



## **CHERWELL DISTRICT COUNCIL**

### **STATEMENT OF CASE**

Appeal by Optimis Consulting on behalf of Bovis Homes under Section 78(1) of the Town and Country Planning Act 1990 against Cherwell District Council's decision to refuse an application for planning permission for the addition of approximately 310m of metal 'field' style railings painted black (retrospective).

<b>Appellant</b>	<b>:</b>	<b>Bovis Homes</b>
<b>Appeal Site</b>	<b>:</b>	<b>Heyford Park Parcel B2A, Camp Road, Upper Heyford</b>
<b>Appellant's Agent</b>	<b>:</b>	<b>Optimis Consulting Ltd</b>
<b>LPA Reference</b>	<b>:</b>	<b>17/01466/F</b>
<b>PINS Reference</b>	<b>:</b>	<b>APP/C3105/W/17/3191148</b>

## **1. Introduction**

- 1.1 The appeal proposals were subject to a planning application submitted to Cherwell District Council as Local Planning Authority and validated on 26<sup>th</sup> July 2017. The Council resolved to refuse planning permission and issued its decision notice on 2<sup>nd</sup> October 2017.
- 1.2 The Appellant has lodged an appeal against the decision of the Council to refuse planning permission. This appeal will be determined through the written representations procedure.
- 1.3 The Local Planning Authority's (LPA) case in this appeal is principally as set out within the officer's report for the planning application, a copy of which was sent to the Inspectorate with the appeal questionnaire. This Statement of Case does not intend to repeat or duplicate the arguments set out in this report, but instead focuses on responding to and clarifying the key issues that arise from the appellant's grounds of appeal.

## **2. Appeal Site and Locality**

- 2.1. The application site for this proposal is part of the former RAF/USAF Upper Heyford base. Located to the south side of Camp Road almost at the heart of the former settlement area, the site consists of land formerly used largely for recreation and occupied by ancillary buildings now demolished.
- 2.2. The base was designated a conservation area in 2006, its primary architectural and social historic interest being its role during the Cold War. The nature of the site is defined by the historic landscape character of the distinct zones within the base. The designation also acknowledges the special architectural interest, and as a conservation area, the character of which it is desirable to preserve or enhance and provides the context and framework to ensure the setting and appearance of sections of the Cold War landscape are preserved. The base was divided into three main functional character areas: Flying Field, Technical and Settlement.

2.3. The site is in the settlement area; specifically in the sub zone 10D-RAF Service and Recreation Area. In the conservation appraisal, the character of the Area is described as:

“This area, located south of Camp Road west of the housing area, is very open in contrast to the areas either side. There is a limited number of service buildings spread across this area. The buildings are modern prefabricated structures in the rather dull utilitarian municipal style of the 1970s, now much reviled. Whilst the buildings maybe considered functional, they lack architectural merit. These buildings are interspersed with recreational sporting facilities and areas of parking. The layout of this area has no coherence.”

2.4. In terms of the uses on site, the military use ceased in 1994. Since 1998 the site has accommodated a number of uses in existing buildings, first under temporary planning permissions latterly under a permanent permission granted on appeal and subsequent applications.

2.5. Over the last 10 years numerous applications have been made seeking permission to either develop the whole site or large parts of it and numerous of them have gone to appeal. The most significant was application ref 08/00716/OUT. Following a major public inquiry that commenced in September 2008 the Council received the appeal decision in January 2010 that allowed “A new settlement of 1075 dwellings, together with associated works and facilities including employment uses, community uses, school, playing fields and other physical and social infrastructure (as amended by plans and information received 26.06.08).” This permission included the flying field and the uses and development permitted upon it at the appeal have been implemented under the appeal permission. Included within this decision were a number of applications for conservation consent including demolition of buildings on the application site. As these consents have been implemented there is a view that they remain extant.

2.6. The development of the settlement and technical areas was delayed as the site was acquired by new owners and the current applicants who decided to refine the approved scheme. As a result, a new masterplan was drawn up which, whilst similar to the one considered at appeal, has been modified. The main reason for a fresh application arose from the desire of the applicant to retain more buildings on site. Apart from that, the most significant changes are a new area of open space centred

on the parade ground, the retention of a large number of dwellings including 253 bungalows, and more of the heritage buildings the demolition of which was previously consented. The retention of these buildings at their existing low density has meant the masterplan has expanded the development area west on to the sports field including the land subject of this appeal.

- 2.7. The revised masterplan was submitted as part of the outline application for “Proposed new settlement for 1075 dwellings, together with associated works and facilities, including employment uses, a school, playing fields and other physical and social infrastructure” and was granted permission on 22nd December 2011 (ref 10/01642/OUT). The planning permission included a number of plans with which compliance was required including a masterplan, a retained buildings plans and other plans showing layouts all of which included the demolition of all buildings on this site.
- 2.8. A number of reserved matters have been submitted, approved and implemented for permission 10/01642/OUT. The appeal site is part of the residential scheme granted outline planning permission under reference 10/01642/OUT. The reserved matters were approved under reference 13/01584/REM and are currently being implemented.
- 2.9. As a result of this, the site is starting to take shape. To the south of Camp Road several phases of development have been undertaken including the former parade ground which is being retained as open space and will become the “village green”. In conclusion, the new settlement is taking shape and the houses surrounding the appeal site are starting to be occupied.
- 2.10. The appeal site is located adjacent to a swale which was proposed as part of the surface water drainage infrastructure serving the site whilst also providing significant ecology benefits by linking Camp Road with the open countryside beyond to provide a green corridor. This also has the benefit of providing a linear park and valuable recreation space for residents.

### **3. The Appeal Proposals**

- 3.1 The appeal seeks permission for the retention of approximately 310m of metal ‘field’ style railings painted black.

- 3.2 Copies of representations from statutory consultees, internal consultees and third parties that were submitted in relation to the planning application will have already been forwarded to the Inspectorate by the Council as part of completing the appeal questionnaire.
- 3.3 The application was called in to Planning Committee for a decision in view of public interest and planning permission was refused by the Council on 2<sup>th</sup> October 2017.

#### **4. Planning History**

- 4.1. The site has been subject to various planning applications, those most relevant to this appeal are set out below:

17/01466/F – Addition of approximately 310m of metal 'field' style railings painted black (Retrospective) – Refused 02/10/2017

14/01740/REM - Reserved Matters to Outline application (10/01642/OUT) – Erection of 90 dwellings with associated car parking, infrastructure, landscaping and other works – Approved Subject to Conditions 20/01/2015

13/00153/DISC – Discharge of Condition 8 (Design Code) of 10/01642/OUT – Approved 11/11/2013

10/01642/OUT - Outline - Proposed new settlement of 1075 dwellings including the retention and change of use of 267 existing military dwellings to residential use Class C3 and the change of use of other specified buildings, together with associated works and facilities, including employment uses, a school, playing fields and other physical and social infrastructure

16/00083/NMA - Non material amendment to a 10/01642/OUT - Addition of metal railings to walkovers between balancing ponds for safeguard of pedestrians. Approved 5/12/2016

#### **5. Planning Policy Context**

- 5.1 Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires the determination of planning applications and appeals to be in accordance with the development plan unless material planning considerations indicate otherwise. The statutory development plan for Cherwell District includes both the adopted Cherwell Local Plan 2011-2031 Part 1

(LPP1) as well as a number of 'saved' policies within the Cherwell Local Plan 1996 (LP 1996).

**The most relevant development plan policies are:**

Cherwell Local Plan 2011-2031 Part 1

- Policy Villages 5: Former RAF Upper Heyford
- ESD 7: Sustainable Drainage Systems (SuDS)
- ESD15: The Character of the Built and Historic Environment
- ESD17: Green Infrastructure

CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- C28 – Layout, design and external appearance of new development

**Other Material Planning Considerations:**

National Planning Policy Framework (NPPF)

- 5.4 National planning policy is a material planning consideration to which significant weight should be given. The NPPF sets out the Government's definition of sustainable development and the policies by which it envisages the planning system will deliver this. It reinforces the plan-led system introduced through the Planning and Compensation Act 1991 and has at its heart a presumption in favour of sustainable development.

Planning Practice Guidance (PPG)

- 5.5 Guidance that assists in providing up-to-date Government on the interpretation of national planning policy in the NPPF and its application to both plan-making and decision-taking. It also provides guidance on Government interpretation of relevant planning legislation as well as details of best practice in the planning system to assist practitioners and the public with general development management and plan-making queries.

Other Planning Considerations

- Mid-Cherwell Neighbourhood Plan (currently at pre-submission stage)
- RAF Upper Heyford Conservation Appraisal 2006 (UHCA)
- In addition a design code was approved in October 2013 in order to comply with Condition 8 of planning permission 10/010642/F. This was required to "to

ensure that the subsequent reserved matters applications are considered and determined by the Local Planning Authority in the context of an overall approach for the site consistent with the requirement to achieve a high quality design as set out in the Environmental Statement, the Revised Comprehensive Planning Brief for the site, and Policies UH4 of the Non Statutory Cherwell Local Plan, H2 of the Oxfordshire Structure Plan 2016 and comply with Policies CC6, CC7 and H5 of the South East Plan 2009.”

## **6. The Council’s Case**

### **6.1 Reason for Refusal:**

1. *“The fence would cause harm to the character, openness, accessibility and permeability of the public open space, which is not considered to be outweighed by the public benefit or intended function of the railings in terms of public safety or the demarcation of public and private property. Furthermore, the railings would result in the formalisation of informal public open space and would set a precedent for the enclosure of open space and the removal of open frontages. The proposal is therefore contrary to Government guidance contained within the National Planning Policy Framework requiring the creation of safe and accessible environments and Policies Villages 5: Former RAF Upper Heyford and ESD15 of the Cherwell Local Plan 2011-2013 (Part 1).”*

- 6.2 The railings for which consent is now sought were installed without the benefit of planning permission and, as such, are unauthorised. The need for the initial planning application for the railings was two-fold. Firstly that the railings fail to comply with the provisions set out in Schedule 2, Part 2, Class A of the General Permitted Development Order (GDPO) 2015 which permits the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure, providing the height does not exceed more than 1m above ground level adjacent to the highway used by vehicular traffic. Secondly the installation of the railings fail to comply with either Condition 1 or Condition 4 of the reserved matters application (Ref: 13/01584/REM) which require the development and boundary treatments to be carried out in accordance with the approved plans, including drawing number B0285-53-B2A, which provides details of approved boundary treatments. Any attempt to install and retain railings in this location would require a planning application. The railings installed differ from the boundary treatments shown within the approved plans and drawings authorised and secured by condition through

the relevant outline planning permission and reserved matters approval. Even if the railings were provided at a height less than 1m throughout to accord with the provisions of Schedule 2, Part 2, Class A of the GPDO 2015 (as amended), article 3(4) of the GPDO 2015 (as amended) specifically does not permit any development contrary to any planning permission and so the railings cannot fall under the definition of permitted development. The development carried out therefore falls within the ambit of planning control and must therefore, as legislation requires, be assessed against the provisions of the Development Plan and any other material considerations.

### Permitted Development

- 6.3. The appellants argue that the railings which have been installed are 900mm high when measured from the highest ground immediately adjacent to the railings. This would be in accordance with the DCLG Document 'Permitted Development Rights for Householders – Technical Guidance' (April 2017) which explains how height is measured, albeit for buildings rather than other structures, when ground level is not uniform.

*“...ground level is the surface of the ground immediately adjacent to the building in question ... Where the ground level is not uniform (for example if the ground is sloping), then the ground level is the highest part of the surface of the ground next to the building.”*

- 6.4. Following the initial neighbour complaint regarding the installation of the railings, Council Officers visited the site in order to check the measurements of the railings against the criteria of Schedule 2, Part 2, Class A of the GDPO 2015 (as amended). Whilst the council officers did not measure the whole extent of the railings measurements were taken along various points of the rail and it was found that the rail posts were consistently above the 1.0m eligible to be carried out under permitted development in normal circumstances. Notwithstanding that, as the railings erected differ from the development approved and secured by condition within plans and drawings as part of the relevant outline planning permission and reserved matters approval they represent a breach of that planning permission and so cannot, under the GPDO 2015 (as amended), constitute permitted development in any event.

- 6.5. The conclusion following this site visit was that the Council Officers were satisfied that the installed railings did not comply with the provisions of Schedule 2, Part 2, Class A of the GDPO 2015 and therefore the applicants were invited to submit a planning application in order to gain permission for the railings. It should be noted that at no time did the appellant challenge the Officer's findings that the railings did not constitute permitted development and formally submitted an application for planning permission rather than applying for a certificate of lawful existing use of development.
- 6.6. As they are not permitted development, the railings should be assessed solely on their merits and against relevant planning policies.
- 6.7. The appellant's statement of case states that *"the construction of the railings does not actually require planning permission to remain in place, as acknowledged by the LPA"*. This statement is wholly refuted by the Council, as stated above it was one of the reasons the Council invited the planning application, and it is also stated in the original Officer's report that the railings do not *"comply with the requirements of the General Permitted Development Order"*.

#### Character

- 6.8. The appellants claim that the railings would comply with Paragraph 1.5 of the approved Design Code which states the "overall aim is to unify the different development areas into a coherent whole, by enhancing the character of the area". This is part of "the vision" and not a detailed objective in the design code. Of more relevance is Para 5.7 that states:

"The linear park will be presented as an informal open space, where the use of SUDS will create a clear and individual character. The park will provide a linear north/south link through the west of the development, with informal footpath routes allowing pedestrians to stroll through this interesting environment."

- 6.9. The council argue that the railings are contrary to the aims of the design code and this paragraph in particular. By introducing railings around open space on one part of the site it is creating a different character in this location than any other. Furthermore the design code aims to achieve unity by "enhancing the character of the area". The Council would argue that at best these railings cause a negative impact the current

character of the area rather than enhance it. The railings are standard in design and are of no merit in terms of detail or materials used and therefore would not enhance the character. They also reduce the open feel and unsegregated nature of the development further distancing itself from the aims of the design code.

- 6.10. It is also argued in the appellant's statement of case that the informal character of the open space and formal linear pedestrian link arrangement will remain. The Council argues that fencing off a 310m section of open space would not maintain the informal character of that space and would begin to formally define separate areas of land within the development and not continue the unity of residential and recreational space which was intended for the housing development.
- 6.11. The appellant claims that the railings are "field style railings" and are what you would expect to find around agricultural fields. Whilst the Council finds this description to be inaccurate given that metal railings are not found within an 'agricultural' context", Heyford Park is in any event a former Military base and not an agricultural field it is considered by the council that these are against the desired character of the development and would fail to maintain the original character of the military base and would be contrary to Policy Villages 5 of the Cherwell Local Plan 2011-2031.
- 6.12. Para 5.20 of the Design Code points out:
- "The existing development is typified by predominantly open frontages so boundary treatments are to replicate this approach as set out in the Character Areas (Section 4)."
- 6.13. As a former military base, one of the main characteristics is the absence of enclosures save for the perimeter security arrangements. Front gardens and open spaces are largely open and that was the character that was sought for the linear park/swale. The proposal is therefore contrary to the Design Code and to the character and appearance of the Conservation Area which the Council are seeking to preserve and enhance.
- 6.14. Policy Villages 5 of the Local Plan requires: "Layouts should enable a high degree of integration with development areas within the 'Policy Villages 5' allocation, with connectivity between new and existing communities. Also: "Public open space should be provided to form a well-connected network of green areas, suitable for formal and

informal recreation". Clearly the railings erected where they are prevent such integration and the proposal is contrary to the development plan in this respect.

#### Permeability

- 6.15. The Council maintain that the railings would cause harm to the permeability of the area as cited as part of the reason for refusal.
- 6.16. The appellants argue that by virtue of the design of the railings; which consist of vertical metal posts and a number of horizontal railings; they would have a permeable appearance and give a definition of permeability of having openings that allow objects/substances to pass through. They argue that fact that the railings are "see-through" they are therefore permeable. Whilst these railings may be visually permeable to some objects and possibly animals they are not permeable in the sense that the general public can pass through without great difficulty and therefore act as a visual and functional barrier. The use of the word permeable in the respect of this housing development is to allow free movement of residents from one side of the development to the other without obstruction; in this respect the railings are against this vision and are further contrary to the aims of the design code.
- 6.17. This physical impediment is even more unacceptable when it is realised that Heyford now has a through Free School and Academy operating from two bases, Building 75 to the east and the former sports hall, building 583 to the west. The railings form a physical and psychological barrier to the school children when they walk between the two sites.
- 6.18. The railings do include 5 "access points" throughout the length of the 310m. These are lined up with pedestrian routes that cross the swale. Whilst these are points at which the railings can be permeated by local residents it does not make up for the fact that the principle of development is against the vision of the design code which seeks the provision of large, open frontages and direct, barrier free routes. Although gates and gaps have been provided within the fence, the fence is still considered to represent a barrier to movement – regardless of whether this is perceived or realised. It is therefore contrary to Policy Villages 5 which states: The settlement should be designed to encourage walking, cycling and use of public transport rather than travel by private car, with the provision of footpaths and cycleways that link to existing networks. Improved access to public transport will be required Development should

accord with Policy ESD 15 and include layouts that maximise the potential for walkable neighbourhoods with a legible hierarchy of routes.

### Accessibility

- 6.19. Accessibility is largely linked to what is written above regarding permeability. Whilst the public open spaces are technically still accessible through gates and access points, the ease of this access would be greatly impeded by the presence of the railings and gates; and this impact would be felt most greatly by those residents who may have physical challenges. The ease of access to these open public spaces would be significantly impeded by the railings.

### Safety

- 6.20. The appellants claim that one of the main reasons for the installation of the railings was to address safety concerns in relation to the sloped banks surrounding the swale located to the west of the appeal site.
- 6.21. The Council maintain that there is no evidence to suggest that the swale is unsafe or poses a risk to the general public. It is acknowledged that the approval of the NMA application (Ref: 16/00083/NMA) did state that the proposed railings in that application would “*enable safer pedestrian access between different phases of residential development*”, but this was in association with crossing points over the swale where there are sharp changes of level and elevated path/cycleways, and where there may be an issue of safety but also where the railings serve to help direct pedestrians and cyclists. It should be noted that whilst railings would increase safety there was no evidence that the swales would be unsafe without them. It would be a feature which increased upon the safety rather than one which was specifically needed to protect residents.
- 6.22. Furthermore the Council argue that if the railings were installed for the safety of the local residents the positioning of the railings would have been on the western side of the footpaths closest to the swale rather than on the eastern side closest to the highway. With the positioning of the railings as they are they actually do not provide any safety increases with regards to the swale than if they were not there. These railings have not been placed with the safety of the general public in mind.

### Public Open Space

6.23. The Council cited the formalisation of informal public space as part of its reason for refusal for the application. The appellants argue that these public open spaces have already been formalised by the presence of swales and drainage features in these areas. Whilst it is acknowledged that the presence of these features will impact upon the types of activities which can be carried out on the public open space, visually it still appears as an informal area of land for residents to enjoy and to artificially create physical boundaries to it changes the nature of the space and creates a more forced and controlled character to the green space to the detriment of the overall character and feel of what is intended to be an open residential development. In fact the swale has an agreed planting scheme and mix seeking to create an open meadow where mowing will be restricted to twice a year. This will generate an open feel and diverse habitat to encourage bio diversity.

#### Materials/Detailing

6.24. Whilst it is acknowledged that similar railings have been approved elsewhere on the site it is considered that those approved have an entirely different and incomparable relationship with their surroundings than those which are subject to this appeal. The other approved railings are in smaller lengths so do not have such a visually significant impact as the one installed at the appeal site.

#### Precedence

6.25. The Council argue that the installation of these railings will set a precedent for the further enclosing of other informal open spaces around the development. The appellants argue that a precedent has been set by the approval of other railings at the development; however The Council consider that this is not the case. The approved railings elsewhere serve more as directional tools to the public footpaths around the development rather than as a means of enclosure. The other railings are also nowhere near as substantial in length or the space in which they provide a barrier. These railings would be the first on the development to substantially enclose an area of land and would set a precedent for further similar developments to the detriment of the open, historic and planned character of the development.

#### Other Matters

6.26. The Council consider that the railings which are the subject to this appeal do not actually serve any logical purpose other than to fuel an undesirable sense of social engineering within the housing development through the erection of a physical and therefore psychological barrier between the affordable homes and the market housing. The railings fail to relate to their surroundings and their siting within the informal open space area appears contrived as they are freestanding and unattached at either end. This further adds to their awkward and artificial appearance as a barrier to divide areas of the development to the detriment of fostering integrated and inclusive new communities contrary to well-established local and national planning policy.

## **7. Conclusion**

7.1. It is the opinion of the Council that the appeal proposal clearly conflicts with the approved Design Code for the site, Government guidance contained within the NPPF as well as development plan policy for the reasons set out in its decision notice, the case officer's committee report, and this statement of case. The proposed railings are considered to cause harm to the character and openness of the public open space and result in harm to permeability, contrary to Government guidance contained within the National Planning Policy Framework requiring the creation of safe and accessible environments and Policy ESD15 of the Cherwell Local Plan 2011-2013 (Part 1), which promotes permeable and accessible spaces, well designed landscape and development which contributes positively to an area's character and identity. The justification provided by the applicant is not considered to outweigh this harm. Accordingly, the Inspector is respectfully requested to uphold the decision made by the Council and dismiss this appeal.

### **Conditions**

1. The development shall be carried out strictly in accordance with the following plans and documents: UPP2-02-300 Rev N, UPP2-02-252, UPP2-02-211 and Application form

Reason – For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and comply with Government guidance contained within the National Planning Policy Framework.