



Cherwell

DISTRICT COUNCIL
NORTH OXFORDSHIRE

TOWN AND COUNTRY PLANNING ACT 1990

STATEMENT ON BEHALF OF THE LOCAL PLANNING AUTHORITY

Appeal by Mr A Bradbury against the decision by Cherwell District Council to refuse full planning permission for the erection of a 4-bed dwelling with garage and access at land adjoining Rectory Lane, Fringford.

Appellant	:	Mr A Bradbury
Appeal Site	:	Land North East Of Fringford Study Centre Adjoining Rectory Lane Fringford OX27 8DD
LPA Reference	:	20/01891/F
PINS Reference	:	APP/C3105/W/21/3270400

LOCAL PLANNING AUTHORITY'S STATEMENT OF CASE

May 2021

1. Reasons for Refusal

1.1 Planning permission was refused on 18th September 2020 for the following reasons:

1. By virtue of its scale, design and siting on a parcel of land designed for retention and which holds 7 trees designated under a Tree Protection Order, the proposed new dwelling would result in an incongruous and wholly inappropriate development that would prejudice the life of the existing and proposed trees, would be to the detriment of the open, rural character of this part of the lane, would fail to sympathetically integrate into the built environment or surrounding pattern of development and would cause significant and demonstrable harm to the existing loose-knit character of the area. The proposal therefore also results in unacceptable infilling within the built-up limits of Fringford. The proposal is therefore contrary to the provisions and aims of Policies ESD15 and Villages 1 of the Cherwell Local Plan 2011 – 2031 Part 1, Saved Policies C28, C30 and C33 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.
2. The site lies within an area of known archaeological importance. In the absence of a satisfactory archaeological field evaluation having been conducted and the results assessed, the proposal is unacceptable as it is likely to cause damage to features of acknowledged archaeological significance. The proposal is therefore contrary to Government guidance contained within the National Planning Policy Framework, in particular paragraph 189.
3. The site is likely to be home to important ecological habitats. The applicant has failed to demonstrate that the proposal would not result in harm to biodiversity or wildlife on the site. The proposal is therefore contrary to Policy ESD10 of the Cherwell Local Plan 2011 – 2031 Part 1 and Government guidance contained within the National Planning Policy Framework, in particular paragraph 170.

2. The Council's Case

- 2.1 This appeal statement solely focuses on the reason for refusal and does not cover the aspects of the development which the Council considers to be acceptable as these matters are common ground between the parties.
- 2.2 The Council's case in this appeal is principally as set out within the officer's report for the planning application, a copy of which was sent to the Inspectorate with the appeal questionnaire. This Statement of Case does not intend to repeat or duplicate the arguments set out in those reports, but instead focuses on responding to and clarifying the key issues that arise from the Appellant's Statement of Case (ASoC).

Refusal reason 1

- 2.3 In paragraph 5.15 of the ASoC, the Appellant contends that the plot is not important land and does not contribute to views or a spacious rural atmosphere. Furthermore, in paragraphs 5.16 and 5.17, the Appellant contends that the proposal impacts on the loose-knit character of the area or the sense of openness as was written in the officer's report.
- 2.4 The appeal site, together with the land north of The Old School, land south of The Old Bakehouse (largely occupied by a pond) and land at The Green, contributes greatly to the open and loose-knit character of this part of the village. The lack of development on the site, together with its verdant nature, is perceived particularly when travelling east to west along Rectory Lane. The Council therefore submits that the site is important land in contributing to the spacious rural atmosphere that is seen in the western end of the village.
- 2.5 At paragraph 5.17, the Appellant states that the trees and vegetation surrounding the plot would largely be retained and as such the rural character retained. The Council submits that the retention of trees would not alone retain the rural character. The construction of a suburban, two-storey detached dwelling would clearly and fundamentally alter the character of the site, to the extent that the rural character would be eroded.
- 2.6 At paragraphs 5.19 – 5.25 the Appellant contends that the proposal would not represent an overdevelopment of the site and is in accordance with Policy BSC2 of the Cherwell Local Plan 2011-2031. Policy BSC2 is related to housing development on brownfield land, which this proposal would not represent. The Council submits Policy BSC2 is therefore

irrelevant in assessing this appeal. That said, the Council notes that the map/photograph above paragraph 5.22 is misleading in assessing the housing density of the area i.e. it does not include areas to the north, south and west, which are closer to the development site in question. These areas clearly have a lower housing density than the portion of land to the east, which is further to the more built-up central and part of the village.

2.7 The Council submits that the development would prejudice the life of existing and proposed trees. The Appellant has submitted an Arboricultural Appeal Statement from MWAC, in Appendix 1 of the ASoC. The Council's Arboricultural Officer has provided comment on this statement, provided in Appendix 2 of this appeal statement.

2.8 The Council's Arboricultural Officer highlights:

- T4 and T5 are *Fraxinus* (Ash) species and therefore vulnerable to Ash Dieback. However, there is no evidence submitted to suggest they are currently exhibiting symptoms.
- T4 and T5 are categorised in the Arboricultural Appeal Statement as mature, yet their height and diameter suggest considerable growth remains – which will result in ground encroachment in the north of the site.
- The Arboricultural Appeal Statement states uninhabited buildings – such as garages – present very little future pressure for pruning. On the contrary, BS5837:2012 does not give exemption for the proposed use of a building. Encroachment, including possible direct damage, will regardless prompt frequent mitigative pruning.
- BS5837:2012 5.3.3 highlights the importance of considering the sites soil structure when building adjacent to retained trees. The sites soil structure, being 'Soilscape 18, loamy and clayey, slowly permeable and seasonally wet' is prone to subsidence elsewhere in the district. Concerns for future subsidence are not just applicable to T4/T5. All trees within the site, especially T6 which has a potentially very large ultimate height, are within influencing distance of the proposal.
- Due to the proximity of the building adjacent to retained trees, it could be expected soil heave may present a future conflict with the proposal, unless foundations are

designed with this as a consideration. In line with BS5837:2012 the proposal offers potential short to long term below ground conflict.

- Hypothetically, should members of TPO 11/1997 ever be proposed for removal, the size of the dwelling within the plot offers limited scope for conditioned replanting.

2.9 Overall, the Council submits that the Arboricultural Appeal Statement does not overcome refusal reason 1 regarding tree impact. There are legitimate concerns regarding the future health of on-site trees post-development. The Council submits that the size of the plot and scale of the dwelling would lead to future pressure for the TPO trees to be removed. There is not sufficient space within the plot for successful replanting of TPO trees that may need to be replaced in the long term, without those replacement trees then being at pressure for future removal for the same reason.

2.10 The Council notes that the Appellant does not seek to defend the scale and design of the appeal proposal as a reason for refusal. To this end and for the avoidance of doubt, the Inspector is referred 8.22 of the delegated officer report for the Council's submission in this regard.

Refusal reason 2

2.11 The planning application was refused on grounds that a satisfactory archaeological field evaluation had not been conducted, and that therefore the proposal was considered likely to cause damage to features of archaeological significance. The Appellant has submitted an Archaeological Desk Based Assessment by Abrams Archaeology, in Appendix 2 of the ASoC. The County Council's Archaeological Officer has provided comment on this statement, included at Appendix 3 of the Council's appeal statement.

2.12 The County Council Archaeologist advises that the Desk Based Assessment contains numerous errors and omissions and therefore its conclusions cannot be agreed with. These are summarised below:

- There is a lack of evidence that a 19th century building occupied the site, contrary to assertions within the desk-based assessment.

- The assessment concludes that there is medium to low potential for archaeological deposits relating to the early medieval period. However, the County Council Archaeologist considers the potential to be high due to the deposits from this period on the land immediately adjacent to the site.
- With regard to medieval deposits, the assessment assigned a medium potential. However, the County Council Archaeologist advises that this potential is high, as it is a key location for a medieval dwelling or farmhouse, given the findings of a C.13th century barn type structure on land immediately adjacent. The site therefore has considerable potential to contain structural remains of medieval buildings which are likely to be well preserved. The assessment makes no reference to the high level of preservation on the adjacent parcel and as such the assessment of significance contained within the report cannot be agreed with.

2.13 The County Council Archaeologist concludes that there is currently insufficient information contained within the application or appeal documentation relating to the survival of the medieval remains on the site, with an archaeological evaluation required. On this basis, the Council submits that the appeal proposal runs contrary to Government guidance contained within the National Planning Policy Framework, in particular paragraph 189. The Council therefore maintains refusal reason 2.

Refusal reason 3

2.14 The Appellant has submitted a Preliminary Ecological Appraisal by Windrush Ecology in Appendix 3 of the ASoC. The Council's Ecologist has provided comment on this statement, included at Appendix 4 of the Council's appeal statement, concluding that the harm to wildlife and an overall loss to biodiversity can be avoided. Based on the evidence submitted, the Council no longer wishes to defend Refusal Reason 3.

3. Conclusion

3.1 For the reasons set out in its decision notice, the delegated officer report and this statement of case, the Council submits that the appeal proposal clearly conflicts with the Development Plan and with Government guidance contained within the National Planning Policy Framework. Accordingly, the Inspector is respectfully requested to uphold the decision made by the Local Planning Authority in respect of reasons 1 and 2 and dismiss this appeal.

Officer: George Smith
Dated: May 2021

Appendices

- Appendix 1 – suggested draft conditions
- Appendix 2 – CDC Arboricultural Officer response
- Appendix 3 – OCC Archaeological Officer response
- Appendix 4 – CDC Ecologist response

APPENDIX 1

Suggested Conditions

If, notwithstanding the above, the Inspector is minded to allow the appeal, the following conditions are suggested as necessary to make the development acceptable:

1. The development to which this permission relates shall be begun not later than the expiration of three years beginning with the date of this permission.

Reason: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the following plans and documents:

- Application form
- 2550 02 – Proposed Floor Plans
- 2550 03 – Proposed Elevations
- 2550 04 – Site Plan
- 2550 05 – Block Plan
- 2250 06 – Street Scenes

Reason: For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and comply with Government guidance contained within the National Planning Policy Framework.

3. The development hereby approved shall not be carried out other than in accordance with the recommendations set out in section 5 of the Preliminary Ecological Appraisal carried out by Windrush Ecology in February 2021.

Reason - To ensure that the development does not cause harm to any protected species or their habitats in accordance with Policy ESD10 of the Cherwell Local

Plan 2011 – 2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

4. Prior to the first use/occupation of the development hereby approved, the parking and manoeuvring areas shall be provided in accordance with the plan approved (Drawing No. 2550 05) and shall be constructed from porous materials or provision shall be made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the site. Thereafter, the parking and manoeuvring areas shall be retained in accordance with this condition and shall be unobstructed except for the parking and manoeuvring of vehicles at all times.

Reason - In the interests of highway safety and flood prevention and to comply with Policies ESD7 and ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

5. Prior to the first occupation of the dwelling hereby approved, the proposed means of access between the land and the highway shall be widened to 2m and formed, laid out and constructed strictly in accordance with Oxfordshire County Council's specification and guidance.

Reason - In the interests of highway safety and to comply with Government guidance contained within the National Planning Policy Framework

6. No development shall commence above slab level unless and until a schedule of materials and finishes for the external walls and roof of the development hereby approved has been submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out other than in accordance with the approved schedule and shall be retained as such thereafter.

Reason - To ensure the satisfactory appearance of the completed development and to safeguard the character and appearance of the area and to comply with Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

7. No development shall commence above slab level unless and until a landscaping scheme has been 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 along all boundaries.

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

Reason - In the interests of the visual amenities of the area, to ensure the creation of a pleasant environment for the development and to comply with Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

8. 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.

Reason - In the interests of the visual amenities of the area, to ensure the creation of a pleasant environment for the development and to comply with Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

9. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), no development within Part 1 or Part 2 of Schedule 2 of the Order shall take place.

Reason: To enable the Local Planning Authority to retain planning control over the development of this site, and to in order to safeguard the openness and rural character of the area, and because if the appeal is allowed the acceptability of the proposal would have to be in part based on the size and design of the proposed dwelling, and to comply with Saved Policy C28 of the Cherwell Local Plan 1996, Policies ESD13 and ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.