

LAND TO THE EAST OF WOODWAY ROAD, SIBFORD FERRIS, OXFORDSHIRE

OPINION

Introduction

1. I am asked to advise Blue Cedar Homes in relation to a detailed planning application that has been made¹ ('the application') for the erection of 6 residential retirement properties for people over 55 years old on Land east of Woodway Road, Sibford Ferris, Oxfordshire.
2. In essence the application seeks to deliver a bespoke residential retirement scheme which will meet an acknowledged and identified need for these type of properties both locally and in Sibford Ferris.
3. I have considered the application and the range of expert reports submitted with it² and various consultee responses. I am asked to consider the planning policy context in light of such evidence and in light of the legal tests engaged relevant to the grant of planning permission. I have also considered various objections that have been made to the application including one from Victoria Prentis MP.

Site and Planning Policy Context

¹ 21/04271/F

² Detailed analysis of the proposals have been undertaken in terms of landscaping, biodiversity, archaeology, transport, drainage.

4. Sibford Ferris is a village located in north west Oxfordshire. The site relates to a parcel of land on the southern edge of the village. It comprises the northern part of a field in arable use measuring 0.94ha and surrounded by hedgerows.
5. To the north and east of the site lies residential development of medium/low density one and two storey housing. To the south is a site which has had residential development (25 dwellings) allowed on appeal in December 2019³ and to the west the site is bound by Woodway Road.
6. The adopted Cherwell Local Plan 2011-2031⁴ defines Sibford Ferris grouped with adjacent village Sibford Gower as a Category A Service Village (see especially PV1 and PV2).
7. PV1 provides a framework for housing development in rural areas in development plan terms and groups villages into separate categories (A, B and C). Category A Service Villages represent some of the most sustainable villages in the district. Such a categorisation was evidence based, informed by a range of sustainability criteria⁵ and applied an established methodology as the plan makes clear⁶. In any event it would not

³ APP/C3105/W/19/3229631. I return to that decision below

⁴ Policy Villages I ('PV1'). Relevant parts of the development plan include the 'saved' policies of the Cherwell Local Plan 2011- 2031 (Part 1) – re-adopted 2016 and the 'saved' policies of the Adopted Cherwell Local Plan – 1996.

⁵ See CLP at C.255. Categorisation of villages for the Local Plan was based upon the findings of the Cherwell Rural Areas Integrated Transport and Land Use Study (2009). The 2009 study records Sibford Ferris/Sibford Gower as benefitting from a range of facilities including community facilities, nursery, public house, post offices, primary school, restaurant facilities and retail. Survey work previously undertaken to inform village categorisation and was supplemented by 'the Cherwell Rural Areas Integrated Transport & Land Use Study' (CRAITLUS) which was produced in association with Oxfordshire County Council. The survey work was updated in 2014.

⁶ "C.257 *The principle of categorising villages is well established within the District, with this approach being taken in both the Cherwell Local Plan 1996 and the Non-Statutory Cherwell Local Plan in 2004. It is considered that this approach is still appropriate*"

be appropriate when determining a planning application to seek to recategorize Sibford Ferris⁷. The development plan policy is quite clear.

8. Moreover my instructions and the evidence I have seen indicate that the village has seen very little recent development to continue to support the existing local facilities. The Sibfords⁸ are evidently one of the most sustainable rural settlements in the District with a range of services and facilities within walking distance of the proposed development site.
9. In my opinion the application would be in general accordance with policies PV1 & PV2. In particular I am of the clear view that the 750 figure referred to in PV2 is not to be construed or applied as a ceiling or target by a decision maker. In that regard I would make the following points:
 - (i) As has been made clear on appeal⁹, the 750 figure is not a ceiling.
 - (ii) Even in a situation where the 750 figure might have been nearly attained¹⁰ (or even met) in the context of BSC1 and the need to meet overall housing requirements by 2031 (which I address below) it would not provide a basis for a moratorium on future development. Quite the contrary, particularly as there is an extant housing shortfall in the District and a local need for this type of housing.

⁷ That would be a matter for a review or new local plan

⁸ Ie including Sibford Gower and Burdrop

⁹ See for example APP/C3105/W/19/3229631 at paragraph 13

¹⁰ I understand from a recent report in relation to land to the west of Chinalls Close -21/03066/OUT that 749 dwellings are either completed or under construction on sites with planning permission – see para 9.23 of the officer report

- (iii) The application proposal would not undermine the thrust of PV2. Indeed in light of the documentation and the compliance with the PV2 criteria I consider it would support it.
- (iv) Even if, contrary to my view, it were considered that there was a conflict with aspects of PV2 in terms of the plan housing strategy the lack of a 5 year supply in the district would render it out of date so that reduced weight could be given to any perceived conflict in a decision making context.

10. The development plan context is, in essence, in accordance with the latest up to date national policy which supports principles of sustainable development in a way that is also found in, for example, policy PSD1. That policy embeds a proactive approach to considering proposals to reflect the presumption in favour of sustainable development in national planning policy. Development as is here proposed would support balanced and sustainable growth.

11. Further, I am instructed that Cherwell District Council are currently unable to demonstrate a 5 year housing supply¹¹. To that extent the local plan is currently failing to deliver district wide needs. Policies which *might* be construed as limiting housing growth would be ‘*out of date*’ in national policy terms¹². This means that paragraph 11

¹¹ The housing land supply is currently calculated at about 3.8 years according to the recent report relating to land to the west of Chinalls Close -21/03066/OUT (see report at 9.15) – a figure derived from the 2021 AMR. This compares to a 4.7 year supply in the 2020 AMR. The shortfall in Cherwell is significant. See policies BSC1 on requirement and E.10 for monitoring requirements. As I understand it an additional 1.864 homes would need to be shown to be deliverable in the period 2021-2026 to achieve a NPPF compliant 5 year supply.

¹² In policy housing policies would be ‘out of date’ because of a lack of 5 years supply. The weight to be afforded to such policy is a matter of planning judgment viewed in context.

(d) of the NPPF is engaged¹³ as a material planning consideration so that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

12. National policy stresses the imperative of significantly boosting the supply of homes and requires that the needs of specific groups are addressed¹⁴ - which includes the needs of ‘*older people*’¹⁵. I am instructed that there is an accepted need for retirement properties in the area and this application will assist in meeting such a need and accord with national policy. The evidence I have seen indicates that there is such a recognised and accepted need for elderly persons accommodation in Sibford Ferris which is not being met by any existing or proposed residential development. Thus the consultation response from Strategic Housing¹⁶ is clear that : “*There is a need in Cherwell for accommodation for older people and the proposed development will contribute to meeting this need*”. This development would in that context provide much needed adaptable living accommodation specifically designed for the elderly.

13. Such provision will also accord with policies BSC4 and BSC1 and the sustainable location of the application site will accord with the aims of policy BSC2. The proposal

¹³ Subject to para 11 (d) (i) which I do not consider bites

¹⁴ Paragraphs 60 & 62 NPPF

¹⁵ See also National Planning Policy Guidance (NPPG) relating specifically to Housing for Older and Disabled People. Paragraph 001, which was revised in June 2019, explains that: - “*The need to provide housing for older people is critical. People are living longer lives and the proportion of older people in the population is increasing. In mid-2016 there were 1.6 million people aged 85 and over; by mid-2041 this is projected to double to 3.2 million. Offering older people a better choice of accommodation to suit their changing needs can help them live independently for longer, feel more connected to their communities and help reduce costs to the social care and health systems.*”

¹⁶ 8.2.22

would add to the mix and tenure of dwellings in the locality. The evidence I have seen clearly supports this position¹⁷.

14. There is a clear recognition underpinning PV2 of a need to deliver housing growth evenly across the District and PV2 identifies a range of criteria to guide development in Category A villages.

15. In general terms my view is that the application can readily be delivered in a way which accords with the PV2 criteria and also with policies ESD3 (sustainable construction), ESD 10¹⁸ (protection and enhancement of Biodiversity), ESC13 (landscape)¹⁹ and which will provide a high quality, well designed development (H18, C28, C30, C33 of the saved 1996 plan would be complied with).

16. It will also accord with national policy²⁰ which emphasises the need for good design. In light of the transport statement I have considered²¹ I see no basis for refusal on transportation grounds. Those instructing me have confirmed that all necessary financial contributions to comply with the CIL regulations will be made.

17. I note the following two further material points from the documents I have considered:

¹⁷ A report prepared by Contact Consulting deals with the issue of need/demand for elderly persons accommodation in more detail

¹⁸ I note that the planning application gives full consideration to the protection of and enhancement of biodiversity and the natural environment and to this end the application is accompanied by an ecological survey and a tree survey. The findings of the ecological survey indicate that the development can occur without harming any protected species or habitats, or otherwise affect any habitats of note. The accompanying tree survey indicates that the development can proceed without causing harm to any important trees. Further, substantial additional tree planting is proposed as part of the proposals. See in particular the Biodiversity Assessment that has been carried out by Malford Environmental Consulting Limited

¹⁹ A Landscape and Visual Technical Note has been prepared by Leyton Place Limited.

²⁰ NPPF paragraph 127

²¹ By Pegasus Group

- (i) The application site was put forward as a potential development site in the SHLAA (SF005). The SHLAA concludes that:- *“This is considered to be a potentially deliverable site for about 20 dwellings in the next five year period subject to satisfying access being achieved and careful design and layout to achieve a satisfactory relationship with the existing dwellings in the vicinity.”* In my view this would further weigh in favour of the proposal as a consideration.
- (ii) The Appeal Decision from December 2019²². I have referred to this already. In my view the clear finding there by the Inspector that residential proposals in that case would be in accordance with the development plan is of particular relevance given the location of that site. It is also of note that this was the case even at a time when the council could demonstrate a 5 year supply of deliverable housing. That is not something that can now be demonstrated. It would in my view be entirely inconsistent (quite apart from being contrary to the development plan) for the Council to now indicate that the application location was not a suitable or sustainable location for the residential development proposed.

Objections

18. I am instructed that a number of objections have been made to the application. In particular I have seen a letter from Victoria Prentis MP dated the 18th February 2022. I would make the following observations in that regard:

²² As I have referred to above, the site to the south of the application site was granted permission on appeal in December 2019.

- (i) I have seen no evidence to support the contention that the proposed development would lead to a material loss of farmland in a way that would or could preclude a grant of permission or which would be contrary to national or development plan policy.
- (ii) In relation to the suggestion that the 750 target (presumably a reference to PV2) has been exceeded I have addressed this issue above²³. Properly construed and applied in the correct context the 750 figure does not preclude further development. Indeed as I have indicated this particular proposal accords with the development plan viewed as a whole.
- (iii) The suggestion (from her constituents) that the Category A status should be questioned is not a suggestion that should properly be given any weight. S 38(6) of the 2004 Act indicates that the development plan should be considered and applied and the categorisation in policy is clear. It would not be appropriate to seek to change or question that when determining a planning application in my view. The weight to be given to a policy is of course for a decision maker, but the content/construction of policy is quite clear and was derived from an extensive evidence based process.
- (iv) I have seen no credible evidence to support any highways or infrastructure related objections which are hinted at in the letter.

19. In short I do not consider the letter to raise any issues which would (viewed in light of the expert evidence, the development plan and national planning policy) indicate planning permission should be refused.

²³ This issue has been raised in a similar way by others for example the Action Group.

20. I have also considered a number of objections from residents, the Parish Council, the Sibford Action Group and others – many of which raise similar points. Some, for example, have also suggested the Category A status should be questioned. I have dealt with this issue already. I do not consider there to be any cogent basis for the various objections raised relating to infrastructure, traffic or cumulative impacts or design/sustainability. I note that the County Council as Highways Authority have now withdrawn²⁴ earlier objections. Other matters can be adequately dealt with by conditions.

Conclusions

21. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications be determined in accordance with the relevant policies contained within the development plan unless material considerations indicate otherwise.

22. It appears plain that the proposal accords with the development plan viewed as a whole. It is important to appreciate that even if it were felt that there was conflict with some policies as a matter of law a decision maker could conclude compliance with the plan as a whole.

23. In this case, the proposals are consistent with the thrust of policies in the adopted development plan (especially PSD1, PV1, PV2, BSC4, BSC1, 2 & 4, ESD10, 3 and ESC13) so far as the provision of new high quality and sustainable housing is

²⁴ 25.2.22 response

concerned. The evidence is in my view clear. Material considerations – which include the recent nearby appeal decision, the range of benefits that the proposal would deliver and up to date national policy all weigh heavily in favour of the proposal.

24. Further, as the Council are unable to demonstrate a 5 year supply of housing the tilted balance in paragraph 11 (d) NPPF is engaged²⁵ as a material consideration for the decision maker. The statutory presumption in favour of proposals which accord with relevant development plan policies applies as I have explained earlier. This is now bolstered by up to date national policy with the further presumption in favour of sustainable development and the clear indication that sustainable proposals such as this should be viewed in a positive way and be granted permission without delay unless any adverse impacts would significantly and demonstrably outweigh the benefits. This is a material consideration that would normally be quite properly afforded great weight.

25. Whilst matters of planning judgment are not matters for me it is clear that the expert evidence I have seen in support of the application when considered in light of a proper construction and understanding of national and development plan policy indicates that the proposal would accord with relevant development plan policies and that - in any event - there are a range of material considerations which would weigh heavily in favour of a grant of planning permission. None of the various objections I have seen provide a basis for me to change my views.

Tom Cosgrove QC

24th March 2022

Cornerstone Barristers

²⁵ Supported by PPG (national guidance)

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