

**IN THE MATTER OF LAND AT THE BEECHES, HEYFORD ROAD, STEEPLE ASTON, OXFORDSHIRE, OX25 4SN**

**AND MR ADRIAN SHOOTER**

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**ADVICE**

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- 1 I am asked to advise Mr Adrian Shooter regarding land at The Beeches, Heyford Road, Steeple Aston, Oxfordshire, OX25 4SN ('the Site') upon which he has sought planning permission from Cherwell District Council ('the Council') for "erection of up to 8 dwellings with all matters reserved except the means of access onto Heyford Road" ('the Development')<sup>1</sup>.
  
- 2 The Council refused permission for the development pursuant to a decision notice dated 31 October 2019 for the following reasons:-
  - (1) The proposed development represents new housing that would significantly encroach into the countryside beyond the built-up limits of Steeple Aston, contrary to the housing strategy of the Development Plan for the area, for which it has not been demonstrated that there is a justified need. In its proposed location the development would therefore be an unjustified and unsustainable form of development. As such the proposal is contrary to Policy ESD1 and Villages 1 of the Cherwell Local Plan 2011-2031 Part 1, Saved Policy H18 of the Cherwell Local Plan 1996, Policy PD1 of the Mid Cherwell Neighbourhood Plan 2018 and Government guidance contained within the National Planning Policy Framework.

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<sup>1</sup> Reference 19/01601/OUT

- (2) The proposed development represents inappropriate ‘back-land’ development that would fail to relate well to the pattern of development in the area and would appear as an intrusion of built form into the countryside, detracting from the rural character and quality of the area the setting of the village. As such the proposal is contrary to Policies ESD13 and ESD15 of the Cherwell Local Plan 2011 - 2031 Part 1, Saved Policies C28 and C30 of the Cherwell Local Plan 1996, and Government guidance contained within the National Planning Policy Framework.
- 3 The reasons for refusal cite a number of development plan policies and refers to the National Planning Policy Framework. I will deal with those in my analysis of the position below.
- 4 I also note that the decision to refuse permission was made under delegated powers by the officer and I am instructed that this was despite a desire evinced by at least some members of the planning committee to have the matter dealt with at committee. Once again I will deal with that issue further below.
- 5 Policy ESD1 deals with mitigating and adapting to climate change. Among the criteria provided for on that policy are “at a strategic level, this will include:-  
(1) distributing growth to the most sustainable locations as defined in this Local Plan  
(2) delivering development which 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 ...”
- 6 This is a high level strategic policy and with respect, it is hard to see why this proposal has any conflict with it given that policies Villages 1 and Villages 2 specifically provide, at the spatial level, for the distribution of housing, in particular at category A villages. Steeple Aston is identified as a category A or service village under policy Villages1.
- 7 In consequence the contention that there is any conflict with that policy is, with respect, wholly misconceived.

- 8 In my view, it would not withstand scrutiny if the subject of examination as part of any planning appeal, if made.
- 9 Policy Villages 1 identifies that Steeple Aston is a category A village. That anticipates that minor development infilling and conversions will be considered suitable as such settlements are considered to be larger and to have a range of facilities sufficient to support such development. The plan itself did not seek to define in map terms the built up area boundary.
- 10 Policy Villages 2 deals with the distribution of growth across the rural areas and specifically anticipates that a total of 750 homes will be delivered at category A villages. It states “this will be in addition to the rural allowance for small site “windfall” and planning permission for 10 or more dwellings as at 31 March 2014”.
- 11 The policy goes on “sites will be identified through the preparation of Local Plan Part 2, through the preparation of Neighbourhood Plans where applicable, and through the determination of applications for planning permission”.
- 12 A series of criteria are then set out within this policy for the evaluation of any sites that may come forward.
- 13 It may be noted that although the policy is permissive of the means of identification of sites, it does not devolve to the Neighbourhood Plan process the means of delimiting the built up area boundaries of settlements. Instead, it remains within the purview of the local plan to identify sites where appropriate.
- 14 To that extent Policy Villages 2 is permissive of development at such locations.
- 15 The criteria for identifying and considering sites and then evaluation both in factual and planning terms. I deal with these further below.

- 16 The Site not only represents the planning unit of the domestic dwelling, The Beeches, but it also has benefit of planning permission for the construction of the model railway and associated buildings.
- 17 The officer's delegated report, as well as referring to the relevant Cherwell Local Plan Policies also refers to policy ESD1 of the Mid Cherwell Neighbourhood Plan 2018 – 2031 (MCNP). I recognise that this Neighbourhood Development Plan has sought to try and define settlement limits for various settlements including Steeple Aston. I am unconvinced, as a matter of interpretation, that it is permissible given the terms of the hierarchical superior policies including policy Villages 1 of the CLP. In my view there is nothing to preclude the assessment being made that pursuant to the local plan: that the site falls within the built-up area of the settlement. This is a judgement for the decision maker to make upon the site specific grounds and as a matter of planning judgement. It is not defined by MCNP.
- 18 Be that as it may, policy PD1 of the MCNP provides a series of criteria for residential development outside any settlement areas of the villages. The officer in his delegated report, in context of the Site, purported to assess these criteria in paragraphs 8.15 to 8.16 of his delegated report. His assessment in paragraph 8.16 of the delegated report is, to my mind, troubling. Set out below is the summary description of the policy criteria.
- 19 With regard to criterion (a) "the site should be immediately adjacent to the settlement area", it is readily apparent both in plan form and on the ground that that criterion is met. Indeed, as much is acknowledged in the second sentence of paragraph 8.16(a). The suggestion that the effect of a tree line within the site would mean that the location is "somewhat divorced from the existing pattern of residential development" is not a criterion within the policy and is frankly irrelevant.
- 20 It is accepted by the officer in respect of criterion (b) that "the site should not be the best and most versatile agricultural land and the use of previously developed land is likely to be acceptable" is met. Given the planning status identified earlier it is clear that the site constitutes previously developed land. Further, in terms of the policy it is

simply wrong, as a matter of interpretation of the policy (let alone its application) to state “that the site could be considered as PDL is not considered to be a turning factor either way”. For the purposes of properly understanding and interpreting policy it is necessary to understand what the policy says, not what the officer may wish to apply.

- 21 As to criterion (c) “the development should conserve and where possible enhance the landscape” the officer’s assessment is simply directed to the change in existing character and appearance of the site. Once again it avoids dealing with its current planning status as PDL and asserts that the site forms a “valued rural landscape”. In the light of the decision in *Stroud District Council -v- SoS and Gladman [2015] EWHC 488 (Admin)* under the former NPPF (2012) and the terms of paragraph 170(a) of the NPPF (2019) this assertion is, with respect, misplaced and without justification. There is certainly no assessment as to how the residential curtilage forms part of countryside character, any more than any other residential curtilage within Steeple Aston, including those MCNP has sought to identify.
- 22 As to criterion (d) (respect for nearby heritage assets) and criterion (e) (that the proposal would not give rise to coalescence with other nearby settlements, in particular Steeple Aston and Middle Aston) both of these criterion are considered to be met.
- 23 The Council’s landscape officer considers the scheme would cause a harmful landscape and visual impact. Whilst this involves a matter of professional judgement, having been to the site and explored the locations from which the site can be viewed, this assessment is, with respect, highly surprising.
- 24 The assessments made in paragraph 8.34 and 8.35 of the officer’s report contend firstly as to matters which are spatial rather than landscape in nature and, at most, amount to an unparticularised rejection of the assessment contained in the submitted landscape and visual assessment report.
- 25 Paragraph 8.36 and 8.37 of the make a series of speculations as to the adverse impact of the anticipated built form both upon its external visibility and secondly the consequences for overshadowing for the proposed dwellings and impact on existing

vegetation. Having had the opportunity to discuss these matters with my instructing consultant (and viewed the locations of the proposed dwellings on site) these contentions on the part of the officers appear both surprising and, without obvious justification.

26 I note the absence of adverse impact on a range of other identified interests of significance, including ecology and highways. The delegated report nonetheless concludes that permission ought to be withheld, but it does not appear to engage a proper and justifiable interpretation of the terms of the policies with which it purported to deal.

27 In addition, I am somewhat troubled by the process by which the application was determined. I am instructed at least one member of the Planning Committee wished to have the matter determined to committee but that the officer was adamant that this was not permissible in accordance with the terms of the Council's constitution. Having had the opportunity to consider the terms of the Council's constitution, I am unable to follow that contention. The criteria providing for "call in" are set out in the constitution<sup>2</sup>. The following appear to be particularly germane:-

(1) Whether material planning reasons have been supplied? Given the terms of policy and, to put it at its lowest, the most surprising interpretation and application of policy by the officer, there is clearly a material planning reason in this instance.

(2) The parish council does not object to the proposal; indeed it supports it.

(3) There is very little public interest in the proposal.

(4) The scale and type of development (residential development as part of or immediately adjacent to the settlement for 8 new dwellings is of a small scale)

(5) The site history involves the proposed development of previously developed land.

(6) The statutory timeframe for the decision is not mandatory, in any event.

(7) Relevant development plan policies, Council guidance and strategies have, for the reasons set out above been misinterpreted and misapplied in this instance

(8) Fundamentally, the committee could legitimately reach another conclusion to that reached by officers.

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<sup>2</sup> Dated July 2019

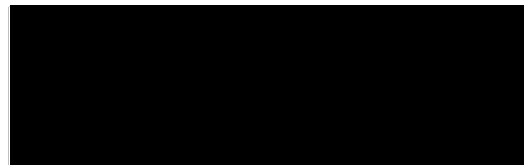
28 In those circumstances the purported determination by officers that the criteria are not met is, in my view, without justification.

29 It would be open to Mr Shooter simply to appeal the matter now to the Secretary of State. However, Government is clear that it wishes local planning authorities to take a positive approach to development and it expects planning appeals to be used only as a last resort.

30 I would suggest that a further application in similar terms to the first is submitted and the Council is invited to determine it, having proper regard not only to the terms of the application but a proper interpretation and application of policy.

31 In light of the matters identified and canvassed both in the application and in this Advice it seems to me that there would be a sound prospect for members of the planning committee, properly informed, to reach a different view to that expressed in the officer's delegated report referred to above. Clearly, if that approach is not successful then Mr Shooter will have little option but to appeal and in those circumstances will doubtless wish to draw attention of any appeal inspector to the chronology of events set out above, this Advice and the opportunity given to the Council to redetermine the matter in the manner identified above.

32 I trust this advice deals with the matters identified for my attention



**PETER GOATLEY**

No 5 Chambers

Birmingham



27<sup>th</sup> January 2020

**IN THE MATTER OF**

**The Beeches, Heyford Road,  
Steeple Aston, Oxfordshire,  
OX25 4SN**

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**ADVICE**

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