

# Appeal Decision

Site visit made on 27 May 2021

**by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI**

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

**Decision date: 1<sup>st</sup> June 2021**

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**Appeal Ref: APP/C3105/W/21/3271094**

**Land at Bretch Hill, Balmoral Avenue, Banbury**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant outline planning permission.
  - The appeal is made by Lone Star Land Ltd against the decision of Cherwell District Council.
  - The application Ref 20/01643/OUT, dated 22 June 2020, was refused by notice dated 29 January 2021.
  - The development proposed is the erection of up to 49 homes, public open space, and other infrastructure.
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## Decision

1. The appeal is allowed and planning permission is granted for the erection of up to 49 homes, public open space, and other infrastructure on land at Bretch Hill, Balmoral Avenue, Banbury in accordance with the terms of the application, Ref 20/01643/OUT, dated 22 June 2020, and the plans submitted with it, subject to the conditions in a schedule attached to this decision.

## Procedural matters

2. The application was submitted in outline form with all matters, except for access, reserved for future consideration. The appeal will be determined on the same basis.

3. The address of the site and the description of the development (with the omission of the superfluous 'with all matters reserved except access'), as stated above, were those given on the application form. There are no reasons for using the address and description used by the Council.

4. The Council refused the application for five reasons in which they cited conflict with policies of The Cherwell Local Plan 2011-2031 (LP). The National Planning Policy Framework (NPPF) requires the Council to maintain a supply of land for housing "...sufficient to provide a minimum of five years' worth of housing against their housing requirement...". In a Statement of Common Ground (SoCG) dated 4 May 2021 it is stated that "...it is accepted that the Council cannot do so". Consequently, by virtue of paragraph 11(d) of the NPPF and Footnote 7 on page 6, and as stated in the SoCG, the aforementioned LP policies "...are 'out-of-date' and this appeal can only fail if the Council can demonstrate that any adverse effects of the proposal would significantly and demonstrably outweigh the benefits...". It is also stated that "The Council accepts that it cannot demonstrate this and that this appeal should be allowed". The Council has, in effect, withdrawn the five reasons for refusal of the application.

5. The appeal was set up to be determined following a Public Inquiry. However, the Council, given their changed position, would not be presenting any evidence and no other party has indicated that they wish to be heard at such an event. Under powers afforded by Section 319A(4) of the Town and Country Planning Act 1990 as amended, the Secretary of State has therefore decided that the appeal will proceed by the written representations procedure. Third party representations made at application and appeal stages will be taken into account. No party's position is prejudiced by the change in procedure.

### **Reasons**

6. Local residents are concerned, as expressed in written representations made at application and appeal stages, about, amongst other things, the effect of traffic resulting from the proposed development on highway safety, the scale of development in Banbury, and their living conditions. Access to the development site is along Balmoral Avenue from its junction with Broughton Road. It was noted at the site visit that Balmoral Avenue, particularly after its junction with Dorchester Grove, rises steeply towards the proposed access into the site. Evidence indicates that the steepness of the road contributed to a lorry causing damage to a house a few years ago but the road is not so steep that there would be any significant safety concerns. The Highway Authority has not expressed any concern for the safety of traffic or other highway users, and traffic associated with a development of only up to 49 houses is not likely to result in significant harm to highway safety.

7. For the same reasons traffic associated with the proposed development would be noticed by residents of Balmoral Avenue but is not likely to have any adverse effect on their living conditions. Despite current ongoing housing developments in Banbury there is an identified need for further housing in the District that the Council is failing to provide for. The need for affordable housing is more acute than the need for market housing and the proposed development would include not less than 30% affordable units. To the east of the site is a concrete water tower and a high telecommunications mast. These are visually unattractive features of the area but are not an impediment to residential development of the site. The site has existing residential development to the north, south and east. The proposed development would not be visually intrusive and would not harm the character or appearance of the area.

8. All matters mentioned by local residents have been taken into account but they do not, either individually or collectively, alter the conclusion that the proposed development would not cause any significant harm to any matters of acknowledged importance.

### **Conditions and Planning Obligation**

#### **Conditions**

9. The conditions in the schedule attached to this decision have been agreed by the Council and the Appellant but they have been amended, where necessary, to meet the tests set out in the Planning Practice Guidance (PPG) and in the interests of clarity, consistency and precision.

#### **Unilateral undertakings**

10. The Appellant has entered into a Planning Obligation, made under Section 106 of the Act, to mitigate the effects of the proposed development. The Obligation provides for the provision of affordable housing, the provision of open

space, the incorporation of a sustainable urban drainage scheme and its maintenance, and the payment of financial contributions towards schools, healthcare, bus services, highway and public rights of way improvements, a community hall, off-site indoor and outdoor sports facilities, and the provision of waste and recycling bins.

11. The District Council and the County Council have assessed the Obligation and have concluded that the obligations contained within it comply with Regulation 123(3) of the Community Infrastructure Levy Regulations 2010. The obligations are all necessary to make the development acceptable in planning terms. They are all, furthermore and in accordance with paragraph 56 of the NPPF, directly related to the development, are fairly and reasonably related in scale and kind to the development, and are in place to mitigate the effects of the development. The Legal Obligations therefore comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010.

### **Conclusion**

12. The proposed development of up to 49 houses is required to contribute to the supply of housing in the District and the social and other impacts of the development are mitigated by planning obligations. The contribution to housing supply is a significant benefit and is not outweighed by any adverse impacts. Planning permission has thus been granted for the erection of up to 49 homes, public open space, and other infrastructure on land at Bretch Hill, Balmoral Avenue, Banbury, subject to the conditions in a schedule attached to this decision.

***John Braithwaite***

Inspector

## **Schedule – Conditions for Planning Permission 20/01643/OUT**

1. No development shall commence until details of the layout (including the layout of the internal access roads and footpaths), scale, appearance, and landscaping (hereafter referred to as reserved matters) have been submitted to and approved in writing by the Local Planning Authority.

Reason: This permission is in outline only and is granted to comply with the provisions of Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. Application for approval of the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission.

Reason: This permission is in outline only and is granted to comply with the provisions of Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

3. The development hereby permitted shall be begun either before the expiration of five years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be approved whichever is the later.

Reason: To comply with the provisions of Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004, and Article 5(1) of the Town and Country Planning (General Development Procedure) Order 2015 (as amended).

4. Except where otherwise stipulated by conditions attached to this permission the development shall be carried out strictly in accordance with Drawing No. RL01 Rev B - Site Location Plan and Drawing No. 20496-06 Rev A - Proposed Site Access Arrangements.

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

5. No development shall take place until details of all ground levels and finished floor levels in relation to existing and proposed site levels and to adjacent buildings have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

Reason: To secure an acceptable standard of development that safeguards the visual amenities of the area and the living conditions of existing and future occupiers and to ensure compliance with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and government guidance within Section 12 of the National Planning Policy Framework.

6. No development shall take place until a desk study, to include a site walk over and to identify all potential contaminative uses on site and to inform the conceptual site model have been carried out by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11', has been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved desk study.

Reason: To ensure that any ground and water contamination is identified and adequately addressed to ensure the safety of the development, the environment and to ensure the site

is suitable for the proposed use to comply with Saved Policy ENV12 of the Cherwell Local Plan 1996 and Section 15 of the National Planning Policy Framework.

7. If a potential risk from contamination is identified as a result of the work carried out under condition 6, a comprehensive intrusive investigation to characterise the type, nature and extent of contamination present, the risks to receptors and to inform the remediation strategy proposals shall be documented as a report undertaken by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'. The report shall be submitted to and approved in writing by the Local Planning Authority before development is commenced.

Reason: To ensure that any ground and water contamination is adequately addressed to ensure the safety of the development, the environment and to ensure the site is suitable for the proposed use, to comply with Saved Policy ENV12 of the Cherwell Local Plan 1996 and Section 15 of the National Planning Policy Framework.

8. If contamination is found by undertaking the work carried out under condition 7, a scheme of remediation and/or monitoring to ensure the site is suitable for its proposed use shall be prepared by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'. The scheme shall be submitted to and approved in writing by the Local Planning Authority before development is commenced.

Reason: To ensure that any ground and water contamination is adequately addressed to ensure the safety of the development, the environment and to ensure the site is suitable for the proposed use, to comply with Saved Policy ENV12 of the Cherwell Local Plan 1996 and Section 15 of the National Planning Policy Framework.

9. If remedial works have been identified in condition 8, the development shall not be occupied until the remedial works have been carried out in accordance with the scheme approved under condition 8. A verification report that demonstrates the effectiveness of the remediation carried out shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that any ground and water contamination is adequately addressed to ensure the safety of the development, the environment and to ensure the site is suitable for the proposed use, to comply with Saved Policy ENV12 of the Cherwell Local Plan 1996 and Section 15 of the National Planning Policy Framework.

10. No development shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles and in general accordance with the principles of Drawing No. BAB-BWB-ZZ-XX-DR-CD-0004\_S2-P2 (Amended Drainage Strategy) and including an assessment of the hydrological and hydro-geological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include:

- a. Discharge Rates;
- b. Discharge Volumes;
- c. SUDS (Permeable Paving, Soakaway Tanks);
- d. Maintenance and management of SUDS features (to include provision of a SUDS Management and Maintenance Plan);
- e. Infiltration in accordance with BRE365;
- f. Detailed drainage layout with pipe numbers;

- g. Network drainage calculations;
- h. Phasing;
- i. Flood Flow Routing in exceedance conditions (To include provision of a flood exceedance route plan).

Development shall be carried out in accordance with the approved surface water drainage scheme.

Reason: To ensure that sufficient capacity is made available to accommodate the new development and in order to avoid adverse environmental impact upon the community and to ensure compliance with Policy ESD 7 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance within the National Planning Policy Framework.

11. No development shall take place until full details of improvements to footpath 120/24 within the planning application site, including, position, layout, construction, drainage and a timetable for the delivery of the improvements, have been submitted to and approved in writing by the Local Planning Authority. The footpath shall be improved in accordance with the approved details before any dwelling is occupied and shall be retained as improved thereafter.

Reason: In the interests of highway safety and public amenity and sustainable development and to comply with Policies ESD1, ESD15 and Banbury 10 and Government guidance contained within the National Planning Policy Framework.

12. No development shall take place until full details of the means of access between the planning application site and the highway on Balmoral Avenue to the south of the site, including, position, layout, construction, drainage and vision splays, have been submitted to and approved in writing by the Local Planning Authority. The means of access shall be constructed in accordance with the approved details before any dwelling is occupied and shall be retained as constructed thereafter.

Reason: In the interests of highway safety and to comply with Government guidance contained within the National Planning Policy Framework.

13. No development shall take place until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the Local Planning Authority. The CTMP shall incorporate the following:

- a. The CTMP must be appropriately titled, include the site and planning permission number.
- b. Routing of construction traffic and delivery vehicles is required to be shown and signed appropriately to the necessary standards/requirements. This includes means of access into the site.
- c. Details of and approval of any road closures needed during construction.
- d. Details of and approval of any traffic management needed during construction.
- e. Details of wheel cleaning/wash facilities – to prevent mud etc, in vehicle tyres/wheels, from migrating onto adjacent highway.
- f. Details of appropriate signing, to accord with the necessary standards/requirements, for pedestrians during construction works, including any footpath diversions.
- g. The erection and maintenance of security hoarding / scaffolding if required.

- h. A regime to inspect and maintain all signing, barriers etc.
- i. Contact details of the Project Manager and Site Supervisor responsible for onsite works to be provided.
- j. The use of appropriately trained, qualified and certificated banksmen for guiding vehicles/unloading etc.
- k. No unnecessary parking of site related vehicles (worker transport etc) in the vicinity – details of where these will be parked and occupiers transported to/from site to be submitted for consideration and approval. Areas to be shown on a plan not less than 1:500.
- l. Layout plan of the site that shows structures, roads, site storage, compound, pedestrian routes etc.
- m. A before-work commencement highway condition survey and agreement with a representative of the Highways Depot – contact 0845 310 1111. Final correspondence is required to be submitted.
- n. Local residents to be kept informed of significant deliveries and liaised with through the project. Contact details for person to whom issues should be raised with in first instance to be provided and a record kept of these and subsequent resolution.
- o. Any temporary access arrangements to be agreed with and approved by Highways Depot.
- p. Details of times for construction traffic and delivery vehicles, which must be outside network peak and school peak hours.

Development shall be carried out in accordance with the approved CTMP.

Reason: In the interests of highway safety and to mitigate the impact of construction vehicles on the surrounding highway network, road infrastructure and local residents, particularly at morning and afternoon peak traffic times.

14. Prior to first occupation of the development a Travel Information Pack shall be submitted to and approved in writing by the Local Planning Authority. The first residents of each dwelling shall be provided with a copy of the approved Travel Information Pack.

Reason: To ensure all residents and employees are aware from the outset of the travel choices available to them, and to comply with Government guidance contained within the National Planning Policy Framework.

15. Prior to its first occupation each dwelling shall be provided with ducting to allow for the future installation of electrical vehicle charging infrastructure

Reason: To maximise opportunities for sustainable transport in accordance with Government guidance contained within the National Planning Policy Framework.

16. No development shall take place until full details of the proposed footpath joining the new development to the highway on Balmoral Avenue to the north of the site, including, position, layout, construction, drainage and a timetable for the delivery of the improvements, have been submitted to and approved in writing by the Local Planning Authority. No dwelling shall be occupied until the footpath has been constructed in accordance with the approved details.

Reason: In the interests of highway safety and public amenity and sustainable development and to comply with Policies ESD1, ESD15 and Banbury 10 and Government guidance contained within the National Planning Policy Framework.

17. No development shall take place until a Construction Environment Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved CEMP.

Reason: In the interests of highway safety and the residential amenities of neighbouring occupiers and to comply with Government guidance contained within the National Planning Policy Framework.

18. No development shall take place until details of the means by which all dwellings shall be designed and constructed to achieve an energy performance standard equivalent to a 19% improvement in carbon reductions on 2013 Part L of the Building Regulations (unless a different standard is agreed with the Local Planning Authority) has been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details and no dwelling shall be occupied until it has been constructed in accordance with the approved energy performance measures.

Reason: In the interests of environmental sustainability in construction in accordance with the requirements of Policy ESD3 of the Cherwell Local Plan 2011-2031 Part 1 and government guidance in the National Planning Policy Framework.

19. No dwelling shall be occupied until it has been constructed to ensure that it achieves a water efficiency limit of 110 litres per person per day and shall continue to accord with such a limit thereafter.

Reason: In the interests of sustainability in accordance with the requirements of Policy ESD3 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

20. No development shall take place, including any demolition and any works of site clearance, and as part of any reserved matters application for layout and landscaping, until a method statement and scheme for enhancing biodiversity such that an overall net gain for biodiversity is achieved, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of enhancement features and habitats both within green spaces and integrated within the built environment, shall be in general compliance with Enhancement Area – Ecological Management Plan, report reference: edp4380\_r004, shall include a biodiversity impact assessment metric, and shall include a timetable for provision of the biodiversity enhancement measures. The biodiversity enhancement measures shall be carried out and shall be retained in accordance with the approved scheme.

Reason: To ensure the development provides a net gain in biodiversity in accordance with Policy ESD10 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

21. No development shall take place until a Landscape and Ecology Management Plan (LEMP) has been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved LEMP.

Reason: To protect habitats of importance to biodiversity conservation from any loss or damage in accordance with Policy ESD10 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

22. Prior to the installation of any external lighting, a full lighting strategy to include illustration of proposed light spill and which adheres to best practice guidance, shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved strategy.

Reason: To protect habitats of importance to biodiversity conservation from any loss or damage in accordance with Policy ESD10 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

23. The development hereby permitted shall be carried out in accordance with the recommendations set out in sections 6.2 to 6.8 of the Ecological Appraisal, report reference: edp4380\_r002d, carried out by EDP dated June 2020.

Reason: To ensure that the development does not cause harm to any protected species or their habitats in accordance with Policy ESD10 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

24. No dwelling shall be occupied until approval has been given in writing by the Local Planning Authority that either:

a. Evidence to demonstrate that all water network upgrades required to accommodate the additional flows/demand from the development have been completed; or

b. A housing and infrastructure phasing plan has been agreed with Thames Water and the Local Planning Authority in writing to allow additional properties to be occupied. Where a housing and infrastructure phasing plan is agreed no dwelling shall be occupied other than in accordance with the agreed housing and infrastructure phasing plan.

Reason: The development may lead to no / low water pressure and network reinforcement works are anticipated to be necessary to ensure that sufficient capacity is made available to accommodate additional demand anticipated from the new development.