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## Appeal Decision

Hearing held on 15 December 2015

Site visit made on 15 December 2015

**by Sara Morgan LLB (Hons) MA Solicitor (Non-practising)**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 11 February 2016**

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**Appeal Ref: APP/C3105/W/15/3130576**

**Land north of Green Lane and east of The Hale, Chesterton, Oxfordshire**

- 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 Philippa and Georgina Pain against the decision of Cherwell District Council.
  - The application Ref 15/00454/OUT, dated 5 March 2015, was refused by notice dated 12 June 2015.
  - The development proposed is application for outline planning permission for up to 51 dwellings with vehicular access from The Hale, together with public open space, and surface water retention pond and associated infrastructure. All matters other than the main site access reserved.
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### Decision

1. The appeal is dismissed.

### Preliminary

2. The application was in outline, with all matters apart from main site access reserved for future determination.
  3. The Council's third reason for refusal related to the absence of an undertaking under section 106 to secure affordable housing and to mitigate effects on local community infrastructure. The appellants have now submitted a completed undertaking, the contents of which have been agreed with the District Council and Oxfordshire County Council.
  4. The undertaking appears not to include a covenant by the appellants to comply with the covenants in the Third Schedule, which casts some doubt as to whether those covenants would be enforceable. However, that is clearly a drafting error which could have been rectified if the development was acceptable in all other respects. Subject to that drafting issue, the undertaking would overcome the third reason for refusal.
  5. The matters which the undertaking seeks to secure are the provision, laying out and transfer of public open space within the development and the payment of contributions towards its maintenance; payment of contributions towards the provision or improvement of community facilities at Chesterton Village Hall; the provision of affordable housing in accordance with requirements of the development plan; payments to Oxfordshire County Council of contributions towards the improvement or extension of Chesterton Primary School and the cost of a new secondary school at Bicester; and the payment of a contribution
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towards the costs of making a traffic regulation order and constructing a cycleway.

6. I am satisfied that the provisions of the undertaking satisfy the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010 and in the National Planning Policy Framework ("the Framework"), in that the obligations are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development. In addition, it was confirmed at the hearing that the contributions intended to be secured by the undertaking would not be affected by the restrictions on the pooling of contributions contained in Regulation 123(3) of the 2010 Regulations. I shall therefore take the contents of the obligation into account in reaching my decision.

### **Main Issues**

7. The main issues are:
- (i) Whether the Council can demonstrate a five-year housing land supply.
  - (ii) Whether the development would accord with development plan policy relating to the supply of housing.
  - (iii) The effect of the development on the setting of Chesterton and on the character and appearance of the surrounding area.
  - (iv) Whether the development would amount to sustainable development.

### **Reasons**

#### ***Housing land supply***

8. The appellants originally argued that the Council could not demonstrate a five-year supply of deliverable housing sites, as required by paragraph 47 of the National Planning Policy Framework (the Framework). This was on the basis, it was argued, that the Council in calculating its supply incorporated a buffer of 5% and not the 20% necessary in cases of persistent under-delivery of housing.
9. However, in recent appeal decisions<sup>1</sup> the Secretary of State and a colleague Inspector have both concluded that the Council can demonstrate a five year housing land supply consistent with the policies in the Cherwell Local Plan 2011 – 2031 Part 1 (the 2015 LP). There is no evidence before me to persuade me to reach a different conclusion from the Secretary of State and my colleague Inspector. Indeed, the Council's 2015 Annual Monitoring Report (AMR), approved after the hearing on 4 January 2016, shows a slight increase in supply, to 5.3 years from the 5.1 years reported in the previous AMR.

#### ***Development plan policy***

10. When the Council made its decision on the appeal application the development plan included saved policies of the Cherwell Local Plan 1996 (the 1996 LP). In June 2015, the Council adopted the 2015 LP. This has replaced many of the policies relied on in the Council's reasons for refusal, although some saved policies of the 1996 LP remain extant and relevant.

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<sup>1</sup> APP/C3105/W/14/3001612 27 August 2015; APP/C3105/A/14/2226552 7 December 2015

11. The 2015 LP strategy is to meet the district's housing needs by concentrating development on the two towns of Bicester and Banbury and on a small number of strategic sites outside those towns. This is reflected in policies BSC 1, which sets out the overall housing provision for the district, and in policies Villages 1 and 2, which sets out housing numbers to be provided in the villages of the district. The Local Plan Inspector noted in his report that the aim of the strategy is to alter the local pattern of housing growth, as a disproportionate percentage has taken place in the smaller settlements, adding to commuting by car and congestion on the road network at peak hours. He endorsed this strategy as being the most sustainable strategy for the district, reflecting the guidance in the Framework<sup>2</sup>.
12. As far as the rural area is concerned, policy Villages 1 categorises villages into service villages (Category A), satellite villages and all other villages. Policy Villages 2 provides that "a total of 750 homes" will be delivered at Category A villages from 1 April 2014 until 2031 in addition to small site windfalls (ie sites of less than 10 dwellings). Chesterton is a Category A village.
13. The Local Plan Inspector referred in his report to "around 750 homes in total", and clearly the 750 figure is not an absolute maximum. But I agree with the Inspector who determined an appeal relating to land off Lince Lane, Kirtlington<sup>3</sup> that any significant increase above 750 could lead to unconstrained growth which would result in non-compliance with the 2015 LP strategy for rebalancing housing growth away from the villages and rural areas. The use of the figure of 750 in the policy must have some form of constraining effect on total numbers, otherwise the policy would be meaningless in terms of its contribution towards the overall strategy of the Plan.
14. The position at the time of the Hearing was that 571 dwellings out of the 750 were anticipated to come forward over the next 5 years, leaving 179 to be provided over the whole of the remainder of the plan period. There is no phasing requirement in policy Villages 2, but the strategy in the 2015 LP is for the provision of sustainable development over the whole of the plan period and the whole of the district. If disproportionate numbers of dwellings are permitted in any one settlement, then other settlements where housing sites have yet to be identified may not be able to meet their needs, including affordable housing needs, without undermining the local plan strategy.
15. The Secretary of State in a recent decision relating to land at Sibford Road Hook Norton has considered policy Villages 2. The Secretary of State noted that there was no restriction on the proportion of the 750 dwellings to be provided in any one village, or any phasing provision. He concluded that it would be acceptable for Hook Norton to provide a relatively larger share of the 750 dwellings than other Category A villages, on the basis of its relatively sustainable location<sup>4</sup>.
16. However, Hook Norton is a far larger village than Chesterton, and appears to have a somewhat wider range of facilities. The Secretary of State's conclusions relating to Hook Norton cannot be read across to apply also to Chesterton, given the significant differences between those two settlements. Indeed, the implication of his conclusion with regard to Hook Norton is that some other

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<sup>2</sup> Para 212 of Report on the Examination into the Cherwell Local Plan 9 June 2015

<sup>3</sup> APP/C3105/W/14/3001612

<sup>4</sup> APP/C3105/A/14/2226552 at paragraph 12 of the decision.

Category A villages would provide a relatively smaller share of the 750 dwellings. That is consistent with the view of the Kirtlington Inspector that the size of the village in question in relation to others is a factor to take into account in the distribution of development. I see no reason to disagree with that view.

17. If the 750 dwellings required by Villages 2 were to be distributed across the Category A villages pro rata on the basis of population, only 15 dwellings would be required in Chesterton. But in fact Chesterton is already committed to provide 45 dwellings, which have been approved in principle subject to a section 106 undertaking being completed. These will be on land immediately to the north of the appeal site, now known as The Paddocks. If the appeal proposal were permitted as well, then 12% of the 750 district wide total would be provided in one relatively small village. This would be disproportionate.
18. The development at The Paddocks is in addition to 44 dwellings approved on appeal<sup>5</sup> on land off Green Lane in 2013, which do not count towards the 750. That development is in the course of construction. Together with the developments already permitted, if the appeal proposal were to be allowed there would be a significant increase in the population of the village over a short timescale.
19. Chesterton has a limited range of facilities within the village itself. These include a primary school and nursery, a public house, a village hall and playing fields, and a bus service (25/25A). There are very limited employment opportunities, and most or all of those who live in the village would have to travel to work, to do their shopping and to access most public services.
20. Although the edge of the Bicester urban area is reasonably close to the village, roads are not pedestrian or cycle friendly due to their width and the traffic using them, there are no footways, and consequently cycling or walking to any part of Bicester, including the newly opened park and ride facility just off the A41, is unlikely to be a realistic option for most people.
21. Even as it is, the bus service is very limited, with buses running towards Bicester every 2 hours from mid-morning. There does not appear to be a travel to work service into Bicester. There are more frequent services to Oxford, an hour's ride away, in the early morning, and travelling to work in Oxford and back by bus appears to be possible, but during the day the buses revert to being 2-hourly.
22. The bus service is subsidised and not viable without subsidy. There appears to be a strong possibility that the subsidy from Oxfordshire County Council towards the 25 service will be withdrawn, and that would result in the village losing most of its buses. Consequently the likelihood in reality is that future residents of the development would be dependent on the private car for virtually all of their travel needs.
23. I have taken account of the conclusions of the 2009 CRAITLUS<sup>6</sup> study on the overall sustainability of villages, which scores Chesterton slightly higher than Hook Norton, but that study was completed some 6 years ago. Given the current information relating to bus services I would not expect similar scores to be achieved by Chesterton now.

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<sup>5</sup> APP/C3105/A/12/2183183

<sup>6</sup> Cherwell Rural Area Integrated Transport and Land Use Study – Halcrow Group Ltd August 2009

24. The Green Lane appeal decision was determined at a time when the now adopted 2015 LP was still emerging, and it appears that Chesterton was then being proposed for, potentially, around 22 new dwellings. The Inspector noted that a regular bus service and close proximity to Bicester contributed significantly to the village's overall sustainability rating. She also noted the scope in the submitted section 106 agreement to maintain and/or improve bus services. She found insufficient grounds for concluding that Chesterton was not a sustainable location for 44 additional dwellings.
25. The position now is that, whilst the proximity of the village to Bicester reduces the *length* of journeys to most facilities, on the basis of the current highly infrequent bus services those journeys are likely to be made by car. That likelihood will be increased if, as appears probable, the current subsidy is withdrawn. This leads me now to conclude that Chesterton would not be a sustainable location for the scale of new development being proposed in this appeal, which of course is additional to that approved at Green Lane, as well as The Paddocks.
26. My overall conclusion on this issue, for these reasons, is that the appeal development would conflict with the overall strategy of the 2015 LP for the provision and location of housing. It would also conflict with policy ESD 1 of the 2015 LP, which requires the impact of development on climate change to be mitigated by, amongst other things, delivering development that seeks to reduce the need to travel and which encourages sustainable travel options.

### ***Character and appearance***

27. The appeal site is an arable field, roughly triangular in shape, bounded on one side by The Hale, on one side by Green Lane and an existing cul-de-sac development, and on a third side by The Paddocks. The Paddocks is currently undeveloped, but will be the site of up to 45 dwellings. There was at the time of my visit a substantial hedgerow between The Paddocks and the appeal site.
28. The appellant has described the proposal as "rounding off", but that description does not, in my view, reflect the extent to which the development would extend built form into the countryside. Once The Paddocks has been constructed, the north-eastern boundary of the site would abut development. But the other boundaries would in the main be Green Lane and The Hale, both of which have the character of country roads where they adjoin the appeal site.
29. The site has no specific designation in either landscape or environmental terms, but it is at present an arable field, and clearly visually part of the countryside. It is typical in character of the flat landscape which surrounds the village. Because of its open nature it provides a rural and agricultural setting to the village, forming a rural foreground to views from The Hale, over what is at present an open boundary with very little boundary planting to obstruct views. Even when the development of The Paddocks has taken place, it would continue if undeveloped to provide a rural setting to the village.
30. The Hale is, in character, very rural despite the amount of traffic using it at present. On the other side of The Hale is a golf course, but this is itself rural in character despite its somewhat manicured appearance. The lane is only just wide enough in places for two vehicles to pass, and has narrow verges. Typically of a country lane, it has no footway. All of these elements reinforce its rural character.

31. The development would introduce a major change to the character of The Hale. At least in the short to medium term, the views across the open field from the lane would become views of a suburban development. However carefully the development was designed and landscaped, its appearance would be suburban. Whilst boundary planting could, in time, lessen the visual impact of the development, it would not conceal the existence of the development, and indeed the openness of the field and the part that openness plays in the setting of Chesterton would also be lost.
32. The site access needed to provide safe access to the development would also have a visually suburbanising effect, as would the new footway along The Hale required by the highways authority to provide a safe pedestrian access to the village. The lane would no longer provide a rural approach to the village. The existing pleasant rural character of The Hale, and the contribution the site plays in the rural setting of the village, would be lost.
33. The development of The Paddocks does not form any sort of precedent for the development of this site. Policy Villages 2 requires new housing in villages, and it is likely that many of the schemes coming forward will involve development of agricultural land and a significant change in character. But The Paddocks is closer to existing development and is a more visually contained site. It was also permitted at a time when the Council could not demonstrate a 5 year supply of housing land and before the 2015 LP was adopted, so that the policy context, and the weight to be given to the provision of additional housing, was different.
34. Even so, development at The Paddocks, with its associated highway works, will have a suburbanising effect on the northern end of The Hale. Adding development on the appeal site would result in virtually the whole length of The Hale becoming suburbanised, to the significant detriment of its rural character. There is no justification in housing land supply terms for this harm. In addition, in the case of the appeal site, the visual harm would be greater because the site is further from the main part of the village and protrudes to a greater extent into the countryside. The harm would be limited to short or medium distance views, as there are no long-distance views of the site, but nonetheless in those short to medium views the harm would be noticeable and material.
35. I conclude that the development would have a significantly harmful effect on the setting of Chesterton and on the rural character and appearance of the area. It would conflict with saved policy C8 of the 1996 LP, which seeks to avoid sporadic development in the open countryside. This policy is still relevant as it seeks to resist unnecessary development in the countryside, and it has not been rendered out of date by housing land supply considerations. There would also be conflict with policy ESD 13 of the 2015 LP, because it would cause undue visual intrusion into the open countryside, be inconsistent with local character and harm the setting of Chesterton.

***Whether the development would amount to sustainable development***

36. The Framework contains a presumption in favour of sustainable development. That requires development that accords with the development plan to be approved without delay. I have found that this development would not accord with various provisions of the development plan, as well as with the overall housing strategy in the 2015 LP. That document is very recently adopted, and

- up to date. The Council is able to demonstrate a five-year supply of housing, and so its policies for the supply of housing cannot be said to be out of date. Consequently, the final bullet point of the Framework's paragraph 14 does not apply.
37. The Framework identifies three dimensions to sustainable development: economic, social and environmental. Dealing first with the economic role, allowing the development would bring more dwellings forward, which would deliver some economic and employment benefits, as well as New Homes Bonus funding for the Council and Council tax revenue. It would also accord with the intention of paragraph 47 of the Framework to boost significantly the supply of housing.
38. But my conclusion is that the site is not particularly well located for housing and I am not satisfied this is the right place for further development. The 2015 LP has identified and seeks to co-ordinate development requirements, including the necessary supporting infrastructure. This development would not accord with the strategy of the 2015 LP, a strategy which is very recently adopted and which the Local Plan Inspector considered was fully consistent with national guidance in the Framework.
39. Turning to the social aspect of sustainability, whilst the additional housing would contribute towards the need for housing in the district, those needs could at present be met without developing this site. The appellants have referred to the need for Cherwell to address Oxford City's unmet housing need in the future. The Local Plan Inspector addressed this issue in his Report in considering the duty to co-operate, and noted that there was as yet no final agreement on how or where the new housing needs of Oxford City would be met. There is no evidence before me as to the extent of that need or how it might be addressed, and it would be speculative and premature to regard this site as being able to meet any of that need in the absence of any such evidence.
40. The development would contribute towards the district's need for affordable housing, as 35% of the dwellings would be affordable. But according to the Council there is only a small level of need for affordable housing in Chesterton at the moment, and so the development would not be meeting the affordable housing needs of the village but of the wider district. The site's poor accessibility and lack of services means that it is a far from ideal location to perform that function. I also share the concerns of the Parish Council as to the ability of the village to absorb the large cumulative increase in population that would occur if this proposal were to be permitted as well as the other two developments already permitted or approved in principle.
41. The unilateral undertaking (if fully enforceable) would secure contributions towards public space and educational facilities, but those would merely mitigate an otherwise adverse impact from the development on local facilities. The contribution towards a speed limit on The Hale would provide a safer walking route between The Hale and Green Lane. The contribution towards making a new cycleway to link the village with the new park and ride site would assist in improving accessibility and highway safety. But accessing the park and ride site from the village by foot or cycle would still require the use of roads with no footways for a considerable distance, which would be likely to deter many users. The benefits would thus be limited.

42. On the environmental dimension of sustainability, the development would have a harmful effect on the rural character of the countryside. There would be some benefits to biodiversity from the proposed pond and linear swales and additional planting. But the likely reliance of occupiers on the private car for their travel needs would have environmental disbenefits.
43. Taking all these considerations into account, I conclude that the harm the development would cause would significantly outweigh the benefits, and that it would not amount to sustainable development as envisaged in the Framework.
44. I have taken all other matters raised in the representations and at the hearing into account, but none of them lead me to alter my conclusion that the appeal should be dismissed.

***Overall conclusions***

45. For the reasons given above I conclude that the appeal should be dismissed.

*Sara Morgan*

INSPECTOR



## **APPEARANCES**

### FOR THE APPELLANTS:

Ms Clare O'Hanlon    Carter Jonas, agent for the appellants

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Matthew Parry    Planning Officer, Cherwell District Council

### INTERESTED PERSONS:

Mr Richard Oliver	Oxfordshire County Council
Mr Philip Clarke	Chairman, Chesterton Parish Council
Mr Tony Thompson	Vice-chairman, Chesterton Parish Council

## **DOCUMENTS**

- 1 Council's letters of notification and list of persons notified
- 2 Policies BSC1 and ESD1 Cherwell Local Plan 2015
- 3 Appeal decision ref APP/C3105/A/14/2226552 Land at Sibford Road Hook Norton
- 4 Aerial photograph showing location of proposed cycle link to Park and Ride site
- 5 Extract from Halcrow Final Report Cherwell Rural Area Integrated Transport and Land Use Study
- 6 Bus timetables for routes 25 and 25A
- 7 Cherwell Local Plan 2015 Extract 5.2 Key Policies Map: Bicester
- 8 Unsigned planning obligation relating to the appeal site
- 9 Chesterton Primary School Pupil Forecasts
- 10 Oxfordshire CC briefing note re site access arrangements
- 11 Suggested rewording of condition 11 proposed by the Council
- 12 Condition relating to refuse storage produced by the Council after the close of the hearing
- 13 Completed unilateral undertaking dated 21 December 2015 produced by the appellants after the close of the hearing
- 14 Annual Monitoring Report 2015 approved by the Council after the hearing