

CHERWELL DISTRICT COUNCIL

Non-determination appeals by Churchill Retirement Living for applications seeking consent for a site redevelopment to allow construction of 80 [now 78] retirement living apartments including communal facilities, access, car parking and access and associated remedial works to Trelawn House following the demolition of the Buzz Bingo building, Banbury, OX16 0TH

Appeal Site : Buzz Bingo site, Bolton Road,
Banbury, OX16 0TH

LPA References : 21/04202/F & 21/04179/LB

Planning Inspectorate : APP/C3105/W/22/3296229
Appeal References : APP/C3105/W/22/3298661

SUMMARY PROOF

of

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1. PURPOSE AND SCOPE OF PROOF

- 1.1 My Proof deals with the general planning and sustainability considerations. I explain why the proposals do not accord with Development Plan or national planning policy. I set out why the Council consider the appeal proposals unacceptable and demonstrate how the adverse impacts of development would significantly and demonstrably outweigh benefits.
- 1.2 The Proof focusses on planning policy, urban design and 'planning balance' considerations – suggested Refusal Reasons 1 and 3 [now 2] – but with heritage impacts and lack of any s.106 concerning mitigation measures/benefits considered as part of the planning balance.

2. APPEAL SITE & PROPOSAL

- 2.1 The appeal site measures 0.49ha and lies southeast of the Castle Street/North Bar Street junction, with Bolton Road to the east and south. It comprises the former Buzz Bingo Hall, its car park and offices fronting North Bar Street. The site envelops Grade II Listed Trelawn House in North Bar Street but excludes the tyre depot in Bolton Road.
- 2.2 Trelawn House and the offices lie within the Conservation Area. The bulk of the appeal site is outside that Area but neighbouring properties in North Bar Street, Castle Street and Bolton Road are all within it.
- 2.3 The appeal site is within an area of archaeological importance.
- 2.4 Neithrop Cutting SSSI is nearby, and the land is identified as being potentially contaminated.
- 2.5 Two passageways provide pedestrian access to the south of the site from North Bar Street.

The Appeal Proposal

- 2.6 The appeal proposes demolition of the Buzz Bingo buildings and offices and site redevelopment with 80 [now 78] elderly persons apartments and associated facilities. Buildings would be 3-4 storey under pitched roofs. Access would be via Bolton Road, beside the Tyre Depot. A thin landscaped strip is proposed along Castle Street widening to a small public open space alongside a revealed blank gable wall to Trelawn House.
- 2.7 The Appellant's viability evidence demonstrated that development could not afford any affordable housing or other community or transport benefits.
- 2.8 The need for housing and elderly persons housing is accepted and the District currently only has a 3.5-year housing land supply, which triggers engagement of NPPF paragraph 11 d).

3. RELEVANT PLANNING HISTORY

- 3.1 No previous planning history other than two Pre-Apps in 2021: 21/01879/PREAPP and 21/02881/PREAPP.
- 3.2 Officers advised that the principle of redeveloping was acceptable but neither proposal was acceptable in the form shown or in the absence of inclusion of the adjacent tyre depot. Also, likely to harm heritage assets Trelawn House and Banbury Conservation Area.

4. LPA'S SUGGESTED REASONS FOR REFUSAL

- 4.1 The Council's Planning Committee resolved on 19th May 2022 that had it been in a position to determine the applications then it would have refused planning permission for four [now 2] reasons, as specified in the SoCG:

5. THE COUNCIL'S CASE

ISSUE 1 – EFFECT ON THE SIGNIFICANCE OF DESIGNATED HERITAGE ASSETS (INCLUDING THEIR SETTING)

- 5.1 Saved Local Plan policy C18 and adopted 2015 Local Plan policy ESD15 are both consistent with S.16(2) and 72(1) of The Planning (Listed Buildings and Conservation Areas) Act 1990 and paragraphs 197, 199, 202 and 206 of the NPPF and should be afforded full weight.
- 5.2 The existing 2-storey Buzz Bingo building fails to either preserve or enhance the setting of Trelawn House or the character and appearance of Banbury's Conservation Area and its removal would represent an enhancement. However, the height and massing of the proposed 3 and 4-storey redevelopment would reintroduce further detriment, which given its scale, would cause increased harm to Trelawn House and Banbury's Conservation Area.
- 5.3 The 3 and 4-storey proportion of development along the elevated Castle Street frontage would dominate the 2-storey terraced cottages opposite, which lie within the conservation area, causing less than substantial detriment to their setting, character, appearance and outlook.
- 5.4 The appeal proposals would block views to St Mary's Church belltower, which saved Local Plan policy C34 seeks to protect.
- 5.5 The appeal site is in an area of archaeological interest, within the medieval core of the town.

- 5.6 NPPF paragraph 199 emphasises that “*great weight*” should be given to the conservation of heritage assets irrespective to the level of harm to the significance of the asset.

ISSUE 2 – EFFECT ON THE CHARACTER & APPEARANCE OF THE AREA

- 5.7 Policy Banbury 8 requires a high-quality landmark mixed-use development to support regeneration of an important and visually prominent urban block in the centre of Banbury, on the edge of its Conservation Area.
- 5.8 The policy sets site-specific design and place-shaping principles for this site including compliance with ESD15 of the 2015 Local Plan. The Appellant’s DAS generally assessed the immediate context of the site but not more widely the historic core. This document includes several photos, but was not clear how they related specifically to Banbury, and they were not locally distinctive.
- 5.9 The 2016 Banbury Vision and Masterplan SPD and Policy Banbury 8 both highlight the importance of the appeal site within Banbury’s historic core. Whilst 3 and 4-storey development is potentially acceptable, there are conservation and urban design concerns with the form of 3 and 4-storey development proposed adjacent and behind the 2-storey listed Trelawn House.
- 5.10 Both the policy and SPD require a 7m landscape buffer fronting Castle Street, which the appeal proposals fail to deliver.
- 5.11 The opportunity to create an architecturally distinctive and landmark feature at a prominent corner junction, adjacent the grade II listed Trelawn House and Three Pigeons Pub has not been taken. The backdrop to the 126m² space created at the corner would be a blank northern flank elevation of Trelawn House, which was never designed to be exposed. Strongly defined building lines addressing Castle Street and North Bar Street, as illustrated in the Banbury 8 Masterplan, would be compromised.
- 5.12 Rather than complement and respect the heritage setting of the neighbouring buildings in North Bar Street, the proposed building would dominate them and fail to provide high-quality design.
- 5.13 With respect to the Tyre Depot, it would remain alongside the appeal proposals on an elevated plot dominating the private amenity space of future residents at the east end of the site. The outlook from all future residents would be dominated by the Tyre Depot.
- 5.14 The piecemeal nature of the proposals would result in a poor quality residential environment for residents, which a more comprehensive development including the Tyre Depot would not have encountered.

ISSUE 3 – WHETHER THE PROPOSAL WOULD RESULT IN ANY HARM TO THE COMPREHENSIVE REDEVELOPMENT OF THE AREA

- 5.15 The piecemeal proposals exclude the tyre depot, contrary to pre-application guidance and policy Banbury 8 of the 2015 Local Plan which seeks comprehensive development. If comprehensive redevelopment cannot be achieved, the policy requires a comprehensive masterplan as part of any submission to show how development would not prejudice acceptable and viable redevelopment of the remainder of the site. This was lacking from the application and has only now been provided belatedly as part of this appeal.
- 5.16 Failure to include the tyre depot has retained an alien and uncomplimentary use that would impact detrimentally on residential amenities of future occupants.
- 5.17 Paragraph 134 of the NPPF sets out that development that is not well designed should be refused, especially where it fails to reflect local design policies and Government design guidance. By failing to integrate properly into its immediate and wider surroundings physically, socially and visually, the appeal proposals conflict with sections C1/C2 of the National Design Guide.
- 5.18 In such circumstances, irrespective of the current housing land supply position, full weight ought to be afforded to policies that are reflective of national guidance and the conflict that these proposals represent to the Development Plan should carry great weight.
- 5.19 Paragraph 7 of the NPPF explains that there are three dimensions (economic, social and environmental) to sustainable development.
- 5.20 In terms of economic sustainability, the proposals would represent economic investment into the town, would generate jobs and extra expenditure within the local economy, which are benefits. However, the proposals are accompanied by a Viability report demonstrating that the proposals are unable to sustain what would normally be expected by way of community and transport infrastructure contributions to mitigate detrimental impacts – a disbenefit of the proposals.
- 5.21 With respect to social sustainability, the proposals would provide 78 elderly person apartments which are needed and would provide those units in a sustainable town centre, which is a benefit. However, the appeal proposals provide no mix of tenure types and no affordable housing. Whilst the viability evidence is accepted, it nonetheless renders the development proposals contrary to Development Plan policy requirements in that regard, which is a disbenefit. The poor quality residential environment afforded to future residents caused by the piecemeal nature of development and retention of the Tyre Depot represents a further disbenefit.
- 5.22 Environmentally, the appeal proposals would introduce less than substantial but nevertheless numerous instances of detrimental impacts on heritage assets, particularly Trelawn House and the conservation area as well as limited views towards St Mary's Church bell tower.

5.23 The poor quality design proposed is not reflective of local Development Plan policy and SPD guidance, nor reflective of national planning policy and design guidance.

5.24 Accordingly, the proposals would not represent sustainable development.

6. OVERALL PLANNING BALANCE & SUSTAINABLE DEVELOPMENT

6.1 The Council's evidence demonstrates numerous instances of less than substantial harm to the setting of heritage assets Trelawn House and Banbury's conservation area. In the Bramshill judgement - Bramshill [2021] EWCA Civ 320 the Lord Justices emphasised the Section 66(1) duty under the Listed Building Act for special regard to be had to the preservation of listed buildings and their setting, which is reiterated in Section 16 of the NPPF (and is fully reflected in local Development Plan policies). The Lord Justices highlighted that the NPPF recognises heritage assets as an "*irreplaceable resource*" and where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, that harm "*should be weighed against the public benefits of the proposal*" including, where appropriate, securing its optimum viable use and that "*great weight*" should be afforded to the conservation of the heritage asset. The Lord Justices emphasised that the balancing exercise undertaken under the policies in the NPPF is not the whole decision-making process, only part of it. The whole process must be carried out within the parameters set by the statutory scheme, including those under section 38(6) of the 2004 Act and section 70(2) of the 1990 Act, as well as the duty under section 66(1) of the Listed Building Act. In that broader balancing exercise, every element of harm and benefit must be given due weight by the decision maker as material considerations, and the decision made in accordance with the development plan unless material considerations indicate otherwise. In concluding on the differences in wording between Development Plan policies (in that instance in Hart District) and the wording in the NPPF and the Acts, the Lord Justices concluded that the differences did not put them into conflict with one another. Development Plan policies do not preclude a balancing exercise as part of the decision-making process, whenever such an exercise is appropriate, as it is in this instance. The policies are directed to the same basic objective of preservation.

6.2 In this instance, substantial weight should be afforded to the provision of 78 elderly persons apartments in a sustainable, previously developed, town centre location, where there is evidence of general housing need and elderly person accommodation needs and that would represent a significant social benefit.

6.3 Significant weight should also be afforded to the economic benefits associated with development, which will bring life back to an otherwise largely redundant site, bringing with it new temporary and permanent jobs during construction and once completed and additional expenditure within the local economy. Those benefits should be tempered slightly by the fact that the schemes poor viability renders it unable to provide any affordable housing and no other contributions to

mitigate impacts and fund enhancements to local community and transport infrastructure, which are moderate disbenefits.

- 6.4 Removal of the Buzz Bingo building, which has a negative impact on the setting of Trelawn House and the character and appearance of Banbury's Conservation Area is also a substantial benefit of the proposals to which great weight should be attached. The provision of a narrow landscape strip along the Castle Street frontage would represent a limited benefit and provision of a small landscaped open space containing a public art feature alongside Trelawn House could also represent a moderate benefit to which some limited weight could be afforded.
- 6.5 On the other hand, increasing the height, scale and massing of development on the redeveloped site in such close proximity to Trelawn House and within part and adjacent other more substantive parts of the conservation area would cause numerous instances of less than substantial harm that would fail to accord with statutory Acts, national planning policy guidance and local Development Plan policy and SPD design guidance to which great weight should be attached. By virtue of the increased scale of development proposed relative to what currently exists, the scale of detriment caused would outweigh any benefit derived from the removal of the Buzz Bingo building. Given the current lack of a 5-year housing land supply, the weight that might normally be afforded to such Development Plan conflict could potentially be reduced. However, the statutory duties remain, as does national policy guidance and the Development Plan policy is fully reflective of the Acts, the NPPF and PPGs. Accordingly, full weight should still be afforded to Development Plan policies C18 and ESD15 and the harms caused to heritage assets would be substantial.
- 6.6 By excluding the Tyre Depot from the appeal proposals, the resultant scheme represents a piecemeal development, which is in conflict with Development Plan policy, which is a significant disbenefit to which significant weight should be afforded. The design and layout of the appeal proposals would not afford future residents with an attractive environment given limited scope for private amenity space and the proximity of Castle Street, Bolton Road and the Tyre Depot. Whilst landscape and noise attenuation measures could ameliorate impacts and such mitigation could be controlled by condition(s) nevertheless, the likely harm to residential impacts should be afforded moderate weight.
- 6.7 Overall, in my opinion, the weight of harmful impacts resulting from development would significantly and demonstrably outweigh the benefits associated with such a development.