



Appeal Decision

Hearing Held on 18 October 2023

Site visit made on 18 October 2023

by K Ford MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 December 2023

Appeal Ref: APP/C3105/W/23/3325113

Land to the rear of No 12 and South of Dismantled Railway Heath Close, Milcombe OX15 4RZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Stoic Roofing and Construction and Abbeymill Homes against the decision of Cherwell District Council.
 - The application Ref 22/02104/F, dated 12 July 2022, was refused by notice dated 19 June 2023.
 - The development proposed is erection of 35 2 storey dwelling houses, construction of access off Rye Hill together with garaging, parking, open space with LAP, landscaping and all enabling works.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 35 2 storey dwelling houses, construction of access off Rye Hill together with garaging, parking, open space with LAP, landscaping and all enabling works, in accordance with the terms of the application, Ref 22/02104/F, dated 12 July 2022. This is subject to the conditions in the Schedule in the appendix of this Decision.

Procedural Matter

2. The Hearing was adjourned to allow for the completion of a S106 Agreement with Cherwell District Council and Oxfordshire County Council. A final copy of a completed S106 Agreement was submitted on 8 November 2023 and the Hearing was closed in writing.
3. The submitted S106 agreement covers a number of planning obligations that are required by policies BSC3, BSC10, BSC11 and BSC12 of the Cherwell Local Plan 2011-2031 (Local Plan) to ensure the delivery of affordable housing and facilities and services that are essential for development to take place or to mitigate the impact of the development.
4. The S106 would secure the provision of; affordable housing; highways works; the provision and maintenance of open space and woodland; a Sustainable Drainage System scheme and Local Area for Play. It would also secure financial contributions for; improvements to Milcombe Village Hall along with measures to allow for the provision of indoor sporting opportunities at the venue; new facilities and improvements to existing GP facilities; the purchase of land in Milcombe for outdoor sports pitches and associated building/ equipment or

towards the improvement of facilities at Bloxham Recreation Ground; primary education facilities and special education needs and development facilities. It also secures financial contributions for the provision of public art within the vicinity of the site; to ensure a bus service is integrated into the development and the expansion and efficiency of household waste and recycling centres serving the site.

5. Given the policy requirements and infrastructure needs arising from the development I am satisfied that all of the above obligations are necessary to make the development acceptable in planning terms, are directly related to the development and fairly and reasonably relate in scale and kind to the development. They would accord with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).
6. As I am satisfied that the provisions of the submitted agreement would meet the necessary tests I have taken them into account in my Decision. The second reason for refusal is not therefore a main issue for the appeal.

Application for Costs

7. At the Hearing an application for costs was made by Stoic Roofing and Construction and Abbeymill Homes against Cherwell District Council. This application is the subject of a separate Decision.

Main Issues

8. The main issues are:
 - Whether the scale and location of the proposal would be appropriate for residential development having regard to the spatial strategy in the development plan.
 - The effect on the character and appearance of the area.
 - Whether a deliverable 5 year housing land supply exists.

Reasons

Location of Development

9. Measuring approximately 22ha on the western edge of Milcombe, the pasture land that forms the appeal site is on the edge but outside the built up boundary of the village and therefore in the countryside.
10. Saved Policy H18 of the Cherwell Local Plan 1996 identifies that new dwellings beyond the built up limits of settlements are only permitted under certain circumstances listed in the policy. The proposed development does not fall within any of the exceptions listed in the Policy.
11. Policy BSC1 of the Local Plan distributes growth across the district, directing it primarily to the main towns of Bicester and Banbury with more limited growth in rural areas.
12. The strategy within the Local Plan is reflected in Policy Villages 1 which categorises the villages in the District, identifying which ones are in principle best placed to sustain different levels of residential development. Policy Villages 1 is relevant to the appeal in so far as it classifies Milcombe as a Category A village which the Council confirmed at the Hearing is considered the most

sustainable form of settlement in the rural areas of the District, with a number of services and facilities including a village shop, recreation ground, community building, church and bus stops. The parties disagree as to whether the public house in the village is currently open. However, even if it is currently closed the use has not been lost with the Council confirming that there has been no planning applications proposing a change of use at the site.

13. Whilst the Council propose to downgrade the categorisation of the settlement through the Local Plan review this has not been tested at examination. Given the very early stage of the Council in the plan making process the Council themselves acknowledge that the intention cannot be given any weight. Given the range of services and facilities in the village and proximity to nearby settlements which are reasonably accessible, the site cannot be described as isolated in the countryside.
14. Policy Villages 2 of the Local Plan deals with the distribution of growth across the rural areas. It is broken down into 2 parts. The first part identifies that 'a total of 750 homes will be delivered at Category A villages' with 'the determination of applications for planning permission' being one source of supply. Whilst the Council identify that there are 1074 dwellings either built, under construction or with planning permission across the category A villages only 703 have been completed which is below the number identified in the policy.
15. Although the Council consider that when taken as a whole the 750 has been reached and exceeded, it was acknowledged at the Hearing that the 750 identified in the policy is not a limit. Noting the findings of other appeal decisions referred to by the Council in support of their case, there is little evidence before me that there has been a material exceedance in the number of dwellings that has resulted in harm to the locational strategy of the district. As such, and given the location of the site to the adjacent built up edge of the settlement with access to services and facilities, I consider the site to be an appropriate location for development, subject to compliance with the 11 bullet points that form the second part of Policy Villages 2, the most relevant of which are covered within main issue 2 of my Decision.
16. The Council say that the development would lead to significant additional growth of the village when considered alongside other development that has occurred in the settlement since the Local Plan was adopted. However, the development has been incremental over this time and the scheme proposed would constitute a 10% increase in the size of the settlement. I do not consider this to be a significant harmful addition given the position of the village in the settlement hierarchy or the level of growth directed to the rural areas.
17. The development would be contrary to Policy Villages 2 of the Local Plan and Saved Policy H18 of the Cherwell Local Plan 2015. However, of the reasons identified I conclude that the location of the appeal site outside the built up limits of Milcombe and the conflict with the policies would only cause limited harm to the spatial strategy of the development plan.

Character and Appearance

18. Accessed off Rye Hill, the site is well screened from the west and north west due to woodland and mature trees and hedgerow that run along a dismantled railway line. There is also established vegetation to the north and south. Views

into the site are not completely blocked by the vegetation in all places but it provides a good level of screening with only glimpsed views into the site from Main Road and Rye Hill. To the east are properties that front onto Heath Close comprising of 2 storey detached houses and detached bungalows. Other residential development in the area includes more recently constructed detached and semi detached dwellings at Oak Farm Close and Oak Farm Drive using a mixture of ironstone and red brick.

19. There is dispute between the parties regarding the ecological value of the site. At the Hearing the Council confirmed that, despite falling within the Swere Valley and Upper Stour Conservation Target Area, there were no objections to the development from the Council's Environmental Protection Officer, Arboricultural Officer or Ecology department, subject to appropriately worded planning conditions. They confirmed that this was a consequence of the proposed biodiversity net gain proposed by the scheme. I have no reason to take a different view. Whilst interested parties raised concern regarding the nearby NERC designation, it was confirmed by the Council that the designation would not be affected by the development. There is little before me to indicate otherwise.
20. The site provides an attractive rural edge to the settlement. The scheme would introduce built development into an area with a currently open agricultural appearance and would consequently have an urbanising effect from the built development, supporting infrastructure and associated paraphernalia. However, the retention of the existing vegetation would mitigate the impact to some extent by softening views into the site.
21. The Council has criticised the proposed layout of the site as a result of the retained landscaping. From my observations on site I disagree with the Council's assertion that the layout would not be reflective of other development in the settlement. I consider that the loss of vegetation to enable buildings to face onto the main road, as proposed by the Council, would be more harmful in this edge of settlement location. Similarly, whilst there is no separate pedestrian access onto the main road, there are pedestrian routes within the proposed layout. I do not think resident permeability would be compromised by the layout and therefore disagree with the Council's view on this matter.
22. The appellant identifies that the proposed density of the development is 22.5 dwellings per hectare, a figure that is not contested by the Council. This density would be lower than some neighbouring development in the settlement and lower than the 30 dwellings per hectare identified in Policy BSC2 of the Local Plan. However, the policy identifies that a lower density is acceptable where justifiable planning reasons exist. Given the edge of settlement location, proposed retention of existing vegetation, provision of open space and biodiversity net gain, I consider there to be justifiable reasons for the lower density proposed.
23. Whilst interested parties raised concern regarding the proposed materials for the construction of the development, the Council is satisfied that the matter can be dealt with through an appropriately worded planning condition. I agree.
24. Based on the evidence before me and my observations on my site visit, I am of the view that the scheme would cause moderate harm to the character and appearance of the area. It would conflict with the part of the National Planning Policy Framework (NPPF) that recognises the intrinsic character and beauty of

the countryside and seeks to ensure development contributes to and enhances the natural environment. However, the severe adverse harm identified in Policy Villages 2 of the Local Plan would be avoided.

5 Year Housing Land Supply

25. The Local Plan covers the administrative area of the District. It sets out the scale and distribution of housing development within the District, directing development to the main towns of Bicester and Banbury. The Cherwell Local Plan 2011-2031 (Part 1) Partial Review – Oxford Unmet Housing Need (Partial Review) makes separate provision for contributing towards meeting the unmet needs of Oxford, adopting a strategy that seeks to avoid undermining the strategy of the Local Plan and the planned delivery of growth at Bicester, Banbury and Former RAF Upper Heyford. The strategy for Oxford is to provide homes where people can most readily connect to Oxford. As such it directs development to meet Oxford's needs to the areas of north Oxford, Kidlington, Yarnton and Begbroke along the A44 corridor.
26. The provision for Oxford is monitored separately to Cherwell with supply falling significantly short of the 5 year housing land supply requirement at 0.2 years. The Council claim a housing land supply of 5.37 years within the Cherwell District area, excluding Oxford. The appellant disputes the figures and the way the Council has calculated the 5 year housing land supply suggesting that there is a 2.85 year housing land supply, including Oxford's needs and 4.78 years if they are excluded.

Requirement

27. The Local Plan was adopted in 2015 and therefore is over 5 years old and so the assessment of housing land supply is against local housing need using Government's standard methodology. The Partial Review was adopted in 2020 and so is not more than 5 years old.
28. The Council says the requirement for Cherwell should exclude Oxford. The appellant says that it should include it. The Partial Review sets out a clear strategy for development. It is clear that Policies PR1 and PR3 of the Partial Review state that the Council will deliver 4,400 homes to help meet Oxford's unmet housing needs and deliver those homes on identified land to be taken out of the Green Belt.
29. There is nothing in paragraph 74 of the NPPF that requires the use of a single administrative area when calculating housing land supply. The NPPF encourages cross boundary working and co-operation and the Partial Review seeks specifically to address Oxford's needs through the strategy contained within it. The Inspector examining the Partial Review accepted the approach of separating the Council's commitment to meeting Oxford's unmet needs from their own commitments. There has been no change in circumstances since this time and so there is no reason to take a different view. Whilst the Council is considering an alternative approach as part of their Local Plan review, it is at an early stage of preparation and subject to change.
30. There is dispute between the parties with regards the base date for the calculation of the projected annual average household growth. I have used the current year as the starting point, reflecting guidance in the Planning Practice Guidance. The appellant promoted the use of 2022 as the starting point with

reference to an appeal decision in support of their case. However, I do not have all the information that informed the approach in that decision and my assessment is based on the information before me.

31. With corresponding affordability adjustments, the local housing need is 3,728 dwellings incorporating a 5% buffer to ensure choice and competition in the market for land. This reflects the fact that the January 2022 Housing Delivery test results show that the Council has exceeded delivery expectations over the past 3 years.

Housing Land Supply

32. The NPPF defines the meaning of deliverable. The site must be available now, offer a suitable location for development now and be achievable with a reasonable prospect of delivery over the 5 year period. Sites with detailed planning permission are assumed to be deliverable unless there is evidence to indicate otherwise. Sites with outline planning permission or allocated sites are only considered deliverable where there is clear evidence that delivery will take place within 5 years.
33. The Council's case is that it can demonstrate a deliverable 5 year housing land supply of 4008 dwellings from 1 April 2022 to 31 March 2027 which equates to 5.37 years. The appellant argues it is closer to 4.78 years.
34. In considering the elements of supply that remain in dispute it should be noted that my assessment is based on the evidence presented as part of the Hearing. It is therefore a snapshot in time, representing the situation as it stood at the time of the Hearing.

Bicester 1 NW Bicester Phase 2

35. The site is subject to an outline planning permission for 1,700 dwellings with the Council anticipating first completions in year 5 of the trajectory. Whilst there has been reserved matters applications they are still pending approval and subject to objections that are yet to be resolved. There is a lack of clear evidence to support delivery and so 20 dwellings should be deducted.

Bicester 3 SW Bicester Phase 2

36. The site has outline planning permission for 709 dwellings, 649 of which have reserved matters approval and are under construction. The remaining 60 dwellings, expected to be specialist housing for older people is not currently subject to a reserved matters application and there was no clear evidence from the Council to demonstrate when it can be expected. The 60 dwellings should consequently be deducted.

Bicester 12 – South East Bicester

37. The site has outline planning permission for 1,500 dwellings on an allocated site, 50 of which the Council expects will come forward within year 5 of the delivery forecast. However, there is no written evidence to support the Council's assertion that reserved matters will come forward in 2024. There is no clear evidence to support the phasing or timing of delivery thereafter. I therefore deduct 50 dwellings.

Bicester 10 – Bicester Gateway Business Park, Wendlebury Road

38. Outline planning permission is in place for the allocated mixed use site which includes 283 dwellings, 80 of which the Council suggest will come forward during year 5. The Council rely on reference to a confidential pre application discussion in which the developer, Thomas Homes, provided details of delivery within 5 years.
39. During the Hearing the appellant provided written confirmation that the owner of the site does not plan to bring the site forward in the short-medium term due to viability issues with the proposed scheme. In the circumstances the 80 dwellings should be removed from the supply.

Land South of Salt Way - East

40. This allocated site has outline planning permission for 1000 dwellings. Reserved matters for 237 dwellings has been granted and the parties agree that these dwellings can be expected to come forward within the 5 year period. I have no reason to disagree.
41. The Council project that a further 113 dwellings will come forward within the 5 years. The trajectory is based on 5 developers being on site but currently there is only one. There is no clear evidence to support the delivery of the additional 113 dwellings and so this should be deducted from the supply.

Former RAF Heyford

42. The allocated site has extant planning permission although this is unlikely to be implemented following the submission of a separate planning application for David Wilson Homes which has not yet been granted with unresolved objections related to biodiversity net gain. The Council expect the planning application to go to committee before the end of 2023 with David Wilson starting on site in early 2024. However, David Wilson do not currently own the site and so I consider this timescale to be ambitious given the processes involved in completing the acquisition. I consequently deduct 30 of the projected dwellings for 2024-2025.

Partial Review Area

43. There is disagreement between the parties regarding the supply figures associated with the Partial Review area. As I have concluded that the Partial Review Area should not be included in the considerations of this appeal I have not considered the supply issues raised in relation to the sites.

Conclusion

44. For the reasons outlined I am of the view that the Council can demonstrate through clear evidence that it has sufficient housing land for the delivery of 3595 dwellings within the 5 year period 2022-2027. On the basis of a 5 year housing need of 3728, including a 5% buffer to provide choice and competition in the market, the Council has a 4.82 year housing land supply. The Council cannot demonstrate a 5 year housing land supply and so paragraph 11d of the NPPF is engaged.

Other Matters

45. The site lies within an area of archaeological interest, located within proximity of a possible deserted medieval village. The appellant has undertaken an archaeological assessment and the Planning Archaeologist at Oxfordshire County Council has raised no objection subject to appropriately worded planning conditions requiring a staged programme of archaeological investigation during construction. I have no reason to take a different view.

Planning Balance

46. I have found that the Council cannot demonstrate a 5 year housing land supply. As such paragraph 11d of the NPPF indicates that permission should be granted unless i) the application of policies in the NPPF that protect areas or assets of importance provides a clear reason for refusing the development proposed or ii) the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole.
47. There is no evidence before me to indicate there are any policies in the NPPF that provide a clear reason for refusing the development. As such paragraph 11di does not apply in this case. Nevertheless, an absence of harm in this regard is a neutral consideration in the planning balance.
48. The development would conflict with Saved Policy H18 of the Cherwell Local Plan 2015 and Policy Villages 2 of the Local Plan. Nonetheless, for the reasons identified the adverse impact arising from the conflict with the development plan would be limited and would not seriously undermine the spatial strategy of the Local Plan.
49. The proposal would contribute 35 dwellings to the housing land supply and make a contribution towards the delivery of affordable housing which I give significant weight. In addition there would be economic benefits to the local economy both during construction and occupation of the development thereafter. The development would also generate biodiversity net gain. I give this moderate weight.
50. Overall, I consider that the adverse impacts of the development would not significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF taken as a whole. Consequently, the presumption in favour of development applies.
51. Applications for planning permission are to be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, whilst the development would conflict with Saved Policy H18 of the Cherwell Local Plan 2015 and Policy Villages 2 of the Local Plan the presumption in favour of the development constitutes a material consideration of significant weight that justifies a determination other than in accordance with the development plan.

Conclusion and Planning Conditions

52. For the reasons given, I conclude that the appeal should be allowed subject to conditions.

53. A list of planning conditions has been drawn up by the Council with input from the appellant. I have taken into account paragraph 56 of the NPPF which identifies that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development permitted, enforceable, precise and reasonable in all other respects.

Implementation

54. The statutory implementation period has been imposed and the approved plans specified for the avoidance of doubt and in the interests of proper planning (conditions 1, 2).

Design and Appearance

55. A number of conditions seek to ensure quality of design. This includes conditions requiring further specification including sample panels to ensure materials are appropriate to the appearance of the locality and details of external lighting.
56. Good quality hard and soft landscaping including open space/ play space will enhance the development and can have a positive impact on the quality of life of occupants. Details of these measures and provisions for their maintenance during the first 5 years are therefore necessary. Similarly, a condition protecting existing trees in line with an arboricultural method statement will ensure such trees are retained and integrated into the development (conditions 6, 7, 8, 18, 19, 20, 22, 28, 29, 30).

Drainage

57. The installation of an approved drainage system and sustainable drainage in accordance with a phasing plan is necessary to ensure timely delivery across the site and will address the concerns raised by interested parties regarding the condition of the land in parts of the site resulting in poor drainage (conditions 25, 26, 27).

Archaeology

58. Conditions requiring the preparation of a Written Scheme of Investigation and subsequent staged programme of archaeological evaluation and mitigation will ensure the identification, recording, analysis and archiving of any heritage matters within the site (conditions 11, 12).

Parking

59. A plan providing detail of the proposed parking provision for vehicles on the site along with provision to ensure the retention of garaging spaces for the parking of motor vehicles will ensure adequate off street parking and highway safety (conditions 3, 33).
60. Whilst concern was raised by interested parties regarding the access onto Rye Hill the scheme incorporates traffic management measures contained in the drawing listed in condition 2. A separate condition on this matter is not therefore necessary.

Living Conditions

61. Demonstration that all habitable rooms achieve specified noise level protection will ensure the creation of a satisfactory living environment free from intrusive noise levels. A construction method statement will protect the living conditions of nearby residents as well as the environment. The submission of details of enclosures along boundary treatments will safeguard the privacy of the occupants of existing neighbouring dwellings as well as proposed new dwellings (conditions 4, 5, 21, 23).

Ecology

62. The submission and implementation of a Landscape and Ecology Management Plan will enable the protection of habitats of importance to biodiversity conservation. Interested parties raised concern on the impact of the development on Great Crested Newts. A condition requiring a Great Crested Newt Licence and necessitating compliance with its terms and conditions will ensure any adverse impacts on Great Crested Newts are adequately mitigated and compensated (conditions 9, 10, 24).

Contamination

63. A desk study and site walk over to identify any contaminative uses on the site along with steps should and contamination be found is necessary to ensure any ground and water contamination is identified and adequately addressed (conditions 13, 14, 15, 16, 17).

Sustainable Travel

64. The provision of covered cycle parking facilities on site and the issue of travel information packs to the first occupants of the new dwellings is necessary to promote sustainable transport options (conditions 31, 32).

K Ford

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Tim Northey	Planning Director Abbeymill Homes (Planning Matters)
Ben Pycroft	Director Emery Planning Partnership (Housing Land Supply Matters)

FOR THE LOCAL PLANNING AUTHORITY

Jeanette Davey	Principal Planning Officer (South) Cherwell District Council (Planning Matters)
Jon Goodall	Director DLP Planning Limited (Housing Land Supply Matters)

DOCUMENTS SUBMITTED AS PART OF HEARING

Email from Thomas Homes dated 18.10.23 regarding site at Bicester Gateway

Updated list of planning conditions

Open Space Plan MIL-PL56A

S106 Planning Obligation dated 8.11.23

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. Except where otherwise stipulated by conditions attached to this permission, the development shall not be carried out otherwise than in complete accordance with the approved plans MIL-PL01A, MIL-PL02P, MIL-PL03, MIL-PL04, MIL-PL05A, MIL-PL06A, MIL-PL07, MIL-PL08, MIL-PL09A, MIL-PL10A, MIL-PL11, MIL-PL12, MIL-PL13A, MIL-PL14, MIL-PL15, MIL-PL16A, MIL-PL17, MIL-PL18, MIL-PL19, MIL-PL20, MIL-PL21, MIL-PL22A, MIL-PL23A, MIL-PL24A, MIL-PL25, MIL-PL26A, MIL-PL27, MIL-PL28, MIL-PL29, MIL-PL30, MIL-PL31, MIL-PL40, MIL-PL41, MIL-PL42A, MIL-PL43, MIL-PL44A, MIL-PL45, MIL-PL50E, MIL-PL53E, MIL-PL55D, MIL-PL56A, 8220308_6102 Rev B unless a non-material or minor material amendment is approved by the Local Planning Authority under the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended).
3. Notwithstanding the details submitted, no development shall commence until and unless a plan detailing the proposed parking provision for vehicles to be accommodated within the site, including details of the proposed surfacing and drainage of the provision, has been submitted to and approved in writing by the Local Planning Authority. The approved parking facilities shall be laid out and completed in accordance with the approved details before the first occupation of the dwellings. The car parking spaces shall be retained for the parking of vehicles at all times thereafter.
4. No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The statement shall provide for at a minimum:
 - a) The parking of vehicles of site operatives and visitors;
 - b) The routing of HGVs to and from the site;
 - c) Loading and unloading of plant and materials;
 - d) Storage of plant and materials used in constructing the development;
 - e) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - f) Wheel washing facilities including type of operation (automated, water recycling etc) and road sweeping;
 - g) Measures to control the emission of dust and dirt during construction;
 - h) A scheme for recycling/ disposing of waste resulting from demolition and construction works;
 - i) Delivery, demolition and construction working hours;The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

5. No development shall commence unless and until a Construction Traffic Management Plan prepared in accordance with Oxfordshire County Council's checklist, has been submitted to and approved in writing by the local planning authority. The development shall not be carried out other than in full accordance with the details approved in the Construction Traffic Management Plan.

6. Prior to the commencement of the development hereby approved, an Arboricultural Method Statement (AMS), undertaken in accordance with BS:5837:2012 and all subsequent amendments and revisions shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, all works on site shall be carried out in accordance with the approved AMS.

7. No development shall take place until the existing tree(s) to be retained have been protected in accordance with an Arboricultural Method Statement which details the protective measures where Root Protection Areas are impacted. A pre-commencement site meeting must be arranged to ensure tree protection has been put in place and regular monitoring will be required to ensure the protection remains in place for the duration of the development for compliance.

The barriers shall be erected before any equipment, machinery or materials are brought onto the site for the purposes of development and / or demolition and shall be maintained until all equipment machinery and surplus material has been removed from the site. Nothing shall be stored or placed within the areas protected by the barriers erected in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavations be made, without the written consent of the Local Planning Authority.

8. Prior to the commencement of the development hereby approved full details of the provision, landscaping and treatment of open space/play space within the site together with a timeframe for its provision shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the open space/play space shall be landscaped, laid out and completed in accordance with the approved details and retained at all times as open space/play space.

9. No development hereby permitted shall take place other than in accordance with the terms and conditions of the Council's organisational licence (WML-OR112, or a 'Further Licence') and with the proposals detailed on plan "Land West of Heath Close, Milcombe: Impact Plan for great crested newt District Licensing (Version 3)", dated 11th July 2023

10. No development hereby permitted shall take place unless and until a certificate from the Delivery Partner (as set out in the District Licence WML-OR112, or a 'Further Licence'), confirming that all necessary measures in regard to great crested newt compensation have been appropriately dealt

with, has been submitted to and approved by the local planning authority and the local authority has provided authorisation for the development to proceed under the district newt licence. The Delivery Partner certificate must be submitted to this planning authority for approval prior to the commencement of the development hereby approved.

11. Prior to the commencement of the development a professional archaeological organisation acceptable to the Local Planning Authority shall prepare an Archaeological Written Scheme of Investigation, relating to the application area, which shall be submitted to and approved in writing by the Local Planning Authority

12. Following the approval of the Written Scheme of Investigation referred to in condition 12, and prior to the commencement of the development (other than in accordance with the agreed Written Scheme of Investigation), a staged programme of archaeological evaluation and mitigation shall be carried out by the commissioned archaeological organisation in accordance with the approved Written Scheme of Investigation. The programme of work shall include all processing, research and analysis necessary to produce and accessible and useable archive and a full report for publication which shall be submitted to the Local Planning Authority within 2 years of the completion of the archaeological fieldwork.

13. No part of the development hereby permitted shall take place until a desk study and site walk over to identify all potential contaminative uses on site, and to inform the conceptual site model has been carried out by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and has been submitted to and approved in writing by the Local Planning Authority. No development shall take place until the Local Planning Authority has given its written approval that it is satisfied that no potential risk from contamination has been identified.

14. If a potential risk from contamination is identified as a result of the work carried out under condition 13, prior to the commencement of the development hereby permitted, a comprehensive intrusive investigation in order to characterise the type, nature and extent of contamination present, the risks to receptors and to inform the remediation strategy proposals shall be documented as a report undertaken by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and submitted to and approved in writing by the Local Planning Authority. No development shall take place unless the Local Planning Authority has given its written approval that it is satisfied that the risk from contamination has been adequately characterised as required by this condition.

15. If contamination is found by undertaking the work carried out under condition 14 prior to the commencement of the development hereby

permitted, a scheme of remediation and/or monitoring to ensure the site is suitable for its proposed use shall be prepared by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and submitted to and approved in writing by the Local Planning Authority. No development shall take place until the Local Planning Authority has given its written approval of the scheme of remediation and/or monitoring required by this condition.

16. If remedial works have been identified in condition 14, the development shall not be occupied until the remedial works have been carried out in accordance with the scheme approved under condition 15. A verification report that demonstrates the effectiveness of the remediation carried out must be submitted to and approved in writing by the Local Planning Authority.

17. If, during development, contamination not previously identified is found to be present at the site, no further development shall be carried out until full details of a remediation strategy detailing how the unsuspected contamination shall be dealt with has been submitted to and approved in writing by the Local Planning Authority. Thereafter the remediation strategy shall be carried out in accordance with the approved details.

18. No development shall commence above slab level unless and until a stone sample panel in natural ironstone (minimum 1 metre squared in size) has been constructed on site and has been inspected and approved in writing by the Local Planning Authority. The external walls of the dwelling(s) to be constructed out of stone shall be laid, dressed and coursed in full accordance with the approved sample panel and shall be retained as such thereafter. The sample panel shall be constructed in a position that is protected and readily accessible for viewing in good natural daylight from a distance of 3 metres. The panel shall be retained on site for the duration of the construction contract.

19. No development shall commence above slab level unless and until a brick sample panel (minimum 1 metre squared in size) has been constructed on site and has been inspected and approved in writing by the Local Planning Authority. The external walls of the dwellings to be constructed out of brick shall be constructed in brickwork, of a type, colour, texture, face bond and pointing which is in full accordance with the approved sample panel and shall be retained as such thereafter. The sample panel shall be constructed in a position that is protected and readily accessible for viewing in good natural daylight from a distance of 3 metres. The panel shall be retained on site for the duration of the construction contract.

20. Samples of the tiles/slates (including ridge tiles) to be used in the covering of the roof of the dwelling(s) shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of those

works. The development shall not be carried out other than in accordance with the samples so approved and shall be retained as such thereafter.

21. No development shall commence above slab level unless and until a report has been submitted to and approved in writing by the local planning authority that shows that all habitable rooms within the dwelling will achieve the noise levels specified in BS8233:2014 (Guidance on sound insulation and noise reduction for buildings) for indoor and external noise levels. Thereafter, and prior to the first occupation of the dwellings affected by this condition, the dwellings affected by this condition, the dwellings shall be insulated and maintained in accordance with the approved details.

22. Full details of the enclosures along all boundaries and within the site shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of those works. Such approved means of enclosure, in respect of those dwellings which are intended to be screened, shall be erected prior to the first occupation of those dwellings and shall be retained as such thereafter.

23. Details of the external lighting including the design, position, orientation and any screening of the lighting shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of those works. The lighting shall be installed and operated in accordance with the approved scheme at all times thereafter.

24. The development hereby approved shall not be occupied unless and until a Landscape and Ecology Management Plan (LEMP) has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall not be carried out other than in accordance with the approved LEMP.

25. The approved drainage system shall be implemented in full accordance with the approved Detailed Design prior to the first occupation of any dwelling on the site (with the exception of the permeable paving for each individual dwelling, which must be installed prior to occupation of that dwelling):

Document: Flood Risk and Drainage Assessment

Ref: 30322

Issue: September 2022

Drawing: Below Ground Drainage Layout Sheet 1

Drawing No: 30322/6001, P05

Drawing: Below Ground Drainage Layout Sheet 2

Drawing No: 30322/6002, P05

Drawing: Exceedance flow plan

Drawing No: SK 6150

Issue: 22/09/2022

Drawing: Below Ground Drainage Details Sheet 1

Drawing no: 30322/6101, P01

Drawing: Below Ground Drainage Details Sheet 2

Drawing no: 30322/6102, P01

Drawing: Below Ground Drainage Details Sheet 3

Drawing no: 30322/6103, P01

All relevant Hydraulic calculations produced via Microdrainage

Date: 22/09/2022

File: SWS 2.MDX

26. Prior to the commencement of the approved drainage system, a phasing plan covering the entire application site shall be submitted to and approved in writing by the Local Planning Authority, in consultation with the Local Lead Flood Authority. Thereafter the development shall be carried out strictly in accordance with the approved phasing plan.

27. Prior to the first occupation of each phase, a record of the installed SuDS and site-wide drainage scheme shall be submitted for each phase in accordance with the agreed phasing plan and be approved in writing by the Local Planning Authority for deposit with the Lead Local Flood Authority Asset Register. The details shall include:

- (a) As built plans in both .pdf and .shp file format;
- (b) Photographs to document each key stage of the drainage system when installed on site;
- (c) Photographs to document the completed installation of the drainage structures on site;
- (d) The name and contact details of any appointed management company information.

28. Prior to the first occupation of the development hereby approved, a landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme for landscaping the site shall include:-

- (a) details of the proposed tree and shrub planting including their species, number, sizes and positions, together with grass seeded/turfed areas,
- (b) details of the existing trees and hedgerows to be retained as well as those to be felled, including existing and proposed soil levels at the base of each tree/hedgerow and the minimum distance between the base of the tree and the nearest edge of any excavation,
- (c) details of the hard surface areas, including pavements, pedestrian areas, reduced-dig areas, crossing points and steps,
- (d) details of boundary treatments.

The development shall be carried out in strict accordance with the approved landscaping scheme and the hard landscape elements shall be carried out prior to the first occupation of the development and shall be retained as such thereafter.

29. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in accordance with BS 4428:1989 Code of Practice for general landscape operations (excluding hard surfaces), or the most up to date and current British Standard, in the first planting and

seeding seasons following the occupation of the building(s) or on the completion of the development, whichever is the sooner. Any trees, herbaceous planting and shrubs which, within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the current/next planting season with others of similar size and species.

30. A schedule of landscape maintenance of the landscape details as shown in the landscape scheme for the life of the development shall be submitted to and approved in writing by the Local Planning Authority prior to occupation of the development. The schedule shall include details of the arrangements for its implementation. Development shall be carried out in accordance with the approved schedule unless otherwise approved in writing by the Local Planning Authority.

31. Prior to the first use or occupation of the development hereby permitted, covered cycle parking facilities shall be provided on the site in accordance with details to be first submitted to and approved in writing by the Local Planning Authority. The covered cycle parking facilities so provided shall thereafter be permanently retained and maintained for the parking of cycles in connection with the development.

32. Prior to first occupation of any dwelling hereby approved a Travel Information Pack shall be submitted to and approved by the Local Planning Authority. The first residents of each dwelling shall be provided with a copy of the approved Travel Information Pack.

33. Notwithstanding the provisions of Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (or in any provision equivalent to that class in any statutory instrument revoking, amending or re-enacting that order), the garage(s) shown on the approved plans shall be retained for the garaging of private motor vehicles and shall not be converted to provide additional living accommodation.

END OF SCHEDULE



Costs Decision

Hearing Held on 18 October 2023

Site visit made on 18 October 2023

by K Ford MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 December 2023

Costs application in relation to Appeal Ref: APP/C3105/W/23/3325113 Land to the rear of No 12 and South of Dismantled Railway Heath Close, Milcombe OX15 4RZ

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Stoic Roofing and Construction and Abbeymill Homes for a full award of costs against Cherwell District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the erection of 35 2 storey dwelling houses, construction of access off Rye Hill together with garaging, parking, open space with LAP, landscaping and all enabling works.
-

Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The PPG also advises that the behaviour of parties during the time of the planning application can be taken into account in deciding whether unreasonable behaviour has occurred, although the costs themselves can only be awarded in relation to unnecessary or wasted expense at the appeal.
4. The PPG identifies that Council's are at risk of an award of costs being made against them if they make inaccurate assertions about the impact of a proposal unsupported by objective analysis and fail to produce evidence to substantiate each reason for refusal.
5. The Council appeal statement covers the issue of density when outlining their reasons for refusal. The Council officer's report also covers the matter. As such Members had information to inform their decision alongside their knowledge of the area to assist in informing the Committee's assessment of the proposal.
6. In making their decision Members took into account the range of information contained in the officer's report, the officer presentation and the points raised by public speakers. This demonstrates an informed and evidenced analysis. The Council's statement of case substantiated their reasons for refusal. Whilst

the applicant is of the view that the Council misused Policy BSC1 and Policy Villages 1 of the Cherwell Local Plan 2011-2031, this relates more to the merits of the case rather than that related to an award of costs.

7. As outlined in my Decision I have reached a different conclusion to the Council regarding the impact of the development. Nonetheless, Members were not bound to follow the officer's recommendation to grant planning permission. The Council were entitled to reach their planning judgement on matters related to the case and so there has been no unreasonable behaviour in this regard.
8. The PPG identifies that failure to give the applicant proper explanation for delays in determining the application within the time limits is grounds for an award of costs. The application was submitted in July 2022 but was not determined until June 2023. Delays in the determination include waiting for Counsel opinion and delays in forming committee meetings following an election. This would have been frustrating for the applicant. However, there is evidence before me that the applicant agreed to an extension of time for the determination of the application during this period which is not disputed by the applicant.
9. If the applicant had concerns about the time taken to determine the planning application they could have appealed against non determination once the application exceeded the statutory decision time. That option was not exercised in this instance. On the evidence before me there is little to indicate that the delays directly led to wasted or unnecessary expense in pursuing the appeal.
10. The PPG identifies that not determining similar cases in a consistent manner may give rise to an award of costs. Whilst it may be the case that other applications have been supported by the Council, each case must be determined on its own merits. I do not have sufficient evidence before me that other cases quoted have such similarities that result in an unreasonable level of inconsistent decision making.
11. The PPG makes it clear that parties are required to behave reasonably in relation to procedural matters on the appeal, for example by complying with the requirements and deadlines of the appeal process.
12. The applicant has raised issue with the Council's conduct in the preparation of the Statement of Common Ground and the legal agreement. The Council failed to engage with the applicant in a timely way on both matters. Whilst I appreciate that planning departments are busy and often under resourced this does not excuse a lack of regard to progressing the appeal in a timely manner.
13. The Council's adoption of their own timetable for the submission of the Statement of Common Ground and legal agreement showed a lack of respect for the procedural deadlines established and agreed at the Case Management Conference and caused difficulties for all involved. Nevertheless, despite the delays in providing the Statement of Common Ground and legal agreement the Hearing was able to take place as scheduled. Whilst the applicant did undertake some work on a Unilateral Undertaking there would have been additional work on the matter in any event following discussions at the Hearing. Although there was a delay in the Council engaging in the process,

on the evidence before me there is little to demonstrate that it led to wasted or unnecessary expense on the part of the applicant. I am therefore unable to conclude that the Council acted unreasonably in this regard.

Conclusion

14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG has not been demonstrated and an award of costs is not justified.

K Ford

INSPECTOR

Richborough