



Appeal Decision

Hearing Held on 20 June 2019

Site visit made on 20 June 2019

by Andrew Dawe BSc(Hons) MSc MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 September 2019

Appeal Ref: APP/G3110/W/18/3213179

4 Lime Walk, Oxford OX3 7AE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Biggin Morrison Investments Ltd against the decision of Oxford City Council.
 - The application Ref 17/01480/FUL, dated 13 June 2017, was refused by notice dated 1 June 2018.
 - The development proposed is the demolition of vacant former MOT facility (Class B2) and the erection of 6no. flats (Use Class C3), associated landscaping and ancillary works.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of vacant former MOT facility (Class B2) and the erection of 6no. flats (Use Class C3), associated landscaping and ancillary works at 4 Lime Walk, Oxford OX3 7AE in accordance with the terms of the application, Ref 17/01480/FUL, dated 13 June 2017, subject to the conditions in the attached Annex.

Application for costs

2. At the Hearing an application for costs was made by Biggin Morrison Investments Ltd against Oxford City Council. This application is the subject of a separate Decision.

Main Issue

3. Whether the proposal should make provision for affordable housing.

Reasons

Main issue

4. Policy HP4 of the Oxford City Council Sites and Housing Plan (the SHP) sets out a requirement for a financial contribution towards affordable housing elsewhere where a proposed residential development would involve 4-9 dwellings. The proposed development, in not making any provision for such a contribution would therefore be contrary to that policy.
5. Planning applications should be determined in accordance with the development plan, unless material considerations indicate otherwise. Policy HP4 predates the current version of the National Planning Policy Framework (the Framework). The Framework, unlike the original version, sets out in

paragraph 63 that the provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas. That is a very significant material consideration. Policy HP4 also predates the Written Ministerial Statement dated 28 November 2014 (the WMS) which set out that such contributions for developments of 10 units or less, and which had a maximum combined gross floor space of 1000 square metres, should not be sought. That policy was reflected in the national Planning Practice Guidance (PPG).

6. Due weight should be given to policy HP4 according to its degree of consistency with the Framework. In respect of the matter of whether affordable housing should be sought on small housing sites, the policy is wholly inconsistent with paragraph 63.
7. I have however also had regard to the Council's Position Statement (PS) relating to Exceptional Affordable Housing Need in Oxford, March 2017, and the Council's Local Plan 2036 Affordable Housing Background Paper (BP). These were produced following the WMS and prior to other small housing schemes dismissed on appeal referred to by the Council at 8 Hollybush Row¹, Former Quarry Gate Public House², 23 and 25 Spring Lane³, and land adjacent to 75 Town Furze⁴, the former two including a finding that an affordable housing contribution should be made. The PS and BP highlight the local circumstances relating to Oxford being the least affordable city in the country due to a combination of high house prices compared to income, and a heavy reliance on the development of small sites for housing delivery due to the extent of built up area within a tightly drawn City Council boundary.
8. Having regard to those small sites, there is no clear break down in the PS or BP as to the proportion relating to sites containing 4-9 dwellings compared with those with 1-3. Submissions submitted by the appellant, based on the Council's raw data highlight that a large proportion of dwellings on small sites completed between 2010 and 2018 are on sites comprising 1-3 units, particularly since 2012. I acknowledge that this information was submitted very shortly before the Hearing with limited time for the Council to analyse it, and also that it does not take account of extant permissions. However, I have afforded some weight to it as it relates to data provided by the Council and provides an indicator of the relative proportions. I have received insufficient substantive evidence to clearly demonstrate to the contrary, notwithstanding the submission by the Council in response to that relating to completion sites rather than actual numbers of dwellings.
9. I acknowledge that such data alone cannot categorically prove any link between the number of 4-9 dwelling sites coming forward and the presence of policy HP4, due to various other influences referred to in the submissions. However, neither does it clearly show that it is not having some effect, despite high overall housing delivery and provision in that policy to allow for lower or even nil contributions where a proposal would otherwise be unviable.
10. Furthermore, I have had regard to evidence submitted relating to the level of financial contributions for affordable housing that have come forward on sites

¹ Ref APP/G3110/W/16/3165091

² Ref APP/G3110/W/16/3162804

³ Ref APP/G3110/W/18/3207780

⁴ Ref APP/G3110/W/18/3203669

relating to 4-9 dwellings since 2012. That indicates only a small number of cases where such contributions have been secured over a number of years. I acknowledge that the Council suspended seeking contributions relating to small sites during the period of uncertainty relating to Government policy on seeking affordable housing contributions in those cases. There may also be extant cases where such contributions remain to be paid and also sites still under consideration. It could also be explained to some extent by development granted permission prior to the adoption of policy HP4. However, I have insufficient substantive evidence before me to provide clarity in these respects.

11. In addition, I have taken account of the benefit of adding six dwellings to the general supply of housing in the city thereby also supporting, albeit to a small degree, the Government's objective of significantly boosting the supply of homes. There would also be likely short term economic benefits associated with the creation of construction jobs relating to the development. The proposal would also be making beneficial use of a currently vacant site. Furthermore, under current circumstances there would be the potential for a resumption of an incompatible B2 use in terms of noise and disturbance effects on neighbouring residents, regardless of whether or not this would have been the case in the past. It would therefore also have the benefit of providing a more compatible use in this location. These benefits provide additional weight in favour of the proposed development.
12. With regard to those dismissed appeal cases concerning 8 Hollybush Row and Former Quarry Gate Public House referred to above, I note that more weight was given to the basis behind policy HP4 than the conflict with the WMS, due to the exceptional circumstances relating to the need for and supply of affordable housing. However, whilst those decisions were taken despite the existence of the WMS, to which significant weight was attached, they were prior to the introduction of paragraph 63 to the Framework and the inconsistency of policy HP4 with it. Furthermore, there is no indication in those decisions that my colleagues had any figures relating to the numbers of dwellings that have specifically come forward on sites comprising 4-9 dwellings. The circumstances are therefore different to those other cases.
13. My colleagues in relation to the other two of those decisions referred to found that affordable housing contributions should not be provided. Whilst I note the Council's disagreement with those findings, and its claim that less evidential material was put forward in those cases, they nevertheless remain as material considerations and were made following the introduction of paragraph 63 of the Framework. I have also had regard to another appeal decision referred to by the appellant at Hawkswell Gardens, Ref APP/G3110/W/16/3162190, relating to three dwellings, albeit with regard to policy HP3 concerning a site of greater than 0.25 hectares, and which was allowed, having regard to the WMS and PPG. I do however acknowledge that my colleague in that case referred to no substantive evidence having been submitted to support the Council's position.
14. Another appeal decision referred to, that at land adjacent to 16 Beardell Street in London, Ref APP/N5660/W/18/3192507, and where an affordable housing contribution was found to be necessary, is not so directly comparable as it relates to the circumstances of a different local authority area. Furthermore, in the absence of any information to the contrary, it differs in that reference is made only to less than ten dwelling sites in respect of the relevant policy as opposed to a differentiation between 1-3 and 4-9 dwelling sites. Additionally,

the contribution that such sites make towards housing supply was not contested. I have therefore afforded little weight to that decision. Accordingly, whilst taking account of these other decisions in my reasoning, I have determined this appeal on its planning merits based on all the evidence before me.

15. For the above reasons, based on the evidence before me, I cannot be certain that policy HP4 has not negatively affected the delivery of 4-9 dwellings housing schemes or is resulting in a significant contribution to the supply of affordable housing, to the extent that local circumstances have been demonstrated to be such as to comprise an exception to paragraph 63 of the Framework. Therefore, despite the clear need for affordable housing in the city, in this case paragraph 63, together with the benefits referred to above, outweighs the proposal's conflict with policy HP4 in failing to provide a contribution to that need.
16. I have had regard to the matters and evidence concerning the viability of the proposed development were a financial contribution made to make provision for affordable housing. However, for the above reasons, regardless of the dispute between the parties over viability and the appellant's position that a financial contribution towards affordable housing would be unviable, I conclude on this main issue that the proposal should not make provision for affordable housing.

Other matters

17. I have had regard to concerns raised in respect of emergency and service vehicle access to the site. I have received no substantive evidence to indicate that such vehicles would not be able to safely or conveniently serve the proposed development, albeit that were they to come onto the site it would be likely to involve reversing from the road. Furthermore, whilst the proposal would not provide car parking, other than one disabled space, the site is located in a location easily accessible to a wide range of services and facilities to serve the day to day needs of prospective residents, either by foot, cycle or public transport. Adequate provision would also be made for cycle parking on the site.
18. In respect of the scale and modern design of the proposals, the buildings concerned would not appear as unexpected features in the context of the variety of designs and scales of existing buildings surrounding the site, including a noticeably taller development immediately to the west.
19. The proposed dwellings would be designed such that any direct overlooking of neighbouring residential properties from upper floor windows would only be towards the end of rear gardens, from varying distances, well away from the more private areas closer to the dwellings. Any overlooking towards the rear habitable rooms of existing dwellings would be both from a point of noticeable separation distance and at varying degrees of obliqueness. Any significant potential overlooking from ground floor windows, including one directly facing the rear of No 8 Lime Walk, would be prevented by screen fencing on the site boundaries. It is therefore unlikely that the privacy of surrounding residents would be harmfully reduced. Furthermore, the separation distances from neighbouring dwellings, together with the positioning of the proposed different height buildings on the plot, would be likely to ensure the retention of a good level of outlook from those neighbouring properties. Light emitted from the

proposed development would be unlikely to materially add to any existing emissions from surrounding properties so as to amount to causing harmful additional light pollution. I have received no other substantive evidence to suggest that the living conditions and amenities of surrounding residents would be materially harmed as a result of the proposals.

20. Prospective residents would be living in a largely residential area, and as such would be unlikely to experience noise and disturbance any greater than would normally be expected in such an area. Any potential effects from contamination of the site from past uses could be mitigated through a condition to ensure a suitable living environment. I have also no substantive basis to consider that the size and layout of each of the proposed dwellings and space around them would amount to being unsuitable, and they would provide an additional supply of flats to the mix of housing in the locality. The proposed layout of the site and relationship of the outdoor spaces to the dwellings causes me to consider that those spaces would be likely to be well used and so adequately maintained.
21. In terms of renewable energy, submitted measures relating to energy efficiency could be secured by a condition. I have also insufficient substantive basis to consider that local wildlife would be materially harmed as a result of the proposed development, despite what is currently a largely overgrown site being built upon. Concerns relating to drainage issues could also be addressed through a condition to secure measures to ensure adequate provision for surface water. In respect to concerns relating to boundary fencing, details of landscaping, including boundary treatment could also be secured by condition.

Conditions

22. The Council has suggested 15 conditions that it considers would be appropriate were I minded to allow the appeal. I have considered these in the light of advice in the Planning Practice Guidance and amended some of the wording.
23. The standard time condition is required in this case and for the avoidance of doubt and in the interests of proper planning, a condition requiring that the development is carried out in accordance with the approved plans would also be required. Although at the Hearing reference was also made to the vehicle track plot plans, they do not relate to anything not already shown on the other plans proposed to be constructed, and so do not need to be specifically referred to within such a condition.
24. In the interests of the character and appearance of the surrounding area, conditions would be necessary to ensure that the development is constructed in accordance with firstly submitted and approved samples of the materials to be used on the external elevations of the buildings; the submission of details of the proposed bin and cycle storage facilities, the latter also being in the interests of encouraging sustainable transport modes; implementation of tree protection measures; and the submission and implementation of a landscaping scheme.
25. In the interests of ensuring adequate drainage of the site, a condition requiring the submission and implementation of details of surface water drainage measures would be necessary. Furthermore, conditions to prevent harmful effects of any contamination of the site through investigation work and any necessary mitigation would be necessary.

26. To ensure that the proposed dwellings meet the needs of all members of the community, a condition to ensure they are appropriately accessible and adaptable would be necessary.
27. In the interests of energy efficiency and environmental sustainability, a condition would be necessary to ensure that the proposed development is carried out in accordance with the submitted Energy Efficiency Statement.
28. The Council has suggested a condition to remove permitted development rights for extensions and additions to the proposed stand alone single dwelling as well as for any outbuildings associated with it. The Council explained at the Hearing that this would be necessary, especially to preserve an adequate amount of garden space for the prospective residents. I consider that reason to be valid given that the space proposed for that dwelling would already be fairly small. However, it would only be necessary to remove permitted rights relating to Classes A and E in order to achieve that as those other Classes referred to relate to extensions or alterations to the roof, and porches of a restricted size. I have received insufficient substantive evidence to indicate that there would be such exceptional circumstances as to warrant the removal of those other permitted development rights.
29. In the interests of highway safety, conditions to ensure the provision and retention of the proposed parking space and exclusion of the site from eligibility for resident's parking permits would be necessary.

Conclusion

30. For the above reasons, I conclude that the appeal should be allowed.

Andrew Dawe

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Alan Divall BA(Hons)	Principal Consultant - Walsingham Planning
Clare Winnett	Partner – Carter Jonas
Jeremy Biggin	Director of Biggin Morrison Investments Ltd
Simon Morrison	Director of Biggin Morrison Investments Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Hereward Phillpot Q.C.	Queen’s Counsel
Amanda Ford	Team Leader – Policy
Sarah Orchard	Case Officer – Senior Planner
Matthew Hayes MRICS	Avison Young
Hayley Jeffery BA(Hons) DIPTP MRTPI	Planning

INTERESTED PERSONS:

Simon Sharp	JPPC
John Nealon	Member of Steering Committee of Headington Neighbourhood Forum, Treasurer of Headington Action

DOCUMENTS SUBMITTED AT THE HEARING:

1. Table submitted by Council containing completions data in response to that submitted by the appellant on 19 June 2019.
2. Costs application by the appellant against Oxford City Council.

ANNEX - CONDITIONS

1. The development to which this permission relates shall be begun not later than the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: L01, P100 Rev.C, P101, P102, P103, P104, P105.
3. Prior to their installation, samples of the materials to be used in the external elevations of the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the approved details.
4. Prior to the commencement of development, plans, calculations and drainage details to show how surface water will be dealt with on-site through the use of sustainable drainage methods (SuDS) shall be submitted to and approved in writing by the Local Planning Authority. The plans, calculations and drainage details will be required to be completed by a suitably qualified and experienced person in the field of hydrology and hydraulics. The plans, calculations and drainage details submitted shall demonstrate that:
 - I. The drainage system is designed to control surface water runoff for all rainfall up to a 1 in 100 year storm event.
 - II. The rate at which surface water is discharged from the site may vary with the severity of the storm event but must not exceed the current runoff rate and be aimed at reducing runoff to greenfield runoff rate for a given storm event.
 - III. Excess surface water runoff must be stored on site and released to receiving system at as close to greenfield rates as possible.

Any proposal which utilizes infiltration via a soak away is to be based on onsite geotechnical testing.

Prior to the occupation of the development the drainage infrastructure shall be constructed in accordance with the approved details and thereafter retained and maintained.

5. Prior to the first occupation of the dwellings hereby permitted, the cycle storage and bin storage, including means of enclosure, shall be provided within the site in accordance with details that shall first have been submitted to, and approved in writing by, the Local Planning Authority. Thereafter, the areas concerned shall be retained solely for the purposes of the parking of cycles and storage of bins.
6. The dwelling(s) shall not be occupied until the Building Regulations Part M access to and use of building, Category 2 accessible and adaptable dwellings, Optional requirement M4(2) has been complied with.
7. The development shall be carried out in accordance with submitted Energy Efficiency Statement.

8. The development shall be carried out in strict accordance with the approved tree protection measures contained within the submitted Arboricultural Impact Assessment dated March 2017 prepared by Land and Landscape Management Ltd, unless otherwise agreed in writing by the Local Planning Authority.
9. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or enacting that Order) no structure including additions to the dwelling house as defined in Classes A and E of Schedule 2, Part 1 of the Order shall be erected or undertaken without the prior written consent of the Local Planning Authority.
10. Prior to the first occupation of the dwellings hereby permitted, the proposed parking space shall be laid out in accordance with approved plans and retained thereafter for the parking of private motor vehicles.
11. The development hereby permitted shall not be occupied until the Order governing parking at the proposed development site has been varied by the Oxfordshire County Council as highway authority to exclude the site, subject to this permission, from eligibility for resident's parking permits and residents' visitors' parking permits unless otherwise agreed in writing by the Local Planning Authority.
12. Prior to the commencement of the development a phased risk assessment shall be carried out by a competent person in accordance with current government and Environment Agency Guidance and Approved Codes of Practice. Each phase shall be submitted in writing and approved by the Local Planning Authority (LPA).

A Phase 1 has been undertaken which has identified the potential for contamination to exist on the site and has recommended a Phase 2 be carried out on site.

Phase 2 shall include a comprehensive intrusive investigation in order to characterise the type, nature and extent of contamination present, the risks to receptors and to inform the remediation strategy proposals.

Phase 3 requires that a scheme of remediation and/or monitoring to ensure the site is suitable for its proposed use be submitted and approved in writing by the LPA. The remediation shall be carried out in accordance with the approved scheme and the applicant shall provide written verification to that effect.

13. The development shall not be occupied until any approved remedial works relating to condition 12 have been carried out and a full validation report has been submitted to and approved by the LPA.
14. Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on that part of the site affected shall be suspended and a risk assessment carried out by a competent person and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and

verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development (or relevant phase of development) is resumed or continued.

15. A landscape plan shall be submitted to, and approved in writing by, the Local Planning Authority prior to the commencement of development. The plan shall include a survey of existing trees showing sizes and species, and indicate which (if any) it is requested should be removed, and shall show in detail all proposed tree and shrub planting, treatment of paved areas, boundary treatments and areas to be grassed or finished in a similar manner. The landscaping proposals as approved by the Local Planning Authority shall be carried out upon substantial completion of the development and be completed not later than the first planting season after substantial completion.