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## Appeal Decision

Hearing Held on 27 March 2018

Site visit made on 28 March 2018

**by H Butcher BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 25 April 2018

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**Appeal Ref: APP/D3125/W/17/3184787**

**Land north of Swinbrook Park, North of Price Way, East of Shilton Road, West of Swinbrook Road, Carterton, West Oxfordshire, OX18 1DS**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by David Wilson Homes Southern (a trading name for BDW TRADING LTD) against the decision of West Oxfordshire District Council.
  - The application Ref 17/00699/OUT, dated 6 February 2017, was refused by notice dated 15 June 2017.
  - The development proposed is up to 115 residential dwellings (C3 Use Class), up to 100 sqm Charity office space (B1 Use Class), extension to Country Park and associated landscape enhancements.
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### Decision

1. The appeal is dismissed.

### Preliminary Matter

2. The application was submitted in outline with only access to be determined at this stage and I have dealt with the appeal on that basis. Details have, however, been submitted showing how the site might be developed in terms of layout and landscaping and I have taken these into account for illustrative purposes only.

### Main Issues

3. The main issues are:
  - The effect of the development on the character and appearance of the area and the setting of Shilton Conservation Area;
  - The effect of the development on the living conditions of future residents having particular regard to light and noise, and;
  - The effect of the development on local biodiversity.

### Reasons

#### *Character and Appearance/Setting of Shilton Conservation Area*

4. The appeal site comprises two large, open and undulating agricultural fields which adjoin the edge of Carterton, defined here by existing residential development in Garner Close and the recently constructed Swinbrook Park

- development. The Swinbrook Park development is tucked in behind Garner Close and does not extend significantly into the countryside to the north-west. Together they create a very strong and defined edge of development when viewed from Shilton Road which bounds the site to the south-west.
5. The illustrative layout shows a swathe of housing along the south-east side of the appeal site which would be physically set apart from existing development by Price Way, the access road to Swinbrook Park, and areas of open landscaping within this new development. It would also bear little resemblance to the existing more linear and clearly defined edge of Carterton.
  6. The appeal site also provides an important visual gap between the large town of Carterton and the much smaller rural village of Shilton, which is located just to the north-west. This gap helps preserve these two areas very separate and distinctive characters. Whilst the gap here is not particularly large when viewed from Shilton Road, the appeal site being the main area of land separating Carterton from Shilton at their closest points, it, nevertheless, allows these two areas to remain clearly visually and physically separate. The proposed development would encroach into this gap, undermining the separation between these two areas and, in conjunction with the layout of development shown, would blur the distinction between them. For these reasons it would cause harm to the character and appearance of the area.
  7. I have also considered the effect the reduction of the gap between Carterton and Shilton would have on the setting of Shilton Conservation Area. Shilton is predominantly set within a tight and steep valley (the Shill Brook Valley) which encloses it and provides its principal context and setting. However, the wider surrounding open land to Shilton also forms an important part of the landscape in which Shilton is experienced and understood. As demonstrated by historic maps of the area Shilton has always been a rural village isolated from Carterton and set in a wider rural landscape. The proposal would eat into the remaining rural landscape surrounding Shilton which helps retain this historic character. It would therefore also cause harm to the setting of Shilton Conservation Area.
  8. The appellant intends to enhance existing hedgerows and provide additional woodland planting, most notably a strip of trees across the centre of the site at a slightly higher level. This would, however, take time to mature, and whilst it might eventually soften and filter views of the development it would never be able to completely screen it, particularly in the winter time. The proposed landscaping would therefore not mitigate the harm identified above.
  9. I therefore find that the proposed development could not be delivered without resulting in harm to the character and appearance of the area or to the setting of Shilton Conservation Area. The proposal would therefore conflict with Policies BE2, BE4, NE1, NE2, NE3 and H2 of the West Oxfordshire Local Plan 2011 (LP) which require new development to respect local character and appearance and to retain open areas which make an important contribution to the distinctiveness of settlements. It would also conflict with Policy BE5 of the LP which seeks to guard against unsympathetic development proposals which affect the setting of designated conservation areas.
  10. The harm to the significance of Shilton Conservation Area, by virtue of harm to its setting, can be considered 'less than substantial' for the purposes of paragraph 134 of the National Planning Policy Framework (the Framework). This sets out the need to address 'less than substantial harm' in a balanced

manner against the benefits associated with such schemes and I address this in my overall planning balance below.

### *Living Conditions*

11. The east side of the appeal site abuts Carterton Football Club. The Council have raised concerns over the impact of this on the living conditions of future residents of the development closest to this boundary in terms of disturbance from light from floodlights around the football pitch and noise from the general use of the club. I shall address these in turn below starting with light.
12. The proposed development is located in Environmental Classification Zone E2 which is considered to be a relatively dark outer suburban location in accordance with the Institute of Lighting Professionals document 'Guidance Notes for the Reduction of Obtrusive Light DN01:2011'. This indicates a pre and post curfew light trespass of 5lux and 1lux respectively, pre-curfew being before 11pm and post-curfew being after 11pm. The majority of receptors included within the modelling works carried out by the appellant would not meet these criteria.
13. The appellant stated at the hearing that this is a worst case scenario that does not take into account any existing screening. However, humans are sensitive receptors and these results indicate that the floodlights are likely to be considered a nuisance by future residents close to the boundary with the football club. The appellant also argued that the frequency of usage of the football club at present would mitigate this impact but there is no restriction over the use of the club at present and nothing to confirm it will remain at its existing level in the future.
14. Layout is a reserved matter and the houses shown on illustrative plans as being directly adjacent to the football club could be moved away from this boundary which would mitigate the above harm. However, no plan has been produced demonstrating this and given my findings in respect of character and appearance I would be concerned this could result in further harm of this nature. Relying on the orientation of properties to ensure there was no harmful light spill to habitable windows would also not be a satisfactory solution as it could result in dwellings having limited outlook. Finally, perimeter planting to mitigate any harmful light pollution would likely need to be tall and evergreen to be effective all year round and as such could have adverse effects on living conditions.
15. I therefore find that the proposal would be harmful to the living conditions of future residents due to light pollution and this would not be able to satisfactorily overcome at reserved matters stage or by condition given the constraints I have identified. It would therefore conflict with the relevant provisions of Policy BE2 of the LP which seeks to create a satisfactory living environment.
16. I turn now to noise. Noise from the football ground would originate mainly from players on the pitch and supporters in the stands on match days and during training sessions. It is agreed between the two main parties that noise to the properties themselves could be mitigated by the design of the windows. The main area of dispute therefore concerns the use of private gardens belonging to properties closest to the football club.

17. The illustrative layout gives the impression of houses in blocks meaning where necessary gardens could be separated from the football grounds by houses. This would make a big difference in terms of noise as confirmed by the appellant's noise consultant. The Council confirmed at the hearing that a layout with gardens to the rear would be supported. I therefore consider any harmful noise could be mitigated by the layout of the development which is a reserved matter.
18. Consequently I find no harm to the living conditions of future residents in respect of noise and therefore no conflict with Policy BE2 of the LP in this regard, or Policy BE19 which specifically seeks to protect occupants of housing from significant noise disturbance from existing development. This does not, however, override the harm I have found above with respect to light.

#### *Biodiversity*

19. The Council have raised concern that the proposal would result in the loss of habitat for, in particular, farmland breeding birds such as the Skylark, Corn Bunting, Yellow Hammer, Linnet and Yellow Wagtail which are priority species. Some of the site would clearly be lost due to the housing proposed. However, the remainder of the site is to be a Country Park (an extension to Kilkenny Lane Country Park) which would be managed to provide new and enhanced habitats for all of the above birds apart from the Skylark which I return to later.
20. At present, the land on which the Country Park is to be located can be freely accessed by the public and dog walkers. Whilst the Country Park before me would bring with it increased human activity from the new houses proposed as part of it, there would be greater management of this area. For example, access to certain parts of the Country Park would be restricted during bird-breeding season. This would not in itself mitigate all of the associated harmful impacts of additional residential development in this area such as an increased presence of cats. However, I consider that overall there would be no harm to the above farmland breeding birds (with the exception of the Skylark) when balanced against the overall compensatory management of this area proposed.
21. I return now to the Skylark. The proposed landscaped Country Park would not provide suitable habitat for the Skylark which requires large open areas to breed. However, the appellant proposes long-term off-site mitigation for the loss of Skylark habitat at the appeal site through the creation of six Skylark plots on land at Kilkenny Farm, which is adjacent to the appeal site but not owned by the appellant. This would be secured by a Grampian condition as suggested by the appellant. A letter setting out the agreement of the landowner to these measures was produced at the hearing which indicates there is a reasonable prospect that this mitigation could be performed within the time limit imposed by the permission. A Grampian condition would therefore be appropriate in this case and would provide mitigation for the loss of Skylark habitat as a result of the proposal.
22. In light of my above findings adequate mitigation could be provided so as to ensure no harm to local biodiversity. The proposal would therefore be in accordance with Policy NE13 of the LP which requires development proposals to include measures to mitigate any effects upon features of nature conservation value, including, where appropriate, the provision of compensatory habitats or management.

### *Overall Planning Balance*

23. As set out previously I have found harm to the setting of Shilton Conservation Area. Whilst this harm would be 'less than substantial' it still represents a harmful impact to the conservation of this heritage asset. Paragraph 132 of the Framework sets out that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
24. As per paragraph 134 of the Framework where a development will lead to 'less than substantial harm' to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. The proposal would provide the benefit of housing, of which 35% would be affordable, which is a benefit of considerable weight given that the main parties are agreed that the Council cannot, at this time, definitively demonstrate a five year supply of deliverable housing sites.
25. The other benefits put forward by the appellant include the provision of a Country Park but as this is included in the emerging plan this may be provided in the future regardless of the outcome of this appeal or who owns it at present. Furthermore, the Country Park would largely provide mitigation for harm to local biodiversity as a result of the development. I therefore consider it a neutral factor in this appeal. I also find no benefit in terms of biodiversity gain, only mitigation, therefore this is also a neutral factor. Charity space is proposed as part of the development but no evidence of need for such space has been provided therefore this carries only minimal weight as a benefit. Finally, support for local jobs and services is tempered as a benefit by the large amount of development which has already occurred or is currently under way in Carterton.
26. In weighing the harm to the setting of Shilton Conservation Area against the public benefits of the proposal I consider that the harm would outweigh the benefits in this case. I have also found harm to the character and appearance of the area and to the living conditions of future occupiers of the development in terms of light pollution. Taking all of the above harm together the adverse impacts of the development would significantly and demonstrably outweigh the benefits.

### *Other Matter*

27. The main parties agree that the third reason for refusal relating to the provision of affordable housing and contributions to meet the needs of the development has been fully addressed by the two separate planning bilateral obligations submitted at the hearing.

### **Conclusion**

28. For the reasons set out above, and having had regard to all other matters raised, the appeal is dismissed.

*Hayley Butcher*

INSPECTOR

**APPEARANCES**

FOR THE APPELLANT:

Nick Paterson-Neild	Barton Willmore
Lisa Toyne	Barton Willmore
Jonathan Smith	CGMS
Jessica Jones	CGMS
Richard Harding	Osborne Clarke LLP
Benjamin Kite	EPR
Sean Kielthy	Hoare Lea and Partners
Matthew Gore	MEC Acoustic Air
Sian Keeling	David Wilson Homes
Nina Sharp	Barton Willmore
Rob Griffiths	Barton Willmore

FOR THE LOCAL PLANNING AUTHORITY:

Chris Wood	West Oxfordshire District Council
Liz Huggins	West Oxfordshire District Council
Melanie Dodd	West Oxfordshire District Council
Will Marshall	Oxfordshire County Council
Richard Oliver	Oxfordshire County Council
Mark Holland	CBA Studios

**DOCUMENTS SUBMITTED DURING THE HEARING**

Document 1	Letter from BCM re Skylark Plots
Document 2	Planning bilateral obligations
Document 3	Email from BCM re Skylark Plots
Document 4	Statement of compliance
Document 5	Condition 26 wording