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## Appeal Decision

Inquiry Held on 8-11 and 17 October 2024

Site visit made on 11 October 2024

**by T Burnham BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30<sup>th</sup> October 2024

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**Appeal Ref: APP/C3105/W/23/3329533**

**Land off Tadmarton Road, Bloxham, Easting (x) 442058 Northing (y) 235960**

- 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 Gladman Developments Ltd against the decision of Cherwell District Council.
  - The application Ref 23/01265/OUT, dated 4 May 2023, was refused by notice dated 11 August 2023.
  - The development proposed is outline planning application for the erection of up to 60 dwellings with public open space, landscaping, sustainable drainage system (SuDS) and vehicular access point. All matters reserved except for means of access.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. It was clarified at the Inquiry that the application was in outline with all matters reserved except for means of access. The application is therefore more accurately described as 'Outline planning application for the erection of up to 60 dwellings with public open space, sustainable drainage system (SuDS) and vehicular access point. All matters reserved except for means of access'.
3. It was clarified at the Inquiry that the only plans which should appear on any approved list would be the site location plan<sup>1</sup> and a drawing showing the proposed access from Tadmarton Road<sup>2</sup>. The submitted Development Framework Plan is only an illustrative summary of how the site could be developed<sup>3</sup>. I have based my consideration on a scheme of 60no. dwellings.
4. The Council originally refused the application citing reasons relating to loss of grade one agricultural land and with regard to the requirement for further ecological investigation. They have confirmed that following the submission of additional information, refusal reasons relating to those matters are no longer pursued<sup>4</sup>. I shall not therefore address those matters further.
5. A further refusal reason was issued with regard to the lack of a planning obligation to secure infrastructure contributions being in place at the time of

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<sup>1</sup> Core Document (CD) 1.2 – Site Location Plan – D9731.001E.

<sup>2</sup> CD 1.8 – Proposed Access off Tadmarton Road – 0301 Rev P04.

<sup>3</sup> CD – S Carvel Planning Proof 2.1.3.

<sup>4</sup> CD – Proofs of evidence – Planning POE – 1.16.

the decision. Those were received after the close of the Inquiry and I address them later in my decision.

6. As a result of issues identified by interested parties, I advised the main parties at the CMC<sup>5</sup> that matters relating to flood risk, noise, odour, and water infrastructure would be considered as main issues.

### **Main Issues**

7. The main issues therefore are i) the effect of the proposal on the character and appearance of the area, ii) whether the development of the site is acceptable in terms of flood risk, iii) the effect of nearby land uses on the living conditions of future occupiers with regard to noise, iv) whether the site is suitable for the proposed development having regard to accessibility to services and facilities, v) the effect of nearby land uses on the living conditions of future occupiers with regard to odour and vi) whether the development could be adequately served by water infrastructure.

### **Reasons**

#### *Planning policy context*

8. The most important policies are PSD 1, BSC 1, ESD 1, ESD 6, ESD 13, ESD 15, Villages 1: Village Categorisation (PV1), Villages 2: Distributing Growth across the Rural Areas (PV2) of the Cherwell Local Plan (2015) (CLP), saved policies C28, C30 and C33 of the Cherwell Local Plan (1996) (CLP96) and policies BL2, BL3, BL11 and BL12 of the Bloxham Neighbourhood Plan (2016) (BP).
9. These policies amongst other things broadly seek to direct development to sustainable locations within Cherwell, in doing so addressing matters including climate change, flood risk and the effect of planning proposals on the character and appearance of the area. The policies have alignment with the Framework<sup>6</sup> which states amongst other things that the planning system should support the transition to a low carbon future in a changing climate and help to shape places in ways that contribute to radical reductions in greenhouse gas emissions. It also states that planning decisions should ensure that developments are sympathetic to local character and recognise the intrinsic character and beauty of the countryside.
10. The main parties share a common position that Policy BSC 1 relating to the housing requirement for the district is out of date<sup>7</sup> and I have no reason to disagree. However, this forms just one element of the basket of most important policies and does not render that basket out of date.

#### *Character and appearance*

11. The appeal site sits adjacent to the westernmost fringe of Bloxham, beyond a modern residential estate (the Miller Homes development). Although a large proportion of the site was previously a quarry, that is not obvious given the site is laid to grass and appears as part of the pleasant countryside beyond the edge of Bloxham. It's appearance as part of the countryside is reinforced by the maturing planting belt on the western side of the Miller Homes

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<sup>5</sup> Case Management Conference - Held virtually on 8th July 2024 at 10am.

<sup>6</sup> National Planning Policy Framework 2023.

<sup>7</sup> CD – Statements of Common Ground – SoCG Addendum FINAL (signed).

- development which now defines the edge of Bloxham and which provides a marked line of separation between the village and countryside beyond.
12. Park Farm, which hosts a series of large buildings of agricultural appearance is to the west of the site. To the west of Bloxham, the character and appearance of the countryside around Tadmarton Road is one of occasional buildings of agricultural appearance bounded by fields.
  13. The proposal, through introducing a substantial amount of built development and residential activity within the countryside and by filling the existing gap to Park Farm, would significantly detract from the existing rural character and appearance of the area on the western side of Bloxham. This would be noticeable to users of Tadmarton Road and users and occupiers of Coleman Close within the Miller Homes development.
  14. The BP<sup>8</sup> identifies that Bloxham has a rural sense of place, the preservation of which features highly in the plan. The LVA<sup>9</sup> identifies the visual receptor 'Users of PRoW Footpath 136/6/20' (VP 6). This is a position on Hob Hill with views towards the site from where the LVA states the visual receptor overall effect would be moderate adverse through from construction stage to year 15.
  15. The appeal site currently plays an important visual role in views from VP6. The undeveloped nature of the site effectively terminates the western side of the village leaving the viewer with a clear appreciation as to the extent of Bloxham at its western end, bolstering its appearance as a village within the countryside.
  16. The development of the appeal site would, when combined with Park Farm, give the impression of Bloxham extending further westwards into the valley, the views further into which are screened by the landform to the west of the PRoW. The visual appreciation of Bloxham as a village within the countryside would therefore be undermined from VP6 as a result of the bridging of the existing gap between the Miller Homes development and Park Farm.
  17. The harms that would arise with regard to how the site is experienced both by those close to the site in visual terms and in terms of its character and in longer distance views in visual terms lead me to conclude that the proposal would have a significant adverse impact on the character and appearance of the area.
  18. The BP<sup>10</sup> identifies key views, including those from the public footpath on Hob Hill, on which VP6 is located. The text indicates that the plan seeks to preserve these views for present and future residents. The proposal would conflict with policies BL11 and BL12 of the BP which require amongst other things that all development shall demonstrate that it does not result in harm to the rural character of the village including consideration of the impact of the development on the key features of the views from public rights of way.
  19. The proposal would further conflict with policies ESD 13 and ESD 15 of the CLP. Amongst other things Policy ESD 13 states that proposals will not be permitted if they would cause undue visual intrusion into the open countryside, be inconsistent with local character or harm the setting of settlements. Policy ESD

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<sup>8</sup> CD 6.21 Bloxham Neighbourhood Plan p6.

<sup>9</sup> Tadmarton Road Bloxham, Landscape and Visual Appraisal April 2023 – The Environment Partnership.

<sup>10</sup> CD 6.21 Bloxham Neighbourhood Plan p42.

- 15 states that new development proposals should amongst other things contribute positively to an area's character by reinforcing local distinctiveness and respecting views.
20. The proposal would also conflict with Policy C33 of the CLP96. Whilst I do not consider Bloxham to have a loose knit settlement structure, the policy amongst other things states that the Council will seek to retain any undeveloped gap of land which is important in preserving a view of recognised amenity value.
21. I have not identified conflict with policies C28 or C30 of the CLP96 which appear to relate more to detailed matters such as building appearance. I have no reason to believe that those matters could not be addressed adequately with regard to the scheme. There would not be conflict with Policy PV2 of the CLP on this main issue given its specific reference to significant adverse landscape impacts.

#### *Flood risk*

22. The red line boundary of the site includes areas which are subject to a medium risk from surface water flooding. These areas are mainly, but not exclusively within the front part of the site adjacent to Tadmarton Road. Policy PV2 of the CLP states that in identifying and considering housing sites, particular regard will be given to amongst other things, whether the development would have an adverse impact on flood risk. Policy ESD 6 states amongst other things that the Council will manage and reduce flood risk in the district through using a sequential approach to development.
23. The Framework advises that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. The proposal is a type of development which should be subject to the sequential test with regard to flood risk.
24. The overall aim of the sequential test is to steer new development to areas with the lowest risk of flooding, and development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. The Framework and Planning Practice Guidance are clear that the sequential approach is applicable to all sources of flooding which would include surface water flood risk.
25. My attention has been drawn to recent Environment Agency Guidance<sup>11</sup>. However, given the outline nature of the scheme and the inherent uncertainty as to how the site would be developed, there can be no certainty that only elements such as public open space, biodiversity and amenity areas would be located in areas at risk of flooding.
26. The Flood Risk Proof of evidence (FRPE)<sup>12</sup> suggests that the access track which provides a high point likely protects the site from the overland flooding flow further south into the site. There is differing information within the evidence about this which creates uncertainty as to what may happen to the track. The FRPE and the initial noise report<sup>13</sup> indicate the existing access track will be retained. The appellant suggests a planning condition simply requiring its closure. This in turn creates uncertainty as to how the site will be developed

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<sup>11</sup> CD 13.13, p 6.

<sup>12</sup> CD – Proofs of Evidence – C Whittingham Flood Risk and Drainage Proof.

<sup>13</sup> CD 1.13 – Noise Screening Report Tadmarton Road Bloxham.

and whether flooding at the northern boundary would be retained within the northern strip of land and indeed whether the resultant development would result in betterment on this issue.

27. Further, surface water flood modelling has been carried out. However, this identifies limited 1.0% AEP storm areas towards the front of the site at Tadmarton Road but not exclusively so. These are identified as equivalent to the medium risk Environment Agency surface water flood risk extents.
28. To conclude on this matter, the site is at risk of surface water flooding. The sequential test has not been applied as required by the CLP and the Framework and it is not known whether there are reasonably available alternative sites at lower risk of flooding. There is therefore nothing of substance to indicate that the requisite level of housing within the area can only be provided if sites with similar characteristics and level of flood risk to the appeal site come forward for housing.
29. It therefore follows that the development of the site is not acceptable in terms of flood risk. The proposal would subsequently conflict with policies ESD 6 and PV2 of the CLP along with the Framework which aim to steer development to areas at lowest risk of flooding.

#### Noise

30. Despite the presence of a planting belt which offers some buffering, the appeal site is set closely to the east of Park Farm which hosts a dairy herd of between 200-300 head of cattle. They, along with other farming activities, have the potential to be sources of noise which could have significant adverse impacts on the living conditions of future occupiers. Calving takes place at the farm at around 10 instances per month although the noise witness advised that this took place in a building well away from the appeal site.
31. During my site visit, which included Park Farm, the sounds of cattle lowing as well as a repetitive metal clanging sound apparently coming from Park Farm were audible from well within the boundaries of the appeal site. The author of the Noise Technical Letter<sup>14</sup> has not visited the site. The author also draws comparisons to another co located dairy farm and residential development, noting that in this instance no specific noise mitigation measures were warranted. Little detail is provided on that and there is nothing within the evidence to enable me to draw such conclusions or confirm that identical circumstances were in evidence.
32. To conclude on this matter, I do not have any assurance that the existing noise climate has been fully understood at the outset and it cannot be reasonably inferred that the activities at the farm would not result in any significant noise impact on the proposed development, regardless of the potential use of mitigation measures.
33. The proposal would therefore conflict with the Framework<sup>15</sup> which states amongst other things that planning decisions should ensure that new development is appropriate for its location taking into account the likely effects of pollution on health and living conditions.

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<sup>14</sup> CD – Proofs of Evidence – S Carvel Planning Appendices - Noise Technical Letter – Noise Consultants – September 2024.

<sup>15</sup> NPPF paragraph 191.

### *Accessibility to services and facilities*

34. The appeal site is located only a short distance from the nearby primary school. Further, Bloxham offers various services and amenities including a secondary school, a private school, a nursery, a flexible workspace centre, a care home, doctors' surgery, dentist, pharmacy, pub, church, village hall, a convenience store, and a post office. The village therefore offers a good range of services and facilities. Bus services which allow access to the larger settlements of Banbury and Chipping Norton can be accessed from stops within the village.
35. It would require a moderate walk from prospective residents to access most of the services and facilities other than the primary school and some pavements are narrow and include steeper sections on routes towards the heart of the village. Walking distances would frequently be over 800m.
36. However, the centre of the village can nonetheless be accessed by foot, on pavements. Therefore, within the rural context of Oxfordshire it would be a viable and realistic option to walk to access services. Cycling would also be a viable option, with part of the National Cycle Route 5 nearby. It is also the case that in spite of the distance to the bus stops from the site and the limited timing and frequency of services, there is the realistic prospect of being able to utilise public transport as opposed to a private vehicle for some journeys. There would overall be viable alternative options to the use of a car.
37. It is also the case that the Framework<sup>16</sup> acknowledges that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. I conclude on this matter that the site is suitable for the proposed development having regard to accessibility to services and facilities.
38. There would therefore be no conflict with policies ESD 1, ESD 15 or PV2 of the CLP, policies C28 and C30 of the CLP96 nor Policy BL3 of the BP with regard to this particular matter. Amongst other things these policies seek to deliver development that seeks to reduce the need to travel and which encourages sustainable travel options including walking, cycling and public transport to reduce dependence on private cars and consideration of whether the site is well located to services and facilities.

### *Odour*

39. This matter was considered in relation to the adjacent farm and in particular the presence of two slurry pits. A detailed and thorough odour assessment, which included visits to the site was submitted alongside the appeal<sup>17</sup>. Mitigation is proposed which would involve covering the large slurry pit at the farm, which would materially reduce the potential for any significant impacts associated with odour from the farm from an uncovered state.
40. Overall, taking in to account the results of the multi tool assessment, the report concludes that potential impact of odour at the appeal site was judged to be not significant, in accordance with the national guidance. I have no reason to come to any other conclusion. I therefore conclude on this matter that there would be no significant adverse impact of operations at the farm on the living conditions of future occupiers with regard to odour.

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<sup>16</sup> NPPF paragraph 109.

<sup>17</sup> CD S Carvel Planning Proof Appendices - Odour Assessment, Tadmarton Road, Bloxham – August 2024.

### *Water infrastructure*

41. Thames Water indicated within their consultation response<sup>18</sup> that they had been unable to determine the foul water infrastructure needs of the proposal and that network reinforcement works may be required to accommodate the proposal.
42. However, the Environment Agency have indicated<sup>19</sup> that the development will be served by Bloxham Sewage Treatment Works, currently using about 85% of its dry weather flow permit capacity. They also indicate that whilst it is a frequently spilling site, a scheme has recently been completed to increase flow to full treatment, which should increase its ability to treat incoming flows.
43. On that basis, there would appear to be foul water infrastructure in place to accept flows associated with the proposal. Thames water also note that there is inability of the existing water network infrastructure to accommodate the needs of this development proposal. However, Thames Water and the Council suggest that this matter should be dealt with via condition. With regard to this particular scheme and in the absence of any further detailed evidence regarding water pressure, I have no reason to disagree with this approach, were I minded to allow the appeal. To conclude on this matter there is nothing to indicate that the development could not be adequately served by water infrastructure.

### **Other Matters**

44. I have considered The Secretary of State's written ministerial statement 'Building the homes we need' which amongst other things outlines the government's commitment to ensure that substantial numbers of homes are built in the upcoming period. I have also considered the consultation on 'Proposed reforms to the NPPF and other changes to the planning system' and the 'National Planning Policy Framework: draft text for consultation' (the Framework Consultation). The proposed revised standard method for calculating housing supply would appear to result in a notable increase in the annual housing need within the area on the basis of the consultation. However, the Framework Consultation could be subject to change and I therefore afford this limited weight.

### *Planning obligations*

45. A completed agreement under S106 between the appellant and Oxfordshire County Council amongst other parties has been submitted which secures contributions towards primary education and special educational needs capacity, bus service continuity and enhancement, a traffic regulation order contribution and a waste management contribution.
46. A completed unilateral undertaking (UU) has been submitted which would secure the provision of affordable housing of a mixed tenure, a community hall facilities contribution, a healthcare contribution, indoor/outdoor sports provision contribution, a landscape and ecology management plan and monitoring sum and an open space/play area/commuted sum. A further completed UU relating to a scheme to cover the larger slurry pit on park farm has been submitted.

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<sup>18</sup> CD 4.15 – Thames Water Response.

<sup>19</sup> CD 4.18 – EA Response Groundwater.

47. The evidence indicates that these are necessary to make the development acceptable in planning terms. They are directly related to the development and fairly and reasonably related in scale and kind to the development. They therefore meet the tests<sup>20</sup>.

### **Planning Balance and Conclusion**

48. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the development plan unless material considerations indicate otherwise.
49. The issue of the housing land supply of the Council was explored extensively at the Inquiry, with a shortfall suggested by the appellant but contended by the Council. However, given the risk to the site in terms of surface water flooding and the failure to apply the sequential test, having regard to Footnote 7<sup>21</sup>, the application of Framework policies relating to areas at risk of flooding provide a clear reason for refusing the development proposed. The balance in paragraph 11(d)(ii) of the Framework does not therefore apply.
50. The proposal would contribute towards housing supply and the provision of affordable housing. It could provide modern and comfortable homes in a sustainable location from where the range of services and facilities within Bloxham could be accessed without reliance on the use of a car. These would be significant benefits of the scheme.
51. Further benefits would arise through local road improvements close to the site. Open space would be provided. There would be economic benefits associated with both construction and occupation of the dwellings. There would be biodiversity net gain in terms of habitat units, hedgerow units and watercourse units. Some provisions within the section 106 and UU's, while primarily provided in mitigation, would have some benefit to those in the local area.
52. However, there is conflict with a cluster of development plan policies with regard to the harm that would be caused to the character and appearance of the area. The proposal would detract from a key view of Bloxham which has been specifically identified for preservation to assist in protecting the rural character of the village.
53. The site is at risk of surface water flooding and the sequential test, which exists to steer new development to areas with the lowest risk of flooding from any source, has not been applied.
54. Further, I am not assured that noise arising from the adjacent farm and therefore potential impacts on the development have been properly assessed and understood. On that basis, I cannot conclude that there would be no significant adverse impact on the living conditions of future occupiers with regard to this matter.
55. Considering the harms cumulatively, I afford them substantial weight such that they outweigh the benefits of the scheme. The proposal would conflict with the development plan and there are no other considerations, including the

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<sup>20</sup> Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (CIL Regulations) and Paragraph 57 of the National Planning Policy Framework.

<sup>21</sup> NPPF p 6.

provisions of the Framework, which indicate the proposal should be determined otherwise than in accordance with it. Therefore, the appeal is dismissed.

*T Burnham*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT**

Anjoli Foster, Barrister, instructed by Stuart Carvel

She called

Stuart Carvel (Planning and accessibility)

Ben Pycroft (5 year Housing Land Supply)

Ian Jeffrey Grimshaw (Landscape)

Colin Whittingham (Flood Risk)

Andrew Nyul (Ecology)

P Threlfall (Odour)

David Sproston (Noise)

### **OTHER APPEARANCES**

Rachel Goddard - Solicitor, Gladman Developments Ltd

Andrew Fortune-Collis - Senior Planner, Gladman Developments Ltd

### **FOR THE LOCAL PLANNING AUTHORITY**

Gary Grant, Barrister, instructed by Kim Maher

He called

Andrew Thompson (Planning and accessibility)

Mark Cooper (Landscape)

Jon Goodall (5 year Housing Land Supply)

### **OTHER APPEARANCES**

Kim Maher – Locum Planning Solicitor

Rebecca Wise – Paralegal

Richard Oliver - Senior Infrastructure Funding Negotiator (Oxfordshire County Council)

Rashid Bhosa - Transport Development Lead (Cherwell), Transport Development Management Team (Oxfordshire County Council)

#### INTERESTED PARTIES

David Bunn (Chairman Bloxham Parish Council)

Councillor Rob Pattenden (Ward member Adderbury, Bloxham and Bodicote)

#### DOCUMENTS SUBMITTED DURING THE INQUIRY

1. Appellant opening submission.
2. Council opening submission.
3. Park Farm, operations note.
4. Bloxham Neighbourhood Plan.
5. Draft Unilateral Undertakings and S106 Agreement.
6. Draft Planning conditions.
7. Appellant and Council notes on bus services/walking/cycling.
8. Guidance on the assessment of odour for planning – Institute of Air Quality Management.
9. Council Closing submissions.
10. Appellant Closing submissions.

#### DOCUMENTS SUBMITTED AFTER THE INQUIRY

1. Completed Unilateral Undertakings and S106 Agreement.