

**Land Adj To Cotwold Country Club And South Of
Properties On Bunkers Hill Shipton On Cherwell
OX5 3BA**

20/01756/OUT

Case Officer: Shona King

Recommendation: Permitted

Applicant: Keble Homes Limited

Proposal: Removal of Conditions 17 (Archaeological Written Scheme of Investigation), 18 (staged programme of archaeological evaluation and mitigation) and 27 (hardstanding) of 18/01491/OUT

Expiry Date: 2 October 2020

Extension of Time: 12 March 2021

1. APPLICATION SITE AND LOCALITY

- 1.1. The site is located to the rear of a row of dwellings which front onto the A4095 and comprises an area of hardstanding, former Club building and a disused bowling green and associated changing rooms and maintenance shed. Access to the highway is via a narrow track onto the A4095 at the western end of the site. The site is bounded to the north and west by countryside and to the east by an established nursery/garden centre.

2. DESCRIPTION OF PROPOSED DEVELOPMENT

- 2.1. Outline planning permission was granted under application 18/01491/OUT for the demolition of the existing club house, bowling club pavilion and ancillary store and the erection of 10 no. dwellings and access improvements. The consent was subject to conditions and the applicant is now seeking to remove three of the conditions, namely 17 (Archaeological Written Scheme of Investigation), 18 (staged programme of archaeological evaluation and mitigation) and 27 (hardstanding).

3. RELEVANT PLANNING HISTORY

- 3.1. The following planning history is considered relevant to the current proposal:

18/01491/OUT OUTLINE - Demolition of existing club house, bowling club pavilion and ancillary store. Erection of 10 no. dwellings and access improvements (further to outline planning permission 14/02132/OUT, dated 8th April 2016) and having a lesser proposed cumulative floor area than that permission. – APPROVED

19/01410/REM - Reserved matters to 18/01491/OUT - Seeking approval of layout, landscaping, appearance and scale. Access details approved as part of outline permission – APPROVED

20/01755/DISC – Discharge of Conditions 5 (finished floor levels); 6 (Arboricultural Method Statement); 7 (supervision measures); 8 (services and trenches); 9 (open space provision); 10 (means of access); 11 (visibility splays); 12 (internal access road details); 13 (refuse vehicle tracking); 14 (drainage details); 15 (Construction Traffic Management Plan); 16 (bat, bird, owl and invertebrate box details); 19 (facing materials) & 20 (Landscaping details) of 18/01491/OUT – PENDING CONSIDERATION

20/01757/DISC - Discharge of Condition 2 (materials) of 19/01410/REM – APPROVED IN RESPECT OF BRICK AND TILE ONLY

20/01758/REM - Removal of conditions 3 (stone sample panel) & 4 (doors & windows) of 19/01410/REM – PENDING CONSIDERATION

4. PRE-APPLICATION DISCUSSIONS

4.1. No pre-application discussions have taken place about this proposal.

5. RESPONSE TO PUBLICITY

5.1. This application has been publicised by way of a site notice displayed near the site and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records. The final date for comments was **24 August 2020**, although comments received after this date and before finalising this report have also been considered.

5.2. The comments raised by third parties relate to the removal of Condition 27 only and are summarised as follows:

- Applicant agreed to this under a previous approval
- Meets 5 tests for conditions
- Required to encourage more use of public transport
- Needed for sustainable development
- Erosion of benefits for existing residents
- Required for highway safety and safety of passengers.
- Current bus stop is unsuitable

5.3. The comments received can be viewed in full on the Council's website, via the online Planning Register.

6. RESPONSE TO CONSULTATION

6.1. Below is a summary of the consultation responses received at the time of writing this report. Responses are available to view in full on the Council's website, via the online Planning Register.

PARISH/TOWN COUNCIL AND NEIGHBOURHOOD FORUMS

6.2. SHIPTON ON CHERWELL AND THRUPP PARISH COUNCIL: **Object** to the removal of these conditions, in particular condition 27. The removal of this condition will have a detrimental effect to the transport links from Bunkers Hill and a negative impact on the residents, who already have limited public transport on the area. The costing and surveying of such conditions should have taken place before the submission of the application, and removal of these after the application has been approved, on that basis is not acceptable. The applicants believed it to be within their remit originally and therefore this must be upheld.

CONSULTEES

6.3. LOCAL HIGHWAY AUTHORITY: **Objection**. Necessity of the hardstanding was noted in our response to the outline application, dated 24th September 2018. The nearest bus stop to the development was considered in need of improvement where a hard standing onto which the agreed s106 contribution of £1,090 public transport infrastructure contribution would be installed was identified. The infrastructure requested herein meets the '3 CIL tests,' which are:

- Necessary to make the development acceptable;
- Directly related to the development; and
- Fairly and reasonably related in scale and kind to the development.

Without these improvements, the site is considered non-compliant to provision c) of Para 102 of the NPPF.

- 6.4. CDC ARCHAEOLOGY: **Object.** The conditions are both required and justified within the NPPF and planning system and do meet all six tests required for a condition to be acceptable. The programme of archaeological investigation is essential for this development to be undertaken in line with the NPPF and it is therefore recommended that these conditions are not discharged and that this staged programme of archaeological investigation is undertaken ahead of any development.

7. RELEVANT PLANNING POLICY AND GUIDANCE

- 7.1. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 7.2. The Cherwell Local Plan 2011-2031 - Part 1 was formally adopted by Cherwell District Council on 20th July 2015 and provides the strategic planning policy framework for the District to 2031. The Local Plan 2011-2031 – Part 1 replaced a number of the ‘saved’ policies of the adopted Cherwell Local Plan 1996 though many of its policies are retained and remain part of the development plan. The relevant planning policies of Cherwell District’s statutory Development Plan are set out below:

CHERWELL LOCAL PLAN 2011 - 2031 PART 1 (CLP 2031 Part 1)

- BSC1: District wide housing distribution
- BSC2: Effective and efficient use of land
- BSC3: Affordable housing
- BSC4: Housing mix
- BSC10: Protection of open space outdoor sport and recreation uses
- ESD1: Mitigating and adapting to climate change
- ESD10: Protection and Enhancement of Biodiversity and the Natural Environment
- ESD13: Local landscape protection and enhancement
- ESD15: The Character of the Built and Historic Environment

CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- H18: New dwellings in the countryside
- C8: Sporadic development

- 7.3. Other Material Planning Considerations:

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)

8. APPRAISAL

8.1. The Planning Practice Guidance advises:

In deciding an application under section 73, the local planning authority must only consider the disputed condition/s that are the subject of the application – it is not a complete re-consideration of the application. A local planning authority decision to refuse an application under section 73 can be appealed to the Secretary of State, who will also only consider the condition/s in question. (Paragraph: 031, Reference ID: 21a-031-20140306)

8.2. Therefore, the key issue for consideration in this case is whether it is appropriate remove Conditions 17 (Archaeological Written Scheme of Investigation), 18 (staged programme of archaeological evaluation and mitigation) and 27 (hardstanding) of 18/01491/OUT.

8.3. Condition 17 states:

“No development shall commence including any demolition until and unless a professional archaeological organisation acceptable to the Local Planning Authority shall prepare an Archaeological Written Scheme of Investigation, relating to the application site area, which shall be submitted to and approved in writing by the Local Planning Authority.

Reason - To safeguard the recording of archaeological matters within the site in accordance with Government guidance contained within the National Planning Policy Framework.”

Condition 18 states:

“Following the approval of the Written Scheme of Investigation referred to in condition 18, and prior to any demolition on the site and 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 an accessible and useable archive and a full report for publication which shall be submitted to the Local Planning Authority.

Reason - To safeguard the identification, recording, analysis and archiving of heritage assets before they are lost and to advance understanding of the heritage assets in their wider context through publication and dissemination of the evidence in accordance with Government guidance contained within the National Planning Policy Framework.”

8.4. Condition 17 is a ‘pre-commencement condition’ for which consent of the applicant is required. The applicant’s agent has advised that consent was not sought nor were conditions 17 and 18 agreed with the applicant prior to the determination of the application. Section 100 ZA (5) of the Town and Country Planning Act 1990 provides that planning permission for the development of land may not be granted subject to a pre-commencement condition without the written agreement of the applicant to the terms of the condition. In this instance the Council did not seek agreement for the imposition of these two conditions (condition 18 follows on from condition 17) and therefore it is recommended that they are removed.

- 8.5. In addition, the conditions were not imposed on the previous consent, 14/02132/OUT and it is considered unreasonable to now require a WSI and a scheme evaluation and mitigation to be carried out under the current consent.
- 8.6. Notwithstanding the above, the clubhouse has already been demolished and the dwellings constructed negating the need for the condition.
- 8.7. Condition 27 states:

No occupation of any of the dwellings hereby permitted shall take place until an area of hardstanding is constructed to the west of the layby within the highway boundary at the northbound bus stop on the A4260 52 metres to the north of the junction with Bunkers Hill and the A4260, in accordance with full specification details of the hardstanding which shall have first been submitted to and approved in writing by the Local Planning Authority. The said area of hardstanding shall be retained as such thereafter.

Reason - In the interests of highway safety, to ensure the safety of the passengers waiting for and alighting from buses and to comply with Government guidance contained within the National Planning Policy Framework.

- 8.8. The applicant's agent has argued that the condition was not agreed in advance and did not appear within the report of officers to planning committee as a recommended condition. It also relates to works on land:

- That is not within the applicant's control;
- that is not defined;
- in an area that has not been surveyed with what looks like an adjacent ditch;
- of indeterminate ownership, and
- almost half a kilometre (450m plus) distant from the first approved dwelling.

- 8.9. Further they state that the land has not been the subject of survey and there is no way of knowing anything of practicality or costs. The condition does not define what is required and is therefore imprecise: for example, dimensions, siting or area of hardstanding. Also, the condition requires that 'the said area of hardstanding shall be retained as such thereafter.' The land is beyond the control of the applicant/developer and so they would have no future control over this and therefore could not comply with the condition's requirements, making it unreasonable when applying the '6 tests'.

- 8.10. Paragraph 55 of the National Planning Policy Framework makes it clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests:

1. necessary;
2. relevant to planning;
3. relevant to the development to be permitted;
4. enforceable;
5. precise; and
6. reasonable in all other respects.

Each of tests need to be satisfied for each condition which an authority intends to apply.

- 8.11 The condition is not a pre-commencement condition and therefore the prior agreement of the applicant is not required.
- 8.12. The hardstanding is considered to be necessary to make the development acceptable in planning terms as the only means residents of this development who do not have the use of a car will be able to access key services and amenities is by bus. Without the improved public transport infrastructure, it is considered that the development would be unsustainable contrary to guidance set out in the NPPF. It is therefore considered to be relevant to planning and due to the proximity of the scheme to the bus stop (which is accessible by foot), relevant to the approved development. It is also enforceable.
- 8.13. The condition is not particularly precise in what it seeks but it does require prior approval of the specification of the works and a s273 agreement is required, with OCC, for works within the highway. The requirement that 'the said area of hardstanding shall be retained as such thereafter' could be considered unreasonable as the land on which the hardstanding is to be located is not within the applicants'/developers' ownership or control. Therefore, it is recommended that this element is omitted from the condition. As the land is in the ownership/control of the County Council it is highly likely that the hardstanding will be retained and maintained as part of the highway infrastructure in the future.
- 8.14 Given the necessary involvement with OCC and the time it will take to construct the hardstanding, amending the wording of the condition further to require the hardstanding to be constructed prior to the occupation of the 8th dwelling is considered to be more reasonable and will not delay the provision of the hardstanding to any significant degree. The applicants' agent has written advising that, whilst they would prefer the condition to be removed entirely, they would accept this trigger. OCC has agreed the later trigger.
- 8.15. Therefore, it is recommended that condition 27 is reworded as follows:

Prior to the occupation of the 8th dwelling hereby permitted an area of hardstanding shall be constructed to the west of the layby within the highway boundary at the northbound bus stop on the A4260 52 metres to the north of the junction with Bunkers Hill and the A4260, in accordance with full specification details of the hardstanding which shall have first been submitted to and approved in writing by the Local Planning Authority.

Reason - In the interests of highway safety, to ensure the safety of the passengers waiting for and alighting from buses and to comply with Government guidance contained within the National Planning Policy Framework.

9. PLANNING BALANCE AND CONCLUSION

- 9.1. The removal of the conditions 17 and 18 as set out above is deemed necessary due to the requirements of Section 100 ZA (5) of the Town and Country Planning Act 1990. The removal of Condition 27 would however result in unsustainable development and would therefore be contrary to the guidance set out in the NPPF.

10. RECOMMENDATION

That permission is granted, subject to the following conditions:

- 1 Except where otherwise stipulated by condition, the application shall be carried out strictly in accordance with the application form and the following plans and documents: 392/19/PL1000, PL1001A, PL1003, PL10.00A, PL20.00, PL30.00, 3287 BUNK ICS 01 XX DR C 004 P09 S4, 0753 1.1C and 1.2C, Landscape Management Plan.

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

- 2 The development shall not be carried out other than in accordance with the finished floor levels plan Drawing No. BUNK ICS 01 XX DR C002 P05.

Reason: To ensure that the proposed development is in scale and harmony with its neighbours and surroundings and to comply with Policy ESD 15 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.

- 3 The development shall not be carried out other than in accordance with the Arboricultural Method Statement prepared by Cotswold Wildlife Surveys dated September 2019

Reason: To ensure the continued health of retained trees/hedges and to ensure that they are not adversely affected by the construction works, in the interests of the visual amenity of the area, to ensure the integration of the development into the existing landscape and to comply with Policies ESD13 and ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

- 4 The development shall not be carried out other than in accordance with Arboricultural Method Statement prepared by Cotswold Wildlife Surveys dated September 2019 and drawing Nos. 0753 1.1 and 1.2

Reason: To ensure the continued health of retained trees/hedges and to ensure that they are not adversely affected by the construction works, in the interests of the visual amenity of the area, to ensure the integration of the development into the existing landscape and to comply with Policies ESD13 and ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

- 5 The development shall not be carried out other than in accordance with Drawing No.3287 BUNK ICS 01 XX DR C003 P05 S4 showing service trenches, pipe runs or drains.

Reason: To ensure the continued health of retained trees/hedges and to ensure that they are not adversely affected by the construction works, in the interests of the visual amenity of the area, to ensure the integration of the development into the existing landscape and to comply with Policies ESD13 and ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

6 The development shall not be carried out other than in accordance with Drawing Nos. 0753.1.1.C and 0753.1.2.C showing the landscaping and treatment of open space/play space within the site and agents letter dated 10th June 2020

Reason: In the interests of amenity, to ensure the creation of a pleasant environment for the development with appropriate open space/play space and to comply with Policy BSC11 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

7 The development shall not be carried out other than in accordance with Drawing No. 392 19 PL1001 Rev B showing the means of access.

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

8 The development shall not be carried out other than in accordance with Drawing No. 392 19 PL1001 Rev B showing vision splays

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

9 The development shall not be carried out other than in accordance with Drawing No. 3287 BUNK ICS 01 XX DR C 004 P09 S4 showing the estate roads and footpaths.

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

10 The development shall not be carried out other than in accordance with Drawing No. 3287 BUNK ICS 01 XX DR C 020 P02 S4 showing refuse vehicle turning as clarified by Site Plan 001 accompanying agent's email dated 26/08/2020

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

11 No development shall commence unless and until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development, 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 details and shall be carried out in its entirety before the development is completed. The scheme shall also include:

- Discharge Rates
- Discharge Volumes
- Maintenance and management of SUDS features (this maybe secured by a Section 106 Agreement)
- Sizing of features - attenuation volume
- Infiltration in accordance with BRE365
- Detailed drainage layout with pipe numbers
- SUDS (list the suds features mentioned within the FRA to ensure they are carried forward into the detailed drainage strategy)
- Network drainage calculations
- Phasing
- No private drainage into the existing public highway drainage system
- No private drainage into the adoptable highway drainage system.

Reason: In the interests of amenity, highway safety and the adequate drainage of the site and to comply with Government guidance contained within the National Planning Policy Framework.

- 12 The development shall not be carried out other than in accordance with Drawing No. 392 19 1000 – Construction Traffic Management Plan.

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

- 13 The development shall not be carried out other than in accordance with the letter from Cotswold Wildlife Surveys dated 2nd January 2020.

Reason: To protect habitats of importance to biodiversity conservation from any loss or damage in accordance with Policy ESD10 of the Cherwell Local Plan 2011-231 Part 1 and Government guidance contained within the National Planning Policy Framework.

- 14 The development shall be using Terca Grove Multi Orange, Irish Rose and Ecostock Bamford Blend facing bricks and Forticrete grey and brown 'Gemini' roof tiles in accordance with drawing No. 392 19 PL2000 and shall be retained as such thereafter.

Reason: To ensure the satisfactory appearance of the completed development and to comply with Policy ESD 15 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.

- 15 The development shall not be carried out other than in accordance with the landscape scheme drawings Nos: 0753.1.1.C and 0753.1.2.C

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, saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

- 16 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, saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

- 17 a) No retained tree shall be cut down, uprooted, damaged or destroyed, nor shall any retained tree be pruned in any manner, be it branches, stems or roots, other than in accordance with the approved plans and particulars, without the prior written approval of the Local Planning Authority. All tree works shall be carried out in accordance with BS3998: Recommendations for Tree Works.
- b) If any retained tree is cut down, uprooted, destroyed or dies, another tree shall be planted in the same place in the next planting season following the removal of that tree, full details of which shall be firstly submitted to and approved in writing by the Local Planning Authority.

In this condition a "retained tree" is an existing tree which shall be retained in accordance with the approved plans and particulars; and paragraphs (a) and (b) shall have effect until the expiration of five years from the date of the consent.

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 Policies ESD13 and ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

- 18 The development shall not be occupied until the remedial works identified in the Environmental Risk Assessment and Remedial Strategy referenced 183217/ERA/001 dated October 2019 produced by AA Environmental Ltd have been carried out and a validation report that demonstrates the effectiveness of the remediation works have been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with saved Policy ENV12 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

- 19 If remedial works have been identified in condition 21 the development shall not be occupied until the remedial works have been carried out in accordance with the scheme approved under condition 21. 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.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with saved Policy ENV12 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

- 20 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. The development shall not be carried other than in accordance with the approved remediation strategy.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with saved Policy ENV12 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

- 21 Prior to the first occupation of the development hereby approved, the appropriate number of refuse bins required in relation to the dwellings shall be provided.

Reason: To ensure the satisfactory appearance of the completed development and to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

- 22 Prior to the occupation of the 8th dwelling hereby permitted an area of hardstanding shall be constructed to the west of the layby within the highway boundary at the northbound bus stop on the A4260 52 metres to the north of the junction with Bunkers Hill and the A4260, in accordance with full specification details of the hardstanding which shall have first been submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of highway safety, to ensure the safety of the passengers waiting for and alighting from buses and to comply with Government guidance contained within the National Planning Policy Framework.

Case Officer: Shona King

DATE: 09/03/2021

Checked By: Andy Bateson

DATE: 12 March 2021
