



## Appeal Decision

Inquiry Held on 27 June – 6 July 2022

Site visit made on 4 July 2022

**by H Butcher BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 10 August 2022**

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### **Appeal Ref: APP/D3125/W/22/3293656**

#### **Land east of Barns Lane, Burford**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Greystoke against the decision of West Oxfordshire District Council.
  - The application Ref 21/02343/OUT, dated 30 June 2021, was refused by notice dated 14 December 2021.
  - The development proposed is up to 141 assisted extra care residential units (Class C2) and up to 32 affordable housing units (Class C3) along with associated communal facilities, parking, vehicular and pedestrian access, internal roads, public open space, landscaping, drainage and other associated infrastructure.
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#### **Decision**

1. The appeal is dismissed.

#### **Preliminary Matters**

2. The application is made in outline with all matters reserved. However, the plans for approval include a Land Use Parameter Plan (Drawing No. P20-0412\_04, Sheet No 01, Rev B) and a Building Height Parameter Plan (Drawing No. P20-0412\_04 Sheet 02, Rev B). Before me is also a Masterplan but this is to be considered on an indicative basis only.
3. The Council confirmed that they were satisfied that reason 4 for refusal relating to biodiversity could be overcome with suitable conditions. It is not necessary, therefore, for me to take this matter any further.
4. Reason 5 for refusal in part relates to the absence of a legal agreement to provide contributions towards infrastructure. During the course of the appeal an agreement was provided dealing with these. In respect of the infrastructure contributions the Council confirmed this now resolves their concerns and they did not pursue this matter further.

#### **Application for Costs**

5. An application for a partial award of costs was made by Greystoke against West Oxfordshire District Council. This application is the subject of a separate Decision.

## **Main Issues**

6. The main issues are:

- Whether the development would preserve or enhance the character or appearance of Burford Conservation Area, and the effect on the setting of the Grade I Listed Church of St John the Baptist;
- The effect of the development on the character and appearance of the surrounding area including the Cotswolds Area of Outstanding Natural Beauty (AONB);
- Whether adequate provision is made for affordable housing, and;
- Whether or not the Council can demonstrate a 5-year supply of housing land.

## **Reasons**

### *Conservation area and setting of the Church of St John the Baptist*

7. The appeal site comprises a field accessed off of Barns Lane in Burford (Field 1) and includes part of another field which stretches down to Witney Street (Field 2). Field 1 falls within Burford Conservation Area. The Conservation Area covers most of the market town of Burford including the historic crossroads of the High Street with Sheep Street and Witney Street, the parish church, and some of the surrounding countryside including the edge of the River Windrush and part of the appeal site, as detailed above.
8. Part of the significance of the conservation area is derived from the large number of historic properties which can be seen throughout the town and how these are laid out. There is a hierarchy to them with a predominance of densely packed three storey buildings lining the wide High Street, arguably the main focus of town activity historically. The side streets off of this, however, are largely two storey and less grand, with the odd exception, and as you leave the town along Witney Street or Barns Lane, for example, the dense built form starts to become broken up by open spaces which allow views to the surrounding countryside.
9. The significance of Burford Conservation Area is also derived from various, features within it which reveal its historic development. These include the fine parish church (Grade I Listed), a so-called 'Cotswold Wool Church', which is a manifestation of the town's medieval prosperity which was largely derived from the wool trade. The town also boasted large agricultural/livestock markets, the latter possibly held in the area through which Sheep Street later passed and from which it was perhaps named. Furthermore, Barns Lane, which lies towards the southern edge of the conservation area and which probably originated as a droveway used to funnel flocks being herded down to the riverside meadows along the River Windrush<sup>1</sup>, provides an important historic link between the town and its surrounding agricultural landscape. That Barns Lane was a droveway is not contested by the appellant, and given the evidence before me, I consider it is highly likely that it was used for such purposes historically.

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<sup>1</sup> CDF8 page 18

10. Field 1 is accessed off of Barns Lane and can be seen from there. Whilst much of Barns Lane has been developed with housing, Field 1 retains a last link between the driveway and the agricultural landscape to which it would have formed a part of. Field 1 also comprised an area called The Leasow, as shown on maps dating from 1823, which means to graze, or pasture, and although this map is much later than medieval times, there is nothing before me to indicate that it was not used for such purposes earlier than this. For these reasons Field 1 contributes to the significance of the conservation area by aiding our understanding of the driveway and its historic link with the town.
11. The exceptionally fine Grade I listed church holds significance in itself as a physical manifestation of the town's medieval prosperity generated by the wool trade, for example, the heightened tower and addition of a spire. Setting is the surroundings in which an asset is experienced, and although often expressed by reference to visual considerations, the way in which we experience an asset in its setting is also influenced by our understanding of the historic relationship between places<sup>2</sup>. The appeal site's location on an historic driveway, used for herding flocks of sheep within and around Burford, and its likely historic use as pastureland, also aids our understanding of the historic relationship between the church and its surrounding agricultural landscape. The appeal site therefore falls within the setting of the church and contributes to its historic significance.
12. The proposal is to develop a large proportion of Field 1. This would completely alter its character from open, agricultural land to urban land. It would, as a result, further urbanise Barns Lane and remove all links between the driveway and the agricultural landscape to which it belonged, and further obscure the link between this and the rest of the town. This would result in the loss of some of the historic character of the conservation area and the ability to understand part of its significance. For the same reasons it would also harm the ability to appreciate part of the significance of the church as experienced in its setting.
13. Whilst the proposal is in outline, before me for approval is a Building Height Parameter Plan. This specifies in Field 1 building heights of up to 10.5m around the periphery of this field, with the central area rising up to a maximum building height of 12.5m and 16m. 10.5m is around two storey development with a pitched roof, therefore, largely comparable to the almost exclusively two storey development which borders the site on three sides. 16m, however, would be uncharacteristically high in this context.
14. In addition to my concerns above regarding developing this site, the height of development would disrupt the hierarchy of the town where three storey development is largely centred around the High Street. In any event, historic three storey development will likely be lower than modern three storey development and 16m is very generous. Development of this nature would disrupt and confuse the historic pattern of development of the town diminishing its significance, as perceived by views within and across the conservation area.
15. Taking all of these points together I do not consider that Field 1 could be developed as proposed whilst preserving the character and appearance of Burford Conservation Area and without resulting in harm to the setting of the Church of St John the Baptist. For these reasons the proposal would conflict with policies OS2, OS4, EH9, EH10, EH11 and EH13 of the West Oxfordshire Local Plan 2031 (LP) which seek to protect the historic environment, and, in

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<sup>2</sup> Historic England, The Setting of Heritage Assets CDF3

particular to respect and build on pre-existing historic character in respect of landscape and townscapes.

16. In the terms of the National Planning Policy Framework (the Framework) paragraph 202, the harm I have identified to both the conservation area and the setting of the Church would be 'less than substantial' in each case. The level of 'less than substantial harm' I place between moderate to high in both cases given the extent of harm that would occur to people's experience of these assets.
17. As per paragraph 202 of the Framework, where a development proposal will lead to 'less than substantial harm' to the significance of a designated heritage asset this harm should be weighed against the public benefits of the proposal. I return to this balance later in my decision.

#### *AONB*

18. The appeal site falls within the Cotswold AONB. It can be broadly described as a low-lying landscape with gently rolling hills extending up from the River Windrush to form the valley sides. It has a riparian character and is typically associated with pasture or meadow grassland and open farmland. The appeal site is currently open farmland, therefore, it makes a positive contribution to the character and appearance of the landscape.
19. In terms of Field 1 the impact of developing this site on the AONB would be mitigated by the fact that it is relatively well contained by existing built development on three sides and, given the lie of the land, would not be particularly visible from Witney Street. However, the height of the development as specified on the Building Height Parameter Plan would make it appear unduly prominent when glimpsed from Barns Lane, in elevated private views from Springfield House, and in views from other surrounding properties, which would increase its visual impact on the AONB at this edge of town location. The scale modelling in the appellant's Design and Access Statement<sup>3</sup> is a view taken at a great distance from the site and extremely elevated. As a result, a lot of the detail is lost, and it is therefore of limited use in understanding the 'on the ground' impacts of the development.
20. The principal vehicular access to the development, as shown on plans and agreed at the inquiry, would be from Witney Street. An access here would, given land levels, require a long and winding access road across Field 2 exiting in the vicinity of Springfield House as indicated on the Indicative Masterplan. This would have a significant hard and urbanising impact on Field 2 which is an area of AONB less encumbered by surrounding development than Field 1. It would be perceivable from Witney Street at the entrance to the development and to future users of this access road where it would be clear that it was cutting across open land. It would also be apparent from the houses located opposite Field 2 in elevated views from principal rooms. Wider views from other surrounding development would also be aware of this significant urbanising change in the landscape. Whilst private views are not generally regarded as a planning matter, in this case, the protection of the character and appearance of the AONB is in the public interest and therefore is a material consideration of significant weight.

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<sup>3</sup> CD A4 pg 41

21. Landscaping is put forward as mitigation to the visual impacts of the development as well as an enhancement in terms of woodland planting and grassland creation. However, any benefit it might provide would take time as this planting became established. It is also relevant to note that it would be on lower ground to the highest parts of the proposed development, therefore, even over time, I do not consider that it would adequately overcome the harm I have identified. It would also not be possible to completely disguise the access road with landscaping, as it would remain visible at its entrance, along its length, and in elevated views from neighbouring properties.
22. I therefore do not consider that the site could be developed as proposed without resulting in harm to the character and appearance of the AONB. I therefore find conflict with the relevant provisions of policies OS2, OS4, EH1 and BC1 of the LP which seek to protect the scenic beauty of the AONB. I balance my findings in respect of harm to the AONB with the other considerations outlined in para 177 of the Framework, such as need for the development, later in my decision.

### *Affordable Housing*

23. Policy H3 of the LP deals with affordable housing need and how this will be addressed through new housing development. Across the District housing schemes of 11 or more units or which have a maximum combined gross floorspace of more than 1,000m<sup>2</sup> will be required to provide affordable housing on-site as a proportion of the market homes proposed. For the appeal site, which is providing Extra-Care Housing in a High Value Zone, 45% on-site affordable housing should be provided.
24. The proposed development is for 173 units in total. 45% of this would amount to 77.85 on-site affordable homes. However, the appellant is proposing only 32 affordable homes to be provided on site with an off-site contribution for the remainder of the required affordable housing provision.
25. The policy does state that a financial contribution for the provision of affordable housing on other sites in West Oxfordshire, in lieu of on-site provision, may be appropriate if it can be demonstrated that: It is not physically possible or feasible to provide affordable housing on the site (such as for reasons of viability); or there is evidence that a separate site would more satisfactorily meet local housing need and contribute to the creation of mixed communities.
26. It has not been demonstrated that it is physically impossible to provide the required additional C3 affordable housing on site and there is no viability evidence before me. The proposal is in outline therefore layout is yet to be determined. Although the Indicative Masterplan shows how the site might be developed in the manner suggested by the appellant above, this does not mean an alternative split could not be provided. It also does not have to mean affordable housing in the form of affordable Extra-Care Housing given the operational issues this can pose. Simply a different split between C3 affordable housing, and C2 units on-site.
27. There is also no substantive evidence before me that a separate site would more satisfactorily meet affordable housing need. There is an undisputed need for affordable housing in the district generally, and no alternative site has been put forward. In this case, therefore, I consider that 45% affordable housing on-site should be provided.

28. There is a unilateral obligation before me which provides for an off-site affordable housing contribution. However, for the reasons already stated, this would not accord with Policy H3 of the LP. The appellant has attempted to agree an alternative off-site contribution figure with the Council, but it is their position that this is not acceptable in principle, and I agree.
29. The appellant has also suggested a negatively worded condition restricting development until an alternative planning obligation or other agreement has been entered into to resolve the disputed affordable housing provision, likely involving a consideration of viability. As set out in the National Planning Policy Guidance, conditions of this nature are unlikely to be appropriate in the majority of cases. In this case, I find no exceptional reason to have not resolved this matter in a timely manner to ensure that the test of necessity is met.
30. Notwithstanding the above I do, however, have an agreed bilateral obligation before me to secure the on-site 32 affordable housing units. Whilst this is not policy compliant for the reasons already discussed, it, nevertheless, would be a public benefit to be weighed into any planning balance.

#### *Housing land supply*

31. The Council's housing land supply position is 5.02 years. The appellant, however, contests the supply calculating the housing land supply to be 3.68 years. The difference between the two parties relates to the supply of housing in respect of two discreet points: the counting of various small, permitted sites (< 10 houses), and eight contested larger sites.
32. In respect of the small, permitted sites, the appellant provided evidence that planning permission for a number of these sites had expired prior to or subsequent to the base date of the plan. The Council had no evidence to refute this. I therefore cannot consider these sites to be deliverable.
33. In respect of the eight contested larger sites, all of which have outline consent and are for major development, the Council accepted at the inquiry that they had no clear evidence that housing completions will begin on any of these sites within five years. As per the Framework, these sites cannot, therefore, be considered deliverable.
34. I therefore find that the housing land supply position for South Somerset is closest to the appellant's submitted position of 3.68 years. The Council cannot, therefore, currently demonstrate a 5-year supply of housing land.

#### *Other matters*

35. I note the appeal site was previously an allocated site for 85 houses in the submission version of the emerging Local Plan, albeit it was not taken forward. However, as expressed by the Examining Inspector, soundly based decisions on the balance of the benefits and harms of further housing development in this area can only reasonably be reached based on the detailed evidence submitted as part of specific planning applications, such as this one.
36. Mr Hugh Ashton appeared as a Rule 6 Party and was principally concerned with highway safety matters. Evidence was heard predominantly on the transport related aspects of the proposal from Mr Ashton and the appellant's highway witness. The Council raised no objection in this respect. Having considered this

evidence I find no reason to pursue this matter further as I find the highway safety impacts from the development would not result in material harm.

#### *Heritage balance*

37. I have found that the proposal would result in 'less than substantial harm' to Burford Conservation Area and 'less than substantial harm' to the setting of the Grade I Listed Church of St John the Baptist. It is necessary, as per the Framework, for me to balance such harm against the public benefits of the proposal.
38. There are agreed benefits to the scheme<sup>4</sup>. These include the provision of housing in the context of a District with no 5-year Housing Land Supply, and specifically Extra-Care Housing for older people and the variety of benefits that encompasses in terms of healthcare and wellbeing, as well as the benefit of releasing under-occupied housing to the market. There are also associated economic benefits in terms of spending and job creation, and some modest benefits from the provision of additional public open space within the development and any biodiversity net gain.
39. The affordable housing provision secured is also a benefit but this is tempered by the fact that it is not policy compliant. With the above points in mind, I afford the benefits in this case significant weight collectively.
40. In respect of any financial contributions these must be necessary insofar as they mitigate any direct impacts of the development on local infrastructure or facilities, therefore they are not a benefit, but rather a neutral consideration in my determination.
41. It has been suggested that there may be the benefit of increased public views of the spire of the church from the site made possible by its development, However, the appellant's position is that the significance of the church cannot be appreciated from here, and in light of my findings, any significance would not be appreciable in the context of new housing development.
42. Conversely, great weight should be given to the conservation of heritage assets, and any harm to a heritage asset must be given considerable importance and weight. In respect of the 'less than substantial harm' I have found to both the conservation area and the setting of the parish church respectively, both of which I have found to be between a moderate to high level of 'less than substantial harm', I find that the public benefits do not outweigh the harm in either case. As per the Framework, this in itself provides a clear reason for refusing the development.

#### *AONB balance*

43. There is no dispute between the parties that the development proposed constitutes major development in the AONB. As set out in the Framework in Areas of Outstanding Natural Beauty permission should be refused for major development other than in exceptional circumstances and where it can be demonstrated that the development is in the public interest.
44. There are clear benefits as already stated and a need for the type of development proposed which is supported by local and national planning policy.

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<sup>4</sup> Statement of Common Ground para 8.58

It has also been found that there is no 5-year housing land supply for the district at this time indicating a need for housing generally. Furthermore, there is nothing substantive before me to demonstrate that this need could be met in some other way. Therefore, there are significant reasons in the public interest in allowing the development.

45. However, this must be weighed against the harm to public interest by virtue of harm to the landscape and scenic beauty of the AONB, as identified in my reasoning above, and which I have found could not be adequately moderated. The AONB is a finite resource and, as per the Framework, great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs which have the highest status of protection in relation to these issues. As a further consideration, harm to heritage assets is also not in the public interest, as explained in the Framework, these should be conserved so they can be enjoyed for their contribution to the quality of life of existing and future generations. Again, great weight should be given to the conservation of such assets.
46. On balance, therefore, I do not consider that exceptional circumstances have been demonstrated to justify a development of this scale in the AONB. Again, as per the Framework, this provides a clear reason for refusing the development.
47. I have been directed to various Secretary of State reports and appeal decisions which the appellant states conclude that the absence of a 5-year housing land supply constitutes exceptional circumstances for the purposes of para 177 of the Framework. However, this is an overly simplistic view of these decisions, whereby the decision makers in each case weigh differing matters of public interests into the balance, each of which are unique to the developments they concern. They are therefore not directly comparable to the case before me and do not alter my findings above.

### **Conclusion**

48. I have had regard to the development plan as a whole and the policies which weigh both in favour of the development and against it. I have also had regard to all material considerations, including a lack of 5-year housing land supply and policies in Framework. In applying planning judgement to these matters I have found that policies in the Framework that protect designated heritage assets and AONBs provide clear reasons for refusing the development. In addition to this there is some harm insofar as the proposal would not make adequate on-site provision for affordable housing. For these reasons, the appeal is dismissed.

*Hayley Butcher*

INSPECTOR



**APPEARANCES**

FOR THE LOCAL PLANNING AUTHORITY:

Cain Ormondroyd, Francis Taylor  
Building

Instructed by: West Oxfordshire District  
Council

He called:  
Chris Wood

West Oxfordshire District Council

Tara Hayek BA (Hons),  
MSC, IHBC

West Oxfordshire District Council

FOR THE APPELLANT:

Giles Cannock QC, Kings Chambers

Instructed by: David Hutchinson

He called:  
Paul Harris BA, DIP LA,  
CMLI

MHP Chartered Landscape Architects

Gail Stoten BA(Hons) MCIfA  
FSA

Pegasus Group

Pegasus Group

Neil Tiley BSc (Hons) Assoc  
RTPI

David Hutchinson BSc  
(Hons) DipTP MRTPI

Pegasus Group

Simon Tucker

David Tucker Associates

RULE 6 PARTY:

Hugh Ashton MA Oxon, MSc, Member of the Chartered Institute of Logistics and  
Transport

INTERESTED PERSONS:

Suzanne Haywood, Local resident  
Gordon Jolly, Responsible Planning in Burford  
Simon Joyce, Cotswold Conservation Board  
John White, Burford Town Councillor

## **DOCUMENTS submitted at the Inquiry**

- 1 Planning Statement of Common Ground
- 2 Opening submissions on behalf of the appellant
- 3 Opening submissions on behalf of the LPA
- 4 Address to the Inspector from John White
- 5 Address to the Inspector from Gordon Jolly
- 6 Address to the Inspector from Simon Joyce
- 7 Updated five-year land supply positions
- 8 Planning obligation
- 9 Suggested route for site visit prepared by LPA
- 10 Points to note on site visit prepared by Hugh Ashton
- 11 DAS visualisation with site outlined in red
- 12 Photos from Springfield House
- 13 Draft conditions
- 14 Update Reg 122 CIL Statement
- 15 Hugh Ashton closing submissions
- 16 Further authorities from LPA
- 17 Heritage note from Gail Stoten
- 18 Draft S278 Agreement Model
- 19 S278 Standard Conditions 2016 Highway Works
- 20 Burford costs application from appellant
- 21 LPA closing submissions
- 22 Appellant closing submissions