



Appeal Decision

Hearing Held on 19 November 2019

Site visit made on 20 November 2019

by David Reed BSc DipTP DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 January 2020

Appeal Ref: APP/D3125/W/19/3230457

Land North of Bampton Road, Curbridge, Oxfordshire OX29 7PF

- 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 SCC Curbridge LLP & Mrs M Parker against the decision of West Oxfordshire District Council.
 - The application Ref 18/01724/OUT, dated 6 June 2018, was refused by notice dated 11 December 2018.
 - The development proposed is the erection of up to 85 dwellings (C3 use) including 40% affordable and 3x self-build plots with associated landscaping, public open space and enhancements to the children's play area, 2x footpaths and 1x footbridge and the provision of land for D1 use, vehicular access from Bampton Road, pedestrian and cycle access from Well Lane and car parking and limited residential vehicular access from Main Road (outline application with all matters reserved other than access).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council's second reason for refusal was that the provision of affordable housing, self-build housing plots, sport and leisure, public transport, education, community benefits, public art, primary healthcare, ecological and landscape management had not been secured by legal agreement. Consequently, the benefits of the development would not be secured nor its impacts mitigated. However, in the lead up to the hearing discussions between the parties led to the submission of a unilateral undertaking by the appellant which addressed these concerns and, as a result, the Council withdrew this reason for refusal.
3. The proposal is in outline, with all matters reserved except access. However, the application is supported by an indicative masterplan, density and landuse parameter plan and design and access statement which the appellant made clear were a firm statement of intent as to how the site would be developed. This is backed up by one of the conditions agreed between the parties which would require any application for reserved matters to be in accordance with these documents. The appeal is therefore considered on this basis, with the illustrative details in these documents taken into account in assessing the acceptability of the proposals.

Main Issues

4. The main issues are:

- the effect of the proposal on the character and appearance of the area, including the form of the village, landscape and visual impact and assessment against development plan policy; and
- whether any harm or conflict in this respect would be outweighed by the benefits of the proposal, including the need for market and affordable housing.

Reasons

Character and appearance

5. The proposal is for a comprehensive scheme involving most of the undeveloped land lying between Well Lane and Main Road within the village of Curbridge. These two roads, which are lined with frontage development along most of both sides, form a triangle with the A4095 Bampton Road which runs along the southern boundary of the appeal site. The site itself, about 6.17 ha, comprises two unequal sized grass fields divided by Elm Bank Ditch and the associated hedgerow which run north west-south east through the land. The larger field to the west of the stream slopes down from Well Lane to meet the paddock to the east which slopes down in the other direction from Main Road.
6. The scheme would involve up to 82 dwellings (34 affordable) on the western field to the east of Well Lane and wrapping around Dovecote Place, a recent cul-de-sac scheme of 14 dwellings. Vehicular access would be from a new junction onto Bampton Road rather than extending Dovecote Place into the site. Development of the paddock would be limited to three self-build plots and a parking area for the nearby village hall accessed off Main Road. The remainder of the site, a generous area of land either side of Elm Bank Ditch, would be landscaped and laid out as semi-natural public open space. This would include an extension to the existing play area on Well Lane and an adjacent area of land suitable for a new village hall.
7. There is no dispute that the development plan comprises the West Oxfordshire Local Plan 2031 (WOLP), adopted in September 2018, and that the policies in the plan are both up to date and consistent with the National Planning Policy Framework¹. In addition, it is agreed that the Council can demonstrate a five-year supply of deliverable housing sites, their latest statement claiming 6.8 years supply against the WOLP requirement². Although the appellant observes that five sites expected to deliver housing do not yet have planning applications and disputes the likely delivery from two allocations³, this would only reduce the deliverable supply by 525 dwellings giving 6.2 years supply. With the presumption in favour of sustainable development only applicable at present in Oxfordshire if there is less than three years supply⁴, it is agreed the tilted balance is not engaged. The appellant's primary case is that the proposal complies with the development plan, and secondly if there is any conflict this is outweighed by the benefits of the scheme.

¹ A Village Design Statement is being prepared locally to guide development in Curbridge but this has not yet been finalised and has not been adopted by the District Council as a Supplementary Planning Document.

² Housing Land Supply Position Statement October 2019: Deliverable supply 5,893; 5-year requirement 4,318

³ East Witney 225 dwellings & Oxfordshire Cotswolds Garden Village 300 dwellings

⁴ Written Ministerial Statement 'Housing Land Supply in Oxfordshire' 12 September 2018

8. Curbridge is defined in the WOLP settlement hierarchy as a 'village' whereas the town of Witney, just to the north on the other side of the A40 dual carriageway, is one of three 'main service centres' and Bampton, about five miles to the south, is one of seven 'rural service centres'. Policy OS2 seeks to focus a significant proportion of new homes within and on the edge of the main service centres and as part of this approach strategic development areas are allocated to the east and north of Witney to join a major site now under construction to the west of the town. This site lies close to Curbridge beyond the A40. Bampton as a rural service centre on the other hand is suitable for 'a modest level of development' to help reinforce its existing role.
9. In relation to villages, Policy OS2 states that they are suitable for 'limited development which respects the village character and local distinctiveness and would help to maintain the vitality of these communities'. A number of allocations are made in villages 'to ensure identified needs are met' but there is no allocation in Curbridge. The policy also includes a list of general principles which include the requirement that development should be of a proportionate and appropriate scale to its context, complement the existing scale and pattern of development and not involve the loss of an open space that makes an important contribution to the character or appearance of the area.
10. Policy H2 goes on to state that new dwellings will be permitted in villages on undeveloped land adjoining the built up area 'where convincing evidence is presented to demonstrate that it is necessary to meet identified housing needs' and it is in accordance with other policies, particularly OS2.
11. In addition to these two policies, the Council argue that the proposal conflicts with Policies EH2 and OS4 which seek to ensure new development conserves and enhances the intrinsic character, quality and distinctive natural and man-made features of the local landscape and demonstrates high quality, inclusive and sustainable design respectively.
12. In the absence of defined settlement boundaries in the WOLP, it was agreed at the hearing that whether the proposal complies with the development plan is a matter of assessing the scheme against these four general policies.
13. Although the application is for outline planning permission, extensive efforts have been made to draw up proposals that respond to the form, character and history of the village and the wider landscape with its topography, vegetation and heritage features. The new housing would be situated between the linear development along Main Road and Well Lane, and also contained by Bampton Road which forms the third side of a triangle. As a result it would not extend into the open countryside surrounding the village, and would also be visually self-contained in views of the village from outside. Whilst the new housing would be very obviously seen from surrounding properties, these are primarily private rear facing views across the site. The most significant public views of the new housing would be from the public footpath crossing the site, from the vicinity of the Main Road/Bampton Road junction and when travelling south west along Bampton Road from this junction. From here the housing would be seen on rising land across a gentle valley but given the backdrop of housing already lining Well Lane would be seen as consolidating this existing built form. Views from the south would be screened by the substantial tree line along the old alignment of the Bampton Road.

14. The site itself comprises low quality (Grade 4) agricultural land and a paddock which are proving increasingly difficult to farm. Although pleasant with its gentle slopes, boundary hedgerows and the Elm Bank Ditch the site does not form part of a designated or protected landscape nor has any formal ecological designations. The trees subject to a preservation order would be protected.
15. The proposed layout of the scheme within the site seeks to respond to the character and needs of the village. The overwhelming majority of the new housing would be located on the upper part of the western field behind the bungalows on the eastern side of Well Lane and next to Dovecote Place. It would thus be located next to mid-20th century ribbon development and a recently built cul-de-sac with a large undeveloped area providing separation from the more historic part of the village along Main Road. This area is not designated as a conservation area but contains several listed buildings and converted stone farm buildings arranged informally along the road as well as some modern infilling. With only a driveway providing access to three self-build plots and some parking for the existing village hall on the paddock, the attractive character of this part of the village would be retained.
16. The scheme would also include the extension and enhancement of the existing play area on Well Lane, land and some funding for a new village hall should this be required, 2.43 ha of open space adoptable by the Parish Council on either side of the stream and a network of pedestrian and cycling routes to improve connectivity between the Well Lane and Main Road parts of the village. Public open space of this size would provide an opportunity for informal recreation and ecological benefits in response to the current situation with clear signs of pressure for more walking routes and much species poor grassland. In this way the scheme would respond to the identified needs of the village, provide significant benefits and represents a comprehensive approach to the development of the site within the heart of the village.
17. For these reasons the proposal, if acceptable in principle, would comply with Policies EH2 and OS4 as it has been designed as far as possible to conserve and enhance the intrinsic character, quality and distinctive natural and man-made features of the local landscape and as such demonstrates high quality, inclusive and sustainable design.
18. Curbridge is not designated as a Conservation Area but the proposal is close to two listed buildings, Curbridge Farmhouse which historically would have been associated with agricultural land and Thatch Cottage. In both cases their remaining rural setting would be slightly eroded, but the harm would be much less than substantial and outweighed by the public benefits of the proposal. As the report to Committee observes, heritage is not a significant constraint in this case and there would be no conflict with Policies EH9 or EH11.
19. In relation to Policy H2, as explained in paragraphs 31-33 below, identified housing needs are not being met at present with a shortfall in delivery against WOLP requirements even though these are staged with lower provision in the early years to allow large strategic sites to start delivering. Despite this, the WOLP strategy to meet housing needs over the plan period as a whole remains deliverable as demonstrated by the five-year housing land supply position. The appellant's argument that the scheme is necessary and thus complies with Policy H2 relies on paragraph 5.44 of the WOLP which states that the staged requirement 'should not be seen as a target and over delivery... particularly in

the early years, will be encouraged'. However, whatever the position regarding housing need, to comply with Policy H2 the scheme must also comply with Policy OS2 and in particular the general principles in that policy.

20. Although the proposal is a well-considered and carefully designed scheme in itself, Policy OS2 is critical to determine whether it would be development in the right place. Curbridge is defined as a village due to its restricted range of services and facilities. The Council's Settlement Sustainability Report⁵ notes a community building, public house, place of worship, playing fields, access to a principal road and regular bus services. However, with no school, employment, shops or surgery, the village is only 32nd out of 41 recognised settlements in the district in terms of sustainability. Despite its proximity and regular bus services to Witney it is a distinct settlement and the sustainability analysis justifies the Policy OS2 stipulation that the village is only suitable for 'limited development which respects the village character'. The term 'limited' is not quantified, with the appellant arguing that the proposal would be limited by the masterplan, the permission and the physical containment of the triangle of roads, but the general principles in the policy are more helpful.
21. Dealing with the first of these, the proposal would be disproportionate and inappropriate in terms of scale to its context. At present the village comprises 219 dwellings⁶ so the scheme would represent an increase of nearly 40% in the number of households. The village has grown incrementally up to now, with Dovecote Place the latest relatively small-scale development. Constructed over a relatively short period, the proposal would result in an excessive increase in the size of the village and would appear out of scale in relation to it.
22. The proposal would also fundamentally change the existing form and thus character of the village which essentially comprises linear development along Main Road, turning the corner into Well Lane and then along Bampton Road to the south of the Lord Kitchener Public House. This latter section consists of a looser knit stretch of development but like the other two comprises mainly frontage buildings with some at right angles or along short tracks to the side. By contrast the proposal, however well designed, would comprise a substantial in-depth housing estate, with buildings visible between the bungalows along Well Lane where at present there are none. This contributes to the rural ambience of that road which would be adversely affected. The proposal would in essence turn a linear village into a more nucleated one. It would not therefore form a logical complement to the existing pattern of development contrary to the second general principle in Policy OS2.
23. Thirdly, the proposal would involve the loss of an area of open space that makes an important contribution to the character of the village, conflicting with another general principle. Whilst not public open space, the fields concerned form a wedge of open land which separate the development along Well Lane from that along Main Road. The two fields are fairly featureless in themselves and overlooked by existing built development but their gentle slopes, boundary hedgerows and the riparian vegetation along Elm Bank Ditch combine to form a pleasant rural area within the heart of the village. Whilst the scheme would retain a substantial part of this open area, built development on a large section would significantly harm the character and appearance of the settlement due to the loss of much of the open space which it encloses on two sides.

⁵ November 2016 Update

⁶ Settlement Sustainability Report Table 5

24. To conclude in relation to the first main issue, whilst the effect on the wider landscape would be minimal, the proposal would cause significant harm to the character and appearance of the area, in particular on the form and character of Curbridge village. In terms of the development plan, the design quality of the scheme would comply with Policies EH2 and OS4. However, the scale and form of the proposal in relation to its village context would conflict with three general principles in Policy OS2 and this conflict is fundamental as it means the proposal fails to comply with the overall housing strategy of the WOLP. Whatever the housing need position, the scheme cannot comply with Policy H2 due to the conflict with Policy OS2. Overall therefore, the proposal conflicts with the development plan when considered as a whole.
25. These findings are consistent with the housing land assessment process carried out for the WOLP. The 2014 Strategic Housing Land Availability Assessment concluded that the site was not suitable for development as it was a significant open space that contributes to the character and setting of the village and that development in depth would be out of keeping with its linear form. Later on, when the Council needed to identify additional housing land, the 2016 Strategic Housing and Economic Land Availability Assessment (the SHELAA) concluded that the site was developable provided a comprehensive approach is taken. Although altering the linear form of the village it stated the landscape impact would be relatively localised and providing the number of homes is limited to incorporate a significant amount of open space, the site offers the potential to create a high-quality living environment close to Witney. This is a fair assessment and the appeal proposal would comply with its conclusions.
26. However, as paragraph 107 of the WOLP Inspector's report explains, the site was one of around 40 sites identified in the SHELAA as being potentially suitable for housing but which was not allocated in the plan. The paragraph makes clear there were a number of reasons for non-allocation, but in each case the Inspector was satisfied that the reasoning was robust.
27. The appeal site was thus actively considered for allocation in the WOLP but was not in the end allocated for robust reasons. It would be inconsistent for such a site to be subsequently judged to be a plan-compliant windfall site. Although there is no size limit for a windfall site, the site was not too small for allocation. Smaller allocations than the appeal site are made in the WOLP, in particular a site for 70 dwellings at Carterton, a main service centre, and sites for 25 and 50 dwellings at Long Hanborough, a rural service centre. Only two allocations are made in defined villages, sites for 50 dwellings at Stanton Harcourt and 125 dwellings at Minster Lovell, both of which offer a primary school, shop and employment opportunities⁷ which suggests they are more suitable for larger scale development than Curbridge.

The benefits of the proposal

28. As explained above, the proposal conflicts with the development plan, but material considerations may nevertheless indicate that planning permission should be granted. It may be justified for a site that is passed over for allocation during the preparation of a local plan to be released for development later. In this case the appellant maintains that the benefits of the scheme outweigh any conflict with the development plan, and that the pressing need

⁷ according to the Settlement Sustainability Report Table 4.4

- for early delivery of more market and particularly affordable housing would be the primary benefits which should be taken into account.
29. In relation to housing overall, over six years housing land supply would suggest a relatively comfortable position. However, this flatters the current situation because the WOLP strategy is for a staged requirement, and during the early years of the plan even that staged requirement has not been delivered.
30. The objectively assessed need (OAN) for housing in West Oxfordshire was established by the WOLP as 660 dpa during the plan period 2011-31, plus an additional 275 dpa between 2021-31 to meet the needs of Oxford City. However, Policy H2 set a staged requirement starting at 550 dpa and rising to 1,125 dpa over the plan period, and the Inspector also agreed that the early shortfall could be made up over the whole plan period (the Liverpool method).
31. During the period 2011-19 only 3,351 dwellings were completed against the WOLP staged requirement of 4,400 dwellings, resulting in a shortfall of 1,049 dwellings. Against the OAN figure of 660 dpa however the shortfall against identified need at present is actually higher at 1,929 dwellings. The appeal scheme would deliver housing at an early date helping to address this current need. However, other committed sites are due to come forward. Recalculating the housing land supply using the OAN and the Sedgefield method⁸ would give 4.6 years supply, or 4.2 years if the appellant's more cautious figure is used⁹. Whilst a less comfortable position if looked at this way, this is still well above three years supply when the tilted balance would apply.
32. In the case of affordable housing, the current shortfall against need is more acute. The WOLP established the need for 274 affordable dwellings pa, thus a total of 2,192 by 2019. However, just 889 had been completed by that date, a shortfall of 1,303 or 60%. Using the Sedgefield method, 2,673 are required in the next five years, a challenging target when the overall supply in that period is no more than 5,893. As further evidence of need, the West Oxfordshire housing register had 2,487 households waiting for affordable housing in 2019 compared to just 994 in 2015, an increase of 150% in just 4 years.
33. It is not disputed that there is a significant level of both market and affordable housing need in West Oxfordshire at present. Affordability indicators have deteriorated and just 12% of the households in the district are in social rented accommodation, even less in the local Ducklington ward where no affordable housing at all has been delivered in recent years. 85 dwellings (34 affordable) on the appeal site would make a useful contribution towards the current shortfall in both categories. Several housebuilders have already expressed interest in building out the site and Cottsway Housing Association – the most important local Registered Provider – would like to acquire the affordable units. Completions on the site could therefore be anticipated at an early date.
34. However, the WOLP strategy, which the examining Inspector agreed met the tests of soundness, knowingly balanced the pressing need for both market and affordable housing with the availability of suitable housing sites of all sizes and the need to allow time for large strategic sites to start delivering. The staged requirement was accepted on this basis with WOLP paragraph 5.44 supporting

⁸ The normal method prescribed by Planning Practice Guidance Paragraph: 031 Reference ID: 68-031-20190722

⁹ OAN to 2024 - 9,405 dwellings; 3,351 built; requirement inc 5% buffer 6,357 dwellings; supply 5,893 dwellings or according to the appellant 525 less.

- over delivery in the early years if possible. This encouragement is for more plan compliant windfall sites to come forward and does not imply support for sites which conflict with the WOLP strategy such as the appeal proposal.
35. At present the indications are that the WOLP is starting to deliver results. In 2018-9 there were 813 housing completions, a substantial increase on previous years and well above the OAN figure of 660 for the first time, reducing the previous shortfall. Affordable housing completions were also up at 180, although still well short of the requirement of 274 pa and only 22% of all completions when Policy H3 is for 35-50% of all large housing sites to be affordable housing depending on area. This is hard to explain when large sites are coming forward and the OAN figure was specifically uplifted to 660 dpa in order to ensure that 274 affordable dwellings would be delivered each year¹⁰.
 36. However, looking forward, the evidence of the Council's Strategic Housing Development Officer to the hearing was that a significant amount of affordable housing is now being built in compliance with Policy H3. 539 new affordable houses are anticipated in 2019-20, substantially more than the 274 annual target for the first time. Large sites near to Curbridge are now delivering both market and affordable housing. The 1,000 dwelling West Witney allocation on the other side of the A40 is under construction and will deliver 30% affordable houses, 63 this year¹¹. Other sites are Downs Road (257 dwellings, 40% affordable, 61 this year), Burford Road (269 dwellings, 40% affordable, 55 this year), Springfield Oval (76 dwellings, 100% affordable, 57 this year) and Minster Lovell (125 houses, 40% affordable, probably next year).
 37. These would not make up the significant shortfall in affordable housing delivery to date nor fully satisfy the waiting list, and even if 40% of the future five-year supply of 5,893 dwellings were affordable the waiting list would not be fully eliminated. However, the waiting list has now dropped to about 2,100 and the evidence suggests that a significant boost in the supply of both market and affordable housing is now being delivered, albeit belatedly, in accordance with the WOLP strategy. The case for the release of the appeal site contrary to the local plan is not therefore made out at this time.
 38. The appellant argues that the need to release greenfield land near Witney to deliver more affordable housing has been decided by a recent appeal decision relating to a site for 50 dwellings at Hailey, just to the north of the town¹². Based on the shortfall in delivery the Inspector concluded 'that the appeal proposal is necessary to contribute to meeting the present need for affordable housing'. The cases are comparable, both relating to greenfield sites of a similar size in defined villages within the same part of the district. However, this conclusion was based on the previous 2018 housing land supply position before the significant upturn in delivery achieved in 2018-9 and without the benefit of the detailed evidence of future affordable housing provision from the relevant Council officer which was provided in this case.
 39. The other benefits of the scheme also need to be considered. Three self-build units would meet a recognised need as evidenced by the self-build register. The more local benefits for Curbridge are also important, including car parking spaces for the existing village hall, land and funding for a D1 community use,

¹⁰ Report on the Examination of the West Oxfordshire Local Plan, paragraphs 41-44

¹¹ Plus a financial contribution for offsite provision in lieu of a further 10%

¹² APP/D3125/W/18/3202562

an extended play area, improved connectivity within the village, a substantial public open space for informal recreation and opportunities for ecological enhancements. These are integral parts of the development that is proposed. The unilateral undertaking submitted at the hearing would secure these benefits, also affordable housing in accordance with Policy H3 and various financial payments. Were the scheme to go ahead these obligations would be necessary to make the development acceptable, they are directly related and fairly and reasonably related in scale and kind to the development concerned. They have therefore been taken fully into account.

Planning Balance and Conclusion

40. Whilst the effect on the wider landscape would be minimal, the proposal would cause significant harm to the character and appearance of the area, in particular on the form and character of Curbridge village. Notwithstanding the design quality of the scheme, the scale and form of the proposal in relation to its village context would conflict with the housing strategy of the WOLP and the development plan when considered as a whole.
41. The proposal would provide up to 85 dwellings (40% affordable) including three self-build plots. These would have important economic and social benefits and make a useful contribution to market and affordable housing needs in the area. These benefits should therefore be afforded considerable weight, together with the other more local benefits for the village of Curbridge set out in paragraph 39. However, whilst significant, these material considerations are not sufficient to outweigh the conflict with the development plan and the harm that has been identified under the first main issue.
42. Having regard to the above the appeal should be dismissed.

David Reed

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Richard Ground QC	of Queens Counsel, instructed by DLBP
Andrew Ryley BA MSc MRTPI	DLBP Planning Consultants
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FOR THE LOCAL PLANNING AUTHORITY:

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INTERESTED PARTIES:

Glenn Gannon

Chairman, Curbridge & Lew Parish Council

Richard Smith

Local Resident

Roger Smith

Local Resident

John Courtney

Local Resident

Edward Stuart

Local Resident

Roger Plater

Oxfordshire CC Highways

DOCUMENTS SUBMITTED AT THE HEARING

Pre-application advice dated 10/11/2017

Letters of Interest

Oxford English Dictionary definition of 'limited'

Note from appellant – 'must consider benefits that are part of the proposed development' with judgements 2018 EWHC 633 (Admin) & 2014 EWCA Civ 878

Housing Land Supply Position Statement October 2019

Committee report for application 16/02657/FUL (Dovecote Place)

Report on the Examination of the West Oxfordshire Local Plan 2031

Unilateral Undertaking from Moira Parker to WODC and OCC

Email from Susan Gargett to Trevor Ivory dated 19 November 2019 11.26

Draft list of potential conditions

Closing statement by the appellant