
Appeal Decision

Hearing held on 2 & 3 February 2016

Site visit made on 3 February 2016

by C J Anstey BA (Hons) DipTP DipLA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12 May 2016

Appeal Ref: APP/C3105/W/15/3134944

Land off Lince Lane, Kirtlington, Oxfordshire, OX5 3HE.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Gladman Developments Limited against the decision of Cherwell District Council.
 - The application Ref 14/02139/OUT, dated 22 December 2014, was refused by notice dated 25 March 2015.
 - The development proposed is the demolition of the existing bungalow and agricultural buildings and residential development of up to 75 dwellings, including highway works, landscaping and public open space.
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Decision

1. The appeal is dismissed.

Application for costs

2. At the Inquiry an application for costs was made by Cherwell District Council against Gladman Developments Limited. This application is the subject of a separate decision.

Preliminary matters

3. The appeal application was made in outline form and seeks permission for residential development of up to 75 dwellings. All matters are reserved for subsequent approval apart from access.
 4. The application was accompanied by a Development Framework Plan (Ref.6225-L-02 Rev E) and an Access Plan (Ref. 4746/22/05), showing access off Lince Lane. Included in the appellant's submissions were a number of other plans: FPCR Footpath Plan (6255), FPCR Illustrative Masterplan (Ref: 6225 Aerial Rev B), FPCR Sketch Proposal for Possible Treatment of Open Space (Ref. 6225-L-04 Rev B), FPCR Framework Plan / 95 Homes Scheme Overlay, FPCR Historic Growth Plan Rev C, and CGMs Regression Map. I have taken these plans into account in assessing the likely impacts of the appeal scheme.
 5. Refusal reason no. 2 relates to the absence of a satisfactory planning obligation relating to infrastructure and affordable housing. A signed planning obligation by deed of agreement, dated 3 February 2016, was submitted during the Hearing. This covers a range of matters including a combined local area of play and local equipped area of play, community facilities, public amenity space,
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affordable housing, bus stops, footpaths, travel plans, bus services, and primary education. There is disagreement between the parties as to certain matters covered within the obligation, including affordable housing and primary education. I consider that the appellant's arguments with regard to these issues are persuasive and consequently I accept the details of the agreement, including the appellant's wording where alternatives are included. I consider that the planning obligation is compliant with *paragraph 204* of the *National Planning Policy Framework (the Framework)* and *Regulation 122* of the *CIL Regulations 2010*. I shall therefore take the contents of the obligation into account in reaching my decision.

6. In my view the appeal proposal is materially different from the scheme for the site that was dismissed at appeal in 2015 (Ref: APP/C3105/W/14/3001612). In reaching this view I am mindful that the current appeal proposal is for 20 fewer dwellings, involves a considerable reduction in the area of land to be given over to built development, and significantly increases the amount of open space and landscaping to be provided. I also believe that there are justified grounds for a reconsideration of the 5 year housing land supply position given the recent publication of the Council's Annual Monitoring Report (8 January 2016).

Main Issues

7. The two main issues in this case are:
 - (i) whether local policies for the supply of housing are up-to-date and accord with national guidance, having regard to the 5 year supply of housing land; and
 - (ii) the effect on the character and appearance of the area and the rural setting of Kirtlington.

Reasons

Description

8. Kirtlington is a village located to the west of Bicester and north of Oxford. It sits aside the A4095 and has a population of around 1,000. The appeal site, which measures about 5.8 ha in area, is a level square-shaped field located next to the south-western edge of the village. The south-east corner of the field has a frontage onto Lince Lane which forms part of the main route (A4095) through the village. The site is bounded by Kirtlington Golf Club to the south and west, by a field to the north and by dwellings on Oxford Close and Lince Lane to the east. There is a bungalow and a group of farm buildings in the south west corner of the site known as Corner Farm. A public right of way runs north-south across the site, adjacent to the eastern boundary with Oxford Close, exiting onto Lince Lane in the south and Hatch Way at the north.
9. The appeal scheme is for up to 75 dwellings (of which 35% would be affordable homes). The housing would be located on the eastern part of the site (2.46ha), next to the main built-up part of the village, whilst the western part would remain undeveloped and given over to informal open space. A locally equipped area of play would be provided within the housing development and there would be areas of planting within and around the boundaries of the site. Vehicular access would be taken from Lince Lane and provision is included for the improvement of the existing right of way across the site and pedestrian links to the village.

Planning policy

10. 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.
11. The Development Plan for the area includes saved policies from the *Cherwell Local Plan (CLP1)*, adopted in 1996, and *The Cherwell Local Plan 2011-2031 (CLP2)*, adopted in July 2015. There are a number of policies in *CLP1* and *CLP2* that I consider to be relevant to the determination of this appeal. These are dealt with at an appropriate point in my reasoning, as is the amount of weight to be attached to these policies having regard to the *Framework* and the *Planning Practice Guidance (the Guidance)*.

Issue1. Housing land supply

Housing supply policies

12. *CLP2* seeks to ensure that growth is located in the most sustainable locations within the District. The overall strategy inherent in this Plan is to focus housing growth in the two main towns, Bicester and Banbury, and on a small number of strategic sites outside these towns, whilst ensuring that the level of development in the villages respects the character and beauty of the rural areas and meets local needs.
13. *Policy Villages 1: Village Categorisation* of *CLP2* identifies Kirtlington as a *Category A Service Village*. As such it is considered to be one of the District's more sustainable villages, based on a range of criteria including population, size, services and facilities, and access to public transport. The policy makes it clear that minor development, infilling and conversions will be allowed within the built-up limits of the village. The appeal site lies outside the built-up limits of Kirtlington. *CLP2 Policy Villages 2; Distributing Growth across the Rural Areas* aims to secure the provision of 750 homes in the 23 category A service villages. 500 of these have already been identified. One of the policy criteria specifies that in considering sites consideration will be given to whether there would be a significant adverse landscape impact.
14. *Policy H18: New Dwellings in the Countryside* of *CLP1* specifies that new dwellings beyond the built-up limits of settlements will only be allowed where there is an essential need, for instance where there is an agricultural justification.

Matters agreed and in dispute

15. It is accepted by the two main parties that the housing requirement for the District is 22,840 for the period 2011-2031 and that this figure should be used as the basis for the consideration of the annual requirement and the shortfall. This gives an annual base requirement for 1,142 dwellings or 5,710 for the 5 year supply period before any buffer is added. Although Cherwell, along with other authorities, will need to have regard to Oxford's unmet housing need in the future currently there is no agreement between the relevant authorities on how or where this should be met.
16. Between 2011 and 2015 (i.e. the first 4 years of the plan period) some 2,052 dwellings out of the requirement for this period of 4,568 dwellings have been delivered, leaving an agreed shortfall of 2,516 dwellings. The two main parties

also agree that the appropriate period for the 5 year supply is 2015-2020 and that the housing requirement, including the shortfall, should be delivered within this period. I have no reason to take issue with these agreed matters.

17. The two main parties are at odds as regards the size of the buffer that should be applied and whether the buffer should be applied to the base requirement for the 5 year supply period (i.e. 5,710 dwellings) and the past shortfall (i.e. 2,516 dwellings) , or just the former. Consequently the amount of new dwellings that need to be delivered over the 5 year supply period is disputed.
18. As regards the supply side of the equation there is a large measure of agreement between the parties as to the number of dwellings that are likely to come forward on most of the identified sites. However the appellant contends that there are 6 sites that would not deliver at the rate anticipated by the Council and that consequently the Council's housing supply figures should be reduced to take account of this.

5% or 20% buffer

19. *Paragraph 47 of The Framework* states that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. This paragraph also makes it clear that where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land.
20. The Council argues that the appropriate buffer to apply is 5% whereas the appellant believes that it should be 20%. The appellant contends that as the Council has failed to meet its housing targets for 8 consecutive years there has been persistent under-delivery in the District.
21. It is accepted that the Council did not meet its housing target in the 3 years prior to the start date of the *CLP2* in 2011. Furthermore in the first 4 years of the *CLP2* plan period only 2,052 dwellings out of the requirement for 4,568 have been delivered. Against a base requirement of 1,142 dwellings per annum there has been an under-delivery in each of these 4 years. Net delivery has been 356 dwellings in 2011/12, 340 dwellings in 2012/13, 410 dwellings in 2013/14 and 946 dwellings in 2014/15. Although the total delivery figure for 2015/16 is not yet available it would appear, on the basis of completions so far, that this is likely to be similar to the completion figure for 2014/15.
22. Persistent under-delivery of housing is not defined in the *Framework*, nor is the time-period for its establishment. Consequently I consider that before reaching any conclusions as to whether persistent under-delivery exists there is a need to take account of local circumstances, including the Council's approach to boosting significantly the supply of housing.
23. I understand that shortfalls in housing delivery prior to 2011 were taken into account in the Oxfordshire Strategic Market Assessment (2014). This assessment provided a new objective assessment of housing need for the District and formed the basis for the housing figures in the *CLP2* (i.e. 1,142

homes per annum or a total of 22,840 dwellings for the plan period). Consequently the *CLP2* provides for a level of housing that seeks to address levels of under-delivery prior to 2011.

24. *The CLP2* was recently adopted in July 2015. Inherent in the *CLP2* is the Council's strategic decision to promote a high level of employment and housing growth within the District. As a result the LP seeks to increase substantially the amount of housing to be delivered in comparison to what has happened in the past. During the Examination of the plan the total number of dwellings to be accommodated was increased from 16,750 for the period 2006-2031 (670 per year) to 22,800 for the period 2011-2031 (1,140 per year). A considerable increase in provision by any standard. To achieve this strategic housing sites are identified in the plan, as well as extensions to others.
25. It is self-evident that such a significant change in policy direction cannot occur on the ground over-night, particularly when a great deal of the planned new housing is to be provided on strategic sites. To my mind it is inevitable that there will be some time before the large sites start to contribute in a meaningful way to meeting the District's housing needs. In reaching this view I am mindful that bringing forward such sites is likely to involve negotiations between a variety of parties, including land-owners, developers, building companies, Councils, and infrastructure providers. Consequently in the early part of the plan period it is not surprising that the completion figures are below the annual requirement. This is recognised in the housing trajectory of the *CLP2*.
26. It is clear from the evidence before me that the District Council is actively engaged in bringing forward the large strategic allocations so that they come on stream and start delivering homes at the requisite level as soon as possible. The housing completion figures for 2014/15 and part of 2015/16 indicate a considerable increase in the number of dwellings delivered compared to the first 3 years of the plan period. In my judgement, therefore, there is a reasonable prospect of the annual delivery figures rising considerably above the rates achieved in the first few years of the plan period and delivering at the required level anticipated in the *CLP2*.
27. Having regard to all these matters I do not believe that under-delivery within the District can yet be described as persistent. However I accept that the tipping point is not too far distant if the number of homes provided continues to fall below the *CLP2*'s housing requirement. Consequently in my judgement a 5% buffer remains, for the time-being, appropriate.

Application of the buffer & the 5 year and annual requirement

28. I consider that the shortfall since 2011 is part of the requirement. *The Framework* is clearly designed to boost the housing requirement and consequently in my view the 5% buffer should be applied to all of the elements that constitute the requirement, including the shortfall since 2011.
29. Consequently I consider that the requirement for the purposes of the 5 year supply is some 8,637 dwellings (i.e. 1.05×5 year base requirement of 5,710 and shortfall of 2,516). This in turn gives an annual requirement over the 5 year supply period of 1,727 dwellings.

Supply of sites

30. The appellant accepts the Council's housing land supply figures apart from those relating to 6 sites. The appellant argues that there are likely to be 858 fewer dwellings delivered on these sites in the 5 year period than estimated by the Council (i.e. 8176 dwellings compared to 9,034 dwellings). The difference of 858 dwellings is due to the appellant's different assumptions about start dates and the rate of housing delivery on the sites. As a result it is argued for the appellant that within the 5 year period there will be 100 fewer dwellings West of Bretch Hill, 125 fewer at Salt Way and West of Bloxham Road, Banbury, 35 fewer at South-West Bicester Phase 2, 380 fewer at North West Bicester Phase 2, 68 fewer at Graven Hill and 150 fewer at South-East Bicester.
31. Estimating how many dwellings are likely to be delivered on sites over the next 5 year period in the District is extremely difficult. Inherent to any assessment are various assumptions that may or may not prove to be accurate. Having carefully considered the Council's estimated start dates for the 6 sites in question I do not find them to be unreasonable or over-optimistic. In my view sufficient lead-in times have been included to enable the various stages inherent in bringing each site forward for development to be completed. In reaching this view I note that the Council's estimates are based on a site by site analysis and recent discussions with developers, agents and with other interested parties. Consequently I endorse the Council's lead-in times used in its 5 year housing supply calculations.
32. I also accept the Council's assumed delivery rates on the sites West of Bretch Hill, South-West Bicester Phase 2 and South-East Bicester. These are broadly in line with the delivery rates anticipated for the appellant once development on these sites commences.
33. I do, however, have reservations about the Council's anticipated delivery rates on the three other sites and consider that more cautious assumptions are required. At Salt Way and West of Bloxham Road, Banbury it is anticipated by the Council that completion rates will double from 50 dwellings in 2016/17 to 100 dwellings for each of the subsequent 3 years. As the Council has already accepted that delivery on this site could be as low as 75 dwellings per annum it would be more appropriate to assume this figure for the 3 years after the year of commencement. This would lead to 75 fewer dwellings delivered at Salt Way and West of Bloxham Road, Banbury than assumed by the Council.
34. The Council assumes that from 2016/17, North West Bicester Phase 2 will deliver at a rate of 210 dwellings per annum. Given what has happened in terms of house completions at North West Bicester Phase 1 I consider this assumption may be overly optimistic and a more realistic figure for Phase 2 would be 125 dwellings per annum. This would mean the delivery of 255 fewer dwellings at North West Bicester Phase 2 than currently assumed by the Council.
35. The development at Graven Hill is a large self-build scheme. The Council anticipates that once key infrastructure works are completed in 2017 development would continue apace in subsequent years. Given the novel nature of this scheme and the likely involvement of numerous parties there is a need, in my view, for a level of caution once this development commences. Consequently for 2018/19 the assumed figure for delivery should be reduced

by 50 dwellings, thereby reducing the overall figure for the site by a similar number.

36. In summary, therefore, I find that the number of dwellings that are likely to be delivered on sites in the District is 380 dwellings fewer than the anticipated by the Council giving a total delivery figure for the period 2015-2020 of 8,654 dwellings.

Summary of 5 year supply

37. I have found that there are sites in the District capable of delivering some 8,654 dwellings over the next 5 years. Given the requirement for 8,637 dwellings (i.e. 1727 per year) I am satisfied that there is a five year supply of housing land within the District.

Policies for the supply of housing

38. I have found that that there is a 5 year supply of housing land in the District. Consequently the various policies in *CLP1* and *CLP2* relating to the supply of housing and referred to above are not out of date. I also believe that these policies accord with national planning policy as they endeavour to locate new housing development of an appropriate scale in sustainable locations whilst paying due regard to environmental impacts. Consequently the policies are consistent with *the Framework* and should be accorded full weight.
39. I conclude, therefore, on the first main issue that as the policies for the supply of housing are up-to-date and accord with national guidance they should be accorded full weight.

Issue 2: Character and appearance

40. *Policy ESD13: Local Landscape Protection and Enhancement of CLP2* is designed to ensure that development respects and enhances local landscape character and appropriate mitigation is secured where damage cannot be avoided. The policy also states that proposals will not be permitted if they cause undue visual intrusion into the open countryside, are inconsistent with local character, or harm the setting of settlements.
41. *CLP2 Policy ESD15: The Character of the Built and Historic Environment* is a lengthy policy dealing with the appearance of new development and its effect on the character and appearance of an area. Amongst other things it seeks to ensure that new development contributes positively to an area's character and identity by creating or reinforcing local distinctiveness and respecting local topography and landscape features, in particular within designated landscapes, within the Cherwell valley and within conservation areas and their setting. Development will also be expected to integrate with existing streets and public spaces.
42. One of the policy criteria of *CLP2 Policy Villages 2; Distributing Growth across the Rural Areas* specifies that in considering housing sites consideration will be given to whether there would be a significant adverse landscape impact.
43. The above mentioned policies are designed to ensure that careful regard is paid to local character. As this concern is one of the key components of *the Framework* these policies should be accorded full weight. Even if it is considered that elements of these policies relate to housing land supply they

- should still be given full weight in the light of my findings as to the 5 year supply.
44. In my judgement the proposed development would not have a significant impact on the landscape of the wider area, including the Cherwell River Valley. The flat topography of the site and the surrounding land form means that medium and long distance views of the site are very limited. I note that the two main parties agree that the appeal scheme would have a limited effect on the wider landscape.
45. I have serious reservations, however, about the impact of the scheme on the local landscape and the setting of the village. At present the appeal site is undeveloped and in agricultural use, is located beyond the built-up area, and is clearly part of the countryside that borders this part of the village. In its current form I consider that the site makes an important contribution to the pleasant rural setting of the southern part of Kirtlington. The field is visible from a number of local viewpoints, including from Lince Lane and from the public right of way along the eastern boundary of the site. Consequently the site provides a soft and attractive edge to the village and positively contributes to the enjoyment and experience of those moving around the village. The current western edge of this part of the village does not unduly detract from the important contribution that this field makes to local character.
46. I acknowledge that the current appeal proposal is significantly different from that considered at appeal in 2015 and that a real effort has been made to improve the layout and form of the scheme with a view to mitigating the impact on the local area. However the construction of up to 75 dwellings on the eastern part of the appeal site would substantially reduce the open nature of the field and suburbanise this edge of the village to an undesirable extent. In spite of the landscaping proposed I believe the new development would appear prominent from local viewpoints, particularly during the winter months, and cause unacceptable harm to the village's rural setting.
47. I have paid careful regard to the appellant's landscape evidence, including the Landscape and Visual Impact Appraisal and the other material submitted. I acknowledge that the landscape immediately to the west and south of Kirtlington, of which the appeal site is a part, is not rare, or of exceptional quality. However this does not alter my finding that the proposal would cause real harm to the local landscape, which is clearly valued by local people, and the rural setting of the village. Detailed design, siting, layout or landscaping would be unable to ameliorate this harm to an acceptable extent.
48. I conclude, therefore, on the second main issue that the proposal would cause significant damage to the character and appearance of the area and the rural setting of Kirtlington. This brings the scheme into conflict with *Policies ESD13, ESD15 and Policy Villages 2 of The Cherwell Local Plan 2011-2031 and paragraph 109 of the Framework* which seeks to protect and enhance valued landscapes.

Other matters

49. Local people have raised a number of concerns including the impact on highway safety, traffic congestion, social cohesion, residential amenity, bio-diversity, the capacity of local services and facilities, sewerage, drainage and flooding. However, having considered all the material before me, including the

views of statutory authorities and the various reports submitted, none of these matters individually or cumulatively would be likely to cause overriding harm, and they are not, therefore grounds for dismissing the appeal. I consider that the provision of an acceptable system of foul drainage can be secured through an appropriately worded planning condition.

Overall planning balance

50. It is evident, given the limited size of Kirtlington, that the appeal proposal for up to 75 dwellings does not constitute minor development. Furthermore the appeal site is located outside the built-up limits of the village and there is no essential need for the development. Consequently the appeal scheme is clearly at odds with local planning policy relating to the supply of housing in the District, which seeks to steer most new housing towards the main towns and identified strategic sites whilst limiting development in the villages. Considerable weight needs to be given to this conflict. I have also concluded that the proposal would cause significant damage to the character and appearance of the area and the rural setting of Kirtlington. As a result the scheme is contrary to local planning policy relating to local character. Again considerable weight needs to be given to this finding.
51. *Paragraph 14 of the Framework* makes it clear that there is a presumption in favour of sustainable development, which has three dimensions: economic, social and environmental. In my judgement the appeal scheme would fulfil the economic role of sustainable development and would contribute to building a strong, responsive and competitive economy, by helping to ensure that there is housing land available to support growth. In terms of the social dimension the scheme would contribute to boosting housing supply by providing a range of sizes and types of housing, including a significant number of much-needed affordable housing units. It is likely that the increased population that would result would help to sustain facilities and services in the village and contribute to the vitality of village life. Appropriate contributions are to be made to the provision of educational and community facilities.
52. As regards environmental considerations the site is reasonably well located for access to a range of services and facilities and to larger centres. The planning obligation would secure improvements to bus services, thereby reducing reliance on the private car. The proposal would also provide a considerable amount of open space, including play provision, for the benefit of the community and secure improvements in biodiversity. It would improve the condition of the footpath link across the site and facilitate better connections with the existing footpath network. I consider that substantial weight should be given to these findings.
53. In my judgement, however, in view of the fundamental conflict with the adopted strategy for the location of housing in the District and the significant environmental harm identified I do not consider the proposed scheme constitutes sustainable development. Consequently the 'presumption in favour' set out in *Policy PSD1: Presumption in Favour of Sustainable Development of CLP2 and the Framework* does not apply.

Overall Conclusion

54. My overall conclusion, therefore, is that the proposal is clearly at odds with the development plan and that other material considerations do not outweigh this

conflict. *Paragraph 12* of the *Framework* indicates that in such a situation development should be refused. Consequently there are compelling grounds for dismissing the appeal. I have taken account of the favourable officer recommendation for the appeal application, the comments relating to the site contained in the SHLAA, and the various appeal cases referred to me. However they do not outweigh the conflict with the development plan in terms of housing strategy and environmental harm. None of the other matters raised outweigh the considerations that have led to my decision.

Christopher Anstey

Inspector

APPEARANCES

FOR THE APPELLANT:

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FOR THE COUNTY COUNCIL

Richard Oliver

INTERESTED PERSONS:

Helen Macbeth
Christine Marsh
James Macnamara
Jane Moore
Mr Barnes

Parish Council representative & local resident
Local resident
District Councillor
Local resident
Local resident

DOCUMENTS HANDED IN DURING THE HEARING

1. Council's letters of notification of appeal & lists of persons notified.
2. Attendance lists.
3. Correlation – Population and CRAITLUS Score.
4. Design & Access Statement (August 2014) Gladman/Barnes Walker.
5. Previous appeal decision ((Ref: APP/C3105/W/14/3001612).
6. The Cherwell Local Plan 2011-2031 Part 1 (July 2015).
7. Additional information requested by Inspector as to housing land supply.
8. Further additional information requested by Inspector as to housing land supply.
9. County Council's assessment of education and transport contributions.
10. Report relating to the County Council's Cabinet's decision relating to bus services.
11. Kirtlington Parish Council's Hearing Statement.
12. County Council's statement relating to the expansion of the primary school.
13. Statement of Facts and Grounds – Hook Norton Appeal.
14. High Court Judgement relating to monitoring/administration fee.
15. Appeal decision – Huby, North Yorkshire..
16. Correspondence relating to sewerage.
17. Foul drainage condition note.
18. Cherwell LP Part 1 Inspector's Report (June 2015).
19. Appeal decision – Great Totham, Essex.
20. Signed Planning Obligation (3 February 2016)

PLANS HANDED IN DURING THE HEARING

- A. FPCR Footpath Plan(6225 – appended to the legal agreement).
- B. FPCR Illustrative Masterplan (Ref. 6225 Aerial Rev B).
- C. FPCR Sketch Proposal for possible treatment of open space (Ref. 6225-L-04 Rev B).
- D. FPCR Framework Plan/95 Homes scheme overlay.
- E. FPCR Illustrative Masterplan /95 Homes scheme overlay.
- F. FPCR Historic Growth Plan Rev C.
- G. CgMs Regression Map.
- H. Extract from LP Proposals Map.
- I. Itinerary for site visit.
- J. Previous appeal – Framework Plan