



Appeal Decision

Site visit made on 4 August 2020

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 August 2020

Appeal Ref: APP/D3125/W/20/3249734

Barnmead, Church Enstone, Chipping Norton OX7 4NL

- 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 Mr T Martin of Land Logic Ltd against the decision of West Oxfordshire District Council.
 - The application Ref 19/00500/OUT, dated 16 February 2019, was refused by notice dated 29 November 2019.
 - The development proposed is for retirement dwellings, community building and communal recreational facilities, access roads and pedestrian/cycle links, hard and soft landscaping, foul and surface water drainage systems and other works.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. In my heading above I have taken the site address from that used in the appeal form rather than the application form as it is more complete.
3. The application is made in outline with access to be considered in detail. Therefore, appearance, layout, scale and landscaping are reserved for separate consideration. As such, the layout plans and apartment elevations are submitted on an illustrative basis and I have taken into account there may be alternative ways of developing the site. Nevertheless, in relation to some matters the appellants refer to the illustrative material. I have specified in my decision those areas where I have given the illustrative plans particular consideration.

Main Issues

4. The main issues are:
 - Whether the proposal provides a suitable location for the development having regards to local and national planning policies and accessibility;
 - Whether the proposal makes suitable provision for affordable housing with reference to local and national planning policies;
 - The effect of the proposal on the character and appearance of the area;
 - The effect of the proposal on ecology, and;
 - The effect of the proposal on local infrastructure.

Reasons

Location and accessibility

5. Policy OS2 of the West Oxfordshire Local Plan 2031, September 2018 (LP) sets out an overall strategy for the location of development in the district. This includes a settlement hierarchy which broadly reflects the range of services and facilities on offer and the choice of transport modes available. Accordingly, it seeks to primarily direct development towards the three main service centres of Witney, Carterton and Chipping Norton. Support for growth at other settlements is given according to their categorisation in the hierarchy.
6. In small villages, policy OS2 limits development to that which requires and is appropriate for a rural location and which respects the intrinsic character of the area. It further requires residential proposals to be considered against policy H2 of the LP. Non-residential development is restricted to specific exceptions.
7. Policy H2 of the LP prevents new residential development in small villages save for listed specific circumstances. Furthermore, policy H4 of the LP requires residential developments to provide or contribute towards the provision of a good, balanced mix of property types and sizes with particular support given to proposals for specialist housing for older people. Opportunities for extra care housing will be sought in the main and rural service centres and other locations with good access to services and facilities for older people.
8. Taken together, these policies are broadly consistent with paragraphs 59 and 61 of the National Planning Policy Framework (the Framework) which sets out the Government's objective of significantly boosting the supply of homes and ensuring the needs of groups with specific housing requirements are addressed.
9. The appeal site is on the edge of Church Enstone, a village which is not specifically listed in the settlement hierarchy¹ and therefore, falls under the residual category of small villages, hamlets and open countryside. It is put to me that, consistent with the settlement of Enstone, Church Enstone should be considered a 'village' as in practical terms they function as a single settlement. Whilst I note that Enstone, Church Enstone and Neat Enstone are fairly close to each other as settlements and fall within the parish of Enstone, policy OS2 identifies named settlements rather than broader areas. Moreover, a distinction is made between Enstone and Church Enstone in the settlement type section of the West Oxfordshire Design Guide 2016, Supplementary Planning Document (DG) which refers to the settlements as a village and small village respectively². Therefore, for the purposes of the LP, Church Enstone is a small village.
10. It is asserted that the proposal would cater specifically for the needs of older people in Enstone Parish and wider community and would therefore, fall within one of the exceptions for residential development outlined in policy H2, namely that there is a specific local need that cannot be met in any other way. The LP acknowledges there is a need for specialist housing for older people across the district, given that West Oxfordshire has a relatively old demographic profile.

¹ Table 4b, page 30, LP

² Page 14, DG

However, the need assessment³ provided in part relies upon a market catchment area with an approximately 7-mile radius from the appeal site in order to show the indicative demand for private leasehold sheltered housing. Given its distance from the appeal site, the radius would include Chipping Norton, a main service centre and location where the policies of LP seek to direct residential development, including specialist housing for older people.

11. Given that it is stated that the nature of sheltered housing will usually need to draw residents from a market catchment area⁴, it is not sufficiently explained why any need arising within Church Enstone itself could not be met at a location which more closely accords with the overall strategy set out in policies OS2 and H2 to focus growth at main service centres or settlements higher up the settlement hierarchy. Therefore, the proposal conflicts with these policies.
12. I am referred to core objective CO6, which comprises part of the vision for the LP, and refers to an appropriate mix of new residential accommodation which provides a variety of sizes, types and affordability. Nevertheless, this objective, together with the other objectives outlined in the vision should not be read separately from the overall strategy in the LP. Rather, they have been used to inform it.
13. A signed Unilateral Undertaking (UU) dated 19 June 2020 is provided, which includes obligations to restrict the age of the occupants of the proposed dwellings as well as the preferential marketing of the units to residents of Enstone Parish. However, given that the evidence fails to demonstrate a specific local need that would justify the development at Church Enstone, such measures would not make the proposal acceptable in planning terms.
14. The UU also refers to the dwellings provided being restricted to retirement accommodation within Use Class C2: Residential Institutions of the Town and Country Planning (Use Classes) Order 1987 (as amended). This includes use for the provision of residential accommodation and care to people in need of care other than a use within Class C3 (dwellinghouses). For example, such development might be expected to provide specialised features or a care package. The distinction between classes C2 and C3 is not straightforward and is a matter of fact and degree in each case. Nevertheless, a Class C2 use would generally constitute more than self-contained dwellings that are tailored towards older occupants.
15. Notwithstanding the outline nature of the proposal and that some communal facilities are shown, based on the information provided I have doubts that the proposal before me would fall within class C2 for the following reasons. Firstly, there is little reference to the future occupants being in need of care to a notable degree, nor how any such care would be provided. Secondly, the nature of the illustrative layout and details⁵ provided indicate that self-contained sheltered dwellings are proposed. Finally, the need assessment primarily considered private sheltered housing rather than focussing on residents being in need of care. Therefore, overall it is not shown that the development would provide specialised features or a care package that would

³ Carterwood, Statement of Case, January 2020, paragraph 19

⁴ Paragraph 43, Carterwood Statement of Case, January 2020

⁵ Illustrative schedule of accommodation 18185 Rev A, Illustrative Site Layout reference 18185/SK04C & Residential/Dwelling Units Supplementary Information planning application form.

set it apart from other housing stock tailored for older occupants such that it would amount to a class C2 use. Consequently, it is unclear in these circumstances, how the provision in the UU would realistically achieve a class C2 use, nor given the complexity of this issue, how it could be practically enforced. Therefore, it is not shown how this would make the proposal acceptable in planning terms.

16. Moreover, part of the reasoning behind the overall strategy seeks to locate new residential development where it will best help to meet housing needs and reduce the need to travel. Church Enstone has limited facilities and the provision of public transport is not conveniently located relative to the appeal site. This reinforces its position in the settlement hierarchy.
17. The development would itself provide a community hub and recreational facilities which, in providing a gym, library, café, treatment rooms, guest accommodation and meeting rooms could provide some social benefits and reduce the need to travel. Even so, there is little to realistically show that local GP practices would use the community hub in order to provide health services for future occupants and other residents. Moreover, the hub would be provided in the existing dwelling at the site and so is modest in scale which curtails the extent of the provision. Accordingly, it is still likely that future residents would seek to regularly travel to access health care, shopping and other recreational activities.
18. It is proposed to improve pavement facilities from the entrance of the appeal site towards Church Enstone, to provide a bus stop at the site as well as bus information to future residents. In addition, the UU secures funding to improve the proximity and frequency of local bus services between Middle Barton and Chipping Norton, or as an alternative, a taxi bus service would be provided. I accept that such measures would improve the accessibility of the site to a degree and would provide future residents some limited choice as to mode of travel other than the private car. In this regard my findings are generally consistent with the appeal decision to which I am referred⁶.
19. The walking distance to facilities outside of Church Enstone would be likely to deter many pedestrians. Furthermore, if future occupants used mobility aids or wheelchairs, the limited width of the pavement⁷ and topography along some of the route could be problematic. Moreover, the degree of bus or taxi-bus provision is unlikely to be so convenient and frequent so as to avoid many trips being undertaken by private car. As such, whilst the provisions in the UU provide some mitigation, they would not fully address my concerns regarding the accessibility of the site.
20. Therefore, due to the conflict with the overall strategy for development in the LP, including specialist housing for older people, together with the relatively poor accessibility of the appeal site, I find that the proposal would not provide a suitable location for the development. Consequently, it would be contrary to policies OS2, H2 and T3 of the LP. Taken in combination, these policies generally seek to direct new development in accordance with a settlement hierarchy to improve access to facilities and services and reduce the need for travel.

⁶ Reference APP/Q3115/W/19/3220425

⁷ Proposed Footway Enhancements reference 17063-003

Affordable housing

21. Policy H3 of the LP requires residential developments of 11 or more units or which have a maximum combined gross floorspace of more than 1,000sqm to provide affordable housing on-site as a proportion of the market homes. The appeal site lies within a high value zone⁸ whereby policy H3 requires 50% of sheltered housing or 45% of extra-care housing to be provided as affordable housing. This is in general accordance with paragraph 62 of the Framework which stipulates that where a need for affordable housing is identified, planning policies should specify the type of affordable housing required and expect it to be met on-site.
22. The appellants have not provided any mechanism to secure such provision, and I have not seen evidence that such a measure would make the development unviable. Accordingly, on the face of it the proposal would conflict with the requirements of policy H3 of the LP.
23. My attention is drawn to a recent appeal decision⁹ where the Inspector found that there was no requirement for affordable housing arising from the development. However, that development was in a different district and therefore, did not consider the application of policy H3 of the LP. Moreover, in that case it was clear that the future occupants were in need of care and the planning obligation secured a C2 use by specifically referring to health assessment and care provision¹⁰. For the reasons already outlined, notwithstanding the submitted UU, it is not shown how the proposal would constitute a class C2 use. Given these differences, the appeal decision is of limited weight in this regard. In any event, I have determined the appeal on its own merits.
24. On that basis, I am not assured that the exemption from providing a minimum 10% level of affordable housing referred to in paragraph 64(b) of the Framework for specialist accommodation for a group of people with specific needs applies in these circumstances. Moreover, it does not prevent the adoption of policies expressly referring to the provision of affordable sheltered and extra-care housing. As such, policy H3 carries greater weight.
25. Therefore, based on the evidence provided, I find that the proposal would fail to make appropriate provision for affordable housing and as such, would be contrary to policy H3 of the LP.

Character and appearance

26. Church Enstone is defined as a nucleated settlement with a distinctive, compact form in the DG. The settlement is also within the Enstone Uplands character area in Fig.8a of the LP and the West Oxfordshire Landscape Assessment, 1998 (WOLA). The character area is described as comprising a large-scale, open and elevated landscape. However, the WOLA categorises a number of different local landscape types within it. The appeal site falls within 'open limestone wolds' comprising amongst other things, large-scale, smoothly rolling farmland.

⁸ Figure 5a, LP

⁹ Reference APP/Q3115/W/19/3220425, Paragraphs 43 and 67

¹⁰ Paragraphs 43 and 67

27. The appeal site comprises a roughly triangular area of grassed land some of which is planted with trees, but also includes a detached dwelling known as Barnmead on the eastern periphery of Church Enstone. The limited built form at the site, together with the grassland, trees and planting along the boundaries, results in an attractive natural rural character. Consequently, the site contributes positively to the rural character and appearance of the area and setting of Church Enstone.
28. Although layout is reserved, and there may be other ways of developing the site, the appellants consider that the illustrative site layout plan¹¹ shows that the development would respect the context and setting of the village. I have therefore, given considerable weight to the illustrative material in my assessment as a realistic representation of the proposal. It includes 33 retirement homes which would introduce a significant amount of built form onto an area that is largely devoid of structures. The presence of the buildings, associated domestic planting and paraphernalia, access roads and parking would markedly change and diminish the rural character of the land.
29. The viewpoint survey in the Landscape Character and Visual Impact Assessment¹² indicates that glimpses of the built form would be visible from various positions within the vicinity of the site. In particular, it would impact on some views from the lane to the south west along part of which runs Shakespeare's Way Long Distance Footpath. My observations confirmed that glimpses of the site are possible from the adjacent lane and B4022, even when the hedgerows and trees are in full leaf. In addition, parts of the development would be likely to be seen via the access.
30. Moreover, the likely scale of development combined with its dispersal across the northern part of the site would protrude into countryside thereby pushing the extent of the settlement eastwards. Given the size of the site relative to the small village of Church Enstone, this would have a marked harmful impact on its distinctive compact character.
31. Furthermore, the access arrangements¹³ include a 2 metre wide footway along part of the frontage of the site and crossing point. These additional urban features would further erode the informal rural character of the land.
32. Taken in combination, these factors would significantly reduce the sense of spaciousness and natural appearance of the land to the detriment of its rural character. It would also have an adverse effect on the form of Church Enstone and its setting. As such it would not be sympathetic to local character, including the surrounding built environment and landscape setting as referred to in paragraph 127c) of the Framework.
33. Furthermore, although policy OS2 supports the non-residential re-use of appropriate existing buildings with preference given to employment, tourism and community uses, this is only where it would lead to an enhancement of their immediate setting. For the reasons stated, it is not shown that the reuse of Barnmead as a community hub building as part of the wider proposed development would do this.

¹¹ Reference 18185/SK04C

¹² Prepared by Lizard, Landscape Design and Ecology dated 18.09.18, Appendix A

¹³ Drawing 17063-002 Rev B

34. It is suggested that Enstone would be better understood as a poly-focal development and reference is made to the typeface used in historic OS mapping¹⁴. Nevertheless, there is a physical separation between Church Enstone and Enstone which includes agricultural land and a tributary of the river Glyme. My observations were that Church Enstone accords with the description in the DG.
35. Concerns are raised that Church Enstone should not be categorised as falling within the open limestone wolds in the WOLA. Irrespective of the categorisation of the landscape character, my findings are also informed by my observations of the site and its context. I acknowledge that the established boundaries of the site provide some enclosure and that with additional boundary planting, the site would not be highly prominent within the wider landscape. Nevertheless, there would be localised harm to an unacceptable degree that additional planting and the use of sensitive materials would not fully surmount.
36. It follows that the proposal would conflict with paragraph 170b) of the Framework which stipulates that planning decisions should contribute to and enhance the natural and local environment by, amongst other things, recognising the intrinsic character and beauty of the countryside.
37. Accordingly, I find that the proposal would be harmful to the character and appearance of the area contrary to policy EH2 of the LP which requires new development to conserve and, where possible, enhance the intrinsic character, quality and distinctive natural and man-made features of the local landscape. In addition, it would conflict with policy OS2 of the LP which, amongst other matters, sets out general principles for new development including that it should form a logical complement to the existing scale and pattern of development and as far as is reasonably possible protect or enhance the local landscape and the setting of settlements. It follows that it would also conflict with policy H2 of the LP as this requires compliance with the general principles in policy OS2.

Ecology

38. In response to the Council's concern regarding the date of the Preliminary Ecological Survey Report (30 June 2017) and the potential for ground nesting birds, reptiles, badgers and bats to be present, the appellants provided an update letter dated 21 June 2019 detailing a more recent walkover ecology survey. This concluded that the recommendations in the original document should remain unchanged.
39. The preliminary survey considers the likely impact of the proposal on protected species and is sufficient to show the outline proposal would avoid harm. It further makes recommendations for ecological enhancements in section 7.1. Based on the illustrative information, there is little evidence to suggest that these could not be successfully incorporated as part of a more detailed scheme.
40. Overall, I am satisfied that sufficient information has been provided to enable the impacts upon protected and priority species to be determined and that suitable mitigation and enhancements are proposed that could be incorporated into the development. On that basis I do not consider the proposal would

¹⁴ Statement of case prepared by Lizard Landscape Design and Ecology 31.1.20

conflict with policy EH3 of the LP which, amongst other matters, requires development to protect and enhance biodiversity and to achieve an overall net gain in biodiversity. Neither, in relation to this matter, have I found a conflict with the general principles for development set out in policy OS2 of the LP.

Local infrastructure

41. A single access to the B4030 Bicester Road at a point approximately 100 metres west of the junction with the B4022 Banbury Road is proposed to serve the development. This would be about 40 metres outside the 30mph speed limit mark on the approach to Church Enstone. In order to secure appropriate visibility and stopping sight distances, the Highway Authority consider the access should be located within a 30mph zone, and I have not seen substantive evidence to show otherwise. This would require a Traffic Regulation Order (TRO) to enable the relocation of the 30mph speed limit mark and a contribution of £2700 is sought for this. Policy OS5 of the LP requires new development to deliver or contribute towards the timely provision of essential supporting infrastructure either directly as part of the development, or through an appropriate financial contribution.
42. On the evidence before me, it appears that the need for the contribution arises from the development and satisfies the 3 tests in Regulation 122(2) of the Community Infrastructure Regulations 2010 (as amended) (the Regulations) in that it is necessary to make the development acceptable in planning terms, is directly related to the proposed access and is fairly and reasonably related in scale and kind to the development. The submitted UU dated 19 June 2020 would secure £2700 towards the TRO prior to the occupation of any of the dwellings.
43. The UU also includes schedules regarding the use and marketing of the accommodation, the provision of a community hub, the establishment of a management company to oversee the community hub and communal areas and an enhanced bus service. It will be seen from my reasoning above that I have generally found that these factors would not make the development acceptable in planning terms. Neither does the information submitted indicate that these matters constitute essential supporting infrastructure required by the LP. Accordingly, I am not persuaded that they would pass the statutory test of necessity in the Regulations, which is reiterated in paragraph 56 of the Framework. Hence, it would not be lawful to take these matters into account as a reason for granting planning permission.
44. Accordingly, overall, the proposal would make appropriate mitigation towards the timely provision of essential supporting local infrastructure and I find no conflict with policy OS5 of the LP.

Other matters

45. In reaching my findings I have taken the letters of representation into account, some of which would welcome the opportunity to live in a rural retirement community and/or the use of the associated facilities. However, this is not a sufficient basis to determine the development other than in accordance with the adopted development plan.

Planning balance and conclusion

46. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise¹⁵.
47. The proposal would provide benefits in terms of the provision of additional housing that is specifically aimed at older people. It would be likely to assist some future occupants to remain in a rural community for longer and could release larger family homes back onto the market. As such it would offer increased choice and diversification and would result in social and economic benefits to the area. Given the likely number of retirement dwellings proposed this would amount to a notable contribution. Overall, I attribute moderate weight to these benefits.
48. I have found that the proposal would not result in harm to bio-diversity and would make appropriate provision through the UU to deliver alterations to the highway to support the proposed access arrangements. However, as these are requirements of the development plan, they are neutral factors in the overall balance rather than benefits.
49. The benefits that the proposal would bring do not outweigh the significant weight given to the conflicts with the development plan policies in relation to the overall strategy for development and accessibility of the site, the lack of provision for affordable housing and the harm to the character and appearance of the area. Accordingly, they do not justify my determining the development other than in accordance with the adopted development plan and Framework.
50. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

Helen O'Connor

Inspector

¹⁵ Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.