

WEST OXFORDSHIRE DISTRICT COUNCIL
LOWLANDS AREA PLANNING SUB-COMMITTEE:
MONDAY 11 JUNE 2018

OUTLINE APPLICATION FOR UP TO 50 DWELLINGS (CLASS C3) ON LAND
SOUTH WEST OF CHARLBURY ROAD, HAILEY

APPLICATION NO. 17/00992/OUT

REPORT OF THE HEAD OF PLANNING AND STRATEGIC HOUSING
(Contacts: Phil Shaw, Tel: (01993) 861687; or Chris Wood, Tel: (01993) 861677)

(The decisions on this matter will be resolutions)

1. PURPOSE

To consider what decision the Sub-Committee would have reached in relation to this application had an appeal not been lodged by the applicant against non-determination. The application (ref. 17/00992) seeks outline planning permission for up to 50 dwellings (Class C3) with means of access from Charlbury Road, with all other matters (layout, scale, appearance and landscaping) reserved at land to the south-west of Charlbury Road, Hailey).

2. RECOMMENDATIONS

- (a) That the Sub-Committee determines whether it would have resolved to approve or refuse the application; **AND**
- (b) In the event that the Sub-Committee determines that that it would have resolved to approve the application to agree draft conditions that it would have imposed; **OR**
- (c) If the Sub-Committee determines that that it would have resolved to refuse the application to agree an indicative set of reasons for refusal that it would have relied upon.

3. BACKGROUND

- 3.1. Application 17/00992/OUT seeking outline planning permission for up to 50 dwellings (Class C3) with means of access from Charlbury Road, with all other matters (layout, scale, appearance and landscaping) reserved at Land South West of Charlbury Road, Hailey was received by the Council.
- 3.2. The application was the subject of a report to the December meeting that had to be cancelled because of the snow and a further report that was presented to the 15 January meeting of the Sub-Committee, recommending approval subject to a legal agreement. However, this application was not considered by the Sub-Committee, with consideration of the application being deferred at the applicant's request, as confirmed in the relevant Minutes.
- 3.3. Members will note that the January meeting date was one day in advance of the letter from the LPI Inspector advising that the emerging local plan was likely to be found sound with its attendant consequences for the application of the 'tilted balance', status of emerging policies, weight to be attached to the maximum likely levels of shortfall against housing numbers etc that Members have become increasingly familiar with in recent months.

- 3.4. The applicants were invited to re cast their case against the revised policy/planning background but following exchanges of correspondence the applicant has decided to appeal against non- determination (NB instead of waiting for an application to be determined, an applicant can appeal on the grounds that the proposal in question is acceptable in planning terms, within six months of the application passing the statutory date for determination - in this case 13 weeks after it is received).
- 3.5. An appeal “start letter” has now been received in respect of this appeal, which has been given ref. APP/D3125/W/18/3202562 and is to be heard by public inquiry. The date of the inquiry is not yet known but the LPA’s “Rule 6 Statement of Case”, setting out its case in a clear but indicative form is due on 11 July 2018).
- 3.6. In order to set out its position in relation to this appeal within its statement of case, officers need to know the Sub-Committee’s view of the planning merits of the appeal proposal. In particular, they need to know whether the Sub-Committee would have approved or refused the application, if it was being determined today.
- 3.7. In this context, Members should have regard to the original January 2018 report which will be made available again for ease of reference and which *inter alia* summarises details of the proposal, responses from statutory and non-statutory consultees, representations received, the applicant’s case and relevant policies from the adopted and emerging Local Plans, before providing a planning assessment and overall conclusions.
- 3.8. Whilst this original report, as noted, recommended approval subject to a legal agreement, Members are advised to note the following in relation to any decision that they may take, with particular reference **to matters that have changed** since the 15 January 2018 report was written.
- The report’s recommendation was given on balance and with regard to the benefits of the proposed housing set against a housing land supply shortfall.
 - As set out at its paragraphs 5.46-5.48, the report stated:
 - 5.46 *In terms of restrictive policies of the NPPF, assessing harm and public interest/public benefit with regard to impact to heritage assets respectively suggests that the balance is in favour of granting consent.*
 - 5.47 *Given that the saved Local Plan 2011 Policies for the supply of housing are time expired, and the emerging Local Plan is yet to complete examination and adoption, the Council cannot currently definitively demonstrate a 5 year supply of housing. In this context, policies for the supply of housing are out of date and paragraph 14 of the NPPF is engaged. This requires that development is approved unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, subject to consideration of restrictive footnote 9 policies. Officers have applied the restrictive policies that pertain to heritage assets and have undertaken the planning balance. There is limited environmental harm in landscape and heritage terms. However, significant weight is attached to the social and economic benefit of the provision of new housing (in general terms), and in particular the required 40% affordable housing in this case. The economic benefits associated with the construction of new dwellings, and potential economic activity associated with new residents are acknowledged.*

5.48 On balance, it is considered that the harm arising from the proposal would not significantly and demonstrably outweigh the benefits. Accordingly, it is recommended that the application is approved subject to conditions and the completion of legal agreements.

- Since the report was written, the LPA has received the letter dated 16 January 2018 from the Inspector responsible for carrying out the examination in public (the EiP) into the emerging Local Plan (the eLP).
- This letter commented inter alia that the LPA had a 99.5% developable housing land supply (HLS) against its longer term requirements for the remaining eLP plan period (up to the end of March 2031) and that subject to further main modifications similar to those proposed in draft form by the LPA in September 2018 (in relation to which he proposed to liaise with the LPA on the detailed wording of some individual modified policies) and to a further period of consultation, he considered that the (modified) eLP is likely to be capable of being found legally-compliant and sound.
- The EiP Inspector has liaised with the LPA on the modifications as indicated in his 16 January letter and the further main modifications have been the subject of what the LPA hopes will prove to be a final period of consultation; and a summary of the consultation responses has been sent to the EiP Inspector.
- As a result, Officers take the view that generally greater weight can now be given to the (modified) policies of the emerging Local Plan;
- Among the more significant modifications to the eLP that are of relevance to this application:
 - Policy H2NEW has been amended to (a) include a staged housing requirement; (b) alter the wording of the locational requirements applying to undeveloped, unallocated sites adjoining the built up area of settlements (including the current appeal site); and (c) the General Principles relating to design have effectively been removed and relocated to policy OS2NEW
 - Policy OS2NEW now contains all the design General Principles for all new development (including housing)
 - Policy EH7 relating to heritage assets has been altered and a new policy EH8 relating to conservation areas has been added;
 - Policy EH3a has been added relating to contributions towards public open space
- Under emerging policy H2NEW (as modified), the proposal would be unacceptable in principle on an unallocated, undeveloped site on the edge of a settlement unless the applicants can provide convincing evidence to demonstrate that the proposal is necessary to meet identified housing needs.

NB: Policy H2NEW, *Delivery of New Homes*, states that for Main Service Centres, Rural Service Centres and **Villages**, ***New dwellings will be permitted at the main service centres, rural service centres and villages in the following circumstances:*** [including, with additions underlined and omissions ~~struck-out~~]

- On undeveloped land ~~within or~~ adjoining the built up area where convincing evidence is presented to demonstrate that it the proposed development is necessary to meet identified housing needs, and it is in

accordance with the distribution of housing set out in Policy H1 and is in accordance with consistent with the criteria in 3) below and other policies in this the plan in particular the general principles in Policy OS2.

- However it must be clearly acknowledged that whilst more advanced in its process several recent appeal decisions relating to major housing proposals in edge of settlement locations have not considered eLP policy H2 to be worthy of 'significant' weight, partly because there remain outstanding objections to it, including new objections that have arisen during the most recent period of consultation.
- Officers consider nonetheless that the EiP Inspector's letter indicates greater confidence that the LPA has a 5 year deliverable HLS;
- Despite this, Officers continue to believe that on a precautionary basis it remains appropriate to accept that the LPA cannot yet definitively demonstrate and 5-year HLS and that, accordingly it is appropriate to apply a tilted paragraph 14 balance where this applies;
- Where there is harm to designated heritage assets (such as the Hailey Conservation Area in this case), that harm should be classified as either "substantial" or "less than substantial" and the appropriate provisions of paragraphs 133 or 134 of the NPPF should then be applied in advance of any "tilted" paragraph 14 balance;
- No legal agreement has yet been provided by the applicant/ appellant that would provide the contributions towards infrastructure and services that Officers would regard as necessary were consent to be given to mitigate harm that would otherwise arise on local services/ infrastructure as a result of the proposed dwellings, when occupied.

3.9. Additionally, if the Sub-Committee determines that it would have resolved to refuse the application, Officers consider that it would be helpful at appeal to be clear in relation to the following matters:

- Whether or not the proposal would represent a logical extension to the pattern of development within the village (the report concludes that *It is considered that the use of the site for housing would represent a logical complement to the existing pattern of development in this location, subject to the precise siting of properties, and carefully designed height*

NB: in considering this issue, members may note that the application/ appeal site effectively adjoins open land on three sides and, as such could be considered an intrusion into the countryside surrounding the village and forming its setting.

- Whether the proposal would give rise to any significant harm to the Cotswolds AONB (officers remain of the view that it would not).
- Whether the proposal would give rise to any other sources of planning harm or benefit not referred to in the Sub-Committee report.
- Whether or not the proposal would represent an opportunity to provide a softer edge to the village (the Sub-Committee report suggests that this is possible given that *The existing edge of Hailey village is quite abrupt...*; and *The proposal includes a large area of open space on the higher contours that would lend itself to structural planting. Landscaping is a reserved matter.* NB in considering landscape impacts,

members may also wish to note the views of an Inspector in early 2010 relating to the proposed change of use of the former pumping station in Priest Hill Lane that adjoins the southern part of the current application site from a disused Thames Water site to travelling showman's quarters. That Inspector, in dismissing that appeal commented on the minor valley in which that site – and the current application/ appeal site – sits, stating inter alia: *In my view, the site is an important component of the attractive valley landscape. Although it is not the subject of any statutory designation, I can well understand the high regard in which it is held by some of the residents and Councillors who spoke at the Hearing.*

- Whether or not any harm that the Sub-Committee may conclude would arise to designated heritage assets or their setting (including any heritage harm to the setting of the Hailey conservation area and perhaps the spire of the listed Leafield parish church) would represent “substantial” or “less than substantial” harm (officers continue to suggest less than substantial harm would be the correct assessment);
- Whether or not the appropriate paragraph 133 or 134 balance (the second of which applies to less than substantial harm to designated heritage assets and requires the public benefits of a proposal to be assessed against the harm to those heritage assets seen in isolation) would fall in favour of the proposal;
- In the event that a paragraph 133 or 134 balance was either unnecessary or fell in favour of the proposal, whether any other harms that the Sub-Committee may conclude would arise from the proposal would significantly and demonstrably outweigh the overall benefits of the proposal under a paragraph 14 “tilted” balance (NB it would be helpful for the Sub-Committee to indicate its view in relation to a paragraph 14 balance, whatever its view on a possible 133/134 balance, in the event that the appeal Inspector may consider such a balance appropriate);
- Whether the Sub-Committee’s view on a possible paragraph 14 “tilted” balance depends on the extent of any shortfall in the LPA’s 5-year deliverable HLS.

NB: in considering any of the above balances, officers are strongly of the opinion that provision of housing has at least some significant economic and social benefits and provision of affordable housing has at least some very significant social benefits, irrespective of the HLS position.

4. ALTERNATIVES/OPTIONS

- 4.1. The Sub-Committee may determine that it would have resolved to approve; or to refuse the application; and may identify conditions that it would have imposed (which it may then recommend to the Inspector) or reasons for refusal that it would have relied upon accordingly.
- 4.2. As a further alternative, the Sub-Committee may if they consider the scheme acceptable leave the matter of appropriate conditions to recommend to the Inspector (who will ultimately be responsible for imposing conditions if the appeal is not dismissed) to officers, as is usually the case at appeal.

5. FINANCIAL IMPLICATIONS

- 5.1. There are no significant financial implications.

5.2. However, as with any appeal there is a possibility that the appellant may apply for their costs relating to the appeal, if they believe that the Local Planning Authority has acted unreasonably and in doing so has caused it to incur unnecessary expense.

6. REASONS

As set out in section three of this report.

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Background Papers:

Lowlands Area Planning Sub-Committee Report January 15 2018: Applications for Development: Item 1

Lowlands Area Planning Sub-Committee Report and Minutes January 15 2018

Appeal Decision ref. Ref: APP/D3125/A/09/2112273, relating to change of use from a disused Thames Water site to travelling showman's quarters at Former pumping station, Priest Hill Lane, Hailey

Letter from Malcolm Rivett, the EiP Inspector to the LPA dated 16 January 2018