

APPLICATION NO.	P19/V0023/FUL
SITE	Tilbury Fields Off Bushy Close Botley Oxford, OX2 9SH
PARISH	CUMNOR
PROPOSAL	Retrospective application to regularise public realm works in connection with applications P07/V0741/O and P13/V0817/RM, including changes to approved roads and footpaths, parking areas, hard and soft landscaping, boundaries, recycling storage facilities, vehicle access prevention to Tilbury Lane, and surface water drainage. (As amended by plans and information received 19 June 2019 and 5 August 2019)
WARD MEMBER(S)	Debby Hallett Emily Smith Alison Jenner Judy Roberts
APPLICANT OFFICER	Persimmon Homes Stuart Walker

RECOMMENDATION

Planning Permission

- 1. Approved plans**
- 2. Landscaping implementation within next planting season**
- 3. Re-gritting of porous paving areas within 12 months**

1.0 INTRODUCTION

1.1 This application was considered by planning committee on 29 January 2020 where it was resolved to defer the decision for officers to investigate and report back on the following:

- Exploration of the feasibility of a possible bond payment.
- Review of drainage system; check for debris in the SUDs.
- Investigate opportunity of further tree planting across the site and review of planting that has failed.
- Confirmation whether there has been a breach of the S106 agreement and report what action can be taken in relation to this.
- Clarify financial implications of any road failure, future maintenance and management and who would be liable.

- Clarify whether any further works are required in relation to road repairs, given previous construction problems.
- Ascertain potential liability and legal obligations placed upon the management company/residents' association following any transfer of land.

1.2 A copy of the original report is **attached** at Appendix 1.

1.3 **Updates since 29 January Planning Committee meeting**

Amended plans

Following the committee meeting, the applicant has agreed to plant 35 additional trees within the public realm to partially offset those trees not planted in rear gardens. The latest plans, received in March 2020, are **attached** at Appendix 2 and have been out for consultation.

1.4 *Requirement for a Deed of Variation to S106 Legal Agreement*

The original S106 agreement requires the owner to provide 0.58 ha of public open space (POS) to the council (together with a Public Open Space Commuted Sum). The council's infrastructure team has identified a problem with the initial land offer as it includes drainage elements which the council's property team is not willing to accept. Alternative POS land has therefore been identified but due to the estate layout, the alternative offer only amounts to 0.549 ha, slightly below the 0.58 ha required in the agreement. The planning considerations of this are discussed later in the report, but if the shortfall is accepted, the S106 needs to be varied under S.106A TCPA 1990.

1.5 *Neighbourhood Plans*

As set out in paragraph 48 of the NPPF, weight can be given to emerging plans. Consultation on the draft neighbourhood plan for Cumnor Parish closed on 14th February 2020. The Cumnor plan however remains at an early stage of preparation, so limited weight applies to its policies. The most relevant policy for this application is LGS1 – Tilbury Lane Play Area. Officers consider there is no conflict with this policy.

1.6 The neighbourhood plan for North Hinksey has been to examination and it has been concluded by the independent examiner that the plan can proceed to referendum subject to a series of recommended modifications. On this occasion, deviation from the examiner's recommendation to Policy BU1 - Oxford Brookes University Harcourt Hill Campus, is considered. Between 31 January and 13 March 2020, there was an opportunity to comment on the proposed decision to deviate from the examiner's recommendation in relation to Policy BU1 and the reasons for it. As the plan has been through examination it can be given significant weight. The relevant policies for this application are:

HS1 – Characteristics of New Housing

HS4 – Flexibility, Future-Proofing, and Sustainable Design

TR1 – Cyclists, Pedestrians and Public Transport

TR2 – Parking, Access and Electric Vehicle Charging

UT1 – Flooding and Groundwater

GS1 – Local Green Spaces

GS2 – Biodiversity, Wildlife Corridors, TPOs and Tree Canopy Cover

GS3 – Locally Important Views

Officers have assessed the proposal against these policies and consider there is no conflict to change the recommendation.

2.0 SUMMARY OF CONSULTATIONS & REPRESENTATIONS

2.1 A summary of the responses received to the latest plans is below. All comments can be viewed in full online at www.whitehorsedc.gov.uk.

Cumnor Parish Council	<p>No objection.</p> <p>Council requests that the following update from the Residents Association regarding unfinished work be taken into account and that the Planning Department liaise with the Chairman of the Residents Association regarding these unfinished works:</p> <p><i>‘Whilst some extra trees have been planted, no serious work has been undertaken in respect to finishing/improving the landscaping. None of the Swales to the east of Tilbury Lane have been planted, also no clearance/preparation of the kick about area has been undertaken. The area immediately surrounding the play park has not been finished, and the area used as a work site adjacent to Tilbury Lane is now a mud field.’</i></p>
North Hinksey Parish Council	<p>Objection.</p> <p>NHPC had no objections, but supported comments by Cumnor Parish Council:</p> <ul style="list-style-type: none"> • The apparent reduction in the number of trees • The need to improve the health of the soft landscaping as much already appeared to be dead and • Supported the views of the Residents Association as they were most closely associated with the issues.
Residents	<p>Two letters of objection have been received raising the following points:</p> <ul style="list-style-type: none"> • Residents can confirm no trees were planting in rear gardens and there has been no offer from the developer to do so (this is in response to the developer comments submitted with the amended plans). • If trees had been planted, we could agree to the reduction, but if not, all must be provided. • Tree for plot 150 is inside the boundary, not as shown on the drawing. • Some areas still require planting

	<ul style="list-style-type: none"> • Landscape establishment check should be a condition on any approval given.
Councillor Judy Roberts	No further response received.
Councillor Debby Hallett	No further response received.
Oxfordshire County Council	No objection.
Drainage Engineer	No further comment.
Countryside Officer	No further comment.
Landscape Officer	<p>No objection.</p> <ul style="list-style-type: none"> • The revised plans show the additional trees to compensate for those trees which could not be implemented from the original scheme and are acceptable. • It is unlikely that these trees could be implemented until the next planting season but it is imperative that the maintenance of the existing site, as per the Landscape Maintenance Plan is undertaken to ensure that the ground is weed free to allow minimise competition for existing plants, to give the best growing conditions once these additional trees can be implemented and ensure the grassed areas can establish successfully.
Tree Officer	No further comment.
National Grid	No further response received.
Environmental Protection Team	No further comment.
Waste Management Team	No further comment.

3.0 **RELEVANT PLANNING HISTORY**

3.1 See previous report.

3.2 **Pre-application History**

None.

3.3 **Screening Opinion requests**

None.

4.0 **ENVIRONMENTAL IMPACT ASSESSMENT**

4.1 The proposal is not EIA development.

5.0 **MAIN ISSUES**

5.1 The main issues to report back are:

1. Exploration of the feasibility of a possible bond payment.
2. Review of drainage system; check for debris in the SUDs.
3. Investigate opportunity of further tree planting across the site and review of planting that has failed.
4. Confirmation whether there has been a breach of the S106 agreement and report what action can be taken in relation to this.
5. Clarify financial implications of any road failure, future maintenance and management and who would be liable.
6. Clarify whether any further works are required in relation to road repairs, given previous construction problems.
7. Ascertain potential liability and legal obligations placed upon the management company/residents' association following any transfer of land.
8. Acceptability of March 2020 amendments.

5.2 **Exploration of the feasibility of a possible bond payment**

It was mooted that payment of a bond might provide a means of securing funding. The district council does not currently have the provision to administer bonds and the legal team consider that it would not be appropriate in these circumstances. Clause 8.4 of the S.106 provides for liability for successors in title but also for liability for any owner at the time of breach. Consequently, the council could pursue action against the developer rather than the management company through this clause.

5.3 **Review of drainage system; check for debris in the SUDs**

A site visit was undertaken on 28th February by the drainage engineer with OCC in attendance. Following inspection, drainage is working as intended with no debris in the SUDs. Further remedial clearing and re-gritting of block paving is still required, along with a small replacement of dipped tarmac and dipped block paving (which is causing pooling) and the relaying of a gully. These repairs and re-gritting are underway and can be secured by condition.

5.4 **Investigate opportunity of further tree planting across the site and review of planting that has failed**

Amended plans have been submitted to include 35 additional trees. Remedial work on landscape planting has been ongoing since the January committee, but has now paused. It will resume in the next planting season and can be secured by condition.

5.5 **Confirmation whether there has been a breach of the S106 agreement and report what action can be taken in relation to this**

The developer is currently in breach of the S.106 as the required landscaping is not in place in accordance with the timeframes set out in paragraph 2.1 and

3.1 and the required maintenance has not been taking place in accordance with paragraph 3.1 of the Second Schedule of the S106.

5.6 Section 106 (5) TCPA 1990 provides that a S106 agreement can be enforced by means of an injunction. This is an application to the High Court and should generally only be applied for as a last resort where there have been persistent breaches of planning control over a long period and other enforcement options have been or would be ineffective. As the current application is seeking to address the breaches of planning control, the legal team advise injunction proceedings would not appear to be expedient. It should also be noted that the restriction within the S106 is on occupation of dwellings so enforcing this when all the dwellings are already occupied would be problematic.

5.7 **Clarify financial implications of any road failure, future maintenance and management and who would be liable**

Road repairs have been monitored by OCC as they were re-laid, so officers see no reason why they should fail. If damage occurs before handover to the management company, then the developer is liable along with maintaining them. Once they are transferred it will be for the management company to maintain and remediate where necessary.

5.8 **Clarify whether any further works are required in relation to road repairs, given previous construction problems**

Other than the minor repairs connected with drainage, officers consider no further works in relation road repairs are required. Road repairs to date have been assessed by the Highway Authority and are considered satisfactory and the site continues to be monitored in relation to remedial work.

5.9 **Ascertain potential liability and legal obligations placed upon the management company/residents' association following any transfer of land**

In the event land is transferred without compliance with conditions the council could, under Section 187A of the TCPA 1990, choose to serve a breach of condition notice on either:

- i) Any person who is carrying out or has carried out the development;
or
- ii) Any person having control of the land

This would mean that the council could serve the notice on Persimmon as the developer and it would be the developer who would be charged with committing an offence if compliance was not then secured.

5.10 **Acceptability of March 2020 amendments**

Additional tree planting

Officers consider the additional tree planting is acceptable.

5.11 *Changes to land to be transferred to the council*

The proposed changes for the council to take ownership of less POS land than required in the S106, is essentially a civil matter. The amount of POS across

the development remains the same as previously approved and is compliant with policy DP33 and is therefore acceptable in planning terms, regardless of its ownership. Officers consider there is no planning reason to withhold permission on this issue.

6.0 CONCLUSION

- 6.1 This application has been assessed against the development plan, the National Planning Policy Framework (NPPF) and all other material planning considerations. In considering the application, due regard has been given to the representations received from statutory and other consultees. These have been taken in to account in assessing the overall scheme.
- 6.2 The proposed development is acceptable.
- 6.3 Subject to the recommended conditions, the application amounts to sustainable development and should be approved.

The following planning policies have been taken into account:

Vale of White Horse Plan 2031 Part 1

- CP01 - Presumption in Favour of Sustainable Development
- CP03 - Settlement Hierarchy
- CP04 - Meeting Our Housing Needs
- CP07 - Providing Supporting Infrastructure and Services
- CP08 - Spatial Strategy for Abingdon-on-Thames and Oxford Fringe Sub-Area
- CP33 - Promoting Sustainable Transport and Accessibility
- CP35 - Promoting Public Transport, Cycling and Walking
- CP37 - Design and Local Distinctiveness
- CP38 - Design Strategies for Strategic and Major Development Sites
- CP42 - Flood Risk
- CP43 - Natural Resources
- CP44 - Landscape
- CP45 - Green Infrastructure
- CP46 - Conservation and Improvement of Biodiversity

Vale of White Horse Plan 2031 Part 2

- CP04A - Meeting our Housing Needs
- DP16 - Access
- DP23 - Impact of Development on Amenity
- DP24 - Effect of Neighbouring or Previous Uses on New Developments
- DP28 - Waste Collection and Recycling
- DP30 - Watercourses
- DP33 - Open Space

Neighbourhood Plans

See section 1 of report

Supplementary Planning Documents

- Vale of White Horse Design Guide – 2015

National Planning Policy Framework (NPPF) – June 2019

National Planning Practice Guidance (PPG)

Other Relevant Legislation

- Planning (Listed Buildings and Conservation Areas Act) 1990
- Community & Infrastructure Levy Legislation
- Human Rights Act 1998
- Section 149 of the Equality Act 2010
- Section 17 of the Crime and Disorder Act 1998

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