



Appeal Decision

Hearing Held on 15 November 2017

Site visit made on 15 November 2015

by Gareth W Thomas BSc(Hons) MSc(Dist) PGDip MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 13th December 2017

Appeal Ref: APP/Q3115/W/17/3179647

The Barn House, 46 Lower Icknield Way, Chinnor, Oxfordshire OX39 4EB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Vanderbilt Homes against the decision of South Oxfordshire District Council.
 - The application Ref P16/S3184/FUL, dated 19 September 2016, was refused by notice dated 2 May 2017.
 - The development proposed is for the erection of 14 dwellings with widening of existing access to Lower Icknield Way and landscaping..
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Decision

1. The appeal is dismissed.

Procedural matters

2. At the Hearing, a signed unilateral undertaking (UU) was submitted that included, inter alia, the provision for on-site affordable housing and a commuted financial sum towards the provision of off-site affordable housing together with financial contributions towards waste and recycling provision, street naming and public transport. I deal with the matter of the UU later in this decision. On the basis that an undertaking to provide affordable housing in accordance with the Council's development plan policies together with contributions towards infrastructure provision is now in place, the Council confirmed to the Hearing that it would not be contesting Reason No.4 to its decision notice.
3. In addition, following the removal of a "protected" tree with growth potential on site, the Council also confirmed to the Hearing that it would not be contesting the first part of Reason No.2 relating to the protection of this tree.

The appeal site and its surroundings

4. The appeal site comprises part of the extensive garden area to The Barn House, which sits behind the ribbon of development that leads in an easterly direction from the village centre. There is a strong linear character to this part of Chinnor; however, this built form is punctuated on both sides of Lower Icknield Way by backland development comprising both individual dwellings and small clusters of housing arranged as culs-de sac, including the developments at Wheatfield and at Hernes Oak to the east of the site and the

recently built development opposite the site entrance to the north at 66-77 Icknield Way.

5. Beyond the site's southern boundary lies open countryside and gently rolling pastoral land, across which, runs the Chinnor and Princes Risborough Steam Railway line. Beyond the railway line, the land rises steeply to the bottom of a heavily wooded and highly prominent Ridgeway that forms part of the Chiltern escarpment and Chiltern Hills Area of Outstanding Natural Beauty (AONB).
6. According to the Council's assessment, the rear garden projects some 80m from the rear elevation of the host property and contains a large number of trees along its western and eastern boundaries. The owner however has sought to open up the fine views out towards the Ridgeway with only a fence and low hedge forming the southern boundary.
7. The site does contain a prominent landmark feature comprising a stand of Corsican pines and a walnut tree that are protected by a Tree Preservation Order.

The proposed development

8. The proposal would see the demolition of the existing dwelling and its replacement by 14 No. two storey dwellings comprising nine market units and 5 No. affordable units with a mix of two, three and four bedroom properties. The development would be served by the existing access, which would be widened to accommodate two-way traffic.

Planning Policy

9. The development plan, for the purposes of this appeal, is the saved policies of the South Oxfordshire Local Plan (SOLP), the South Oxfordshire Core Strategy (SOCS) and the Chinnor Neighbourhood Plan (CNP).
10. Chinnor is designated as a 'larger village' in the SOCS. Policy CSS1 sets out the Council's overall strategy for the District, which seeks amongst other things, to support and enhance the larger villages as local service centres, while focussing 'major development' at Didcot and supporting the roles of the higher order settlements of Henley, Thame and Wallingford.
11. Policy CSR1 establishes that housing provision within villages will be achieved through allocations, infill development and rural exception sites for affordable housing. In support of this approach, the Core Strategy does not identify development boundaries for Chinnor. At the Hearing it was agreed that the site is located in the built-up area of Chinnor although the site boundary falls on the edge of the countryside. The Council in the agreed statement of common ground accepts that the principle of development would be acceptable on part of this site.
12. Paragraph 49 of the National Planning Policy Framework (the 'Framework') requires housing applications to be considered in the context of the presumption in favour of sustainable development. This is set out in paragraph 14 of the Framework and indicates that where relevant housing supply policies are out of date, planning permission should be granted unless any adverse impacts of so doing would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.

Paragraph 7 of the Framework establishes the three dimensions to sustainable development: economic, social and environmental.

13. On 12 December 2016, the Planning Minister, Gavin Barwell published a Written Ministerial Statement (WMS) concerning neighbourhood planning. This requires that, where there are relevant policies for the supply of housing in a recently made neighbourhood plan (NP), these policies should not be considered out-of-date unless there is a significant lack of supply and if a specific set of circumstances occur at the time of decision making. This set of circumstances is that: (i) the WMS is less than two years old or the NP has been part of the development plan for two years or less; (ii) the NP allocates sites for housing; and (iii) the local planning authority (LPA) can demonstrate a 3 year supply of deliverable housing sites. All three circumstances must occur together and, in this case, circumstances (ii) do not occur. Although Chinnor has seen substantial housing growth in recent times and there remains an extant bank of planning permissions that together will provide in excess of 700 new homes, the NP does not specifically allocate sites for housing.
14. The parties agreed that the Council cannot meet the five year deliverable housing land supply required by the Framework. Consequently, relevant policies for the supply of housing are out of date and paragraphs 49 and 14 are engaged. A tilted balance in the presumption in favour of sustainable development therefore applies in line with paragraph 49 of the Framework. In the context of a housing undersupply position, the provision of fourteen dwellings would make a very positive contribution towards boosting the supply of housing in line with the aims of paragraph 47 of the Framework. This is a matter to which I attach considerable weight.
15. Given the agreed position, I consider that adopted SOCS policies CSR1 in terms of addressing the housing targets and CSR1 that restricts development in villages, including the larger village of Chinnor to infill are policies relevant to the supply of housing and are therefore out of date. Although the Council has not referred to these policies in its reasons for refusal, they nonetheless set the policy context for the application of the tilted balance. In this regard also, my attention has been drawn to a number of planning permissions for housing development in the village, including the appeal¹ on the north side of Lower Icknield Way for 89 dwellings where development on greenfield land was accepted.

Main Issues

16. Consequently, the main issues in this appeal are:

- the effects of the development on the character and appearance of the area and surrounding landscape arising from its form and design together with its rural setting and proximity to the Cotswolds Area of Outstanding Natural Beauty (AONB)
- whether the proposed development would have a satisfactory relationship with protected trees, and
- the effects of the proposed development on the living conditions of occupiers of neighbouring bungalows either side of the proposed access arising from noise and general disturbance.

¹ APP/Q3115/W/15/3097666

Reasons

Character and appearance

17. The host property is presently served by an access located between two existing bungalows and which presents a relatively narrow form onto Lower Icknield Way. There have been a number of instances where backland development comprising both single dwellings and small pockets of development has broken the distinctly linear character of Lower Icknield Way. I was able to visit three developments in close proximity of the appeal site that comprised a modest number of dwellings in each case. However, I found that the depth of these developments was limited and such incursions have not undermined the linear character of Lower Icknield Way to any significant extent. Moreover, the layout of each one of the larger developments have made good use of existing mature trees with the resulting schemes comprising relatively spacious plots in leafy settings.
18. It can be seen from the proposed site plan that the new access would notably extend the existing driveway back into the appeal site and, together with the widening of the access road to the majority of the width of the site frontage, would make it readily visible from Lower Icknield Way despite the curvature and planting proposed. This would add to the uncharacteristic nature of the appeal scheme when viewed from Lower Icknield Way.
19. Unlike other development along the south side of Lower Icknield Way, the southern boundary of the appeal site is relatively open and from the public footpath located beyond the railway line the rear of the host property is readily apparent and set within extensive grounds. From further afield, including from the footpaths along both the lower and upper slopes of The Ridgeway, the host property is noticeably set back from the boundary and reflects the built form of other more recent developments on the southern side of the road, including the larger schemes mentioned above.
20. From public vantage points to the south, I found that the existing edge to the village to be generally soft and this character is aided substantially by the spacious arrangement of dwellings and their sylvan settings. The new cul-de-sac proposed as part of the scheme would contain plots 6-9 at the end of the access way. These would take the form of four large detached houses with relatively shallow rear gardens which would fail to provide sufficient space for any robust landscaping. I concur with the Council that future occupiers just like the occupant of the host property would want to take full advantage of the splendour of the Chilterns escarpment and hanger with the consequence that despite the developer's good intentions with regard to landscaping, there would be pressure to remove any worthwhile tree planting with the result that the appeal site would remain largely open to views from the south. In addition, due to the tight urban form of the proposed development, the scheme would fail to provide adequate mitigation for the loss of a substantial number of trees and shrubs that presently exists on site.
21. From the south, most notably from the public footpath linking Chinnor with Lower Wainhill, the development would be visually prominent and appear as a regimented and comparatively dense layout which would be harmfully at odds with the grain and pattern of the existing built form along Lower Icknield Way. The four detached houses would introduce a particularly noticeable and consequently unacceptable harsh edge to the village. Due to the tight urban

- form proposed, this incongruity would not in my view be significantly diminished as a result of the limited tree planting that would be possible.
22. The appeal site is not within the AONB. However, the parties agreed that Chinnor and therefore the appeal site are within the setting of the AONB. Based on the photomontages and my own observations when walking along the public footpath and climbing to the lower edge of the escarpment, I have no reason to disagree. I have carefully considered the potential impact of the appeal development upon the AONB, and its setting, having regard to the AONB's purpose of conserving and enhancing the natural beauty of the area.
23. Whilst I have detailed my observations on the appeal proposal from closer vantage points along the public footpath to the south of the site, from the much longer distances and elevated nature of available views from within the AONB, the dominant views are that of Chinnor in the foreground. From here, the linear nature of Lower Icknield Way is most evident but buildings are set back from the southern boundary and are largely obscured by vegetation whereas the appeal site is noticeably open. Given the modest size of the gardens to the appeal scheme and the dense nature of the plot layout, the development would be viewed as an abrupt development that would be out of kilter with the built form even from the longer distance viewpoints from within the AONB. My attention was drawn to the comments of Inspector Schofield in his decision where he found that "the development would not introduce a distinct new built form into a setting where none currently exists...or encroach further towards the AONB as a result of it." However, the present appeal site is different in that the host property clearly follows a common building line. The proposal would introduce an additional built form where none presently exists and would encroach further towards the AONB. I agree with the Council that the development would unacceptably intrude on the landscape setting of the village and wider AONB and cause significant harm to the rural setting of Chinnor and in turn the setting of the AONB.
24. Having regard to the above findings, I conclude that the proposed scheme would conflict with SOCS policies CSEN1 and CSQ3 which seek, amongst other things to ensure that the District's distinct landscape character, including the setting of the AONB and other key features will be protected against inappropriate development and to grant planning permission only for new development that enhances local distinctiveness and ensuring that it is of a scale, type and density appropriate to the site and its setting.
25. The proposal when read together would also be contrary to policies G4, C4, R6 and D1 of the Local Plan, which in combination seek to ensure that recognition is given to protect the countryside for its own sake as an important consideration in decision making for developments of this nature; that the attractive setting of settlements is not damaged; that the existing settlement patterns are respected; and that the principles of good design and the protection and reinforcement of local distinctiveness should be taken into account in all new development with appropriate provision for open space. The development would also fail to comply with the detailed guidance set out in the South Oxfordshire Design Guide and the Framework. The latter, in particular, states that planning should take account of the differing roles and character of different areas and that good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people.

The relationship with protected trees

26. The parties agreed that a total of 20 trees along the north eastern boundary of the site together with a walnut tree are protected by way of a Tree Preservation Order (TPO), which superseded an earlier TPO that did not take effect but also sought to cover the now felled Dawn Redwood in addition to the trees included in the later TPO. The appellant's arboricultural statement makes reference to 18 Corsican pines, one of which is dead leaving 17 No. live Corsican pines with a further two Lawson cypress mistakenly surveyed as Corsican pines and a walnut tree that forms a close association with the pines. The appellant agrees that the stand of 17 Corsican pines is an important landscape feature of the site and that they make a positive contribution to the character and appearance of the site and its surroundings. Although the walnut tree is of lesser importance in this regard, it nevertheless contributes to the character and appearance as part of the group.
27. There is no dispute between the parties with regards to the proposed works to the trees to be retained or in terms of the positioning of the proposed dwellings and level of root protection that will be afforded. The outstanding concern relates to the relationship between the proposed dwelling at Plot 10, a two-bedroom flat over garage, and the stand of Corsican pines.
28. The parties agree that the garden area to the rear of Plot 10 would be subject to various degrees of shading as a result of the close proximity to this stand. According to the appellant's evidence, the height of trees within this stand range between 16m and 21m although due to their closeness to one another, the canopies are all above 8m. The appellant maintains that the combination of the removal of non-protected trees, including the two Lawson cypress trees and dense ivy growing below the canopy would lighten the garden area to plot 10 very appreciably.
29. My attention has been drawn to the BRE document² that notes that trees and shrubs are not normally included in the calculations of the impact of buildings on sunlight in gardens due to the dappling effect of sunlight as it passes through canopies of trees and that this is normally considered more pleasant than the deep shading that might be created by buildings.
30. From my own observations however, the positioning of plot 10 would be located in very close proximity to this stand of very tall trees that make an important contribution to the character and appearance of the area. At such close proximity, the trees would tower above the property and private garden space and would create a notably oppressive environment. I consider that due to the potential for such an oppressive environment, these Corsican pines could come under future pressure to be cropped or felled by occupants of plot 10, which the Council may find it difficult to resist. The removal of trees within this would be detrimental to the character and appearance of the area.
31. In terms of shading, whilst I have little doubt that some occupiers may find the dappled light effect created by trees to be attractive, I am not convinced that sufficient light would penetrate the garden area to plot 10 during the early parts of the day. This would be further compounded in my view by the orientation of the building, which would mean that the structure itself would

² Building Research Establishment "Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice – document BR209, October 2011 (Appendix H4.2 'Sunlight in Gardens with Trees')

shade the rear garden during the afternoon. Moreover, the Council's Tree Officer was able to point to examples of recent applications for the felling of trees where occupants complained of shading as well as the dropping of needles and cones, which was irritating and diminished the enjoyment of their garden areas.

32. In conclusion on this matter, for the reasons given above, the proposal would fail to comply with policies CSEN1 and CSQ3 of the SOCS and with policies G2, D1, D3, C9 and H4 of the SOLP. These policies seek to ensure that the district's distinct landscape character and key features are protected against inappropriate development including by satisfactorily integrating development into the landscape character of the area and by ensuring high quality and inclusive design that provides adequate plot size and coverage to ensure adequate and useable outdoor garden space.

Living conditions - existing occupiers

33. Either side of the proposed access are detached bungalows that have some of their principle windows facing the present gravelled driveway. They sit within a few metres of the common boundary with the appeal site. I was provided with copies of the original drawings for each bungalow and observed that there is substantial tree and shrub planting either side of the common boundaries on each side. This provides a strong visual buffer between the bungalows and the existing driveway.
34. The existing access drive serves only the host property and is less than 4m width. The proposal would provide a hard surfaced access road of 6m in width, which would result in much of the existing vegetation being removed. During my site visit I was able to view other backland developments cited by the appellant, including the highlighted scheme at 66-79 Lower Icknield Way. At this location, the access road serving a development of 10 units has a relatively substantial separation from No.79 but the gap between No.75 taking the appellant's measurements, is in the region of 3m. However, by comparison with 44 and 48 Lower Icknield Way, the orientation of the principle windows to No's. 75 and 79 is to the front and rear rather than the side boundary. Moreover, the rear gardens of No's 75 and 79 are substantial by comparison with the curve in the road providing opportunities for planting in the margin build-outs.
35. Although I acknowledge that Lower Icknield Way is a relatively busy road that generates not insignificant vehicular noise and general activity, there would be a significant increase in traffic movements using the access, which the appellant estimates would be equivalent to 62 two-way vehicle movements per day and 6-7 vehicles during peak hours. This increased activity as well as the increased comings and goings by pedestrians would not be ameliorated merely by the use of the proposed bound surface to the access road as the appellant would suggest. I am particularly mindful also of the remaining width should this relatively intense development go ahead, which in my view would not provide sufficient space for any significant landscaping buffer.
36. Taking all the above into account, I conclude that the proposed development of 14 dwellings would lead to an unacceptable intensity in use of the widened access, which would have a significantly harmful effect on the living conditions of occupiers of the neighbouring properties either side by reason of noise and general disturbance. Furthermore, there would be insufficient land available to

provide adequate mitigation in the form of a landscaped buffer. I conclude that this would be contrary to policies CSQ3 of the SOCS and Policies D4 and EP2 of the SOLP. These policies inter alia seek to ensure that new development is of a high quality and inclusive design by reason of scale, type and density and does not lead to unacceptable levels of noise. These policies are consistent with one of the core planning principles of the Framework in always seeking to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.

Other Matters

37. In addition to the appeal cases cited in this decision, the appellant provided me with copies of a number of other appeal cases. However, few were brought specifically to my attention at the Hearing, which related to matters of housing supply and the planning balance undertaken by the relevant Inspectors. Whilst the degree of shortfall was still a matter of contention between the parties, there was common ground that the Council could not demonstrate a five year supply of deliverable housing sites and thus the decisions in themselves do not weigh in favour of the appeal proposal.
38. Representations were received from local residents about the ability of the local road network to accommodate the additional traffic that would be created by the appeal scheme. The concerns expressed related specifically to the intermittent footway along Lower Icknield Way, the propensity of parked cars to clog up the highway and the dip in the road that hindered inter-visibility for road users. Photographs were submitted that depicted these issues. However, I note that the officer report did not raise any highway objections to the proposed development at the time that the application was being considered and from what I saw at my site visit, it would be difficult to sustain an objection solely on highway grounds.
39. A signed Unilateral Undertaking was presented to the Hearing, which the Council acknowledged would satisfy its policies towards the provision of affordable housing (Policy CSH3 of the SOCS) and infrastructure provision (Policy CS11 of the SOCS). Although I attach considerable weight to the provision of affordable housing as explained later in this decision, the contributions for other infrastructure provision would only be necessary to make the development acceptable in planning terms and thus this aspect of the UU is a neutral factor in the case rather than a benefit. Given that I am dismissing the appeal on the substantive issues, I need not consider this matter in any further detail.

Planning Balance

40. In my reasoning above, I have afforded weight to relevant policies in the Core Strategy and Local Plan. I have also had regard to the relevant policies of the Chinnor Neighbourhood Plan which forms part of the development plan for the area. However, as I have found that policies contained in the development plan relating to the supply of housing are out of date, it is necessary for me to also consider the proposal against the planning policies in the Framework including the tilted balance in paragraph 14.
41. I have found that the proposal would cause harm to the character and appearance of the area; would have an unacceptable relationship with

- protected trees and; would have an adverse impact upon the living conditions of neighbouring residents. I give significant weight to these harms.
42. Nevertheless, the appellant has stated that the appeal scheme would provide a number of benefits and I weigh these in the planning balance, taking account of the three strands of sustainable development in paragraph 7 of the Framework.
43. In terms of the social benefits, the scheme would deliver additional housing, both market and affordable (secured by obligation), in a sustainable village and in line with the Framework's aim at paragraph 47, and Government policy, of significantly boosting the supply of housing. Having regard to the undisputed shortfall in housing supply and the need for affordable housing in the district, I give this benefit substantial weight as other Inspectors have done in the appeal cases drawn to my attention, including APP/K3415/A/14/2224354.
44. Turning to the economic dimension of sustainability, the Government has made it clear that house building plays an important part in promoting economic growth. There is no doubt that the erection of 14 dwellings would result in construction employment, although such a benefit would only be short-lived. Albeit that these jobs and local investment would be transitory, this is a matter I afford moderate weight.
45. The development would generate New Homes Bonus (NHB) and Council tax receipts for the Council. However, NHB is an incentive for local planning authorities to provide housing on suitable sites, and no direct beneficial link between the spend of the NHB or Council Tax on Chinnor has been established. I do not consider that this factor attracts weight in the planning balance.
46. The occupiers would be likely to support local facilities and services and hence contribute economically to the vitality of Chinnor and the surrounding area. However, the likely contribution that a development of fourteen houses would make whilst quantified, was not broken down for Chinnor and it would be difficult to determine that this expenditure would have a significant benefit for the village itself or, indeed that it was required to sustain the shops and services that currently exist there. Thus I give this little weight.
47. However, judged on the evidence, the several socio-economic benefits and planning benefits of the development summarised above would, together, be significantly and demonstrably outweighed by the environmental harm this proposal would cause and would therefore fail to meet the requirement for sustainable development that runs through decision-taking.

Conclusion

48. For the reasons given above therefore, I conclude that the appeal should fail.

Gareth W Thomas

INSPECTOR

APPEARANCES:

For the Appellant:

Douglas Bond BA (Hons) MRTPI	Partner, Woolf Bond Planning
Colin Pullan	Urban Design Director, Litchfields
Kevin Charsley BA(Hons) DipLA CMLI	IDP Group
Nathan Craker	Vanderbilt Homes
Simon R. M. Jones	Director, SJA Trees

For the Council:

Tom Wyatt	Team Leader, Development Management
Max Gulliford,	Tree Officer

Interested persons:

Councillor Ian White	Ward Member, South Oxfordshire District Council
Martin Wright	Chairman, Planning Committee of Chinnor Parish Council
Will Marshall	Planning Obligations Officer, Oxfordshire County Council
Mark Garman	Local Resident

Richborough Estates

DOCUMENTS PRESENTED AT THE HEARING:

- Document 1: Appeal decision letter APP/Q3115/W/16/3161733
- Document 2: Application to High Court for permission to apply for Planning Statutory Review Notification Ref CO/4193/2017
- Document 3: Plans of neighbouring bungalows
- Document 4: Plan outlining extent of rear building line along Lower Icknield Way
- Document 5: Three applications for tree works submitted to the Council on sites elsewhere in the District
- Document 6: Two aerial photographs of area of appeal site, one with site superimposed and outline of protected trees
- Document 7: Agreed/signed Statement of Common Ground November 2017
- Document 8: Regulation 122 Statement of Compliance, Oxfordshire County Council
- Document 9: Unilateral Undertaking dated 15 November 2017
- Document 10: Letter of notification of Hearing
- Document 11: Location Plan showing recent refusal adjacent 54 Lower Icknield Way LPA Ref P16/S4027/O in relation to appeal site

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