

**Case Officer:** George Smith

**Recommendation:** Refuse

**Applicant:** Mr A Bradbury

**Proposal:** Erection of a 4 bedroom detached dwelling with garage and access

**Expiry Date:** 18 September 2020

**Extension of Time:** 18 September 2020

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## **1. APPLICATION SITE AND LOCALITY**

- 1.1. The site is located towards the south of Fringford, on the corner of Rectory Lane and Farriers Close. Farriers Close is a more modern residential development of four detached dwellings, granted on appeal (95/00702/OUT). The site is accessed via Rectory Lane, which is a dead-end street, although pedestrian footpaths provide access through to Crosslands and Church Lane.
- 1.2. The site in question is occupied by 7 trees which are protected by way of a Tree Preservation Order. The site is within a medium priority Archaeological Alert Area, designated as "Fringford historic core, including site of moat at Fringford Manor and med/post-med fishponds". Fringford is not covered by a Conservation Area, whilst there are no listed buildings within 25m of the site.

## **2. DESCRIPTION OF PROPOSED DEVELOPMENT**

- 2.1. The applicant seeks planning permission for the erection of a single residential dwelling. The dwelling would be two-storey and constructed in primarily brick, with a stone front gable. The dwelling would have a generally traditional appearance, with the main element having a north to south gable fronting towards Rectory Lane. A two-storey gabled projection is proposed off the western flank. The dwelling would also feature an attached garage to the east. The dwelling would feature 4-bedrooms at first floor level, with living room, kitchen, dining room, study and utility rooms at ground floor level and 3 bathrooms across both levels.

## **3. RELEVANT PLANNING HISTORY**

- 3.1. The following planning history is considered relevant to the current proposal:
- 3.2. **10/01220/F** – No. three bedroom dwelling. – Refused and Dismissed at Appeal
- 3.3. The Inspector dismissed the appeal on grounds of character and appearance, impact on trees and archaeology.

## **4. PRE-APPLICATION DISCUSSIONS**

- 4.1. No pre-application discussions have taken place with regard to 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 taken into account.

- 5.2. 32 letters of objection and 0 letters of support have been received. The comments raised by third parties are summarised as follows:

#### Object

- Sustainability; access to Bicester is poor, no longer a bus service and villagers must rely on cars
- Character and appearance; copse important to character of Rectory Lane and has been allocated as public amenity space, helps screen Farriers Close, elevation difference means development would be incongruous, impact on historic part of village.
- Impact on trees; Development likely to result in some or all of TPO trees being removed, affecting rural and street setting.
- Residential amenity; Overbearing, loss of light and loss of privacy on surrounding dwellings, in particular Pringle Cottage.
- Highway safety; narrow road, already overcrowded, lack of on-road parking, poor access and on bend, popular route for walkers/joggers, more traffic than previous 2010 decision, increase in accident likelihood.
- Archaeology; a survey is essential due to findings on original Farriers Close development
- Ecology; provides space for local wildlife
- Flooding; Fringford has history of flooding and drainage problems
- Smaller affordable housing is needed in village rather than another 4-bed dwelling.
- Copse was conditioned to be retained (Condition 11 of 95/00702/OUT).
- Construction traffic impact
- Provision of services has not been sufficiently detailed

- 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. FRINGFORD PARISH COUNCIL: **Objects** – on grounds of unsustainable development, loss of trees and amenity value of copse, loss of wall, negative impact

on local environment and streetscene, destruction of wildlife, highway safety, archaeology and neighbour impact.

#### STATUTORY CONSULTEES

6.3. OCC HIGHWAYS: **No objections** – subject to conditions

#### NON-STATUTORY CONSULTEES

6.4. CDC ECOLOGY: **Comment** – that information is outstanding

6.5. OCC ARCHAEOLOGY: **Comment** – that information is outstanding

### **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)

- PSD1: Presumption in Favour of Sustainable Development
- ESD 1: Mitigating and Adapting to Climate Change
- ESD 3: Sustainable Construction
- ESD 7: Sustainable Drainage Systems (SuDS)
- ESD10: Protection and Enhancement of Biodiversity and the Natural Environment
- ESD15: The Character of the Built and Historic Environment
- Villages 1: Village Categorisation

#### CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- C28: Layout, design and external appearance of new development
- C30: Design control
- C33: Important local gaps

7.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Cherwell Residential Design Guide (2018)
- Cherwell Council Home Extensions and Alterations Design Guide (2007)

### **8. APPRAISAL**

8.1. The key issues for consideration in this case are:

- Principle of development
- Design, and impact on the character of the area

- Residential amenity
- Highway safety
- Archaeology
- Ecology

#### Principle of development

- 8.2. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that any application for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for the District comprises the adopted Cherwell Local Plan 2011-2031 and the saved policies of the Cherwell Local Plan 1996.
- 8.3. Paragraph 10 of the National Planning Policy Framework states that at the heart of the Framework is a presumption in favour of sustainable development. There are three dimensions to sustainable development, as defined in the NPPF, which require the planning system to perform economic, social and environmental roles. These roles are interdependent and need to be pursued in mutually supportive ways.
- 8.4. Paragraph 12 of the NPPF notes that the development plan is the starting point of decision making. Proposed development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise. Cherwell District Council has an up-to-date Local Plan which was adopted on 20th July 2015.
- 8.5. The NPPF does not change the statutory status of the development plan as the starting point for decision making. Proposed development that conflicts with the Local Plan should be refused unless other material considerations indicate otherwise (Para. 12).
- 8.6. Cherwell District Council can demonstrate a 3-year supply of housing. The Written Ministerial Statement of 12th September 2018 states that relevant and important policies for determining the application may be considered out of date only where a 3-year supply of deliverable sites cannot be demonstrated. The presumption in favour of sustainable development, as advised by the NPPF, will need to be applied in this context.
- 8.7. Policy ESD1 of the Cherwell Local Plan Part 1 states measures will be taken to mitigate the impact of development on climate change and deliver the goals of sustainable development. This includes distributing housing growth to the most sustainable locations as defined in the Local Plan and delivering development which reduces the need to travel. The local plan has a strong urban focus with large amounts of housing planned at Bicester and Banbury, with rural housing growth therefore more restrained.
- 8.8. The principle of residential development in Fringford is assessed against Policy Villages 1 in the Cherwell Local Plan Part 1. Fringford is recognised as a Category A village in the CLP 2031 Part 1.
- 8.9. Category A villages are recognised as the most sustainable rural settlements within the district, which can accommodate appropriate minor development, infilling and conversions. Infilling is defined within paragraph C.264 of the CLP 2031 as *“the development of a small gap in an otherwise continuous built-up frontage”*.

- 8.10. The land subject of this application is considered to accord this definition of infilling, given its size and location generally between other buildings (Farriers Close development and the Old School/Fringford Study Centre).
- 8.11. However, CLP paragraph C.264 goes on to state that *“Not all infill gaps will be suitable for development. Many spaces in villages’ streets are important and cannot be filled without detriment to their character. Such gaps may afford views out to the landscape or help to impact a spacious rural atmosphere to the village. This is particularly important in a loose knit village pattern where the spaces may be as important as the buildings”*.
- 8.12. Therefore, it is considered that the acceptability of the development is dependent on the impact of a new dwelling here on the character and appearance of the village. This matter – and other material considerations – are discussed in more detail below.

#### Design and impact on the character of the area

- 8.13. Government guidance contained within the NPPF requiring good design states that good design is a key aspect of sustainable development, creates better places in which to live and work and helps makes development acceptable to communities. Further, permission should be refused for development of poor design that fails to take the opportunities for improving the character and quality of an area and the way it functions.
- 8.14. Saved Policy C28 of the CLP 1996 exercise control over all new developments to ensure that the standards of layout, design and external appearance are sympathetic to the character of the context.
- 8.15. Policy ESD15 of the CLP 2031 states that: *“New development will be expected to complement and enhance the character of its context through sensitive siting, layout and high-quality design. All new development will be required to meet high design standards.”*
- 8.16. Relevant here is paragraph C.264 under Policy Villages 1 of the CLP 2031 in relation to appropriate infilling. Furthermore, saved Policy C33 seeks to preserve important local gaps where they are important to preserving the loose knit character of an area of where they are important in maintaining the setting of a listed building.
- 8.17. There are 7 trees within the site which are covered by a Tree Protection Order (TPO). The trees make a valuable contribution to the character and appearance of the area. Policy ESD10 of the CLP 2031 states that the protection of trees will be encouraged, with an aim to increase the number of trees in the District. Policy ESD15 adds that new development proposals shall respect local topography and landscape features, including trees. Paragraph 175 of the NPPF states that development involving the loss or deterioration of irreplaceable habitats (including veteran trees) should be refused.
- 8.18. In considering the appeal against refusal of application 10/01120/F, the Inspector stated: *“The appeal site creates a break in development here and is an important and integral part of its established character and appearance. The combination of the loss of the trees, which form an attractive copse and the introduction of a dwelling on this elevated site, would alter its character and appearance and that of the streetscene to a significantly harmful degree, particularly when viewed from Rectory Lane”*. [appeal ref: APP/C3105/A/10/2140169].

- 8.19. The application site is considered to contribute significantly in amenity value to the character of this part of Fringford. Coupled with the significance of the trees within the site, the plot also contributes to the loose-knit character of the village and sense of openness. There have been no significant changes to the site context since this previous dismissed appeal. Furthermore, through the introduction of the NPPF and adoption of the CLP 2031, local and national policy now places greater emphasis on the sensitive layout and siting of new development.
- 8.20. On this basis, officers see no reason to come to a different conclusion in relation to the siting of this new dwelling. The proposal remains harmful to the character and appearance of the streetscene on Rectory Lane, infilling a gap in the frontage which significantly contributes to the pleasant and attractive loose-knit character of the village.
- 8.21. The siting of the dwelling in this location (and its size) would also clearly cause harm to the protected trees on site. Officers note that the Council's Arboricultural Officer has also raised an objection to this application. Whilst 1 tree is proposed to be felled and replaced, the remaining trees are very likely to be impacted through construction works within their root protection areas. The change of use of the land to residential, coupled with the limited amenity space afforded considering the dwelling's size, is likely to lead to a conflict and pressure for these trees to eventually be removed from the site.
- 8.22. Turning to the design and appearance of the dwelling; the previous dismissed appeal showed a modest linear dwelling, centrally within the site. The current proposal seeks a larger and more suburban style of dwelling, but within a relatively small plot. Officers consider that it would not assimilate well into the street scene or reflect the character of the neighbouring dwellings, where dwellings are either of a more simple, linear historic form, or (where dwellings are of a similar scale to that proposed here) are afforded larger plots. Thus, and further to the previous decision, officers consider that the design and scale of the dwelling is inappropriate to the local setting and would cause harm in this respect.
- 8.23. Overall, the proposal is considered to represent unacceptable infilling, due to its harm caused to the character and appearance of the area. The proposal is thus contrary to Policy Villages 1, ESD10 and ESD15 of the CLP 2031, saved Policies C28 and C30 of the CLP 1996 and relevant paragraphs of the NPPF.

#### Residential amenity

- 8.24. Policy C30 of the CLP 1996 requires that a development must provide standards of amenity and privacy acceptable to the Local Planning Authority. These provisions are echoed in Policy ESD15 of the CLP 2031 which states that: *'new development proposals should consider amenity of both existing and future development, including matters of privacy, outlook, natural lighting, ventilation and indoor and outdoor space'*.
- 8.25. Officers note that a number of third-party residents have concerns regarding overlooking and loss of light to Pringle Cottage. Whilst the dwelling in this location may result in some shared views across the road between bedrooms, this can usually be expected where dwellings front onto the road / face each other across the public realm. Even so, the new dwelling is set back within the plot and as such the distances involved (approx. 18m) are not considered to result in any significant material harm to neighbouring or future residents in this case. Neither the dwellings on Farriers Close nor the dwellings to the rear are considered to be in close enough proximity for there to be any material harm caused.

- 8.26. Turning to the amenity space for future residents, the size of the plot is not in any way substantial, being relatively small in consideration of some neighbouring plots. However, I do consider its village location as a benefit in this regard i.e. with access to local walking routes and the village playing field. Thus, a refusal would not be warranted in this case, albeit that officers do note that the size of the amenity space is likely to lead to pressure on the removal of TPO trees, as previously noted.
- 8.27. Overall, for these reasons, the proposal is considered acceptable in residential amenity terms, compliant with local and national policy in this regard.

#### Highway safety

- 8.28. Policy ESD15 of the CLP 2031 Part 1 states, amongst other matters, that new development proposals should: *be designed to deliver high quality safe...places to live and work in*. This is consistent with Paragraph 110 of the NPPF which states that: *developments should create places that are safe, secure and attractive – which minimise the scope for conflicts between pedestrians, cyclists and vehicles*.
- 8.29. The Local Highway Authority (LHA) has raised no objections to this proposal, advising the proposal would not have a significant detrimental impact in terms of highway safety and convenience. The LHA has requested conditions relating to parking being provided as per the submitted plan and for a 2m wide access to be provided. I see no reason to disagree with the LHA's view or these suggested conditions and therefore conclude that the proposal is acceptable on these grounds, compliant with local and national policy.

#### Ecology

- 8.30. Section 40 of the Natural Environment and Rural Communities Act 2006 (as amended) places a duty on all public authorities in England and Wales to have regard, in the exercise of their functions, to the purpose of conserving biodiversity. A key purpose of this duty is to embed consideration of biodiversity as an integral part of policy and decision making. Paragraph 99 of Circular 06/2005: Biodiversity and Geological Conservation states that: *It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision*.
- 8.31. Paragraph 170 of the NPPF states that: *"The planning system should contribute to and enhance the natural and local environment by...minimising impacts on biodiversity and providing net gains in biodiversity, including by establishing coherent networks that are more resilient to current or future pressures"*. This requirement is echoed by Policy ESD10 of the CLP 2031 Part 1, which states that *"a net gain in biodiversity will be sought by protecting, managing, enhancing and extending existing resources, and by creating new resources"*.
- 8.32. The Council's Ecologist (CE) has noted that there may be Great Crested Newts and other ecological features within the site, with the proposal needing to show that there would be no overall loss to biodiversity and an overall gain sought. The CE has recommended that a Construction Environmental Management Plan and walkover check is carried out on site, to ensure ecological interests are addressed. Given the likely potential for ecological features, it is considered that this information is required prior to determination. Therefore, given the lack of this submission, permission should be refused on these grounds.

## Archaeology

- 8.33. The site is within in Archaeological Alert Area Paragraph 189 of the NPPF has regard for sites with archaeological interest. It states, *“Where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation”*.
- 8.34. The Council’s Archaeologist has advised that the applicant should be responsible for the submission of an archaeological field evaluation. As this information has not been submitted, we are unable to make a determination of the archaeological impacts of this proposal. In line with the Inspectors previous decision, because of what is known of the archaeological importance of the adjacent site, a Grampian condition would not be sufficient to protect its archaeological potential. Permission must therefore be refused in this regard, due to its non-compliance with the provisions of Paragraph 189 of the NPPF.

## **9. PLANNING BALANCE AND CONCLUSION**

- 9.1. The NPPF states that the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 8 requires that the three dimensions to sustainable development (economic, social and environmental) are not undertaken in isolation, but are sought jointly and simultaneously.
- 9.2. By virtue of its scale and siting on a parcel of land designed as amenity land and which adds significant local value, the proposed new dwelling would result in an incongruous and wholly inappropriate development that would cause significant and demonstrable harm to the existing loose-knit character of the area, and would therefore also result in unacceptable infilling in housing supply terms. Further, the lack of information in ecological or archaeological terms does not allow the LPA to make a full assessment on these matters, contrary to local and national policy.
- 9.3. Whilst the proposal would deliver a modest social benefit in the form of one additional house, this is not considered to outweigh the significant harm identified. The proposal is therefore contrary to the Policies set out in section 7 of this report for the reasons as set out below.

## **10. RECOMMENDATION**

That permission is refused, 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.

Case Officer: George Smith

DATE: 18<sup>th</sup> September 2020

Checked By: Nathanael Stock

DATE: 18.09.2020

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