

Planning Committee
Cherwell District Council
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Date: 29 August 2017
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Dear Sirs

Land East of Larsen Road - Report to Planning Committee 31 August 2017

It is understood that the Cherwell District Council are to consider application reference 15/01357/F at its Planning Committee on 31 August 2017; the application by Pye Homes Limited comprises the erection of 79 dwellings, a new access from Camp Road, creation of new open space, hard and soft landscaping and ancillary works on a greenfield site located to the east of the former RAF Upper Heyford site. A report to the Committee has been prepared and published which recommends that the permission is granted subject to three provisos, with conditions to be imposed on the grant of planning permission noted as 'to follow'.

On behalf of our client Heyford Park Settlements LP (HPS) we write to express our concern at the proposal to determine this application at the present time, and the terms of the recommendation to the Committee.

Background

As set out in the Committee report, the former RAF Upper Heyford site has the benefit of an extant planning permission for housing development with its root in the grant of planning permission pursuant to an appeal in January 2010. A subsequent planning permission was granted for part of the former RAF site was approved with a revised masterplan in December 2011 which has now been implemented. That development is controlled by conditions and a comprehensive section 106 agreement which secures infrastructure to support the development and other obligations to mitigate its impact.

Subsequent to the grant and implementation of the above planning permissions, in July 2015 the Cherwell District Council adopted its local plan which included, at Policy Villages 5: Former RAF Upper Heyford, the allocation of a wider area of land at Upper Heyford to allow for the development of approximately 1,600 dwellings in addition to the number already permitted. Notably the policy wording describes the development as including '*necessary supporting infrastructure*' and explicitly stated that '*A comprehensive integrated approach will be expected*'. The policy sets out a requirement that '*all development proposals will be expected to contribute **as necessary** towards the infrastructure provision through onsite provision or an appropriate off-site financial contribution*' (our emphasis) before listing various requirements, and also that '*measures to minimise the impact of traffic generated by the development on the surrounding road network will be required through funding and/or physical works, including to any necessary capacity improvements around Junction 10 of the M40, and to the rural road network to the west of the site and around Middleton Stoney including traffic calming and management measures.*'

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The policy requirements are amplified in the supporting text which confirms, inter alia, that *'a comprehensive approach will be required and it will be necessary to demonstrate how the additional land identified can be satisfactorily integrated with the approved development. The additional land will not be permitted to be developed independently of the main development and infrastructure contributions will be expected for the wider scheme'*.

Since the adoption of the Cherwell Local Plan, HPS has been working towards preparation of a masterplan for the allocated site which will identify the total infrastructure requirements for its development in accordance with Policy Villages 5. This has included, in particular, modelling the highway implications. In preparing the masterplan HPS has engaged with a range of stakeholders, including Cherwell District Council in its capacity as local planning authority and in respect of its community facilities function, Oxfordshire County Council in its capacities as highway, transport and education authority, Historic England, Ecological Interest, Oxford Clinical Commissioning Group, the Mid-Cherwell Neighbourhood Forum and with other local residents' groups. Notably the applicant has chosen not to participate in, or otherwise contribute to, this exercise. Several of these consultees have objected to the Pye Homes application and the proposal by Cherwell District Council to approve it in advance of completion of the masterplanning work, most notably Oxfordshire County Council Highways as set out below.

Whilst significant progress has been made with the masterplanning exercise, it remains the case that the infrastructure requirements arising from the allocated development have not yet been finally identified and thus the necessary contributions required, either through onsite provision of off-site financial contribution, have not yet been quantified. Specifically, Oxfordshire County Council as local highway authority has very recently requested additional highways modelling work in order to identify the scope and scale of mitigation required to address projected impacts on the local and strategic highway network; it is understood that mitigation of a different nature than previously anticipated may now be required, with consequent impacts on the anticipated costs and the level of development that may proceed before the mitigation is in place.

The Regulatory Context

Pursuant to section 38(6) of the Planning and Compulsory Purchase Act 2004 if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.

The National Planning Policy Framework (NPPF) is a material consideration which should be taken into consideration in the determination of the Pye Homes application. This document contains a presumption in favour of sustainable development that applies to both plan making and decision taking. In relation to decision taking it requires that development proposals that accord with the development plan should be approved without delay, but where the development plan is absent, silent or relevant policies are out of date permission should be granted unless the adverse impacts of doing so would significantly or demonstrably outweigh the benefits when assessed against the policies in the NPPF as a whole or if specific policies indicate that development should be restricted. In this instance the Cherwell Local Plan 2011-31 is recently adopted and includes a specific policy to guide the development of the RAF Upper Heyford Site. As it is understood that the Council can demonstrate a five year housing supply its policies for the supply of housing should be also be considered up to date.

Planning obligations are capable of being material considerations in the determination of planning applications provided that they comply with the requirements set out in Regulation 122 of the Community Infrastructure Levy Regulation 2010. These specify that:

(2) A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is—

- (a) necessary to make the development acceptable in planning terms;*
- (b) directly related to the development; and*
- (c) fairly and reasonably related in scale and kind to the development.*

A planning obligation relating to part of an allocation to contribute to the funding of infrastructure necessary to serve and mitigate the impact of the entire allocation is therefore capable of satisfying these requirements provided that the contribution asked of each part is fairly and reasonably related in scale and kind to the development. In order to carry out this exercise it is necessary as a starting point to identify the infrastructure that is necessary to serve the allocation.

Additionally, in order for any s106 Agreement to be given weight in the determination of a planning application, the local planning authority will need to be satisfied that the required infrastructure will be delivered at the time at which it is needed. Careful consideration will therefore need to be given to trigger points for delivery and restrictions imposed on any development beyond those points unless the mitigation is in place.

The Proposal to Approve the Application

It is accepted that the land subject of the Pye application falls within the land allocated for development for housing and supporting infrastructure by Policy Villages 5. However, other than in respect of its location, the proposal is not currently in accordance with Policy Villages 5. The requirements of the policy are clear: a comprehensive and integrated approach to development of the allocated site is expected, with the imperative that all development proposals contribute as necessary to the total infrastructure requirements. In order for the application to be policy compliant, the total infrastructure requirements must be identified, costed and apportioned, and the necessary contributions secured from individual development proposals by way of condition or planning obligation as appropriate.

To allow the Pye Homes proposal now, prior to the identification of the overall site wide infrastructure requirements, is likely to result in inappropriate contributions being secured toward that infrastructure and which may also prejudice its delivery. It also has the potential to compromise environmental improvements and conservation interests in the wider site as required by Policy Villages 5. Given the required integration between development of the 'additional land' and the 'main development', the grant of planning before the total infrastructure requirements have been identified would amount to an independent permission for the Pye Homes application site, further undermining the requirements of the Local Plan.

Our client has already submitted objections to the Pye Homes application being considered in advance of the completion of the masterplanning exercise. The report to Committee summarises these objections and also sets out further objections raised in respect of the recommendation to approve the application at the present time (leaving aside concerns raised in respect of the detailed design of the development proposal) from other parties. Notably the Council's own Head of Strategic Planning and the Economy stresses that 'to avoid an independent approach, necessary infrastructure would need to be proportionately secured having regard to the needs of the wider site', concluding that the application has the 'potential to meet the policy requirements'. Even if it is accepted that there is potential for the current proposal to be deemed policy compliant at a later stage, which we suggest should depend on the outcome of the masterplanning exercise, we submit that it is premature for the District Council to approve the application at the present time.

The Committee report also cites objections from outside the District Council, including strong objections from Oxfordshire County Council which states that 'a site wide masterplan should be agreed before applications for additional developments are determined. The application is contrary to Policy Villages 5 which requires a comprehensive integrated approach'.

The County Council's concerns centre on highway and education infrastructure; in relation to highway the County Council's objection notes that it did not object to the allocation of the wider site at the Local Plan Examination in Public 'subject to an appropriate level of strategic transport mitigation being delivered at the earliest opportunity as there are existing traffic pressures on junctions and villages in the area' with all sites within the allocation expected to contribute to the solution. As noted above, the County Council has recently requested HPS to undertake additional modelling work; it is understood that the implications of this modelling may result in a solution to the highway impact of more significant scale being required, with consequent increased contributions required from the development and

potential for impacts on viability of the allocation development. In the absence of an agreed solution to the traffic impacts of the development and, importantly, control of quantum of development unless and until the solution is delivered, the County Council is unlikely to remove its objection to the current application.

In respect of education provision, the County notes that *'contrary to the site policy requirements, this application does not consider education provision comprehensively for the whole of the Local Plan Policy Villages 5 allocation of 1600 homes. Without the strategic view of the education need there is a risk that the individual development sites coming forward will not provide the appropriate or proportional funding or land towards the education provision'*. The County Council has modelled the education need arising from the allocated site and identified requirements for a new primary school and expansion to the secondary school, to include acquisition of additional land for the provision of the primary school. Assuming that some of the education infrastructure will most likely be provided on our client's site, with a consequent reduction in the land available for its residential development, the County Council recognises that *'once a masterplan has been developed an equalisation of contributions can be discussed so that each development pays appropriate and proportionate costs'*. This conclusion must also apply to other elements of infrastructure identified in Policy Villages 5 which will be provided on our client's land and in respect of which contributions will be required from other developers, such as community facilities including a new hall, sports pitches, healthcare facilities, extra-care facilities and a new village centre.

Whilst it is understood that the applicant has agreed in principle to make a contribution towards required infrastructure, for the Council to approve the proposal in advance of completion of the masterplanning exercise and associated identification of infrastructure requirements and costings will be for it to fail to take account of the extent to which the scheme contributes fairly and reasonably to the total infrastructure required to support the development in accordance with Policy Villages 5. This is clearly a material consideration. Approval of the development in principle may also prejudice the Council's later consideration of the merits of the scheme in the event that identified infrastructure contributions impact negatively on the financial viability of the development proposal and a request is made to reduce the burden.

The Officer's report to Committee concludes with a recommendation to grant planning permission subject to conditions (to be provided) and to both the resolution of the highway authority objection and the negotiation of a section 106 agreement in accordance with the heads of terms set out in paragraph 8.50 of the report. These two factors are inextricably linked; based on its comments as set out in the report the County Council's objection will remain in place unless and until the necessary infrastructure required to support, and minimise and mitigate the impact of, the allocated site's development have been identified and the associated costs calculated and apportioned. On this basis, it would appear that the recommendation to approve as set out in the Committee report will not result in the grant of planning permission any earlier than would be the case in the event that determination awaited the outcome of the highway modelling work and completion of the site wide masterplan.

We are also concerned that the Heads of Terms for the section 106 agreement omit reference to a number of obligations that should be secured in connection with the Pye Homes proposal for it to accord with the requirements of Policy Villages 5 and the Cherwell Local Plan including provision of public art; heritage mitigation education and experience; a new heritage park; provision of sports pitches, pavilions and changing facilities; biodiversity mitigation and management; works to Camp Road and moving the new HGV access away from the village centre; highway mitigation for Junction 10 of the M40; and sustainable travel measures including a travel plan; public rights of way. There is no recognition of the need to secure an overarching approach to the management of the whole allocation, which further emphasises the independent nature of the current proposal.

Further, there is no reference to securing contributions towards land acquisition costs for provision of new facilities such as the new village hall, new primary school, extra care facility. Whilst contributions are identified for school provision, these do not reflect the

figures set out in the County Council's reported objection which are acknowledged to exclude land costs; as such contributions in these sums will represent inadequate contributions to this element of infrastructure provision.

Conclusions

As noted above, the statutory duty placed on the Council is to determine a planning application in accordance with the development plan unless material considerations indicate otherwise. In this instance Policy Villages 5 requires a comprehensive and integrated approach to development of the allocated site, with all development proposals required to contribute to infrastructure required to support the site wide development and measures to minimise the impact of the totality of the development on the surrounding highway network.

Unless and until the infrastructure required to support the site wide development is understood and has been costed, the Council will be unable to assess the extent to which a proposal for development of any part of the Former RAF Upper Heyford allocated site complies with the policy requirements set out in Policy Villages 5 of the Cherwell Local Plan. In determining an application for development before this information is available to enable assessment of compliance with policy the Council will be failing to take a material consideration into account. The Council should also retain and protect its ability to consider the merits of development proposals against identified infrastructure requirements in the event that viability is subsequently brought into question.

In summary, and to quote the County Council's comments cited in the Committee report in respect of the Pye Homes application, *'there are a number of principles to be agreed and challenges to be understood and overcome prior to an application of this nature being considered'*. We submit that it is not appropriate for the application to be considered for determination by the Committee as set out in the officer's report. At the very least, if the Committee is minded to support the principle of development as proposed in the Pye Homes application, it should be a requirement of any Committee resolution that the Heads of Terms for the section 106 agreement are brought back to Committee before the agreement is completed and permission granted, in order that there is a clear understanding of the extent to which the scheme will contribute towards the infrastructure requirements as required by Policy Villages 5 and that the development will be appropriately phased in relation to the infrastructure delivery. Failure to do so will render any such decision susceptible to challenge.

We would therefore urge you to withdraw the report from the meeting agenda, defer a decision in respect of the Pye Homes application pending completion of the masterplanning and modelling work, or refuse the application as currently presented.

Yours faithfully,


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