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## Appeal Decision

Site visit made on 30 March 2015

**by Thomas Shields MA DipURP MRTPI**

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

**Decision date: 13 July 2015**

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### **Appeal Ref: APP/D3125/W/14/3000947**

#### **Land to the north of New Road, Bampton, Oxfordshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A 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 Mr Steve Louth (Richborough Estates) against the decision of West Oxfordshire District Council.
  - The application Ref 14/1338/P/S73, dated 17 September 2014, was part refused and part approved by notice dated 4 December 2014.
  - The application sought planning permission for the erection of residential development of up to 160 dwellings and creation of vehicular access from New Road, without complying with conditions 3 and 13 attached to planning permission Ref 13/1465/P/OP, dated 29 August 2014.
  - The condition in dispute is No. 3 which states that: *The development shall be phased with 60 units being built by 2017, 50 further units in 2019 and the final 50 in 2023.*
  - The reason given for the condition is: *To ensure that all components of the overall development are provided as part of a phased programme and to enable the development to be better assimilated into the village.*
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#### **Decision**

1. The appeal is allowed and planning permission is granted for the erection of residential development of up to 160 dwellings and creation of vehicular access from New Road at land to the north of New Road, Bampton, Oxfordshire in accordance with the application Ref 14/1338/P/S73, dated 17 September 2014, without compliance with condition number 3, previously imposed on planning permission Ref 13/1465/P/OP, dated 29 August 2014, but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect.

#### **Application for Costs**

2. An application for costs was made by Richborough Estates against West Oxfordshire District Council. This application is the subject of a separate Decision.

#### **Background**

3. Condition 3 (C3), which is in dispute, is imposed on an outline planning permission (13/1465/P/OP) granted on 29 August 2014, and subject to compliance with other conditions and a S106 Agreement (S106) for residential development for up to 160 dwellings adjoining the edge of the village of Bampton. The S106 was completed on 26 August 2014.

4. C3 and its reason for imposition is as follows:

*The development shall be phased with 60 units being built by 2017, 50 further units in 2019 and the final 50 in 2023.*

*REASON: To ensure that all components of the overall development are provided as part of a phased programme and to enable the development to be better assimilated into the village.*

5. The appellant subsequently applied to the Council to have C3 removed but the application (14/1338/P/S73), now subject of this appeal, was refused for the following reason:

*By reason of the pace and scale of development, the lifting of the restriction would give rise to a significant adverse impact upon the social and economic facilities of the settlement and fail to assimilate with the host community. It is therefore contrary to paragraphs 7, 14, and 15 of the NPPF.*

### **Main Issue**

6. The main issue in this appeal is whether C3, or a revised wording of C3, would be reasonable and necessary having regard to the impact of the development upon the social and economic facilities of the settlement, and whether it would assimilate with the host community.

### **Reasons**

7. The parties advance a number of opposing arguments with regard to the interpretation and requirements of C3. The Council contends that it meets all of the relevant tests for planning conditions as set out in at paragraph 206 of the National Planning Policy Framework (2012) (the Framework) and the national Planning Practice Guidance (2014) (PPG).
8. However, on an ordinary reading of C3 I find it is ambiguous. It is not clear whether the first 60 units are required to be built by the first or last day of 2017. The Council argues in its statement that "built by 2017" means *before 31 December 2017*, but I consider that such an interpretation requires the insertion of those particular words. Their absence therefore renders the condition imprecise and open to interpretation contrary to the advice in the PPG<sup>1</sup> and paragraph 206 of the Framework.
9. Also, given that the first part of the condition requires that 60 units are required to be built "by 2017", it is unclear whether the use of the word "in" in the remainder of the condition means that the 50 further units and the final 50 units were also required to be built "by" 2019 and 2023 respectively, or, commenced and built within those specific years. As such, the condition as a whole could be interpreted either way and is imprecise.
10. The Council argues that the condition should be interpreted as follows: 60 units to be completed before 31 December 2017, then 50 further units to be commenced and completed in the year 2019, then a further 50 units commenced and completed in the year 2023. On this interpretation there would be enforced gaps during which further construction of houses on the site would be prohibited; a one year gap between the end of 2017 and the start of 2019, and a three year gap between the end of 2019 and the start of 2023.

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<sup>1</sup> Reference ID: 21a-003-20140306, 21a-004-20140306

11. The appellant argues, rightly so in my view, that the condition as worded also requires completion of the development, albeit within a staggered timeframe. I consider that would be an unnecessary and unreasonable requirement in conflict with the guidance in the PPG<sup>2</sup>.
12. For all the forgoing reasons, I find that the wording of C3 is imprecise and imposes an unreasonable completion requirement. I therefore conclude that the condition fails to meet the six tests for planning conditions set out at paragraph 206 of the Framework and hence its removal is justified.
13. It is not clear to me from the evidence why the Planning Sub-Committee considered that the particular discrete one and three year gaps were an appropriate and measured way of phasing the build out of the development, firstly; in the context of the Council's concerns regarding impact upon the social and economic facilities of the settlement and social cohesion, and secondly; whether the staggered start-stop requirement for development took account of any economic constraints it might have on the economic viability of developing the whole site.
14. Nonetheless, it is clear that the Council's intention in refusing to remove C3 was to restrict the rate at which the development would be built out so that it would not have the significantly adverse impacts it feared would occur as described in the reason for refusal. In these circumstances the Council contends that I should give consideration to imposing a revised wording of the condition, such that the purpose of the condition to regulate the build out rate of the development is sustained, and in order to prevent the harms identified by the Council in its reason for refusal, and as set out in detail in its appeal statement.
15. The Council refers to the location of the development at the edge of the existing village, and to a lack of provision or opportunities for meetings between members of the community who might not otherwise come into contact with each other. Also, to the many concerns of local residents and others including, but not limited to, education and health provision, and a negative impact on community spirit from a feared influx of new inhabitants, equating approximately to a 15% increase in the village population.
16. However, I am not persuaded by the Council's arguments. With regard to health services, I note that the NHS consultation response to the outline application was that existing capacity at the local surgery was sufficient to absorb the likely increase in patient numbers resulting from the proposed development. With regard to education there was no objection from Oxfordshire County Council (OCC) subject to a legal agreement to secure the expansion of the local primary school and other education contributions. These were indeed secured in the subsequently completed S106, and I note that there were no objections from the NHS or OCC to the application subject of this appeal. Also, given its geographical location and close physical context with the existing village I see no reason why, without a phasing condition, the site should be perceived as disconnected with the rest of the village, or perceived as a distinct and separate environment.
17. I also see no reason why the incoming inhabitants of the development, many of whom would likely already have a local connection, would not integrate with

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<sup>2</sup> Reference ID: 21a-005-20140306

existing village inhabitants in making use of the infrastructure and village facilities which would be enhanced through the S106, and which requires affordable housing provision, and enhancement of other infrastructure including education, policing, highways, community and sports/play facilities, cultural facilities, waste services and bus services.

18. Consequently, it seems to me that the concerns of the Council, local residents, and others, were adequately addressed and taken account of by the Council through the S106, completed approximately 3 months prior to the refusal of the application subject of this appeal.
19. Moreover, the S106 requires the phased delivery of infrastructure in step with the incremental occupation of the 160 housing units. With this in mind, there is no convincing evidence before me that leads me to conclude that a planning condition to phase the build out of the development, in addition to the phasing of infrastructure provision in the S106, would be necessary to deliver infrastructure incrementally, and I see no reason why the likely rate of occupation of the development without a phasing condition would overwhelm or have a negative impact on community spirit.
20. In conclusion, I am satisfied that the Council's concerns relating to the impact of the development upon the social and economic facilities of the settlement and social cohesion are already adequately addressed and resolved to an acceptable degree by the existing S106. An additional phasing condition would therefore be unnecessary to make the development acceptable in planning terms. As such, I conclude that the proposed development without such a condition would continue to remain as a sustainable form of development in terms of paragraphs 7, 14 and 15 of the Framework.

#### *Other matters*

21. Reference is made to the comments made in the Inspector's Report into the West Oxfordshire Local Plan in 2005 with regard to the scale of housing development and infrastructure at Bampton and elsewhere. However, some considerable time has elapsed since then, and in any event planning permission has since been granted for the 160 dwellings. Consequently, given my reasons and conclusion above in respect of the need for a phasing condition, this matter does not lead me to reach a different conclusion on the main issue.
22. While I note the Council's arguments relating to it being at or close to providing a five year supply of deliverable housing sites, and the Committee's concerns in respect of the potential impacts from other development sites, these matters do not by themselves, or cumulatively with other considerations, lead me to conclude that a phasing condition would be reasonable and necessary to make the development acceptable in planning terms.

#### **Conclusion**

23. For all the above reasons, and having regard to all other matters raised, I conclude that the appeal should be allowed as set out in the formal decision at paragraph 1.

*Thomas Shields*

INSPECTOR