



WEST OXFORDSHIRE
DISTRICT COUNCIL

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Name and date of Committee	Lowlands planning sub-committee – 10 th October 2022
Report Number	Agenda Item No. 7
Subject	Consideration of grounds for defending previously determined applications in light of the updated five year housing land supply position
Wards affected	All
Accountable member	Cllr Carl Rylett Cabinet Member for Planning Email: carl.rylett@westoxon.gov.uk
Accountable officer	Phil Shaw Business manager Development and Sustainability Tel: 01993 861687 Email: Phil.Shaw@publicagroup.uk
Summary/Purpose	To enable members to advise officers as to whether they wish to continue to defend appeals that were refused when the council was claiming a five year housing land supply (5YHLS) but which have now gone to appeal and will be defended in the absence of a 5YHLS
Annexes	None
Recommendation/s	<i>That the committee consider the two cases and advise as to whether they wish to defend the appeals</i>
Corporate priorities	
Key Decision	No
Exempt	No
Consultees/ Consultation	N/A

1. BACKGROUND

Members will be aware that when the council can demonstrate a 5YHLS its planning policies can be afforded full weight when making planning decisions. Conversely when the council is unable to demonstrate a full 5 year land supply, the plan policies which are most important for determining the application are considered to be out of date and the “tilted balance” of the NPPF is engaged whereby there is a presumption in favour of planning permission being granted unless there would be significant and demonstrable harms that would outweigh the benefits. In that regard the council has until very recently been able to demonstrate a 5YHLS and successfully defending appeals on that basis. However in a recent appeal decision the inspector found that the council was unable to demonstrate a 5 year supply.

In light of the finding of the Inspector Officers are working to provide additional evidence to support the assumptions that underpinned the housing land supply position statement and this will be updated as soon as that work has been completed. However, as things stand, there are a number of applications, which were refused on the basis that there was a supply but which officers will now be defending in the absence of a supply and where the relevant tilted balance tests have not been applied.

2. MAIN POINTS

- 2.1.1. When defending appeals it is a requirement on all parties that they behave reasonably. Seeking to defend the indefensible or to run refusal reasons that are not supported by evidence opens up the risk of potentially substantial costs being awarded against the council. It is therefore vital that the applications that are already in the appeal system are reviewed to ensure that continuing to proceed to defend the appeal is “reasonable” - if the council is to not put itself in a position where costs could be awarded against it.
- 2.1.2. It is also relevant in this context that the scale of the scheme has a considerable influence. For example delivery of a scheme of 300 houses with 40% affordable housing and substantial contributions to infrastructure and where the number of units would make substantial inroads into the shortfall of 5yhls would be likely to be given considerable weight by the Planning Inspectorate. Conversely an infill plot providing little/no community benefit and only a small reduction in the shortfall would be likely to be given far less weight and the harms may still be sufficient to justify refusal.
- 2.1.3. Furthermore, setting aside the merits, there is the cost associated with defending appeals to consider, as there is the expense of hiring counsel or technical expertise to defend the council’s position at public inquiries and appeals to take into account.
- 2.1.4. Officers will be asking Members for guidance on the following two schemes that are currently with the inspectorate:

Site A – 21/03720/FUL 44 Common Road North Leigh

The erection of 10 detached and semi-detached two storey dwellings and construction of a new access onto Common Road, with associated garaging and parking, landscaping and all enabling works

Appeal by Hearing 15th November. The written statement was submitted to the inspectorate on 23rd September.

Reasons for refusal:

- 1. The proposal is for housing development on a predominantly greenfield site on the edge of the settlement of North Leigh. The design, scale, form and layout of the proposal would not form a logical complement to the existing scale, pattern and character of development in this location; it would fail to protect or enhance the local landscape and the setting of the village, and would fail to conserve the natural environment. While the development would provide some economic benefits, would add nine homes (net) to West Oxfordshire Housing stock, would meet some of the affordable housing need in North Leigh, and would create off site biodiversity net gain, these benefits are insufficient to outweigh the conflict with the Development Plan as a whole. As such, the proposed development is contrary to policies H2, OS2, OS4 and EH2 of the adopted West Oxfordshire Local Plan 2031, the West Oxfordshire Design Guide 2016, and the relevant paragraphs of the National Planning Policy Framework 2021.*
- 2. The applicant has not entered into a legal agreement or agreements to secure the provision of affordable housing; or contributions to waste; public transport services and infrastructure; or highways improvement schemes. The proposal therefore conflicts with West Oxfordshire Local Plan 2031 Policies OS5, H3, T1, T2, and T3.*

Site B - Land South West Of Downs Road, Witney

Outline planning application for a residential development comprising up to 75 dwellings (with up to 40% affordable housing provision) and public open space. All matters reserved.

Appeal by Public Inquiry – notification of appeal received 21st September, dates to be confirmed

Reasons for refusal:

- 1. It has not been demonstrated to the satisfaction of the Local Planning Authority that the site is not required for its allocated and approved purpose as employment land and insufficient material considerations have been advanced or demonstrated that would justify setting aside policy in order to allow residential redevelopment. As such the proposal is contrary in particular to policies E1 and paragraphs 9.2.62 to 9.2.64 of the adopted West Oxfordshire Local Plan 2031 and paragraphs 81-83 of the NPPF 2021.*
- 2. The applicant has not entered into a legal agreement to secure contributions to offset the burden on local infrastructure that would otherwise from the proposed development and meet the affordable housing requirement. The local planning authority cannot therefore be satisfied that the impacts of the development can be made acceptable. Consequently, the proposal conflicts with West Oxfordshire Local Plan 2031 Policy OS5 and the NPPF.*

3. FINANCIAL IMPLICATIONS

Defending appeals in general terms can be expensive depending on the method of determination (Public Inquiries and sometimes hearings involve counsel, there are many hours of officer time including the technical officers in preparing all the documents).

If the council is considered to have behaved unreasonably then costs may be awarded against it.

4. LEGAL IMPLICATIONS

- 4.1. None other than those reported above.

5. RISK ASSESSMENT

The council could be liable for additional costs if it is considered to have behaved unreasonably.

6. ALTERNATIVE OPTIONS

- 6.1. The alternative options are essentially to either A) Defend the appeals as refused, or B) advise the Planning Inspectorate that in light of the changed circumstances it no longer wishes to contest the appeal

7. BACKGROUND PAPERS

- 7.1. Application references: 21/03720/FUL and 21/03342/OUT