordable housing has been secured, however this does not indicate the types of units to be provided. This is not unsatisfactory and most of this detailing is scheduled to be dealt with under the reserved matters.
- 3.7 Natural England requires further information in relation to the impact of the development on Great Crested Newts which have been identified on an adjacent site.
- 3.8 Thames Water raises no objection to the proposal, however sets out the applicants responsibilities with regard to developing the site and recommends that petrol/oil interceptors be fitted in all car parking/washing/repair facilities in order to control oil polluted discharges entering local water courses.
- 3.9 The Council's Head of Recreation and Health requires a contribution towards an offsite community facility in the surrounding area and a contribution towards outdoor and indoor sports per dwelling, on site open space and an on site LAP. New financial figures are referred to.
- 3.10 Oxfordshire County Council Developer Funding Officer requires developer contributions towards libraries, day resource care centre for the elderly, waste and recycling, museums and adult learning.
- 3.11 The Council's Head of Environment and Community states that as this is a potentially contaminated site and a sensitive development is proposed, the full phased contaminated land condition is recommended.

4. Relevant Planning Policies

National Policy Guidance -	Documents	PPS1 – Delivering Sustainable Development PPS9 – Biodiversity and Geological Conservation PPG13 – Transport
South East Plan 2009 -	Policies	CC6 – Sustainable communities and the character of the environment H5 – Housing design and density BE1 – Management for and urban renaissance NRM5 – Conservation and improvement of biodiversity T1 – Achieving sustainable pattern of development T4 - Parking
Adopted Cherwell Local Plan 1996	Saved Policies	C1 – Protection of site of nature conservation value C2 – Development affecting protected species C31 – Compatibility of proposals in residential areas

5. Appraisal

5.1 Extension of Time Limit Applications

An extension to the time limit for implementing planning permission is a new procedure designed to make it easier to keep planning permissions alive for longer during the economic downturn. It grants a new permission for the development authorised by the original permission but differs from an ordinary planning permission in terms of the amount of information required to be submitted by the applicant, the consultee requirements and the fee. It is still considered against the development plan and material considerations under s.38(6) of the 2004 Act. As the application has been previously approved, this application is to be assessed in terms of whether any material change in circumstances have occurred since the last permission which would lead the Council to form a different opinion thereby altering the decision. Where a s106 agreement relates to the land, the Communities and Local Government (CLG) Guidance recommends that a short supplementary deed be prepared and signed which links the new application to the previous obligation.

5.2 Changes to Planning Policy since Approval of Previous Application

With regard to the development plan, the Oxfordshire Structure Plan 2016 is no longer in force and instead, the South East Plan Regional Spatial Strategy for the

South East of England May 2009 is now a material consideration. Relevant policies G2, EN2, and T8 are replaced by policies CC6, H5, BE1, NRM5, T1 and T4 none of which significantly alter the position which would materially affect the outcome. Furthermore, some of the adopted Cherwell Local Plan Policies have not been saved. TR2 is no longer a material consideration. Instead, Policy T4 of the South East Plan is relevant, which again does not significantly alter the Council's position in relation to the application.

5.3 New Material Considerations to be Taken into Consideration

Referring to this extension of time limit application, the documents that are being considered are identical to those submitted with the previous application (06/02499/OUT). Having visited the site there appear to be no on site material changes in circumstance. However since the previous planning application was approved, it should be noted that the residential development at Claypits Close for 18 dwellings has been implemented (accessed from Broughton Road close to the Crouch Hill Road/Broughton Road junction). In terms of planning policy and guidance up to date consultation responses have been received in relation to protected species, contaminated land and developer contributions.

Protected Species

A material consideration that does however require up-to-date assessment under the Wildlife and Countryside Act is the impact of a development upon protected species and their habitats. Great Crested Newts, which are a protected species, have been identified on an adjacent site. Natural England refers to the Ecological Survey Report which identified the newts, which was submitted with the previous application and requires further information from the applicant to satisfy three tests which are required to be met under Regulation 53 of the Habitats Regulations. Further information is also required which sets out how Great Crested Newts fit into the wider management regime of the Informal Open Area. The applicant has provided further information in response to Natural England's comments and the further comments of Natural England are awaited.

Contaminated Land

Where occurrences of natural contaminants and the possibility of contamination from former uses are identified, it is now the Council's policy to ensure that any risk of contamination is identified and mitigated against. In this case, the Council's Head

of Environment and Community has identified that the site has the potential to be contaminated and therefore appropriate conditions are recommended below in order to address this if discovered on site.

Requests for Developer Contributions

With regard to the consultation responses above, whilst some requests have been made for financially up-to-date developer contributions, these cannot be reasonably required given the existing s106 which relates to the land and the CLG guidance referred to above. The existing s106 agreement secures the following: affordable housing, provision and maintenance of children's play space and amenity space, contributions towards offsite indoor and outdoor sports, libraries, social and healthcare waste management and recycling, Museum Resource Centre, the cost of fire hydrants, additional sum of £406 for the 24th and every subsequent dwelling, the Banbury Integrated Transport Land Use Study, bins and recycling facilities and monitoring fees for both the district and County Councils. This agreement covers everything that has been requested in relation to this extension of time limit application, albeit at slightly different financial values in some cases, however as application is for an extension of time limit, it would not be reasonable to alter the clauses of the s106 agreement. HDCMD is currently awaiting advice from the Head of Legal and Democratic Services as to how this application should be linked to the existing s106 agreement.

Highway Safety

With regard to highway safety and despite the development of Claypits Close, the Local highway Authority raises no objections to the proposal subject to the relevant conditions as referred to above.

Third Party Comments

The comments of the third parties (including the Town Council) are noted, however as the application is for an extension of time limit only, the principle of the development is considered to be acceptable and although there have been some changes to the material considerations, these have been assessed above and do not alter the HDCMD's recommendation in relation to the development.

All other material considerations remain as previously assessed.

5.4 Conclusion

Given the above assessment, it is concluded that there have not been any material changes in circumstances on the site since the last permission was issued. However given the requirements set out in Regulation 53 of the Habitats Regulations, further assessment of the impact of the proposal upon Great Crested Newts is required. The documents submitted with this application are identical to the scheme which was approved in outline. The proposed scheme remains to be in accordance with Government Guidance and the Council's Development Plan in principle as it meets sustainable objectives and would be developed at an appropriate density within an existing residential area. The proposal would not result in a risk to highway safety and would result in securing developer contributions towards Local Infrastructure. Subject to the final comments of Natural England and the comments of the Council's Head of Rural and Urban Services and Head of Legal and Democratic Services, the application to extend the time limit of the previous application is recommended for approval.

6. Recommendation

Approval subject to:

- I. **Linking this application to the existing s106 application relating to the site (advice awaited from the Head of Legal and Democratic Services)**
- II. **The comments of Natural England**
- III. **The comments of the Council's Head of Urban and Rural Services in relation to the impact of the proposal upon the trees in the site**
- IV. **The following conditions and planning notes:-**

CONDITIONS

Conditions 1 – 15 of 06/02499/OUT (change policies)
and the following additional conditions:

16. Prior to the commencement of the development hereby permitted a desk study and site walk over to identify all potential contaminative uses on site, and to inform the conceptual site model shall be carried out by a competent person and in accordance with DEFRA and the Environment Agency's '*Model Procedures for the Management of Land Contamination, CLR 11*' and shall be submitted to and approved in writing by the Local Planning Authority. No development shall take place until the Local Planning Authority has given its written approval that it is satisfied that no potential risk from contamination has been identified.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite

receptors in accordance with Policy ENV12 of the adopted Cherwell Local Plan and PPS23: Planning and Pollution Control.

17. If a potential risk from contamination is identified as a result of the work carried out under condition 16, prior to the commencement of the development hereby permitted, a comprehensive intrusive investigation in order to characterise the type, nature and extent of contamination present, the risks to receptors and to inform the remediation strategy proposals shall be documented as a report undertaken by a competent person and in accordance with DEFRA and the Environment Agency's '*Model Procedures for the Management of Land Contamination, CLR 11*' and submitted to and approved in writing by the Local Planning Authority. No development shall take place unless the Local Planning Authority has given its written approval that it is satisfied that the risk from contamination has been adequately characterised as required by this condition.

Reason: as above (this is a suggested model reason)

18. If contamination is found by undertaking the work carried out under condition 17, prior to the commencement of the development hereby permitted, a scheme of remediation and/or monitoring to ensure the site is suitable for its proposed use shall be prepared by a competent person and in accordance with DEFRA and the Environment Agency's '*Model Procedures for the Management of Land Contamination, CLR 11*' and submitted to and approved in writing by the Local Planning Authority. No development shall take place until the Local Planning Authority has given its written approval of the scheme of remediation and/or monitoring required by this condition.

Reason: as above

19. If remedial works have been identified in condition 18, the remedial works shall be carried out in accordance with the scheme approved under condition 18. The development shall not be occupied until a verification report (referred to in PPS23 as a validation report), that demonstrates the effectiveness of the remediation carried out, has been submitted to and approved in writing by the Local Planning Authority.

Reason: as above

20. Except where otherwise stipulated by condition, the application shall be carried out strictly in accordance with the following plans and documents: Site Location Plan, Interim Protected Species Report (Sept 2008)

Reason: For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and to comply with Policy BE1 of the South East Plan 2009.

PLANNING INFORMATIVES

Planning Notes 1 and 2 of 06/02499/OUT
And the following additional planning notes

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SUMMARY OF REASONS FOR THE GRANT OF PLANNING PERMISSION AND

RELEVANT DEVELOPMENT PLAN POLICIES

The Council, as local planning authority, has determined this application in accordance with the development plan unless material considerations indicated otherwise. The development is considered to be acceptable on its planning merits as the proposal is acceptable in principle and pays proper regard to the character and appearance of the site and surrounding area and has no undue adverse impact upon the residential amenities of neighbouring properties, protected species or highway safety. As such the proposal is in accordance with the Guidance contained within PPS1, PPS9, PPG13. Policies CC6, BE1, NRM5, T1 and T4 of the South East Plan 2009 and Policies C1, C2 and C31 of the Adopted Cherwell Local Plan. For the reasons given above and having proper regard to all other matters raised the Council considered that the application should be approved and planning permission granted subject to appropriate conditions as set out above.

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