

WEST OXFORDSHIRE DISTRICT COUNCIL
UPLANDS AREA PLANNING SUB-COMMITTEE:
MONDAY 30 APRIL 2018

UPDATE AS TO PROGRESS AND REASSESSMENT OF PLANNING
APPLICATION REFERENCE 17/01082 LONG HANBOROUGH NORTH OF A4095
UP TO 170 DWELLINGS WHICH IS 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

(Contact: Phil Shaw, Tel: (01993) 861687)

1. PURPOSE

To update members as to progress with regards to the progress and planning merits of the above application where a resolution to approve has been made but where, as yet, a decision has not been issued and to enable Members to reconsider the planning balance in light of the new prevailing circumstances and following receipt of the Local Plan Inspector's recent letter and archaeological dig.

2. RECOMMENDATION

That the application be determined as per the recommendation set out at the end of the planning assessment (see paragraph 3.12 below, on page 4) and the Head of Planning and Strategic Housing/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 from the report that appeared before them earlier this year 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 a 5 year land supply is probably in place and the policies of the emerging plan can be given greater weight. The results of an archaeological investigation are now also known.
- 3.3. This is one of a series of applications which remain undetermined. In some instances the Inspectors 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. That was not the case with this site. 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. Again that was not the case with this application. Some other applications have been or are subject to new matters emerging as part of the

ongoing negotiations on the I06 or as a result of further information being provided (e.g. results of the archaeological dig are now known) and that is the case with this application. As set out in the earlier report Officers advised that because this was a new factor that it would need a new balancing exercise and that this would be by way of a further more detailed report when the position was 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 of this decision on its 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 taking account of the new circumstances rather than provide a new full report. Given the profile of the application 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 strongly advised to refer to the original report 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.

Planning Update

- 3.6. This application secured a resolution to approve at the meeting of 6/12/2018 which was just in advance of the receipt of the Inspectors letter in mid-January. The houses inherent in the approval 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. The developer has been undertaking these works whilst the Section I06 agreement has been under negotiation and a series of features have been discovered including a section of what may be 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 as such the full findings of the archaeological investigation were the subject of further consultation with the County Archaeologist as to the potential implications of the find upon the principle of development and if not its principle then its layout.
- 3.7. In response to the further consultation the developer proposed a revised layout that sought to retain the ditch in situ as a feature of the new layout and to offer to undertake further investigative works to determine the exact extent of the feature. In response to this the archaeologist advises as follows:

“The ditch feature at the above site is currently of uncertain date. The only dating evidence from it to date is medieval with a piece of pottery from the secondary fill that is dated between AD975 and 1350. There is however currently no dating from the primary fill that would give a more definite date for its construction. It would be useful to put a couple of sections across it to obtain better dating evidence and profiles of it. It is possible that it is later prehistoric and therefore contemporary with or part of Grim's Ditch. Grim's Ditch would have had an adjacent bank but ploughing has removed any evidence that this may have been present.

Since my email yesterday the applicant has provided a draft revision of the layout. This preserves most of the ditch as a feature within the housing estate where it forms a green space down the spine of the development. There are two points where roads have to cross it.

These two points will provide an opportunity to investigate the feature further whilst retaining most of it in situ within green space. I think that this is a positive step and would form the basis of a scheme that will ensure that most of the feature is preserved whilst providing the opportunity for targeted investigation to obtain important information about it.

Also if you and your committee favour this approach and proposed layout then I would suggest that the applicant submits a written scheme of investigation outlining the methodology for the areas of archaeological intervention. This can easily be agreed in advance of the final consent being granted. If acceptable this could be included in the permission as an approved document. Then we would only need to attach a condition that requires the mitigation to be undertaken in line with the approved WSI. This will reduce the number of conditions to be discharged and help prevent any delays in the development commencing. It may however be necessary for the applicant to fence off the ditch feature to avoid damage to it being caused by vehicular tracking over it. Overall I think that this is an approach that establishes a positive management of the historic environment and will add some specific character to the development.”

- 3.8. In an attempt to ‘replace’ the dwellings that had been lost to the additional area of green space the amended plans referred to above sought to re provide them by way of an outward extension of the proposed built up area. Your Officers were not happy with this approach and instead sought amended plans that retained development within the bounds of what had previously been considered acceptable. These amended plans were received on 17/4/2018 and have been the subject of further informal consultation with the Parish Council. Any views received will be reported verbally to the meeting.
- 3.9. In light of the above advice your officers assessment is that whilst the feature is a new material consideration its presence has now been acknowledged to the satisfaction of the relevant technical expert and there are no new issues arising (e.g. the development extending out further into the countryside) that need to be balanced against this. As such it is not considered by Officers that the presence of this additional archaeological information would be such as to justify a new decision.
- 3.10. The situation regarding the land supply figures and the status of the policies of the emerging local plan is less clear cut. Members will recall that the issue as to whether a 5 year housing land supply could be demonstrated and the application of the so called tilted balance in favour of development were very key issues in the debate as to the merits of the application. With the advent of the Inspectors letter it now appears highly likely that there is a 5 year housing land supply and indeed a number of Inspectors have reached this conclusion in respect of recent planning appeals. At worst your officers consider that the position is a 4.9 year land supply and it is in reality probably considerably in excess of that required to maintain the necessary land supply. Additionally the policies of the emerging plan now have greater weight and these policies as currently framed have a caveat that essentially seeks to prevent greenfield extensions to villages unless there is a need to do so (see revised wording to emerging policy H2) Thus IF there is a 5 year land supply the tilted balance would not be in place and the additional weight that would be ascribed to emerging policy H2 could be used as a reason to justify a refusal of consent. However we are not quite yet at that position as whilst a 5 year (or at worst a 4.9 year) supply can be strongly inferred it will not be until the report of the Inspector in relation to the latest round of consultation has been received that such a position can without doubt be ‘demonstrated’. Additionally the revised wording of H2 has been the subject of comment from the development industry and as such it cannot as yet be afforded the same weight as if the policy had been subject

to no new comments. Thus, on balance your officer's assessment is that for prudence it should be assumed that the tilted balance is still in place and that significant and demonstrable harms would be needed to justify a refusal.

- 3.11. Your Officers consider that sound reasons would be needed to overturn a democratically arrived at decision. The developer has undertaken considerable time and expense in getting the application to a point that it secured a resolution to approve and in that regard principles of good governance would also dictate that there might be an expectation that the application should again secure a resolution to approve. However it is equally clear that the planning balancing exercise does need members to be aware of all the factors and clearly the fact that the site is not counted in the figures, would be potentially contrary to the policies of the emerging plan and that the land supply position is now much more positive than when last considered must be given due consideration and weight. In so doing however it also needs to be kept in mind that there were no technical matters that justified refusal and the scheme will deliver its full share of affordable housing utilising the new delivery model being promoted on the south site and at Woodstock. Its visual impact will certainly be no worse than before as the extent is the same and in that it now features a new green corridor as a feature it is more distinctive/tied into its historical context and will probably feature a lesser number of dwellings overall. In that it is not currently counted in the supply figures it will additionally help to back fill any claims developers may make as regards the notional shortfall against the overall targets of the local plan arising from the Local Plan Inspectors deletion of the AONB allocations and as a relatively small site built out by a local builder there is perhaps a greater degree of certainty that it will actually be brought forward in a timely fashion and provide a greater cushion against any of the other allocations not proceeding as per the anticipated timescales.

Summary and Recommendation

- 3.12. The decision on the application was balanced when last considered and Members are advised to review the planning balance section of the former report to refresh their memories as to the key issues for and against. The decision is now in your officers assessment more finely balanced with the new material considerations and in particular the housing land supply/emerging policy issues set out above to be factored in. However, on balance, subject to any further comments from the Parish Council and mindful in particular of the need to demonstrate a 5 year housing land supply rather than merely infer one your officers consider that the merits still lie with a recommendation for approval subject to the legal agreement and conditions as set out when the application was last considered but with amended/additional conditions tying the development to the new illustrative plan and to conditions as set out in the response from the County Archaeologist regarding protection and new investigative works.

4. ALTERNATIVES/OPTIONS

- 4.1. The Sub-Committee could decide to take no further action. However the application is subject to new material considerations that have arisen and if it were issued without regard to the latest position then the resultant decision could be subject to successful legal challenge.
- 4.2. Alternatively members could decide that the new material is sufficient to recast the merits of the application in favour of a refusal and determine the application accordingly.

5. FINANCIAL IMPLICATIONS

None arising directly from this report 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

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.

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Background Papers:
See relevant application reference