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## Appeal Decision

Site visit made on 29 April 2019

**by V Bond LLB (Hons) Solicitor (Non-Practising)**

**an Inspector appointed by the Secretary of State**

**Decision date: 24<sup>th</sup> May 2019.**

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### **Appeal Ref: APP/Q3115/W/19/3220743**

### **Land off Fieldside Track, Long Wittenham OX14 4PZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Kler Group against the decision of South Oxfordshire District Council.
  - The application Ref P18/S1964/FUL, dated 7 June 2018, was refused by notice dated 29 November 2018.
  - The application sought planning permission for outline residential development with all matters reserved except access for up to 36 dwellings without complying with a condition attached to planning permission granted on Appeal Ref APP/Q3115/W/17/3169755, dated 3 January 2018 (Local Planning Authority Ref P16/S1124/O).
  - The condition in dispute is No 4 which states that: 'The development hereby permitted shall be carried out in accordance with the following approved plans: site location plan and site access design drawing WIE 006 005 A07.'
  - The reason given for the condition is in the interests of 'certainty'.
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### **Decision**

1. The appeal is allowed and planning permission is granted for outline residential development with all matters reserved except access for up to 36 dwellings at Land off Fieldside Track, Long Wittenham OX14 4PZ in accordance with the application Ref P18/S1964/FUL, dated 7 June 2018 without compliance with condition no 4 previously imposed on planning permission appeal ref APP/Q3115/W/17/3169755 (Local Planning Authority Ref P16/S1124/O) but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect and subject to the following new conditions which shall replace those with the same numbering:
  - 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 2 years from 3 January 2018.
  - 4) The development hereby permitted shall be carried out in accordance with the following approved plans: site location plan and site access design drawing WIE 006 005 A18

### **Preliminary matters**

2. The decision notice issued on 29 November 2018 identifies the application with a 'FUL' suffix. It is apparent from all of the application documentation that the

application related to outline consent with all matters reserved except for access and I deal with the appeal on that basis.

3. Amended plans were submitted during the course of the application. On the basis that these appear to have been consulted upon, I deal with the appeal based upon the same plans upon which the Council made its determination and I do not consider any prejudice to result from this.

### **Background and Main Issue**

4. Outline planning permission was granted at appeal for 36 dwellings on the site and associated access works in January 2018. The appellant submitted an application to vary the plans condition in order to amend the approved means of access to the site. This was so as to avoid any potential for the visibility splay crossing unregistered or third-party land. The main issue is the effect of the proposed variation of the condition on the character and appearance of the area.

### **Reasons**

5. The appeal site sits opposite existing residential development and planning permission has been granted for 36 dwellings on the site. This section of the road has very wide grass verges on the western side, with a hedgerow boundary on the east side of the road. These aspects assist in creating a rural setting for the village.
6. The revised access would not alter the design of the junction itself as previously permitted but would reposition this forward of its approved position, within the adopted highway. The width of the road itself would remain unaltered but rather the consequence would be to reduce the width of the existing grass verge. This would though essentially be replaced with an area of equal grass verge on the eastern side of the road.
7. Whilst the proposed access would be closer to residential properties on the opposite side of the road than the access previously approved, a fair width of grass verge would remain and these properties are also set back some distance from the road. Although the proposal would mean that there would be a footway in front of the hedge and either side of the access road, given that the western side of the road already has a footway, this is not uncharacteristic of the immediate area. Consequently, the informal rural village character would remain.
8. There is no detailed evidence sufficient to indicate that the new proposed footway to the eastern side of the road will result in the loss of the hedgerow. Nor is there any robust justification as to why the likely root spread of trees outside 1-6 Saxon Heath has been assessed incorrectly, such as to mean that relocating the water main and drainage culvert could not be achieved without harm to those trees. As such, I am not persuaded that these features could not be retained. In view of this and extent of the proposed grass verges, the road would certainly not appear as a town road. There is nothing to suggest that the zebra crossing and traffic calming measures would have a materially different effect to those already approved given that these are essentially just relocated.
9. I conclude then on the main issue that the proposed variation of the condition would not have a harmful effect on the character and appearance of the area.

There would thus be no conflict with Policy LW4 of the Long Wittenham Neighbourhood Plan (2018) (LWNP) which indicates that proposals for new development will be supported where they conserve and enhance the character and appearance of the immediate area and street scene as well as the wider rural character of the village as outlined in the Long Wittenham Character Assessment Report (2016).

10. It would accord also with Policy C4 of the South Oxfordshire Local Plan (adopted 2006) which states that development which damages the attractive landscape settings of the district will not be permitted. As regards Policy LW7 of the emerging Long Wittenham Neighbourhood Development Plan, given that the appeal proposal would result in replacement grass verges being provided, there would be no conflict with the aims of this policy regarding the preservation and enhancement of incidental green spaces within the village.

### **Other Matters**

11. Numerous detailed concerns have been raised by local residents and the Parish Council. However, s73 of the Act does not permit a reconsideration of the entire scheme, but rather only the effects of the variation of condition proposed. As such, many of the concerns raised are not relevant to the present proposal and I deal only with those which are of relevance below.
12. Concern has been expressed by local residents that the proposed variation would have the effect of moving the road nearer properties at 1-6 Saxons Heath, 1-4 and 22, 23, 24 Didcot Road and no. 1 The Crescent. There is no substantive evidence though to indicate that this would have any more than a negligible impact in terms of noise as compared to the previous position.
13. A number of concerns have been raised related to potential highway safety issues in respect of the new proposed access and it would appear that the Highway Authority initially was opposed to the proposal. However, the provision of swept path analyses, a stage 1 Road Safety Audit and revised plans persuaded the Highway Authority that the proposed access would be acceptable. In view of this, and bearing in mind the details to be addressed pursuant to the Section 278 process, together with the relatively low traffic speeds in the immediate area, there is no convincing evidence to indicate that the proposal would result in adverse highway safety impacts. There also no robust justification as to why the appeal proposal would conflict with the proposed improvements for Fieldside in the NDP.
14. Temporary inconvenience related to construction works is not a valid planning reason to resist otherwise acceptable development. Potential effects on property values are not a relevant consideration as these relate to a private interest. As regards impacts in relation to the proposed community hub, it would appear that this scheme is at an early stage and there is no substantive evidence to suggest that appeal proposal would be likely to impede those plans in any way.
15. In the context of the already approved access, the proposed access would preserve the settings of the Long Wittenham Conservation Area and of Grade II listed buildings including those at Challis Farmhouse, The Old Farmhouse, the barn to the south of The Grange and The Grange. In making this assessment, I have had regard to my statutory duties pursuant to the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the

desirability of preserving listed buildings and their settings, and of preserving the character or appearance of the CA.

*Deed of Variation*

16. The second reason for refusal in the Council's decision notice indicated that in the absence of a completed Deed of Variation related to a previous S106 Agreement and Unilateral Undertaking, the proposal would fail to secure on and off site infrastructure necessary to meet the needs of the development. During the course of the appeal a completed Deed of Variation dated 25 April 2019 has been submitted and the Council has therefore confirmed that this reason for refusal has fallen away. There is no evidence to suggest that the obligations sought would not accord with regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations set out in the revised National Planning Policy Framework (2019).

**Conditions and conclusion**

17. The guidance in the Planning Practice Guidance makes it clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties. There is no substantive evidence to suggest that any additional conditions are required regarding the protection of trees or biodiversity beyond those already imposed on the permission granted pursuant to the previous appeal. Nor is there any detailed evidence such as to suggest that other conditions should be varied from those imposed on the previous permission granted on appeal.
18. I have amended the conditions stipulating timescale on the submission of reserved matters on the basis that s73(5) of the Act indicates that planning permission must not be granted under s73 to the extent that it has effect to change a condition subject to which a previous planning permission was granted by extending the time within which - (a) a development must be started; (b) an application for approval of reserved matters (within the meaning of section 92 of the Act) must be made. In the interests of clarity, it is necessary to apply a condition requiring development to be in accordance with the revised plans.
19. Although the Council's housing land supply position means that the 'tilted balance' contained within the revised Framework does not apply as it did in the previous appeal on site, nonetheless, this is not a reason to resist development that is otherwise acceptable. For the reasons given above, I conclude that the planning permission should be varied as set out in the formal decision.

*Veronica Bond*  
INSPECTOR