

Appeal Decision

Site visit made on 15 May 2024

by E Pickernell BSc MSC MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th August 2024

Appeal Ref: APP/D3125/W/23/3331704

Land Formerly Known As The Square, Road Through Church Enstone, Church Enstone, Oxfordshire OX7 4NL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr Roger Burton against the decision of West Oxfordshire District Council.
- The application Ref is 23/00860/FUL.
- The development proposed is described as "The proposal is for the construction of a single family dwelling of three bedrooms and a fourth bedroom/home office, three bath/shower rooms (two on the first floor, and a third accessed at ground floor level) with a series of reception rooms - kitchen/dining/living and sitting room - with supporting storage and utility areas. The nett internal floor area of the dwelling is 202 sq m. An outbuilding will have a footprint of c. 40 sq m. The house has been designed to achieve 'carbon neutral' based on Passivhaus, providing a healthy environment with low operational costs, achieved by the construction of a highly insulated and airtight envelope, with mechanical ventilation and heat recovery (MVHR) and with appropriate renewable technologies. The superstructure will be built off-site.

The site will incorporate both natural and more intimate 'garden areas' while retaining all the existing trees of which four are the subject of a TPO."

Decision

1. The appeal is allowed, and planning permission is granted for the erection of a single dwelling at Land Formerly Known as The Square, Road Through Church Enstone, Church Enstone, Oxfordshire OX7 4NL in accordance with the terms of the application, Ref 23/00860/FUL, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. Since the determination of the application the Government published a revised National Planning Policy Framework (the Framework) in December 2023. The parties have had the opportunity to comment on the relevance of the revised Framework to the appeal and I have taken these submissions into account in my decision.
3. I have used the description of development given on the application form in the banner heading above. However, it is clear from the appeal form that a revised description was agreed, and I have used that given on the decision notice in my formal decision above.

4. A Unilateral Undertaking (UU) under section 106 of the Town and Country Planning Act 1990 (as amended) signed and dated 1 March 2024 was submitted as part of the appeal. This has obligations relating to Self-Build and Custom Housebuilding (SBCH). The Council have had the opportunity to comment on this. I return to this matter below.

Main Issues

5. The main issues are:
 - whether the appeal site is an appropriate location for a dwelling, having regard to local planning policies;
 - the effect of the development on the character and appearance of the area;
 - The effect of the development on the setting of listed buildings; and
 - whether any harm identified, including conflict with the development plan, would be outweighed by other considerations.

Reasons

Appropriate location

6. The spatial strategy for housing development in the area is set out in Policies OS2 and H2 of the West Oxfordshire Local Plan 2031 (adopted September 2018) (WOLP). The appeal site is within Church Enstone which for the purposes of the WOLP is a 'small village'.
7. Policy OS2 states that development in small villages will be limited to that which requires and is appropriate for a rural location and which respects the intrinsic character of the area, subject to certain general principles. Proposals for residential development will be considered under Policy H2. This states that in small villages new dwellings will only be permitted where they comply with the general principles set out in Policy OS2 and in certain circumstances. None of the circumstances stated in Policy H2 are applicable to the appeal proposal.
8. Policy H5 of the WOLP sets out that outside of large housing developments, proposals for SBCH housing will be approved in suitable, sustainable locations subject to compliance with other relevant policies including OS2 and H2. As the proposal would not comply with Policies OS2 and H2 it would also not comply with Policy H5.
9. I conclude that the appeal site is not an appropriate location for a dwelling, having regard to local planning policies. It conflicts with Policies OS2, H2 and H5 of the WOLP which collectively seek to direct development, including SBCH towards settlements which benefit from a wide range of services and facilities.

Character and appearance

10. The appeal site comprises an irregular shaped parcel of open space which fronts the B4030, the main road running through Church Enstone. The site hosts a number of trees and adjoins open countryside to the south.

11. The appeal site is near to a number of attractive and historic buildings and the village benefits from mature vegetation and many trees which contribute positively to its character. The countryside beyond the village is visible between and beyond the buildings and the overall character of the area is that of a small, traditional village nestled within a rural setting.
12. The appeal site is located within the Limestone Wolds architectural character area which, amongst other things, is characterised by buildings with long fronts, narrow gables and steeply pitched roofs. The main part of the proposed building would reflect these characteristics and in terms of its overall footprint and height, would be similar in form to nearby dwellings.
13. The main roof would be pitched and tiled in common with many of the buildings in the village. The walls would be clad in timber which is not a common building material in the area. However, it is a natural material which has texture and interest and would not be inappropriate in this rural setting. Were I to allow the appeal, a condition could be imposed requiring details of the proposed materials which would ensure appropriate timber and roofing materials would be used.
14. The front elevation would incorporate some contemporary elements including a projecting feature around first-floor windows and zinc panels. However, these would not overwhelm the building and would not contrast unacceptably with nearby development.
15. To the rear of the building, it is proposed to construct projecting timber and zinc clad elements and to attach solar panels to the main roof. These features would contrast in form and material to the buildings which surround the appeal site. However, because of the positioning of the proposed dwelling, deep within the site, these parts of the building would not be seen in the immediate context of the more historic buildings within the village. They would be visible by users of the adjacent footpaths, however the appearance of the building would be softened by proposed landscaping. Despite its modern appearance, I find the design to be of good quality, which would not detract from its surroundings. Therefore, the proposal would not appear as an incongruous addition to the area.
16. I conclude that the proposal would have an acceptable effect on the character and appearance of the area. It would therefore accord with Policies OS2, OS4 and EH13 of the WOLP and advice contained in the West Oxfordshire Design Guide 2016. Together these seek to ensure that development respects the intrinsic character of the area including its historic and architectural character and demonstrates high quality design. It would also accord with relevant paragraphs of the Framework which seek to achieve well-designed and beautiful places.

Setting of listed buildings

17. The first reason for refusal refers to the setting of Grade II listed buildings (LBs), Tulip Cottage, The Manor House and Rose Cottage. The appeal site is also near to Manor Cottage, Higleys Cottage, Five Chimneys, West Manor and Pinfolds which are all Grade II LBs. Interested parties have also referred to the Church of St Kenelm, a Grade II* LB. Mindful of the statutory duty set out in s66 (1) of the Planning (Listed Buildings and Conservation Areas) Act

1990, I have had regard to the desirability of preserving the setting of all of the LBs referred to.

18. Tulip Cottage, Manor Cottage and Higleys Cottage are listed as a group and are located adjacent to the northeastern part of the appeal site. The buildings date from the 17th Century with later extensions. They derive their significance from their history within the village and their architecture including features such as windows, doors and chimneys. They occupy a prominent location adjacent to the B4030. The northern part of the appeal site provides a verdant foreground in views towards these LBs from the road and contributes positively to their setting.
19. The proposed dwelling would be located towards the south of the site, set well back from the B4030 and would not be a prominent feature in the immediate context of these listed buildings. The existing trees and landscaping features would largely be retained and supplemented with new planting. Despite the presence of a driveway within this area, the northern part of the site would therefore remain a mostly open, landscaped element adjacent to these LBs. As such the proposal would not detract from their setting or their significance.
20. West Manor and The Manor House are two dwellings formed from the Manor House which dates from the late 18th or early 19th Century, with later extensions. The building is a grand three storey structure which is located prominently adjacent to the main road in the heart of the village. It derives its significance from its history and its architecture including its distinctive limestone walls and quoins, sash windows and its prominent, gabled two storey porch. The open nature of the appeal site, opposite this building, provides a spaciousness and rural character to its setting which contributes positively to its significance.
21. The proposed driveway would not be gated adjacent to the main road and the front boundary would be formed by a metal rail as is currently the case. Therefore, the overall effect on the street scene, opposite these LBs would not be significant. Although the proposed house may be visible from within these LBs, it would be located a generous distance from them and the open character of the northern part of the site would be retained. As such the proposal would not detract from their setting or their significance.
22. Rose Cottage is located to the west of the appeal site. It derives its significance from its group value and its historic and architectural interest as a Mid/late 18th Century house with its characterful features including casement windows of varying sizes and coursed limestone rubble walls.
23. This LB and the appeal site are visible within similar vantage points from the main road through the village. The appeal site comprises an open landscaped element in the setting of Rose Cottage and contributes positively to its significance. However, because of the set-back position of the proposed dwelling and the retention of the northern part of the site as a largely open element, the proposal would not result in harm to its significance or setting.
24. Opposite Rose Cottage is a thatched building listed as 'Pinfolds' which dates from the late 17th century and was once three small dwellings. It is on the

opposite side of the main road from the appeal site. Although the appeal site is some distance from this building, its open character forms part of the vista through the village of which 'Pinfolds' is also a part. It therefore contributes positively to its setting. However, because the frontage of the site would not be significantly changed as a result of the scheme, it would not detract from its setting.

25. Five Chimneys is located to the southwest of the appeal site. Although the site is some distance from this building, they both form part of the pattern of open spaces and buildings which front the main road through the village. In this respect it contributes positively to the setting of Five Chimneys. However, because the front part of the appeal site would remain open, and due to the presence of interceding development, the proposal would not detract from its setting.
26. The Church of St Kenelm is located to the north of the appeal site. Although the site is located a generous distance from the LB, it is near to the junction of a lane which leads to the church and therefore makes a positive contribution to its wider setting. Because the northern part of the site would remain as an open area, and because of the presence of interceding development the proposal would not detract from the setting of the church.
27. Consequently, the proposal would preserve the setting and significance of these LBs. It would therefore accord with Policies OS2, OS4, EH11 and EH13 of the WOLP and advice contained in the West Oxfordshire Design Guide 2016. Together these seek to ensure that development conserves and enhances the historic environment including the setting of LBs and respects the historic and architectural character of the area. It would also accord with relevant paragraphs of the Framework which seek to conserve and enhance the historic environment.

Other Considerations

Self-build and custom housebuilding

28. Councils have a duty under Section 2A of the Self Build and Custom Housebuilding Act 2015 (as amended) (the Act) to "give suitable development permission in respect of enough serviced plots of land to meet the demand for self-build and custom housebuilding in the authority's area."
29. The Council acknowledge that they are unable to demonstrate that the statutory duty has been met with regard to the provision of SBCH. The proposed development would make a small but valuable contribution towards meeting the demand for SBCH in the area.
30. The submitted UU includes an undertaking from the appellant that, in accordance with the requirements of the Act, they are custom builders, would have primary input into the final design and layout and will be the initial owners and occupiers of the dwelling. The Council are satisfied that the UU would satisfactorily secure the SBCH element of the proposal. Based on the evidence before me, I have come to the same conclusion. The requirements of the UU are necessary to make the development acceptable in planning terms, directly relate to the development and are fairly and reasonably related in scale and kind to it. The UU would therefore comply

with regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and paragraph 57 of the Framework.

31. It is disputed by interested parties whether the proposal would be a genuine SBCH scheme, however the UU would ensure that the proposal would comply with the requirements of the Act. The appropriateness of the size of the proposed building has been questioned, however the definition of SBCH does not preclude larger houses and the Council have acknowledged that there is an unmet requirement in this regard.

Other matters

32. Church Enstone is a small village with limited facilities including a public house and a church. However, the appeal site is in close proximity to Neat Enstone and Enstone which together provide a more comprehensive range of facilities, services and bus services to higher order settlements. The villages are linked by footways, albeit these are unlit and relatively narrow and therefore would not be suitable for all users. However, given the relatively close proximity of these services and facilities to the appeal site, it is likely that some daily trips of future occupiers could be accomplished by means other than the private car.
33. The Framework at paragraph 83 recognises that where there are groups of smaller settlements, development in one village may support services in a village nearby. The future occupiers of the proposed dwelling would be likely to make use of the services and facilities nearby resulting in some social and economic benefits. Further economic benefits would occur through employment during the construction phase.
34. The Council's Housing Land Supply Position Statement (2023 – 2028) (October 2023) indicates a housing land supply of 5.4 years. The appellant contends that this is being challenged through several appeals, however I have not been informed of their outcome. Even if the Council can demonstrate a 5-year housing land supply, such targets are not maximum quotas for housing. The government seeks to significantly boost the supply of homes and therefore the provision of a new dwelling in a location with reasonable access to goods and services is a benefit of the scheme.
35. The proposal is described as a carbon neutral Passivhaus the efficiency of which would exceed that required by building regulations. Although as a single dwelling the contribution to carbon reduction would be small, the promotion of high levels of energy efficiency attracts some positive weight. The carbon reduction credentials of the scheme have been questioned, however a condition could require the building to be constructed to Passivhaus standards.
36. I have had regard to the findings of the Ecology Report and am satisfied that subject to suitable conditions to secure appropriate planting and features for nesting and roosting the proposal would have an acceptable effect on ecology. Ecological enhancements to the site are proposed but there is limited evidence before me that these would be greater than would ordinarily be required and as such this is a neutral factor in the appeal.

37. Given the distance of the proposed driveway from the boundary of the site with neighbouring properties and the well vegetated nature of the site I am satisfied that its use would not result in a harmful effect on the living conditions of neighbouring properties by way of disturbance or vehicle fumes. The proposed dwelling would be sufficiently far away from any of the neighbouring properties and the windows suitably positioned to ensure that there would be no harm to the privacy of nearby residents.
38. Details of the proposed bin store could be required by condition to ensure it is suitably designed and would not result in an unacceptable effect on the living conditions of the occupiers of neighbouring properties. Users of the proposed access would have adequate visibility onto the B4030 and as such the proposal would not result in an adverse effect on highway safety. Concerns regarding archaeology on the site could be addressed by conditions requiring the implementation of an archaeological watching brief. I note that this approach was recommended by the Council's Planning Archaeologist. Concerns have been raised in relation to flood risk, however there is no substantive evidence before me which demonstrates that the appeal proposal would be at risk of flooding or result in an increased risk elsewhere. Suitably worded conditions could ensure that trees and their roots would be protected during the construction phase.
39. The lack of harm in respect of the above matters is a neutral factor in the appeal.

Planning Balance

40. The proposal would conflict with the spatial strategy for the area. Applications are required to be determined in accordance with the development plan, unless material considerations indicate otherwise. I therefore attach significant weight to the conflict with the Local Plan.
41. On the other hand, the Council has failed to grant suitable planning permissions to meet the identified SBCH demand. Although small, the contribution the proposal would make towards meeting this shortfall would be valuable and would attract significant weight. Taken together with the other identified benefits, to which I attach moderate weight, I conclude that the material considerations are of sufficient weight to indicate that the appeal should be determined otherwise than in accordance with the development plan.

Conditions

42. I have undertaken some minor editing and rationalisation of the conditions proposed by the Council where they meet the tests set out in paragraph 56 of the Framework in the interests of precision and clarity. In addition to those which I have already referred to earlier in my decision, I have imposed a condition requiring that the development is carried out in accordance with the approved plans. This is in the interests of certainty.
43. A condition requiring the submission of a Precautionary Working Method Statement and implementation of the recommendations of the West Oxfordshire District Council's Precautionary Method of Working Document is necessary to ensure protected species are protected during the

development. The Precautionary Working Method Statement is required prior to the commencement of development to prevent any harm occurring to protected species during the construction phase.

44. A condition requiring details and implementation of a surface water drainage scheme is necessary to ensure the site is provided with adequate drainage and does not result in flooding on the site or elsewhere. This information is required prior to the commencement of development as the scheme may affect early parts of the construction such as the formation of foundations.
45. Conditions requiring the submission of an Arboricultural Method Statement and details of services are necessary to ensure that the proposal does not result in harm to trees which are to be retained. This information is required prior to the commencement of development as early construction work and site clearance including the formation of service routes could affect the trees.
46. Conditions requiring details of materials, boundary treatment and landscaping are necessary to ensure an acceptable appearance to the development. Details of the access and the provision of parking and turning areas are necessary to ensure the proposal does not harm highway safety. A condition relating water consumption are required to ensure high levels of efficiency are achieved.
47. Given the scale of the proposed development, the construction phase would not be likely to result in a harmful effect on living conditions or highway safety. Therefore, a condition requiring a Construction Method Statement is not necessary.

Conclusion

48. The proposed development be contrary to the development plan, but material considerations, including the Framework indicate that a decision should be made other than in accordance with it. Therefore, the appeal is allowed.

E Pickernell

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing nos: 1.01, 1.02, 1.03, 1.04, 2.01, 2.02, 2.03, Site Location Plan
- 3) Prior to the commencement of development (including vegetation/site clearance) a Precautionary Working Method Statement (PWMS) for reptiles and great crested newts shall be submitted to and approved in writing by the local planning authority. The approved PWMS shall be implemented in full according to the specified timescales. In addition, the development shall be completed in accordance with the recommendations of West Oxfordshire District Council's Precautionary Method of Working document, in respect of common toads, hedgehogs, badgers and nesting birds.

- 4) Prior to the commencement of development, a full surface water drainage scheme shall be submitted to and approved in writing by the local planning authority. The scheme shall include details of the size, position and construction of the drainage scheme and results of soakage tests carried out at the site to demonstrate the infiltration rate. Three tests should be carried out for each soakage pit as per BRE 365 with the lowest infiltration rate (expressed in m/s) used for design. The development shall be carried out in accordance with the approved details prior to the first occupation of the development hereby approved. Development shall not take place until an exceedance flow routing plan for flows above the 1 in 100 year + 40% CC event has been submitted to and approved in writing by the local planning authority.
- 5) Prior to the commencement of development, including site clearance, an Arboricultural Method Statement, prepared in accordance with BS5837:2012, shall be submitted to and agreed in writing by the local planning authority. The Arboricultural Method Statement shall contain, but not necessarily be limited to, the following details:
- Detailed drawings of the access drive to serve the proposed dwelling
 - A Method statement detailing the process and timings of constructing the access drive
 - Identify areas for the storage of materials, including the procedure for the drop-off of materials
 - Identify areas for the parking of contractors during the entire course of development

The agreed details shall be implemented in full, and according to the agreed timeframes, during the entire course of the development hereby approved.

- 6) Prior to the commencement of development, including site clearance, detailed drawings showing all the service routes to serve the dwelling hereby approved, shall be submitted to and agreed in writing by the local planning authority. The agreed details shall be implemented in full unless otherwise agreed in writing by the local planning authority. The development shall be completed in accordance with the approved details.
- 7) Prior to the commencement of development, a Written Scheme of Investigation shall be submitted to and approved in writing by the local planning authority. This shall include the following:
- details the arrangements for the organisation and implementation of an archaeological watching brief to be maintained during the period of construction or any ground works taking place on the site.
 - details of the professional archaeological organisation which will carry out the watching brief.

No development shall commence without the appointed archaeologist being present. Once the watching brief has been completed its findings shall be reported to the local planning authority, including all processing, research and analysis necessary to produce an accessible and useable archive and a

full report for publication which shall be submitted to the local planning authority within two years of the completion of the archaeological fieldwork.

- 8) Prior to the erection of external walls, a schedule of materials (including samples) to be used in the elevations and roof of the development shall be submitted to and approved in writing by the local planning authority. The development shall be constructed in the approved materials.
- 9) The means of access between the land and the highway shall be constructed, laid out, surfaced, lit and drained in accordance with details that have first been submitted to and approved in writing by the local planning authority and all ancillary works therein specified shall be undertaken in accordance with the said specification before first occupation of the dwellings hereby approved. Thereafter the means of access shall remain surfaced, lit and drained in accordance with the approved details.
- 10) Prior to the installation of external lighting for the development hereby approved, a lighting design strategy for biodiversity shall be submitted to and approved by the local planning authority. The strategy shall:
 - a) Identify the areas/features on site that are particularly sensitive for nocturnal wildlife;
 - b) Show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their commuter route.All external lighting shall be installed only in accordance with the specifications and locations set out in the strategy.
- 11) Prior to the erection of external walls, details of the provision of integrated bat roosting features (e.g. bat boxes/tubes/bricks on south or south-east facing elevations) and nesting opportunities for birds (e.g. house sparrow terraces, starling boxes, swift bricks or house martin nest cups on the north or east-facing elevations) within the new dwelling shall be submitted to the local planning authority for approval. The details shall include a drawing showing the types of features, their locations within the site and their positions on the elevations of the dwelling, and a timetable for their provision. The approved details shall be implemented before the dwelling hereby approved is first occupied and thereafter permanently retained.
- 12) Prior to first occupation of the dwelling hereby approved, a plan indicating the positions, design, materials, type and timing of provision of boundary treatment to be erected shall be agreed in writing by the local planning authority. The boundary treatment shall be completed in accordance with the approved details and retained thereafter.
- 13) Prior to the first occupation of the dwelling hereby approved, a comprehensive landscape scheme shall be submitted to and approved in writing by the local planning authority, including biodiversity enhancements (such as native, species-rich hedgerows and tree planting, wildflower meadow planting, shrub planting) and a 5-year maintenance plan. It must show details of all planting areas, tree and plant species, numbers and planting sizes. The proposed means of enclosure and screening should also

be included, together with details of any mounding, walls and fences and hard surface materials to be used throughout the proposed development.

The entire landscaping scheme shall be completed by the end of the planting season immediately following the completion of the development or the site being brought into use, whichever is the sooner.

Any trees or plants shown on the approved landscaping scheme to be planted or retained that die, are removed, are damaged or become diseased, or grassed areas that become eroded or damaged, within 5 years of the completion of the approved landscaping scheme, shall be replaced by the end of the next planting season. Replacement trees and plants shall be of the same size and species as those lost, unless the local planning authority approves alternatives in writing.

- 14) The dwelling hereby approved shall not be occupied until space has been laid out within the curtilage of that dwelling to enable vehicles to enter, turn round and leave the curtilage in forward gear. Thereafter the turning space shall be permanently retained.
- 15) The car parking areas shown on the approved plans shall be constructed before occupation of the development and thereafter retained and used for no other purpose.
- 16) The dwelling hereby approved shall not be occupied until the means to ensure a maximum water consumption of 110 litres use per person per day, in accordance with Policy OS3, has been complied with for that dwelling and retained in perpetuity thereafter.
- 17) The dwelling hereby approved shall be constructed to 'Passivhaus' standards. It shall not be occupied until the final Passivhaus Planning Package has been submitted to, and approved in writing by, the local planning authority.
- 18) The dwelling hereby approved shall not be occupied until a bin store has been provided in accordance with details which shall first be submitted to, and approved in writing by, the local planning authority. Thereafter, the bin store shall be retained in accordance with the approved details.

END OF SCHEDULE