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**Town and Country Planning (Appeals)  
(Written Representations Procedure  
and Advertisements) (England)  
Regulations 2013**

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**Appeal by Optimis Consulting Ltd  
On behalf of Bovis Homes  
in respect of:**

**Heyford Park Parcel B2A, Camp Road,  
Upper Heyford**

**LPA Application Ref: 17/01466/F**

**Refused by Cherwell District Council  
on 2<sup>nd</sup> October 2017**

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# **Appeal Statement**

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**8<sup>th</sup> December 2017**

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# 1 Introduction

## Background

- 1.1 This appeal is prepared and submitted by Optimis Consulting on behalf of the appellant, Bovis Homes, in respect of Cherwell District Council's refusal to grant planning permission for the *"Addition of approximately 310m of metal 'field' style railings painted black (Retrospective)."*
- 1.2 This statement provides a justification as to why retrospective planning permission for the retention of the railings should be granted.

## Reasons for Refusal

- 1.3 The planning application (LPA Ref. No. 17/01466/F) was submitted to Cherwell District Council (the 'LPA') on the 7<sup>th</sup> July 2017 and validated on the 26<sup>th</sup> July 2017. The application was refused by the LPA on 2<sup>nd</sup> October 2017 for the following reason:

*"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)."*

- 1.4 The Decision Notice, dated 2<sup>nd</sup> October 2017, is attached as **Appendix A**.

## 2 Site and Surrounding Area

- 2.1 The appeal site is located within Heyford Park, which is a former RAF/USAF airbase, that lies 7km to the north of Bicester. Redevelopment is being undertaken of the whole of the disused airfield, with the area surrounding the appeal site forming part of the residential scheme under the LPA Ref. Nos. 10/01642/OUT and 13/01584/REM.
- 2.2 Both, the overall residential schemes and the appeal site are located within the designated RAF Upper Heyford Conservation Area. There is not an Article 4 direction in place for the site.
- 2.3 Camp Road is located to the north of the appeal site, with Miller and Corbett Close being located to the East. To the west of the appeal site is another parcel of residential development with sustainable drainage features (Swales) being located between these two developments.
- 2.4 The location of the appeal site is shown in **Appendix B**.

### 3 Relevant Planning History

#### 3.1 Summary of relevant planning history:

| Application No.                               | Proposal  | Decision  | Date       |
|---|---|---|------------|
| <b>Heyford Park Parcel B2A (Appeal Site)</b>  |   |   |            |
| 17/01466/F<br><b>(Subject of this Appeal)</b> | 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.   | Granted, subject to conditions<br><b>(Appendix C)</b> | 20/01/2015 |
| 13/00153/DISC                                 | Discharge of Condition 8 of 10/01642/OUT (Design Code; <b>Appendix D</b> )  | Granted   | 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. | Granted<br><b>(Appendix E)</b>                        | 22/12/2011 |

#### **17/01466/F – Heyford Park (Appeal Application)**

3.2 This application sought retrospective planning permission for the retention of 310 metres of railings, which are 900mm in height and painted black. These railings are located on the eastern edge of the swale, with the line of railings being adjacently positioned to the existing footpaths that run to the west of the railings.

3.3 The application was refused by Cherwell DC on the grounds that harm would be caused to the character, openness, accessibility and the permeability of the public open space. As stated in the reasons for refusal (**Appendix A**) these points are not outweighed by the public safety or the demarcation of the public space. It is considered, that these railings would result in the formalisation of informal public spaces with this setting a precedent for enclosure of open spaces and removal of open frontages.

3.4 It is relevant to highlight that in the assessment of the application no objections were received from statutory and non-statutory consultees.

3.5 Below is the relevant planning history for the adjoining site on the Heyford Park estate:

| Application No.         | Proposal  | Decision                       | Date       |
|-------------------------|---|--------------------------------|------------|
| <b>Heyford Park B2B</b> |   |                                |            |
| 16/00083/NMA            | Non-material amendment to LPA Ref. 10/01642/OUT – Addition of metal railings to walkovers between balancing ponds for the safeguard of pedestrians      | Granted<br><b>(Appendix F)</b> | 06/12/2016 |
| 13/01584/REM            | Erection of 69 dwellings with associated car parking, infrastructure and landscaping, provision of public open space, play areas and flood attenuation. | Granted                        | 19/02/2014 |

#### **16/00083/NMA – Heyford Park Parcel B2B**

- 3.6 A non-material amendment application for the addition of metal railings was granted on the adjacent site in December 2016. The Officer’s Delegated Report concludes (Section 6.1, **Appendix G**) that this development “*would be wholly acceptable in its own right as it would enable safer pedestrian access*”. Furthermore, it was acknowledged that this complied with Paragraph 75 of the Planning, Health and Wellbeing PPG – “*planning policies should protect and enhance public rights of way and access*”.
- 3.7 As set out in the pre-application advice section of the Officer Report (**Appendix G**) discussion took place with the LPA and advice was sought in regard to the construction of timber fencing, which was rejected by the LPA due to it being “*inappropriate and not of the quality required in this conservation area*” (Paragraph 4.1, **Appendix G**).

## 4 Appeal Proposals

- 4.1 It is understood that in order for the railings to be retained, this needs to comply with conditions 1 or 4 of the reserved matters application (LPA Ref: 13/01584/REM) which require the development and boundary treatments to be carried out in accordance with the approved plans (including Drawing No. B0285-53-B2A), which provides details of approved boundary treatments; the submission of a planning application was required.
- 4.2 The railings have been installed along the eastern edge of the swale, located to the south of Camp Road, and to the west of Miller Close and Corbett Close. The railings, subject to this appeal are black, metal field-style and have a height of 900mm.



Images showing the railings in situ

- 4.3 Concerns have also been raised by the appellant's health and safety advisor in relation to the sloped grass banks of the swale, which could be slippery and hazardous with storm water sitting at the base of the swale. The inclusion of the railings is considered to go towards addressing these concerns.
- 4.4 The retrospective planning application, which is the subject of this appeal, is for the retention of a 310 metres length of railings. The application was submitted on the 7<sup>th</sup> July 2017, validated on the 26<sup>th</sup> July 2017 and then refused by Cherwell District Council on 2<sup>nd</sup> October 2017 for the following reason (**Appendix A**):

*"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)."*

- 4.5 These railings were erected prior to the planning application being submitted, with the Council's attention being brought to these through a resident's complaint. Further to the Council being made aware of this, the appellant was advised that planning permission was required for the retention of these railings, with the LPA being unlikely to support that application due to this preventing the "*permeability and accessibility we are trying to achieve on Heyford Park*".
- 4.6 The appeal site lies in the RAF Upper Heyford Conservation Area; however, it is relevant to note that the reason for refusal does not refer to harm being caused to the character or appearance of the Conservation Area.



## 5 Planning Policy Considerations

### (i) National Policy

#### **National Planning Policy Framework (NPPF)**

- 5.1 The NPPF was adopted on 27<sup>th</sup> March 2012; the aim of the NPPF was to provide a clear and simple planning framework which has, at its heart, a *“presumption in favour of sustainable development”*.
- 5.2 **Paragraph 9** states that *“pursuing sustainable development involves seeking positive improvements in the quality of the built, natural and historic environment, as well as in people’s quality of life, including (but not limited to):*
- *improving the conditions in which people live, work, travel and take leisure; ...”*
- 5.3 **Section 7** in particular deals with design of new development. NPPF **Paragraph 57** particularly advised that *“it is important to plan positively for the achievement of high quality and inclusive design for all development, including individual buildings, public and private spaces and wider area development schemes.”*
- 5.4 **Paragraph 60** also requires that *“planning policies and decisions should not attempt to impose architectural styles or particular tastes and they should not stifle innovation...”*
- 5.5 Local distinctiveness should be promoted and reinforced through developments (**Paragraph 60**), with securing high quality and inclusive design going beyond aesthetic considerations therefore meaning connections between people and places and the integration of new development into the natural, built and historic environment should be addressed (**Paragraph 61**). All developments should *“take the opportunities available for improving the character of an area and the way it functions”* (**Paragraph 64**).
- 5.6 **Paragraph 69** goes on to explain that the planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. Planning decisions *“should aim to achieve places which promote:*
- *safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion.*
  - *safe and accessible developments, containing clear and legible pedestrian routes, and high quality public space, which encourage the active and continual use of public areas”.*

#### **National Planning Practice Guidance (NPPG)**

- 5.7 Whilst design is seen as only part of the planning process, *“it can affect a range of economic, social and environmental objectives beyond the requirement for good design in its own right”* (**Paragraph: 006 Reference ID: 26-006-20140306**).
- 5.8 Furthermore, *“planning should promote cohesive and vibrant neighbourhoods”* as advised in **Paragraph: 014 Reference ID: 26-014-20140306**.

- 5.9 **Paragraph: 003 Reference ID: 13-003-20140306** states that development does not require permission in all instances, under some cases it will be permitted under national permitted development rights.
- 5.10 Permitted development rights, as stated in **Paragraph: 016 Reference ID: 13-016-20140306**, are “national grants of permission that allow certain building works and changes of use to take place without having to make a planning application”.

## **(ii) Local Policy**

### **The Cherwell Local Plan 2011 – 2031, Part One**

- 5.11 The Cherwell Local Plan 2011 – 2031 Part One was adopted on the 20<sup>th</sup> July 2015 and re-adopted on the 19<sup>th</sup> December 2016 to incorporate an updated policy.
- 5.12 Upper Heyford is noted as being allocated within the local plan for “*securing the delivery of a lasting arrangement on this exceptional large-scale brownfield site, whilst additional greenfield land is now allocated in the context of meeting the full objectively assessed housing needs of the District by realising the opportunities presented by the development of this new settlement*” (**Paragraph C.291**).
- 5.13 Provisions are made in relation to the importance of high quality design reflecting the distinctive character areas of the site (**Paragraph C.291**).
- 5.14 **Policy ESD15: The Character of the Built and Historic Environment** states that all new developments “*will be expected to complement and enhance the character of its context through sensitive siting, layout and high-quality design*”. The new development proposals should:
- “*Be designed to deliver high quality, safe, attractive, durable and healthy places to live and work in. Development of all scales should be designed to improve the quality and appearance of an area and the way it functions...*”
  - “*Promote permeable, accessible and easily understandable places by creating spaces that connect with each other, are easy to move through and have recognisable landmark features*”. (*Optimis emphasis*)
- 5.15 **Policy Villages 5: Former RAF Upper Heyford** states the intentions for the re-development of the site:
- The settlement should lead to the encouragement of walking, cycling and the use of public transport through the development and provision of footpaths and cycleways.
  - “*New development should reflect high quality design that responds to the established character of the distinct character areas where this would preserve and enhance the conservation areas...*”
  - “*Public open space should be provided to form a well-connected network of green areas, suitable for formal and informal recreation*”.

**RAF Upper Heyford Revised Comprehensive Planning Brief, 2007**

- 5.16 *“Enclosure of residential boundaries should be carefully considered with this being appropriate to the character of the site, and be specified in the design code. The treatment of residential boundaries and landscaping has an important role in defining public and private space, and in creating the character of the place”.* It is essential that this means of enclosure is appropriate. (Paragraph 4.10.6 – Treatment of Residential Boundaries).
- 5.17 The Planning Brief also advises that *“all side and rear boundaries abutting the public domain should be enclosed using appropriate materials which may vary from character area to character area”.*

**Heyford Park – The Former RAF Upper Heyford Design Code, 2013 (Pursuant to Condition 8 of 10/01642/OUT)**

- 5.18 The Vision of the Design Code explains in **Paragraph 1.5** that *“the overall aim is to unify the different development areas into a coherent whole, by enhancing the character of the area”.*
- 5.19 The Landscape Strategy and Placemaking Section for the Public Realm Code of the document explains that the linear park/SUDS corridor *“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”*, as noted in **Paragraph 5.7**.
- 5.20 **Paragraph 5.20** states that *“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)”*. (*Optimis emphasis;*

NB: It is however noted that the definition of a frontage is *‘the façade of a building, or the land between the front of a building and a public space, e.g. street or river’* (Oxford Dictionary).

## 6 The Appellant's Case

- 6.1 The railings, which are the subject of this appeal, are 900mm high when measured from the highest ground level immediately adjacent to the railings. The DCLG document 'Permitted development rights for householders - Technical Guidance' (April 2017) explains how to measure the height where the 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."*

- 6.2 It is relevant to note that means of enclosure, such as railings, can be constructed under Permitted Development Rights in accordance with the General Permitted Development Order (GPDO) 2015 (Amendment). This is explicitly noted under Schedule 2, Part 2, Class A of the GPDO (**Appendix H**), which states:

***"Permitted development***

***A. The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.***

***Development not permitted***

***A.1 Development is not permitted by Class A if—***

***(a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed—***

***...***

***(ii) in any other case, 1 metre above ground level; ..."***

- 6.3 Therefore, in accordance with this, the construction of the railings does not actually require planning permission to remain in place, as acknowledged by the LPA.

- 6.4 Railings of the same specification of those proposed by the appellant, have been granted by the LPA through a non-material amendment application on the adjacent site to the appeal site. This was granted on the 7<sup>th</sup> December 2016 with the LPA Ref: 16/00083/NMA. Details are shown in **Appendix I**.

- 6.5 Notwithstanding the above, there are further grounds to which planning permission should be granted, which are listed below.

Character

- 6.6 The *"overall aim is to unify the different development areas into a coherent whole, by enhancing the character of the area"* as stated in Paragraph 1.5 of the Design Code (**Appendix D**), which is what the railings are achieving, due to the fact railings at the subject of this appeal are the same as those granted through the non-material amendments application (LPA Ref: 16/00083/NMA, **Appendix I**).

6.7 The informal character of the open space and the formal linear pedestrian link arrangement will remain, and the railings will not have a harmful impact on the character of the area. The proposal is therefore in accordance with Paragraph 5.7 of the approved Design Code (Condition 8 of 10/01642/OUT; **Appendix D**).

#### Permeability

6.8 Within the decision notice (**Appendix A**), it is cited within the reason for refusal that one of the Council's concerns was that the railings would cause harm to the permeability of the area.

6.9 Due to the characteristics of the railings, consisting of vertical metal posts and a number of horizontal railings, they will clearly have a permeable appearance. Permeability is defined as having openings that allow objects/substances to pass through. The very nature of these railings is that they are see-through and therefore permeable, which is shown on the application drawings, **Appendix J**. Furthermore, the railings are field-style railings, therefore being of the style that you would expect to find around agricultural fields.

6.10 Furthermore, physically these railings are permeable and broken into a number of sections through the introduction of five access points throughout the length of 310 m. Three of which are openings and two are pedestrian gates. These are shown on Drawing No. UPP2-02-300 (Fence Key Plan) submitted to the LPA, **Appendix K**. All of these points are aligned with the existing pedestrian access points and pathways that are linked to the adjoining swale features and the public realm. The LPA confirms this in Paragraph 2.3 of the Committee Report for LPA Ref: 17/01466/F, **Appendix L**:

*“Two pedestrian gates and three access points of at least 1.2m in width have been incorporated along the fence. These have been positioned so as to align with existing footpaths within the swale and public realm.”*

6.11 As the permeability, and subsequent access throughout the development, is therefore not impeded through the introduction of the additional railings, due to their design and appearance, and the fact of multiple entrance points being incorporated; all of which are aligned with the footpaths currently present in the locality.

#### Accessibility

6.12 Harm to accessibility is also stated in the reason for the refusal of the planning permission. However, as explained above, the new development and the public open spaces remain fully accessible through the inclusion of access points and pedestrian gates.

6.13 Where the new railings are located adjacent to a private drive, opening have also been included at either side of the private drive to still allow full access to the public open space.

### Safety

6.14 One of the reasons for installing these railings was to address a safety concern in relation to the sloped banks, which surround the swale located to the west of the appeal site, as explained in the appellant's supporting statement for the Planning Committee (**Appendix M**).

6.15 This issue has been acknowledged in the reason for refusal, which states:

*"... outweighed by the public benefit or intended function of the railings in terms of public safety..."*

6.16 On this matter, paragraph 8.10 of the Committee Report (**Appendix L**) for the appeal application states that there is *"no evidence that the swale is unsafe"*, with the safety of pedestrians using the footpaths near the swale being a clear reason for granting consent for the installation of the railings on the adjacent site.

6.17 However, as evidenced in **Appendix N** – a complaint received by the appellant in February 2017 – local residents clearly have a concern about safety and the exposed nature of the steep slopes around the swales.

6.18 However, this position is inconsistent with other decisions that were made by the LPA in reference to the safety issue, with the railings being granted permission through LPA Ref: 16/00083/NMA (**Appendix F**) and justified within the Officer Report (**Appendix G**) as these would *"enable safer pedestrian access"*.

### Public Open Space

6.19 The reason for refusal makes reference to the *"formalisation of informal public open space"*, although it is considered that this public open space can be deemed to already be a formal space due to the inclusion of swales and drainage features in this area. This area is unlikely to be enjoyed in an informal way due to the position of the drainage features at a lower level, which does not facilitate informal activities. Furthermore, the creation of footpaths, which navigate around these swales mean that the environment is more structured, with there being little variation of routes and ways to move around the area.

### Materials/detailing

6.20 The railings are of the same design, material and height as those which were approved through a non-material amendment application on the adjacent site (**Appendices F and I**). As noted in Paragraph 6.1 of the Officer's Report (**Appendix G**), it is stated *"not only is it considered to be minor in nature, but it would by virtue of its design and sympathetic materials enhance the character and appearance of the Conservation"*.

### Precedence

6.21 Due to the reasons for the railings, to provide protection to the open swales, it is not considered that the railings would set a precedent for the enclosure of open space and the removal of open frontages. Furthermore, railings have been erected as a means of enclosure, and have already been approved on the adjacent site (**Appendices F and I**).

## 7 Conclusions

- 7.1 The Council's reason for refusing the application as shown in Section 6 show inconsistencies compared to other relevant applications in the area. The same railings have been granted permission on the adjacent site.
- 7.2 The Council's concern about the lack of permeability is not substantiated, as the railings are clearly permeable features – both in a visual sense due to their style and appearance, and also in a physical sense due to their segmented nature with access points and opening being provided.
- 7.3 As demonstrated in this Appeal Statement, the railings would in fact comply with the relevant policies that include the National Planning Policy Framework, Policy Villages 5: Former RAF Upper Heyford and Policy ESD15 of the Cherwell Local Plan 2011-2013 (Part 1) and would not cause harm to the character, openness, accessibility and permeability of the public open space.
- 7.4 The appellant therefore respectfully requests that the appeal is allowed, and that retrospective planning permission is granted for the retention of 310m of metal 'field' style railings painted in black.