

**WEST OXFORDSHIRE DISTRICT COUNCIL**

**MONDAY 1 OCTOBER 2018**

**UPDATE AS TO PROGRESS AND REASSESSMENT OF APPLICATION  
REFERENCE 15/03099/FUL, LAND AT FOREST ROAD CHARLBURY 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 resolution to approve but where, as yet, a decision has not been issued and to reconsider the planning balance in light of the new prevailing circumstances.

**2. RECOMMENDATION**

That the Sub-Committee resolves to determine the application as per the recommendation set out and to grant authority to the Development Manager to proceed to issue the decision.

**3. BACKGROUND**

3.1. Members will be aware that they have twice resolved to approve this application. In the first instance the approval was subject to a Judicial Review challenge as to the legal balancing exercise, which the Council accepted was soundly based and so consented to the original decision being quashed. Subsequently Members reconsidered the application and again resolved to approve it subject to a new legal agreement. Whilst works were progressing on formulating the revised legal agreement a series of changes to the prevailing planning circumstances have occurred in terms of, for example, a new NPPF, progress on the emerging Local Plan, the lack of need to provide more windfall housing in the AONB, revised Heads of terms of the I06 resulting from the new NPPF etc such that Officers previously advised Members that this was one of a series of applications where notwithstanding the resolution to approve it would be prudent to reconsider the balancing exercise in advance of issuing the decision.

3.2. This is because resolving 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 an application 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 the application needs to be reported back to committee to affirm or otherwise their initial assessment in light of the new consideration.

3.3. As advised above this application is one of a series of that have gone through this process. In some instances the information received from the Inspectorate regarding the likely soundness of the emerging plan was of no 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. Members are

advised that this was the position for this site as the housing figures associated with this site are counted in the developments already counted as commitments and which in turn led the Inspector to consider no further housing beyond that level was needed in the AONB. If they were omitted that position would no longer be accurate.

- 3.4. Please note that for the remainder of this report it is assumed that the Council will have adopted the emerging Local Plan prior to the meeting where this item is to be considered. If not the report will need to be revised to address that fact.

#### **4. NEW CONSIDERATIONS**

##### **Applicant's further letter**

- 4.1. The applicant has tabled a further letter. This contains an attachment that confirms the continuing commitment from the County Council for the 12 younger age Extra Care Housing to meet the needs of West Oxfordshire and wider Oxfordshire as an alternative to locating younger dementia patients in inappropriate frail elderly care homes. They state the facility will provide a greater choice and will deliver significant revenue savings over current care solutions being "an imaginative development, the first of its kind in Oxfordshire and one of very few so far in England". They have capital funds committed to the project.
- 4.2. The applicants planning agent has also written to summarise the planning position as he sees it. He notes the evolving position as regards the local plan and notes that the Inspector indicated that the level of commitments within the AONB was not a cap and that additional housing in the sub area may be granted if it is shown to accord with local and national policies. He notes that the policies of the extant plan are increasingly out of date and that in terms of decision making the position is unchanged since the last resolution due to uncertainties as to the 5 year housing land supply position. (NB Officer Note: If the emerging Local Plan is adopted by Council then Officers would not agree with this last assessment).
- 4.3. He notes Charlbury is a service centre ranked 7<sup>th</sup> of the 41 assessed settlements in terms of sustainability and that the site is well located to secure access to services. He quotes the emerging Charlbury Neighbourhood Plan 2018 in support of the scheme. This states "*we think the town needs smaller sized and lower cost housing rather than executive homes often proposed by developers. We would like to see homes for first time buyers, young families and people of working age who are often priced out of Charlbury. We are interested in a shared equity scheme for essential workers in local schools, hospitals and other vital services. We also need more housing suitable for elderly and disabled people. This could allow older residents to down size to more manageable properties if they wish, without leaving the town. Those who can no longer live independently due to frailty, illness or disability also need housing options. And building more 1 and 2 bedroom social rented properties would help meet a current shortage*".
- 4.4. As regards the AONB he notes the great weight that must be given to the conservation and enhancement of the natural scenic beauty of the area. In that regard he notes that the relevant policy of the emerging plan (EH1a) confirms that proposals that support the economy and social wellbeing of communities located in the AONB, including affordable housing schemes..... will be supported provided that they are consistent with the great weight that must be given to conserving and enhancing the landscape and natural scenic beauty of the area. He notes that the new NPPF has not changed the approach to the AONB and that a decision as to whether a scheme is major or not rests with the

decision maker. Paragraph 172 of the NPPF states that when considering such applications there should be an assessment of the need for the development, the costs and scope of developing elsewhere including outside the AONB and any detrimental effect on the environment, landscape and recreational opportunities and the extent to which that could be moderated. The agent considers that having applied the relevant case law the scheme is actually minor not major and as such the further justification process is not engaged and that the impact on the AONB is localised and limited and not of sufficient scale to preclude development.

- 4.5. He notes the scheme will now provide a 12 bed extra care home, 2 x 1 bed affordable rent units, 3 x 2 bed affordable rent units and 16 x 3 bed units of which 8 will be self /custom build, 6 will be discounted and 2 will be affordable rent. There will also be 4 x 4 bedroom self/custom build units. This is 52% of the total number of dwellings as affordable dwellings (and the description of development has been changed to reflect this revised mix) whereas the emerging local plan only requires 40%. He notes the NPPF has been amended to include affordable housing for rent, starter homes, discounted market housing and other affordable routes to home ownership and that the discount to be applied is now 20% whereas it was 10% at the point that Members resolved to approve the scheme when last considered.

## **5. PLANNING ASSESSMENT**

- 5.1. As set out in opening this report is prepared to enable Members to review and confirm or otherwise their earlier resolution to approve. Members will be very familiar with the site and the key issues having considered it on a number of occasions previously and are strongly advised to review the report and minutes from when the application last secured a resolution to approve (4<sup>th</sup> December 2017). Members will also recall that when they considered an interim report regarding the outstanding applications in March 2018 they asked that Officers seek independent legal advice in preparing the final report. This has been done and the report reflects the advice received from Counsel.
- 5.2. The report seeks to identify the key changes that have occurred since the last resolution and give Officers assessment as to whether they have had a material bearing on the balancing exercise. The new matters are then wrapped up in a new planning balance exercise.

### **The new National Planning Policy Framework (NPPF)**

- 5.3. Members will be aware that the new NPPF was issued relatively recently. In terms of the implications for this application Officers consider that there are two potential areas that need to be reviewed- the AONB and affordable housing. The situation regarding the weight to be given to conserving and enhancing the landscape and natural scenic beauty remains as it was when the application was last considered as does the ability of the decision maker to make an informed decision as to whether in context the scheme is major or not. Essentially therefore Officers consider the new NPPF as regards AONB policy is neutral as compared to the last time the application was considered.
- 5.4. The situation regarding affordable housing is substantially different. The Government has significantly widened out the definitions of what now constitutes affordable housing to clearly include discount market houses. This is clearly a positive factor. Additionally since the last resolution the applicant has been persuaded, in light of the NPPF, to deepen the extent of discount from the 10% as 'approved' to 20% now. Again this is clearly positive.

## **The SI06 Agreement**

- 5.5. There was an issue with the previous I06 agreement in that the cordon sanitaire around the site relied upon the adjoining Ancient Woodland being retained. This has been agreed to be rectified by extending the designation. The cascade mechanism whereby, if for any reason the specialist care use is no longer able to operate, the site reverts to a general care use (rather than private flats) has also been clarified. The I06 is now in a position where it is almost ready to issue subject to final checking. This is all positive since last consideration.

## **The need delivery**

- 5.6. Confirmation has been received from OCC that the ECH facility is still needed, the funding appears to still be in place and appropriate operators are in discussion with the applicant and so this is much the same as previously. The applicant has provided evidence of local people signed up to deliver/occupy the self- build and custom housing and the levels of housing need are such that the “general” affordable housing will be occupied. Again this is neutral/positive.

## **The Local Plan**

- 5.7. By the date of the meeting the emerging plan has become the adopted plan. As part of the process of adoption the Inspector, in light of the level of commitments already in the AONB/Burford-Charlbury sub area, stated that no new allocations or windfalls were required but that applications should be dealt with on a case by case basis with the number of commitments not being seen as a cap and with applications needing to conform to Government policy as regards the AONB and meet specific needs. The units from this site were counted as part of the ‘commitments’ that underpinned this policy decision and so their deletion (were the application now to be refused) would undermine part of the rationale that led to the policy and open the door to developers making arguments that further sites should be allowed in the AONB to make up the deficiency that would thereby arise.
- 5.8. In law planning decisions must be made in accordance with the development plan unless material considerations indicate otherwise. The newly adopted plan is therefore the starting point for decision making and, assuming that it has been adopted at Council, now has full weight in decision making. In that regard the policy dealing with housing developments beyond the existing limits of settlements is clearly very important/material to the reconsideration of the decision. This policy (H2) is available to view alongside all the adopted policies in full on line but in summary allows for housing developments on allocations (not relevant) redevelopment of previously developed land (not relevant) redevelopment within settlements (not relevant) and “on undeveloped land adjoining the built up area where convincing evidence is presented to demonstrate that it is necessary to meet identified housing needs, is in accordance with the distribution of housing set out in policy H1 and is in accordance with other policies in the plan in particular the general policies in policy OS2” The lower case text advises that in the AONB such proposals will be closely scrutinised and will need convincing evidence of a specific local housing need, such as inter alia affordable housing needs specific to a particular settlement, and that AONB etc policies must be complied with.
- 5.9. The needs and impact on AONB must therefore be at the forefront of the decision. Officers have been satisfied and Members will need to be similarly satisfied that there is convincing evidence to demonstrate that the scheme is necessary to meet identified housing needs and is in accordance with the

principles of policy OS2 and the distribution of housing in H1. In the latter regard the fact that the town is 7<sup>th</sup> of the 41 settlements and delivers housing counted as part of the sub area allowance set out in H1 would appear to meet that aspect and the OS2 tests does allow for development in Charlbury provided that it is of 'a modest level to help reinforce the town's existing role as a rural service centre'. It is the need in terms of a young dementia centre and meeting the needs of local people for affordable and self build housing that are at the heart of this proposal and that are being met.

- 5.10. Thus Officers consider that the policy position is supportive in that the need arguments have been met. Similarly it is considered as previously that the impacts on the AONB are limited and localised, can be adequately mitigated and are not of such harm as to preclude development even having given them great weight. The scheme is therefore considered to be compliant with new/adopted policy H2. Similarly the bespoke policy dealing with the Burford Charlbury sub area (BC1) notes that development is relatively constrained by the AONB location but that Burford and Charlbury are suitable for a modest level of development in accordance with OS2 to reinforce their existing service centre role provided that it conserves and enhances the AONB, protects/enhances heritage assets and the Upper Windrush Valley and in locations where inter alia public transport and pedestrian routes can be enhanced, car journeys minimised, community facilities can be retained and education etc facilities secured. The scheme addresses these aims and as such is considered compliant with new policy BC1.

#### **Other material considerations**

- 5.11. As advised above Officers consider the scheme complies with the main relevant newly adopted policies. In the event that Members are not satisfied that the scheme is fully compliant with newly adopted policy it must be remembered that whilst policy is the starting point for any decision decision makers need to also have regard to other material planning considerations that may mean that a decision at variance to policy is justified. In that regard it is relevant to note the fact that an allowance for the houses derived from this specific development underpins the numbers that the Local Plan Inspector considered means a more restrictive policy should now be imposed in the AONB. As a result, officers consider that any conflict that may be identified with policy H2 can (in the specific circumstances of this proposed development) be given only very limited weight, such that the scheme is still acceptable overall.
- 5.12. The alternative approach would be to test the new scheme against the new policy having no regard to the fact that its delivery is counted in the supply side, but if any such application were deemed to fail the tests of H2 and be refused the Housing Land Supply position set out in the Local Plan would not be accurate and there may be wider consequences with 37 of the total of 774 house commitments in this sub area not being provided thereby opening up a route for developers to seek to justify development that the plan is seeking to resist.

### **6. REVISED PLANNING BALANCE SUMMARY**

- 6.1. There has been much public interest in this application. As with all applications the determination should be made in accordance with the development plan unless material considerations indicate otherwise. Objectors to the scheme cite the location beyond the existing built up limits of the settlement, contravention of housing policies, landscape protection policies, the location within the AONB and the visual impacts of developing an attractive greenfield site with a more urban form of development as particular reasons why the scheme should not

proceed. Additionally whilst Natural England and Historic England do not object/make no comment the AONB Board objects. These factors weigh against approval.

- 6.2. To set against these concerns there has been substantial local and wider support for the proposal (as well as objections) which is clearly not a conventional scheme but rather seeks to achieve a range of community and social benefits supported by a modest private housing scheme. The design and layout, and consequent visual and landscape impacts have been appropriately mitigated and moderated. The policies of the emerging/now adopted local plan allow for developments on greenfield sites adjoining settlements in appropriate circumstances.
- 6.3. The site lies within the Cotswolds AONB where paragraph 172 of the NPPF is engaged. Officers are of the view that the scheme is not major development and that as such the scheme does not need to be assessed against the additional tests applying to major developments in the AONB. In looking at the impact on the AONB it is acknowledged that there would be some landscape harm arising from the proposal, which is to be given 'great weight' in the balance. However, it is considered that landscape and scenic beauty would not be unacceptably affected. Officers are of the view that subject to securing effective landscaping and screening the tests of the NPPF are met even were the scheme to be considered as major development.
- 6.4. The many benefits of the scheme in the form of custom /self build homes, discount market housing, affordable rented homes, a dementia home to meet the needs of the younger generation, 127 k towards the primary school, 20k for community facilities, 2k towards public art and 39,750k towards public transport and relocating the 30mph signs leads to the conclusion, in the view of your Officers, that the proposal is acceptable when considered against AONB policy in the development plan. If it is major development then the harm is sufficiently limited and the benefits are sufficiently great to constitute exceptional circumstances leading to the development conforming with the public interest.
- 6.5. The site is outside the Charlbury Conservation Area albeit close to it and not in close proximity to any other heritage asset other than the Station building which has intervening built form between it and the application site. There would be non-material or less than substantial harm, and indeed even where there is an impact only very limited harm to the setting of the heritage assets identified. The benefits of the development in a sustainable location outweighs this limited harm in this case.
- 6.6. In contrast to the position when last considered (and assuming that the plan has been adopted) the Council can now currently definitively demonstrate a 5 year supply of housing and with the recent adoption of the emerging local plan the policies have full weight. In assessing the scheme against those policies there is limited environmental harm in landscape and heritage terms, but for the reasons expressed above this is not so significant as to preclude the development. Significant weight is attached to the social and economic benefits of the provision of new housing (in general terms), and in particular the affordable housing and care home in this case. The economic benefits associated with the construction of new dwellings, and potential economic activity associated with new residents are acknowledged.
- 6.7. In terms of other new considerations the revisions to the NPPF have generally moved in favour of approval, housing development beyond the limits of

settlement is now policy compliant in certain circumstances, the 106 agreement has been clarified and the affordable housing offer improved. The commitment of houses associated with this application underpins the figures that led to the policy applying in the AONB/Burford Charlbury sub area.

- 6.8. On balance, it is considered that the harms arising from the proposal are outweighed by the benefits and that there are material considerations that justify approval of the application notwithstanding a limited element of policy conflict as regards landscape and heritage impact. Accordingly, it is recommended that Members confirm that they wish the application to be approved subject to conditions and a legal agreement.

## **7. ALTERNATIVES/OPTIONS**

The Sub-Committee could decide to take no further action and issue on the basis of the earlier resolution. 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.

## **8. FINANCIAL IMPLICATIONS**

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

## **9. 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.

## **10. REASONS**

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

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### Background Papers:

See relevant application reference