



Appeal Decision

Hearing held on 11 June 2024

Site visits made on 11 and 12 June 2024

by Melvyn Middleton BA(Econ), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th July 2024

Appeal Ref: APP/D3125/W/22/3310486

Land South of Main Road, Curbridge, Oxfordshire OX29 7NT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Messrs J, G, S and E Forde against the decision of West Oxfordshire District Council.
 - The application Ref is 22/00744/OUT.
 - The development proposed is provision of up to 25 dwellings (including affordable housing and self-build housing) with access, parking, amenity space, open space, landscaping, drainage and associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application form specifically indicates that the proposal is in outline with all matters, apart from the means of access, reserved for subsequent approval. At the same time the description suggests that the proposal includes parking, amenity space, open space, landscaping and drainage. At the Hearing, the Appellant confirmed that all matters were reserved apart from the access. In its committee report and decision letter, the Council describes the proposal as "outline application for the provision of up to 25 dwellings (including affordable housing and self-build housing) and associated works, with all matters reserved except site access. I have determined the appeal on this basis.
3. The application is accompanied by a Planning and Design and Access Statement, a Flood Risk Assessment, a Drainage Strategy, a Transport Statement, and a Preliminary Ecological Appraisal. An illustrative layout (drawing P101-R1) was subsequently revised, at the request of the highway authority, to incorporate a pedestrian access into the site from Main Road, immediately adjacent to Long's Cottage¹. On this basis the highway authority does not object to the proposal, subject to conditions, and in that context, neither do I. The illustrative layout is for information only and represents only one of a number of potential ways in which this proposal could be implemented if the appeal is allowed. Nevertheless, as the proposal involves the construction of up to 25 dwellings and I need to satisfy myself that this can be achieved, on the site, in an acceptable way, I have primarily relied on the information contained in this layout when undertaking my assessment.

¹ Shown in detail on drawing no PL02 Rev B

4. One of the two reasons used to refuse the planning application referred to the absence of a completed legal agreement to secure the provision of affordable housing and financial contributions to offset the infrastructure impact of the proposal. In particular, on sport and leisure, public transport, public rights of way, education, waste and biodiversity net gain.
5. Whilst the appeal was being considered, the Appellant prepared and submitted a signed Agreement made pursuant to Section 106 of the Town and Country Planning Act 1990, containing obligations in favour of West Oxfordshire District Council and Oxfordshire County Council. In the agreement the landowners agree to provide 40% of the residential dwellings as affordable units, plus three plots upon which self-build or custom-build dwellings can be constructed, together with mechanisms for delivering the dwellings. The Owners also agree to provide highway and footpath improvements adjacent to the site, in accordance with an Agreement under Section 278 of the Highways Act 1980. Additionally, financial contributions to facilitate the improvement of sport and leisure, education, public transport, recycling and public rights of way facilities and services, are to be made to the Councils. I agree that biodiversity net gain could be secured by a condition.
6. The Deed includes a clause that says that the covenants and obligations shall not apply or be enforceable, if I find in my decision letter that any obligations are unnecessary or otherwise fail to meet the relevant statutory tests.
7. In my judgement these financial contributions, towards capital expenditure on new or extended public facilities, are necessary to make the proposal acceptable in planning terms. The existing facilities do not have capacity to meet the requirements of the population that would live at the appeal development. The agreed financial contributions would enable the Councils to provide for the requirements of the appeal population in West Oxfordshire District and are justified. Following the completion of the Agreement, the Council withdrew reason for refusal No. 2.
8. Overall, the Obligations and the Undertakings that could be secured by conditions or agreement, are related to the requirements of the relevant DP policies and are necessary to make the development acceptable in planning terms. They are directly related to the development and fairly and reasonably related in scale and kind to it, mitigating any harmful effects of the development where appropriate. They therefore comply with the tests set out in paragraph 57 of the *National Planning Policy Framework* (NPPF), the advice in the *National Planning Practice Guidance* (NPPG) and with Regulation 122 of the *Community Infrastructure Regulations* (CIL) 2010. Additionally, there is no conflict with CIL Regulation 123(3).
9. Following an Inquiry in February 2024, when detailed assessments of housing land supply in West Oxfordshire District were considered, on 28 March 2024 an Inspector concluded that there is only a supply of 4.38 years². At the beginning of the Hearing the Council confirmed that it accepted this position.

² Appeal Ref: APP/D3125/W/23/3331279 Land south of Burford Road, Minster Lovell, Oxfordshire

Main Issues

10. In the light of the above and having regard to all that I have read, heard, and seen, I consider that the main issues in this case are:

Whether the proposal is sustainable development that is in accordance with the Development Plan, when read as a whole, with particular reference to:

- a) The scale and location of the proposed development in the context of the policy approach to housing development at Curbridge;
- b) The development's impact on the listed Thatched Cottage;
- c) The effect of the proposed development on the character of the area, including the form of the village and its landscape setting;
- d) The effect of the proposal on the Public Right of Way (PRoW) that crosses the site and the proposed changes to the pedestrian network.

and

Whether there are any benefits of the proposal that are of sufficient weight to outweigh the presumption in favour of determining planning applications in accordance with the Development Plan.

Reasons

Five-year supply of housing land

11. The absence of a five-year supply of housing should be looked at in the context of the LPs stepped approach to housing delivery. Despite a lower annual housing requirement than is proposed from 2024 onwards, the overall delivery is currently in deficit. From 2024 the annual requirement will have risen from 550 dwellings per annum to 1125. Based on the deliverability of housing commitments, the Appellant estimates that there will be a cumulative deficit of more than 3,000 dwellings by 2026. Progress on strategic allocations has been slower than anticipated and the Council is now unlikely to deliver the number of homes during the plan period that were expected.
12. There is also an acute need for affordable housing in West Oxfordshire. In such circumstances it is important that steps are taken to boost the supply of housing, as suggested in paragraph 60 of the NPPF. The appeal proposal, although comparatively modest in size, would assist in boosting the five-year supply, providing self/custom build housing as well as affordable and market dwellings.

Development plan

13. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission to be determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for the area is the West Oxfordshire Local Plan (LP) 2011-31, which was adopted in 2018. Policy H1 sets out the distribution of housing across the district and anticipates that some of the proposed housing will be provided at windfall sites. Policy H2 builds upon this and says that new dwellings will be permitted at identified villages on undeveloped land, adjoining the built-up area, where convincing evidence is presented to demonstrate that

it is necessary to meet identified housing needs and it is in accordance with other policies, in particular the general principles in Policy OS2. Curbridge is one of the identified villages.

14. The proposal would help to meet identified housing needs and Curbridge is a suitable location for some additional housing. In principle the proposal accords with Policies H1 and H2. Because the proposal is not in conflict with LP Policies H1 and H2, the absence of a five-year supply of housing land is somewhat academic in this context.
15. Policy OS2 sets out general principles that all development should meet. In the context of this appeal, the proposal should:

Be of a proportionate and appropriate scale to its context.

Form a logical complement to the existing scale and pattern of development and/or the character of the area.

Conserve and enhance the natural, historic or built environment.

Protect or enhance the local landscape and the setting of the settlement.

Not involve the loss of an area of open space or any other feature that makes an important contribution to the character or appearance of the area.

Scale and location of development

16. The LP does not define proportionate, it is left to be determined as a matter of judgement based on the specific circumstances of each individual case. In terms of the number of dwellings, up to 25 were applied for. That represents about 11% of the current number of dwellings in the village. However, a further 14 dwellings were given planning permission in 2016 at Dovecote Place. If the appeal proposal were to be allowed and built out by 2031, then the number of dwellings in Curbridge would have risen by at least 18% during the plan period.
17. LP Policy T1 gives priority to sites that have good access to a wide range of facilities and where the need to travel by private car can be minimised. According to the Council's Settlement Sustainability Report³ Curbridge is ranked thirty second out of forty-one settlements in West Oxfordshire, scoring only a half of the number of points received at the highest scoring village. Most notably it does not have a shop, a post office, a doctor's surgery or a school. Additionally, at the time of the site visit, daytime bus services had reduced to two hourly and the Public House was closed and up for sale. There is no concrete evidence to confirm that it is about to reopen.
18. Nevertheless, Curbridge is located within four kilometres of Witney Town Centre, which has a wide range of services and facilities, and the village is even closer to local facilities, employment opportunities and the more frequent bus services found in some of the new neighbourhoods, immediately to the north of the A40 by-pass, in south Witney. However, the by-pass acts as a physical and social barrier and in this context, I consider the opportunities for walking, cycling and the use of public transport when visiting workplaces, services and facilities from the proposed development to be limited.

³ West Oxfordshire Local Development Framework, Settlement Sustainability Report, November 2016

19. The sustainability credentials of Curbridge in a transportation context suggest to me that any additional population would need to travel by vehicle to visit most workplaces, services and facilities and that it would have a high reliance on the use of private vehicles. The proposal is not supported by LP Policy T3. A cautious approach is therefore justified when assessing whether or not this proposal is proportionate and appropriate to the scale of this village. In my view the addition of a further 25 dwellings to the housing stock at Curbridge at this point in time would be on the high side of proportionate.
20. When undertaking a similar assessment, the Inspectors determining the appeals, at the larger settlements of Ducklington and Minster Lovell, came to similar conclusions. These villages are also close to Witney and its new neighbourhoods but have much higher populations and housing numbers, as well as better facilities and services than Curbridge. These appeals were nevertheless considering similar proportional additions. I find that the appeal proposal would not be of a proportionate and appropriate scale to its context and is therefore contrary to LP Policy OS2 in this respect.

Historic environment

21. Thatched Cottage is a Grade II Listed Building that backs onto the appeal site. Before unsympathetic flat-roofed extensions were built to its side and rear, it was a two roomed, semi-detached single storey dwelling, with a thatched roof containing an attic that has one small window at eaves height on each of the front and rear elevations. Their positions suggest to me that their function is to provide light to the attic area and that they do not easily function as points for viewing the countryside to the rear. Any views at ground-floor level from or of the original cottage are now obscured by the single storey rear extension and beyond that the sheds, rear fence and other paraphernalia that significantly restrict the visibility of and from the rear of the property.
22. The thatched roof is nevertheless increasingly visible as pedestrians walk up the PRoW to the south-west, above the obstructions that are now immediately behind the cottage. The notional layout suggests that this appreciation of the rear roof of the listed building, from public space on the appeal site, could largely be lost if the PRoW were to traverse the site along a narrow passage between the hedgerow and new buildings, particularly if the suggested locations of new buildings to the rear of Thatched Cottage were to be implemented. Such a layout would be harmful to the appreciation of the listed building.
23. At the present time there are views of trees to the west of Brampton Road between Thatched Cottage, the rear of Long's Cottage and Modica. As the Council points out, this glimpse of the countryside, beyond the village, reinforces the appreciation of the historic setting of the Listed Building within the countryside. Were this to be obscured by built development, then there would be further harm to the setting of the Listed Building. By not respecting the cottage's historic/architectural character, which undoubtedly contributes to local distinctiveness, the proposal would not conserve and enhance the historic environment. In these circumstances, the proposal would be contrary to LP Policies OS2 and OS4, which seek to protect the historic environment.
24. In the context of Section 16 of the NPPF, I consider that the development of the proposal could lead to less than substantial harm to the significance of the designated asset. The extent of that harm will depend upon the degree of

mitigation that the final detailed proposal contains. At the moment, the notional layout suggests that there could be significant harm to the elements that I have discussed. However, different layouts could ensure that the view of the trees west of Brampton Road are retained and the cottage's thatched roof is able to be appreciated from the PRow as it approaches the rear of the cottage, or from some other public space close to the rear of the cottage.

25. Paragraph 208 of the Framework requires me to weigh the less than substantial harm to the significance of the Listed Building, resulting from the proposal, against the public benefits of the proposal.
26. The scheme would provide a limited amount of mixed housing in a District where there is currently no five-year housing land supply. This includes much needed self/custom build housing, as well as affordable housing. The affordable housing is a policy requirement in any event so that this does not attract significant weight, but the self/custom build housing is not and does. There would be short- and long-term economic benefits but in the context of the size of the scheme and the now limited existence of services and facilities at Curbridge, this attracts little weight. Whilst a new pedestrian link to the PRow, to the rear of Thatched Cottage, if appropriately implemented, would be a benefit, I am not persuaded that the other suggested enhancements to the PRow network would be of any major benefit to the residents of the appeal scheme, let alone the wider population.
27. Paragraph 205 of the NPPF says that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation, irrespective of whether any potential harm amounts to substantial harm. Whilst the totality of the benefits are significant, and the outcome finely balanced, in my view, they are not collectively sufficient to outweigh the potential extent of the identified "less than substantial harm" to the significance of the listed Thatched Cottage. In my view, the potential harm to the heritage asset could outweigh the suggested benefits of the scheme in terms of paragraph 208 of the NPPF.
28. In coming to this conclusion, I have taken account of the somewhat modest scale of housing that would be delivered, and that although the housing land supply and affordable housing shortfalls are significant and could be longstanding, taking some time to bridge, they are also likely to be temporary. In contrast, the potential harm to the significance of this heritage asset would be of a far more permanent nature. Consequently, the tilted balance of NPPF paragraph 11 is not engaged.

Character and appearance of the area

29. The Council argues that the urban fabric of the village is characterised by linear development. The built development within the village as a whole is composed of single and two-storey detached and semi-detached properties fronting Main Road and Well Lane in close lines and more sporadically along Brampton Road, to the south of its junction with Well Lane.
30. However, that is not universally the case, particularly along Main Road, where there are three in depth developments. They probably originated as farmsteads and include historic dwellings and agricultural buildings that have been converted into dwellings, along with new ones that have been infilled within informal layouts. Although the appeal site has now lost most of its historic

development, there is nothing to suggest that through good design, a development at the appeal site that is of a similar quality to the farmstead developments, could not be achieved.

31. This is an outline application for up to 25 dwellings. The illustrative layout that accompanies the appeal (P101-R1) is based on a development off comparatively long access roads with some development on one side only. Such a layout, that would protrude into the open countryside significantly beyond the previous limits to development, at this site and to a greater extent than at the other in-depth developments off Main Road, would not respect the character of the built form of this part of the village. Additionally, there would be an excessive and unnecessary amount of hard public space within the development. In consequence, it would not be in keeping with the layout component of the character of this part of the village.
32. Furthermore, the layouts that accompany the appeal, do not integrate with or relate to the existing townscape along Main Road, where the existing buildings back onto the pavement or are only set back a short distance. They suggest an independent development that has turned its back on the rest of the village. Whilst I was referred to Dovecote Place, which was approved in 2016, that development, which contains 16 dwellings, is much smaller than the appeal proposal and wraps around the existing development on Well Lane rather than extending linearly into open countryside, as the notional appeal proposal would. I therefore find that the appeal proposal may not form a logical complement to the existing scale and pattern of development along Main Road or complement the character of the area. In this context, it is therefore contrary to these aspects of LP Policy OS2.

Landscape setting

33. Main Road and Well Lane form two sides of a triangle. Their frontage development is separated by open fields. Because of topography and vegetation, this area and any development within it, would not impinge upon the open countryside to the south-east. The third side of the triangle is bounded by Brampton Road. Apart from adjacent to Well Lane, where the Dovecote Place development takes access from the road, this side of the triangle is open and there are extensive views from this road across open land to the historic part of the village along Main Road. Both sides of this road contain listed buildings as well as a number of other attractive old buildings. Although not listed or within a Conservation Area, these are nevertheless collectively a minor heritage asset that paragraph 209 of the Framework says should be taken into account when determining planning applications.
34. As the Council emphasises, the open land within the apex of the triangle makes an important contribution to the rural character of the setting of this historic part of the village, particularly when viewed from Brampton Road and the public footpath that runs between Brampton Road, adjacent to the Dovecote Place development, and Main Road adjacent to Modica. At the present time, even at the height of summer, there are some filtered views of the part of this area to the north-east of Elm Bank Ditch, across the appeal site from Brampton Road and from the public footpath as it follows the north-western boundary of the appeal site and through the hedgerows. In winter, when the hedgerows are bare, the visibility would be more pronounced than it is in summer when the site visit occurred.

35. If the area to be development were as shown on the notional layouts, then the views of the development and beyond, which includes the development along the south-western side of Main Road at and behind Curbridge and Willow Farms, together with its landscape setting within the apex of the triangle, would be noticeably restricted from Brampton Road. This is largely as a result of the proposed extent of the built development along the length of the public footpath and particularly that part which would be closest to Elm Bank Ditch. In such circumstances there would be harm to the local landscape and the setting of the settlement. The proposal would involve the loss of views experienced by pedestrians over an area of open land, part of which makes an important contribution to the character and appearance of the village. It would not conserve the natural environment and in this context would not be in accordance with LP Policy OS2.

Public footpath

36. The public footpath that follows the north-western boundary of the appeal site appears to be well used. At the present time there are extensive views across the open triangle from it, including into its apex and across the appeal site to Brampton Road. Extensive built development on the appeal site would totally change the ambience of the walk in this area and would harm the experience. The proposal would result in the loss of an area of open land that makes an important contribution to the experience of using the PRow, contrary to this aspect of LP Policy OS2.
37. Beyond the appeal site the PRow is constrained, passing through a confined space between Modica and Stanhope Cottage to Main Road. The highway authority have asked for a new pedestrian access into the appeal site adjacent to Long's Cottage. This could be linked through the development to the existing PRow to the south-west of Modica, providing its users with an alternative to the narrow passageway. However, as an alternative, a link from Main Road to the proposed undeveloped area close to Elm Bank Ditch, following the boundary with Brampton Road, is proposed by the Appellant on the illustrative plans. From close to the existing overgrown field-gate, this would link to the PRow, along a new path from Brampton Road to the PRow close to where it crosses Elm Bank Ditch.
38. I agree with the Council, that this route would be much more circuitous than the existing PRow route and that the part of this route, which parallels Brampton Road, duplicates an existing footpath from Main Road to Brampton Road across highway land. In consequence, it would add little value to the existing footpath provision in the area. At the same time, built development appears to be proposed close to the existing PRow, creating a narrow confine, for pedestrians to walk along, between buildings and the hedgerow. This would result in further disbenefits to walkers using it and additional harm.
39. If a route close to Brampton Road was appropriate as a means of walking from Main Road to the junction of Brampton Road with Well Lane, then most walkers that use the existing PRow, despite its constraints, would be using the existing route via Brampton Road. The condition of the footpath along the alignment of the PRow, at the time of the site visit, suggests that this is clearly not the case. I therefore find that the implied proposals for the movement of pedestrians through the site would have little benefit for pedestrians. The

proposal would not maximise opportunities for walking and is contrary to LP Policy T3 in this respect.

Planning balance

40. On the basis of the illustrative information accompanying the appeal, the proposed scheme could lead to less than substantial harm to the significance of Thatched Cottage as a designated heritage asset. There could also be harm, to the character and appearance of the settlement and its setting because of the development's size and potential layout. Additionally, it may not maximise the opportunities for pedestrians in the locality. The proposal conflicts with LP Policies OS2, OS4 and T3. I consider that the proposal could be in conflict with the Development Plan as a whole.
41. Because of the potential harm to the Listed Building, the presumption in favour of sustainable development does not apply. The harm to the significance and special interest of Thatched Cottage as a listed building, to the character and appearance of the area, the setting of Main Road and also the associated development plan conflict would not be outweighed by the collective benefits of the scheme, which I discuss above (paragraph 26).
42. Consequently, while in many respects the proposal would contribute positively to sustainable development objectives as set out in the NPPF, particularly in terms of housing delivery, the scheme would not overall be sustainable development in the terms of the NPPF such that there is no presumption in its favour.
43. Nevertheless, the proposed layouts before me do not represent the only ways that a housing development could be designed and constructed at this site. In my view by creative design, the identified harms to the Listed Building could be affectively accommodated such that although there would still be some less than substantial harm to the listed building, that harm could be outweighed by the benefits of the scheme. Similarly, the issues relating to the character and appearance of the settlement and its landscaped setting could be resolved by improved design to the layout. There are also opportunities to improve the experience of pedestrians traversing this site on the PRow. In assessing these cumulative harms and potential solutions to them, I have concluded that the site could not accommodate 25 dwellings, a number that I have found to be disproportionate in the context of the size of and facilities located at Curbridge, in any event. It would also be unlikely that a number close to it could be accommodated in a satisfactory way.

Other matter

44. The Appellant referred me to a similar scheme for up to 20 dwellings on a smaller site and also submitted a notional layout for the area of built development, proposed by that scheme, that accommodated 25 dwellings. In my view the extent and nature of these proposals do not overcome the harms that I have outlined above. Nevertheless, a less extensive, imaginative development of up to 20 dwellings may reduce the harm to an extent that the harm to the Listed Building was at a lower end of the spectrum of less than significant harm, such that it was outweighed by the public benefits. Likewise, mitigation to the other harms could result in similar outcomes.

45. The principle of a scheme for up to 20 dwellings is not formally before me and there has been no consultation about it in the context of this appeal. Notwithstanding my observations above, it would not be appropriate for me to amend the size of the scheme at this juncture.

Conclusion

46. For the reasons given above the appeal should be dismissed.

Melvyn Middleton

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Jake College	JC Planning Consultancy
Patrick Maguire	Asset Heritage Consultancy
Jeff Richards	Turley (Housing Delivery)

FOR THE LOCAL PLANNING AUTHORITY:

Chris Wood	Senior Appeal Officer West Oxfordshire District Council
Judith Coats	Infrastructure Funding Team Leader, Oxfordshire County Council

DOCUMENTS SUBMITTED TO THE HEARING

Regulation 122 Compliance Statement	Oxfordshire County Council
Agreed Conditions	West Oxfordshire District Council
	(Received 26 June 2024)