



CHERWELL DISTRICT COUNCIL

Representations on Appellant's Revised Unilateral Undertaking and Recommended Conditions

Appellant	:	Gladman Developments
Appeal Site	:	OS Parcels 6741 And 5426 on land west of Cricket Field, north of Wykham Lane, Bodicote
Appellant's Agent	:	N/A
LPA Reference	:	15/01326/OUT
PINS Reference	:	APP/C3105/W/17/3172731

1. Introduction

- 1.1 The Appellant lodged an appeal against the Council's failure as the local planning authority to determine planning application 15/01326/OUT within the statutorily prescribed time period. The appeal proceeded by way of an informal hearing which has held on 10th October 2017.
- 1.2 The informal hearing concluded with the Inspector setting a timetable for the Appellant to re-draft their Unilateral Undertaking and submit this to both Cherwell District and Oxfordshire County Councils for review and comment before its execution and re-submission to the Inspectorate.
- 1.3 The Inspector also asked that the Appellant and the Council give some further consideration to some of the previously recommended conditions. This supplemental statement provides the Council's response to the revised Unilateral Undertaking as well as some commentary on the conditions that it considers to be necessary in the event that the appeal is allowed. The Appellant tabled some amendments to the Council's recommended conditions at the informal hearing and has gone on to submit a further list of amended conditions to the Inspector following the close of the informal hearing.

2. The Revised Unilateral Undertaking

- 2.1 Both Cherwell District and Oxfordshire County Councils have reviewed the Appellant's revised draft Unilateral Undertaking following the informal hearing. Oxfordshire County Council has not raised any concerns about the draft revised deed but the Council's comments are included as a track changed document at Appendix 1.
- 2.2 Both Councils had substantial concerns about the robustness of the Unilateral Undertaking submitted previously as part of the appeal. Concerns were raised and its adequacy was discussed at the informal hearing. The Inspector adjourned the hearing for a long break and during this time the principal parties discussed the clauses and covenants in the Unilateral Undertaking. The changes considered necessary by the Councils far exceeded those capable of being made as manuscript changes and the Appellant made note of the concerns raised verbally by the Councils during the adjournment.
- 2.3 Broadly speaking, many of the concerns raised verbally have in the Council's view been satisfactorily amended in the draft revised Unilateral Undertaking sent to the Councils on 20th November 2017. However, there are still some drafting concerns which have been identified which do affect the robustness and enforceability of the planning obligations and it is expected that the Appellant will seek to rectify these as part of preparing the final Unilateral Undertaking for submission to the Inspectorate. These mainly relate to the process of inspection and certification of on-site infrastructure to ensure that it is satisfactorily provided for use/adoption.
- 2.4 The Council's main concern with the revised draft Unilateral Undertaking however relates to the covenants with respect to the provision, management and maintenance

of the required new car park. As explained at the hearing, White Post Road is subject to significant on-street car parking pressure as well as pedestrian activity particularly during school drop off and collection times. There is very little car parking within the grounds of Bishop Loveday Primary School (a large 3FE school with approximately 350 pupils) and the majority of the staff park along White Post Road and surrounding roads. The loss of car parking capacity for a long period of time could present substantial public amenity, congestion and highway safety concerns and this occurs at the point at which highway works are undertaken not the point of first occupation of a dwelling. It is also quite conceivable that there could be many weeks and months between the substantial completion of the new access/highway arrangements and the first occupation of a dwelling on the site. It is therefore not considered to be adequate for the trigger for the completion of the car park to be set at 'prior to the first occupation of a dwelling'. The Council has set out track changed amendments to the revised draft Unilateral Undertaking within Appendix 1 that better reflect its concerns in this respect. The Council is also recommending that, in the event the appeal is allowed, a condition is imposed that requires the approval of a timetable for its completion which could outweigh any concerns about the adequacy of the provisions within the revised Unilateral Undertaking if the Appellant chooses not to incorporate the Council's amendments.

3. Recommended Conditions

- 3.1 Broadly speaking the Council is supportive of the conditions it recommended as part of its Statement of Case and which were discussed at the informal hearing. These were all prepared having regard to the national planning policy tests of conditions set out in the NPPF as well as associated guidance set out in the PPG. The Appellant has provided an amended list of conditions based on the Council's original recommendations and these have been sent directly to the Inspector by the Appellant following the close of the informal hearing. For clarity it is thought best for the Council to comment directly on these proposed amendments by condition number particularly as there is not a version of the document available on which to make track changes. The Inspector should take this commentary together with the Council's original list of recommended conditions as set out in its Statement of Case to be the Council's position with respect to conditions in the event that the Inspector is minded to allow the appeal. The Appellant's amended conditions are included as Appendix 2 to this statement.

Condition No.

1 – No objection

2 – No objection to its removal.

3 – Additional wording not necessary. As the previous phasing condition has been removed, all reserved matters are required to be approved prior to commencement of development. The additional wording does not control the development it controls the submission/approval process and so it also not lawful in its wording having regard to S72(1) of the Town and Country Planning Act 1990.

4 – No objection.

5 – No objection.

6 – The detailed plans of the link road (long section, connection at western boundary etc) should be included in the list of approved plans. The application does not reserve access and these should not be buried within Unilateral Undertaking appendices for reasons of transparency. The revised Development Framework Plan is now correctly referenced. The Inspector will have to be satisfied that the second paragraph is sufficiently precise to meet the national policy tests.

7 – No objection but concern about the appropriateness of referencing what is a separate Unilateral Undertaking within a condition. A planning permission should be able to be understood on its face without having to refer to other legal agreements. This wording *“to the coordinates agreed within Annex 2 of the Unilateral Undertaking”* should therefore not be included within the condition in the Council’s view.

8 – No objection subject to all drawing numbers for the detailed section of link road being incorporated. The amendment to the trigger so that it reads the 151st dwelling is considered to be acceptable and is consistent with the Council’s position on the planning obligations.

9 – No objection.

10 – No objection.

11 – No objection.

12 – No objection.

13 – No objection.

14 – No objection.

15 – The condition has been recommended by Thames Water due to concerns about foul drainage capacity and the need to ensure that sufficient upgrades can be put in place prior to foul discharge being received from the development. It is irrelevant as to whether there is a statutory right for a domestic connection to a mains sewer once a dwelling has been completed, the issue is one of whether there is public interest in preventing the construction of a dwelling from occurring until Thames Water as the statutory undertaker is satisfied that any necessary upgrades have been undertaken to prevent sewerage overflow to the detriment of the environment. The advice from the statutory undertaker should be followed.

16 – Thames Water is again the relevant statutory undertaker. It is not disputed that there is a duty to provide mains water supply to an existing/new dwelling. The issue is whether there is public interest in preventing the creation of a new dwelling until there is known to be sufficient capacity so that existing homes are not deprived of a suitable mains water connection. In the absence of any evidence to the contrary, the advice from the statutory undertaker should be followed.

17-19 – The Council’s recommended conditions are more robust and specifically reference existing best practice and standards including those of DEFRA and the

Environment Agency. Combining the requirements into one condition does not reduce the work required, it just amalgamates the various elements it into a single condition that is then harder to discharge such that it requires various applications for partial discharge of the condition.

20 – No objection.

21 – No objection.

22 – No objection.

23 – No objection to combining the previous requirements for a Construction Environmental Management Plan and a Construction Traffic Management Plan. A spoil management plan should however be a separate requirement as a condition as this relates to potentially new and permanent landscape features as well as how topsoil is separately managed from subsoil to ensure distribution across new landscaping as a growing medium.

24 – No objection.

25 – No objection.

26 – No objection.

27 & 28 – The two conditions recommended by the Council are no more onerous than the single condition suggested by the Appellant and has the benefit of being more robust. Condition 28 does not even require anything to be submitted/approved, it simply requires compliance with the documents approved under condition 27.

29 – No objection to its incorporation within a single construction management plan condition as set out in condition 23 (minus the spoil management element).

30 – No objection to the inclusion of the reference to the submitted Energy Statement.

31 – The Transport Assessment that accompanied the planning application recommended that a new public car park be provided to mitigate lost on-street car parking capacity given the extreme parking stress and congestion already experienced along White Post Road particularly during school drop off and collection times. By waiting until the first occupation of a dwelling it could leave many months or perhaps even as long as a year without any mitigation for the lost on-street car parking. This would have substantial congestion, amenity and even highway safety implications for road users including school children. It is not appropriate to wait until the first occupation of a dwelling until the new car park is provided and available. The harm occurs when highway works commence not when occupations begin. The Council therefore recommends that a condition is imposed that requires a timetable for its completion to be agreed prior to commencement of the development as per the original wording in the Council's recommended condition. The revised Unilateral Undertaking currently contains clauses of some concern to the Council in this respect and it is not clear whether the Appellant will incorporate some of the Council's suggested amendments. A suitably worded condition should remove doubt and give the Council the ability to give due consideration to the phasing of the highway works

and provision of the associated car park to help best manage the inevitable parking stress and traffic congestion.

32 – This condition is unnecessary and peculiar given that the Appellant is looking for a reduced number of conditions. Details of the allotments will need to be approved as part of the landscaping element of the reserved matters and a specification/timetable for their provision are captured within clauses in the revised Unilateral Undertaking.

33 – For reasons already given, this should remain as a standalone condition to control spoil and associated soil management.

34 – No objection.

35 – No objection.

36 – No objection.

37 – No objection.

38 – No objection.

39 – No objection.

40 – The wording inserted here implies that the dwellings do not have to actually meet the relevant water efficiency standard, only that they are capable of achieving it. This may seem like a subtle amendment but it could render the condition requirement of little value. Unless there is a requirement to achieve this standard as part of a planning permission there is no ability for building inspectors to require its compliance as part of building regulations.

41 – No objection.

42 – No objection.

43 – No objection.

44 – No objection.

45/46 – The suggested condition is noted but in reality this does nothing more than repeat legislation in the Wildlife & Countryside Act 1981 with the exception of the inclusion of a check by a qualified ecologist. This does not give the Council much comfort that this will actually take place. The requirement to leave the nest undisturbed is also not particularly precise and it is unclear how much and what type of work could take place around the nest in terms of how much of the hedgerow should be retained around it and whether power tools and machinery could be used close to it. It is also considered preferable for the condition to refer to removal of hedgerows, trees and shrubs as set out in the Council's recommended condition rather than demolition and ground clearance in the Appellant's suggested condition as these are less relevant in the case of the proposed development.

47 – No objection.

48 – No objection.

49 – It is well established through appeal decisions that the mix of housing insofar as it relates to meeting housing need is not able to be assessed as part of considering reserved matters (i.e. it does not relate to the scale, layout, appearance or landscaping of the development). As a result this must be assessed and controlled as part of the outline scheme. The Council recommends that its originally recommended condition is imposed which includes the ability to agree an amended mix to adapt to changes in circumstances following the grant of outline planning permission.

50 – No objection.

51 – No objection.

4. Conclusion

- 4.1 The Council has reviewed the Appellant's revised draft Unilateral Undertaking and whilst it represents a more suitable deed than that previously submitted, the Council retains concerns about the detail of some of the clauses. This is particularly with respect to the car park provisions. In the event that the Appellant satisfactorily incorporates all of the Council's suggested amendments as set out in Appendix 1, the Council does not object to the proposed development and recommends that the Inspector allows the appeal subject to the conditions listed by the Appellant as set out in Appendix 2 but with the comments/amendments suggested by the Council as set out in section 3 of this supplemental statement.