

WEST OXFORDSHIRE DISTRICT COUNCIL
UPLANDS AREA PLANNING SUB-COMMITTEE:
MONDAY 5 MARCH 2018

UPDATE AS TO PROGRESS (AND WHERE RELEVANT REASSESSMENT) OF APPLICATIONS SUBJECT TO A RESOLUTION TO APPROVE BUT WHERE A DECISION HAS NOT AS YET BEEN ISSUED

REPORT OF THE HEAD OF PLANNING AND STRATEGIC HOUSING

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1. PURPOSE

To update members as to progress with regards to some of the key applications where a resolution to approve has been made but where, as yet, a decision has not been issued and, where relevant to reconsider the planning balance in light of the new prevailing circumstances and following receipt of the Local Plan Inspector's recent letter dated 16 January 2018.

2. RECOMMENDATION

That the resolutions as per the recommendations set out in respect of each case be confirmed, and the Head of Planning and Strategic Housing and Development Manager be authorised to proceed to issue the decisions provided that no new material planning issues arise in the period before a decision is issued.

3. BACKGROUND

- 3.1. Members will be aware that a resolution to approve an application is not the same as making the decision. Decisions are only deemed to be made at the point that they are issued and case law is clear that where between a resolution to approve a decision and the point it is issued (e.g. because the resolution was subject to a legal agreement) a new factor emerges that would be relevant in the planning balancing exercise then the decision maker has to have regard to that matter and if necessary report it back to committee to affirm or otherwise their initial assessment in light of the new consideration.
- 3.2. In this instance the recent letter from the Local Plan Inspector is clearly material in that it states that the emerging plan is capable of being found sound and the inference is thus that as such policies of the emerging plan can be given greater weight. Additionally the proposed housing allocations in the AONB were not supported by the Inspector.
- 3.3. There have been a series of applications which remain undetermined. In some instances the letter is of little relevance in so much as the weight given to the delivery of housing was not a key issue in the decision to approve. For others the housing supply from the site in question has been factored into the housing land supply figures that underpin the soundness of the emerging plan and as such a decision to "reverse" the decision to approve could have consequences for the soundness of the local plan. Where this is the case the notes pertaining to the application make this clear. On other sites, particularly those in the AONB and in Conservation Areas, the balancing exercise is set out again in more detail to ensure that the correct legal weighting is given to the relevant factors that now need to be considered. Some other applications have been or are subject to new matters emerging as part of the ongoing negotiations on the SI06 or as a result of further information being provided (e.g. results of the archaeological dig are

now known) and in these instances whilst the application is referred to for completeness the recommendation is that these sites be subject to a further more detailed report when the position is clearer.

- 3.4. The Local Plan process is still evolving and Officers wish to avoid an ongoing process whereby when every stage of the emerging local plan is reached it could be claimed that a further balancing exercise is required given the weight to be attached to the policies of the emerging plan will gain greater and greater weight. Delegated Authority is therefore sought for Officers to undertake a final assessment at the point of issuing any of these decisions on their planning merits taking into account any further changes in material considerations.
- 3.5. Of necessity this report only seeks to re cast the planning balance exercise rather than provide a new full report in respect of each and every application determined. Given the profile of the applications in question Members will of course already be aware of the relevant background information that led to the initial resolutions but should further clarification be required they are advised to refer to the original reports which may be found on line. Officers will also be in a position to provide further assistance in clarifying matters at the meeting if required.
- 3.6. The following paragraphs refer to the relevant applications within the area of this Sub-Committee. The Sub-Committee is also advised that a similar report will be considered by the Lowlands Area Planning Sub-Committee at its meeting on 12 March, which will be available from the Council's website.

15/03099/FUL: Rushy Bank Charlbury Mixed Community and private housing scheme

- 3.7. Members will recall that this application secured a resolution to approve and a decision was issued but was subject to a successful legal challenge whereby the decision was quashed. Members therefore re-considered the merits of the application and again decided that the scheme was acceptable subject to the applicants first entering into an amended version of the original legal agreement. Members will recall that the affordable housing offer comprised a mix of conventional affordable housing and discount market housing at 90% of open market value alongside the 12 units of niche housing comprised in the special care units. These benefits sat alongside the financial and other Heads of Terms negotiated. In working up the details of the discount market element of the scheme the potential to provide a lesser number of units than proposed as discount market housing, but as conventional affordable housing has been discussed with the applicants. This would clearly represent a different offer than was agreed by Members and as such when the discussions as to the potential alternative are finalised this matter is likely to be the subject of a separate report to Members. The units on this site were counted towards the housing land supply.

17/01082: Long Hanborough North of A4095 Up to 170 dwellings

- 3.8. This application secured a resolution to approve at the meeting of 6 December 2018 which was just in advance of the receipt of the Inspector's letter in mid-January. The houses are not counted as part of the 5 year land supply that underpins the Local Plan as the decision on the application post-dates the submission of those figures. The County Archaeologist had identified that there were some anomalies and required that these be investigated prior to determination. It is understood that the developer has been undertaking these works whilst the Section 106 agreement has been under negotiation and that a

portion of Grimm's ditch has now been found within the site. Clearly this was not a matter that was known to members at the point that they determined the application and subject to receipt of further written confirmation from the County Archaeologist as to the potential implications of the find this matter will also need to be the subject of a further report.

17/02163/OUT: Finstock Cattery – Outline Planning for erection of dwelling

- 3.9. The house on this site does not count towards the housing figures underpinning the local plan.
- 3.10. The proposal seeks the provision of a dwelling within a relatively sustainable location alongside the related benefits to highway safety arising from a decline in the vehicular use of Wards Lane as a result of cessation of the existing use. It is considered that the harms to the conservation area and AONB are less than substantial/negligible and that even when these are given considerable importance and weight reflecting the strong presumption against development that is harmful to a Conservation Area or AONB that they are outweighed by the public benefit of the improvement to highway safety. Weighing any residual harm into the planning balance the scheme is considered acceptable and compliant with the relevant provisions of the Existing and Emerging Local plans and relevant provisions of the NPPF.
- 3.11. As such it is considered that Members should reaffirm their decision to grant planning permission.

17/00889/FUL: Police Houses, Charlbury – Erection of 8 dwellings

- 3.12. This is a new planning balance that supersedes the original when the application was last considered. The application proposes a development comprising of 8 dwellings within a sustainable location close to Charlbury Town Centre.
- 3.13. The site lies within the Charlbury Conservation Area the significance of which lies principally in Charlbury being a historic Cotswolds market town, including many listed buildings of historical, aesthetic and communal value. Open spaces can play a role in significance, but the designation is primarily concerned with built form.
- 3.14. The site exists in part as an area of open space which provides a degree of visual amenity and contributes to the character and appearance of the street scene and designated area as a whole. Whilst the development would result in the loss of a section of open space, this would be limited to an area located to the rear of the existing Police Houses fronting Hixet Wood which is not significant in either its own right or its contribution to the wider character and appearance of the Conservation Area and the section of the site which appears prominent within public views would be retained as open space and enhanced in terms of its management preserving/enhancing the open aspect within the Conservation Area. The loss of the extent of open space in the northern section of the site would be offset to by the proposed enhancements to the more significant/important southern area of the site.
- 3.15. Local Plan Policy BE5 is applicable in forming part of the adopted Plan, but is not consistent with the balance of harm and benefit required in the NPPF. It attracts reduced weight in this regard, although its intentions remain valid as regards Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and the desirability of preserving or enhancing the Conservation Area.

- 3.16. Under paragraph 134 the less than substantial harm caused to the significance of the Conservation Area by reason of the loss of part of the existing open space must be given considerable importance and weight reflecting the strong presumption against development that is harmful to a Conservation Area. However, the site does not perform a key role in the significance of the Conservation Area. In this instance the proposed landscaping enhancements and contributions towards affordable housing (particularly now that the proposed allocation in Charlbury is deleted and as such opportunities to secure additional affordable housing in the settlement are more limited) represent public benefits that outweigh the harms to the Conservation Area, even having given it great weight.
- 3.17. In terms of the impact on the AONB the harms to the landscape character and significance of the AONB are considered negligible and as such even when great weight is applied to the importance of conserving and enhancing the landscape and scenic beauty of the AONB is not considered to justify refusal. Weighing any residual harms into the overall planning balance it is considered that the development would not result in additional adverse harm to either highway safety and amenity or residential amenity by reason of loss of privacy, overbearingness or loss of light etc. and that the delivery of the managed open space and affordable housing monies more than outweighs the limited harms created. The development as proposed is considered acceptable and compliant with the relevant provisions of the Existing (in so much as it is consistent with the advice of the NPPF and as such could be afforded full weight) and Emerging Local Plans in addition to the relevant provisions of the NPPF.
- 3.18. As such it is considered that Members should reaffirm their decision to grant planning permission.

17/03423: The Grange Charlbury 7 Houses

- 3.19. Members will recall that this application appeared before them at their meeting in January 2018 when it was resolved to approve the application subject to an enhanced affordable housing offer being secured. It is not part of the housing commitments figure underpinning the local plan. Post the meeting Officers managed to negotiate an increase in the AH offer from the original offer of zero (given that the site lies in an area where a development of this net scale would not trigger the need for affordable housing provision) to an offer of £120k – or £20 k per unit. When it was last considered the fact that the site lies in the AONB and Conservation Area and development was at a greater density than at present was acknowledged would give rise to some harms, albeit at the lower end of the scale given the design and planting proposed. Having given considerable importance and weight to these harms reflecting the strong presumption against development harmful to the Conservation Area/AONB the provision of affordable housing monies for a scheme where it is not required was considered sufficient of a public benefit as to outweigh any harms, even having given them great weight. The fact that the site lies in a settlement where the deletion of the proposed allocation means that affordable housing opportunities to secure additional affordable housing in the settlement by other means is now more limited adds weight to this original assessment. In determining that no further allocations were necessary in the AONB to meet district wide housing needs and to not place a reliance upon any windfall developments the Inspector made clear that the existing commitments should not be seen as a cap and that additional permissions may be granted where it is shown to accord with national and local policy in respect of AONBs.

3.20. Your Officers consider that this is the case with this application and as such that Members should reaffirm their decision to approve the scheme.

Other Sites

3.21. Members will be aware that there are additionally small developments at the Old Brewery, Burford (which is counted in the land supply) and Gas Lane, Shipton (which is not counted in the land supply) but where the planning balance as originally set out does not rely upon the tilted balance to an extent that materially impacts upon the recommendations and where the rationale for approval was already made clear in the report and the circumstances are not materially different.

4. ALTERNATIVES/OPTIONS

The Sub-Committee could decide to take no further action. However if the applications where new material considerations have arisen are issued without regard to the latest position then the resultant decision could be subject to successful legal challenge.

5. FINANCIAL IMPLICATIONS

This report has no direct financial implications, but the costs of defending incorrectly issued decisions could be considerable.

6. RISKS

There are risks in not assessing the applications in accordance with the appropriate legal balancing exercises including matters as may have arisen post the initial resolution.

7. REASONS

To ensure that any decisions issued are subject to the appropriate planning balancing exercise.

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Background Papers:

See relevant application references