

Planning and Development

David Peckford, Assistant Director – Planning and Development



Cherwell

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26th August 2020

Dear Mark,

TOWN AND COUNTRY PLANNING ACT 1990

Application No.: 16/00472/OUT

Applicant's Name: Grundon Waste Management Ltd & Cemex UK

Proposal: Proposed residential redevelopment for approximately 200 units

Location: S Grundon Services Ltd
Merton Street
Banbury
OX16 4RN

Parish(es): Banbury

I write with regard to the above referenced planning application and following our previous meetings on 17th July and 20th August 2020. I have now had opportunity to review the responses to the latest round of consultation and as promised, I am writing to confirm the position of officers.

Summary

Unfortunately, I must inform you that Officers are no longer in a position to offer their support to your application in its current form. Having regard to the consultation responses received and the number of significant issues that appear unresolved, along with the deficit in planning obligations that is likely to arise as a result of the viability challenges facing the proposed development, regrettably we have concluded that the benefits of the proposal do not outweigh the numerous conflicts with Local Plan policy and the level of harm – particularly to future occupiers of the site – that we consider will result.

Background

As you know, the starting point for making planning decisions is the Development Plan. Policy Banbury 19 of the Cherwell Local Plan 2011-2031 Part 1 allocates the site for the development of approximately 150 new homes with a mix of approximately 70% houses and 30% flats. It seeks 30% affordable housing on site (in line with Policy BSC3) and recognises that planning obligations will be required to mitigate the infrastructure impacts and needs of the development.

Your application proposes 200 flats with no houses. In the report that went before Planning Committee on 18th July 2019, the previous case officer – Bob Duxbury – acknowledged that the site is difficult to develop due to its physical constraints, existing and previous land uses, and its relationship to neighbouring uses including the railway. He also acknowledged that the need to accommodate a through road, with future potential to link Higham Way to Chalker Way, represented an additional constraint on development. In this context, his report concludes that whether 150 or 200 dwellings are provided on the site, development can only be achieved as 100% flats.

Mr. Duxbury's report also makes reference to the conclusions of the independent viability appraisal carried out by Highgate Land and Development, which accepted that a fully policy compliant scheme would not represent a viable development, mainly due to the costs of remediating the contamination on site. The appraisal initially concluded (January 2019) that "*an affordable housing provision of approximately 15% would be viable, along with a policy compliant level of planning contributions*". However, in the Committee report, Mr. Duxbury advised the Planning Committee that:

Your officers have been working on the assumption that the Council will wish to seek to ensure that this site provides at least some affordable housing. In the light of the above it will be necessary to seek the overall extent of financial payments to be reduced. As a guide the applicants have indicated that if the infrastructure contributions were reduced to £1.1 million then it should be possible to provide in the region of 9% affordable housing. Clearly there is the need for complex three-way negotiations between the applicants and both Councils to conclude a level of contributions and affordable housing that are acceptable. Difficult decisions about foregoing elements of essential infrastructure are necessary if this scheme is to be approved. Whilst these discussions are on-going they will not be concluded by the date of Committee. It is therefore recommended that the Committee indicate their general agreement to this scheme subject to achieving a satisfactory resolution of the planning obligation issues. Any views expressed by the Committee can of course be taken into account in the negotiations.

Taking both the site constraints and viability matters into account, Mr. Duxbury's report concludes that both an increase in density and a reduction in planning obligations is necessary if the site is to be developed for housing as envisaged by the allocation. Notwithstanding this, Mr. Duxbury's report also highlights outstanding issues in respect of drainage and noise. The recommendation was therefore to grant permission subject to these outstanding matters being resolved and a satisfactory position being reached in respect of planning obligations. It is evident from reading the report that this was not a straightforward recommendation, and was very much reached on balance, recognising that the site is allocated for residential development.

In the end, Planning Committee did not consider or debate the recommendation as they resolved to defer consideration of the application to allow a site visit to take place. David Peckford's email to you on 9th June summarises events since that point – including the late objection received from Thames Water with regard to odour impacts from its Sewerage Treatment Plant, and our rationale in carrying out a full re-consultation on the application.

Issues raised by the latest round of Consultation

For the sake of brevity, I will focus on those responses which are most critical to informing the change in Officers' position. You can view the full consultation response online.

Noise

The Council's Environmental Protection Officer has raised concerns about the noise impact and proposed mitigation, and he has posed several additional queries concerning the assessment methodology. He advises that "*The scheme is reliant on windows being unopenable to mitigate the noise from the main line and LMD. An overheating risk assessment should therefore be required to determine if closed windows provides an acceptable living environment*". He also highlights that the Light Maintenance Depot (LMD) is the main potential source of noise pollution and has already been a source of complaints to Environmental Protection.

Odour

Thames Water are maintaining their objection on the grounds that the odour impacts from its Sewerage Treatment Plant have not been properly assessed. They advise that mitigation will likely be required; this could be in the form of a financial contribution to provide the mitigation at source.

Highways

Whilst not objecting *per se*, the County Highways Authority have highlighted the need for the width of the road corridor through the site to be increased, to accommodate a 3m wide cycleway in accordance with its recently adopted Cycle Design Standards.

Visual Impact and Maintenance of the Bund

The Council's Landscape Officer has advised that the 6m high bund required to mitigate the noise impact would be: *visually harmful and physically oppressive for residents. The feature would require extensive landscaping mitigation, along with a 3m wide maintenance access route along its length.* The Council would not adopt this feature and the arrangements for maintenance of this feature need to be addressed in the planning obligation.

Additional concerns are raised about the feasibility of connections between the site and adjacent land, taking account of land ownership and apparent changes in ground levels. Updated reports and surveys are requested.

Drainage

The County Council, acting as Lead Local Flood Authority, are maintaining an objection. They have stated *'Stantec have still failed to provide updated information in line with National and Local Standards. Therefore, the LLFA are unable to technically assess the proposal to ensure the scheme is deliverable'*.

A full copy of their comments will be made available online and includes detailed comments. Essentially, they are concerned that the work carried out is now out of date and doesn't conform with current guidance. I understand from our recent meeting your reluctant to carry out any further work (and incur further costs), but if this matter is left to the reserved matters stage, there is a risk we could reach a point where the required standards cannot be met. It is the case officer's view that this matter needs to be resolved at the outline planning stage.

S106 Matters

In addition to the above, the consultation response indicates that a number of the financial contributions that would be required in order for the scheme to be policy compliant, have increased. Furthermore, a contribution toward primary healthcare, as set out in the Council's Developer Contributions SPD, is likely to be sought; the Oxfordshire Clinical Commissioning Group (OCCG) have been consulted and their response will be provided to you as soon as it is received.

Reasons for Officers' Position

Fundamentally, Officers are concerned that the proposals will result in a substandard living environment for future residents in respect of noise, odour, and general amenity. In particular, the proposed solution to mitigate the noise impact not only leads to visual harm (as acknowledged by Mr. Duxbury in his Committee report), but the consultation response indicates that it may not even be successful or indeed practical as a solution. It is unclear how the bund would be maintained given the constraints of the road alignment and Network Rail land, and this presents additional concerns regarding its safety. Furthermore, the need for windows to be unopenable raises other issues regarding quality of living and risks associated with overheating. These are all matters which need to be satisfactorily addressed at outline stage and cannot be left to conditions or reserved matters.

In addition, the consultation response indicates that viability is likely to have worsened with a viable scheme moving further away from policy compliance, thus failing to provide for and mitigate its infrastructure impacts and with significantly reduced provision for affordable housing.

All in all, Officers consider that the matters which remained outstanding at the time of Mr. Duxbury's Committee report remain unresolved, and the consultation response does not provide enough comfort that these matters can be addressed by conditions or at reserved matters stage. Regrettably, we have therefore concluded that the planning balance is no longer in the scheme's favour, with the level of uncertainty and risk surrounding the ability of the scheme to mitigate its impacts, outweighing the benefits of housing delivery – in the form proposed – on this site.

Moving forward

As we discussed in our meeting on 20th August, the Council is committed to seeing the delivery of residential development on this allocated site. If you feel that our concerns can be overcome, we would be happy to continue working with you to consider solutions that may overcome the concerns outlined above and to deliver a scheme that is as close as possible to the policy requirements.

We discussed the idea of potentially agreeing some design principles if key areas/requirements can be agreed that would have the potential to alleviate issues through the detailed design of the proposal at the reserved matters stage. Once you've had the opportunity to consider our concerns in detail, we would be happy to engage with you on potential design principles that you feel could offer a way forward. The proposed design principles would need to offer the council sufficient comfort that any design solution would be realistically achievable at the reserved matters stage. I would envisage keeping these simple and only focusing on areas where design could potentially overcome our concerns (e.g. details of the bund, design mitigation that could help with noise concerns etc..).

In terms of next steps, we need to agree a timetable for moving forward and we would invite the agent/applicant to produce a draft timetable. This would give us a better understanding of how you would like to proceed with the application and your expectations in terms of timing.

Site Allocation

A matter you raised in our meeting on 20th August related to the allocation of the site in the Local Plan. You asked how the allocation could be removed if you decided not to proceed with development on the site.

In terms of not proceeding with development, the short-term option would be to withdraw the current planning application and inform my colleagues in the planning policy team that you do not intend to develop the site. Although the site is allocated, the Council cannot force you to submit an application or develop the site.

In terms of formally removing the allocation, it cannot be removed from the existing Cherwell Local Plan 2031 because this is an adopted document. However, as David explained, we are currently starting the first round of consultation on a revised local plan, which will need to take account of deliverability issues.

Details of the current consultation can be found on our website (see link) and is open for representations until 14th September 2020. <https://www.cherwell.gov.uk/planningpolicyconsultation>

Concluding Remarks

Please know that Officers have not reached this position lightly. The frustration and disappointment that your client will no doubt express is completely understandable, particularly given the application was submitted to the Council almost 4 years ago. However, I am sure you understand that Officers have a responsibility to ensure that proposals for housing development provide safe, attractive and well-designed places for people to live, and in a manner, which ensures that the impacts on existing communities and infrastructure is acceptable.

I believe our meeting on 20th August was productive for all parties. We would like to invite you to consider how your client would like to proceed. Options include the Council determining the application in its current form at the next available Committee; agreeing an extension of time to allow the time to propose some design principles/submit additional information and to provide one final round of additional information/responses to the issues raised with targeted re-consultation as required; withdrawing the application and entering into pre-application discussions with the Council in an effort to identify an acceptable scheme; or withdrawing the application and taking time to consider whether or not you wish to submit a new/revised scheme to address the concerns identified. Either way, I hope we are all agreed on the need to finally bring this application to a conclusion.

Yours sincerely,

Rebekah Morgan MRTPI
Principal Planning Officer