

APPENDIX 5 Vale District Council's performance 1 January 2020 to 31 December 2020 1- quality of decisions – major appeals allowed (overturned)

To accompany Table 4

Application Reference	Site Address	Description of Development	Decision Process	Appeal Process	Appeal Decision	Costs
P18/V3135/FUL	70 Cumnor Hill, Oxford	Demolition of existing dwelling and erection of a 2 storey block of six flats; and two 1.5 storey dwellings	Planning committee (overturn)	Written representations	Appeal Allowed 14 February 2020	See below.
<p>Costs: The appellant submitted the application on the basis that the Council had submitted evidence in the form of letters. The Inspector consider the letters represented the council's evidence to substantiate refusal therefore it did not fail to provide such evidence. Further the refusal reason was complete, specific and relevant to the proposal. Accordingly the Inspector refuse the application for costs.</p>						



Appeal Decision

Site visit made on 20 January 2020

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 February 2020

Appeal Ref: APP/V3120/W/19/3239078 70 Cumnor Hill, Oxford OX2 9HU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Lucy Developments Ltd against the decision of Vale of White Horse District Council.
 - The application Ref P18/V3135/FUL, dated 18 December 2018, was refused by notice dated 29 May 2019.
 - The development proposed is the demolition of the existing dwelling. Erection of a 2 storey building with 6 flats (6 x 2 Bed) with 12 off-street parking spaces and associated amenity, refuse and cycle stores. Erection of 2 x 1.5 storey 4 Bedroom houses with double car ports and off-street parking (min. 3 spaces per house).
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of the existing dwelling. Erection of a 2 storey building with 6 flats (6 x 2 Bed) with 12 off-street parking spaces and associated amenity, refuse and cycle stores. Erection of 2 x 1.5 storey 4 Bedroom houses with double car ports and off-street parking (min. 3 spaces per house) at 70 Cumnor Hill, Oxford OX2 9HU in accordance with the terms of the application, Ref P18/V3135/FUL, dated 18 December 2018, subject to the conditions set out in the Schedule at the end of this decision.

Application for costs

2. An application for costs was made by Lucy Developments Ltd against Vale of White Horse District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The description of development in the heading above has been taken from the planning application form. In Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application.
4. As part of the appeal, the appellants have included plans that were not submitted to the Council as part of the planning application. These plans show the omission of a carport to one of the proposed dwellings and changes to its position and associated parking. The amendments would materially change the relationship of the proposed dwelling and parking facilities to the boundaries of

the site. Consequently, the amended plans show a significant revision to the scheme determined by the local planning authority and made subject to public consultation. Parties may be prejudiced or caused injustice by my consideration of these revised plans and therefore I have not taken them into account in the determination of this appeal.

5. Reference is made to an emerging Cumnor Neighbourhood Plan. As it is still being prepared, I attach this plan limited weight in my assessment.

Main Issue

6. The main issue is the effect on the character and appearance of the area.

Reasons

7. The appeal site lies in an area characterised by detached houses set off the road behind trees and hedges. Where they are seen from the highway, it is apparent that properties vary in size and style. The existing house is set below road level and partially screened by boundary vegetation, although it is seen through the site access. The prominence of trees and hedges gives the general area a semi-rural character.
8. Being towards the front of the site, the apartment building would be the most obvious element of the proposal. However, it would be set back from the road, on a lower level and partially screened by roadside vegetation and so it would not be prominent in the street scene. Whilst it would be larger in overall size, the apartment building would be similar in height to the properties on either side and design features would break up its mass. Consequently, it would not be incongruous amongst the dwellings of various styles in the area. The Vale of White Horse Design Guide 2015 (DG) resists inappropriately located apartment buildings. However, in this case, the apartment building would be of a height, scale and design that responds sympathetically to its context and therefore it would not be inappropriate to its location.
9. The apartment building would be wider than the 2 properties on either side but it would be narrower than the existing house on the site. The proposal would create a new space between the flank of the apartment building and side boundary with 1 Dean Court that would allow views from the front towards the rear of the site. As such, the proposal would maintain the site's openness as seen from the road, despite any erosion of space caused by the proposed wall, parking area and driveway.
10. The proposed houses would be behind the apartment building and so would not be visible from the road, although they would be seen from adjoining properties. Dwellings on Woodfield and properties behind 72 Cumnor Hill adjoin and can be clearly seen from the rear of the site. As such, the positioning of the proposed houses to the rear of development facing the road would not be incongruous to the site's context. Furthermore, the proposed houses would be detached and would be set away from the proposed apartment building and boundaries of the site, thereby maintaining a degree of openness and level of vegetation cover that would be appropriate to the character of the area. Therefore, the proposal would reflect the surrounding area despite resulting in an increase in the number of residential units on the site.
11. In support of its case, the Council has referred to 2 appeal decisions relating to 15 and 108 Cumnor Hill. Full details of these proposals have not been provided

and so it is difficult for me to draw any comparisons to the current appeal development. However, it is unlikely that the characteristics of these other sites and their surroundings would be the same as this appeal site and, in any case, I am required to assess this appeal on its own merits. From the information before me, it would not be inconsistent with these previous decisions to find the appeal proposal acceptable in terms of this main issue.

12. For the reasons outlined above, I conclude that the development would not be harmful to the character and appearance of the area. Consequently, and in this regard, it would accord with Core Policies 37 and 44 of the Vale of White Horse Local Plan 2031 Part 1 Strategic Sites and Policies 2016, principles DG69, DG79 and DG80 of the DG and the National Planning Policy Framework (the Framework). All of these aim, amongst other things, for new development to respond positively to its surroundings and to reinforce local identity.

Other Matters

13. A number of other concerns have been raised in respect of the proposal. Whilst it would be seen from adjoining properties, the proposed development would avoid unacceptable overlooking, overshadowing and overbearing effects onto neighbouring properties by virtue of its design, separation distances, relative levels and intervening boundary features. I have no reason to find that the proposal would harm the living conditions of occupiers of adjoining properties through noise disturbance or obtrusive lighting. Construction activity would be noticeable at nearby houses but would be likely to last only for a short, temporary period with no unacceptable harm caused to living conditions.
14. Traffic generated by the development would not prejudice highway safety, subject to the provision of the proposed visibility splays, parking and turning areas as shown on the approved plans. Whilst noting concerns in respect of ground water and surface water run-off, there is no substantive evidence that demonstrates the proposal would exacerbate flood risk provided appropriate surface water drainage is incorporated within the scheme. This can be secured through the imposition of a planning condition.
15. I am advised that some trees have already been removed from the site, however existing vegetation would be retained and would be supplemented with additional planting. As such, the proposal would maintain a contribution to the verdant character of the area. No evidence has been provided to me that demonstrates the development would cause harm in respect of air pollution. The Council state that an adequate housing land supply can be demonstrated. Even so, the proposal would be in line with the aim of the Framework to boost the supply of housing and no information is with me to substantiate the claim that there is no need for apartments in the area.
16. In the absence of any substantive evidence to dismiss the appeal on any of the above grounds or complaints, the concerns raised do not override or affect my conclusions on the main issue.

Conditions

17. I have considered the planning conditions forwarded by the Council having regard to the tests set out in the Framework. Where appropriate, I have amended the wording of the suggested conditions for reasons of precision and to avoid unnecessary pre-commencement conditions.

18. A condition detailing the plans is necessary to ensure the development is carried out in accordance with the approved plans and for the avoidance of doubt. As the plans specify external materials, finished floor levels and roof heights, separate conditions relating to these issues are unnecessary. Also, the proposed planting details have been provided. As such, a condition is only necessary relating to earthworks and a landscape implementation programme to ensure the proposal would be in keeping with the character of the area.
19. To preserve vegetation shown to be retained, a condition is necessary to ensure the implementation of tree protection measures as set out in the submitted tree survey report. A separate condition requiring the submission and approval of an arboricultural method statement is unnecessary given the comprehensive report that has already been provided.
20. In the interests of highway safety, a condition is necessary to require provision of visibility splays and parking areas. Conditions are also needed that require the provision of cycle parking facilities as shown on the approved plans as well as electric vehicle charging points in order to promote the use of alternative, more environmentally friendly modes of transport. A condition is imposed to ensure an appropriate surface water drainage system is incorporated as part of the development. The submitted plans show the details of foul water drainage and so a condition requiring further information is unnecessary.
21. The Council suggest a condition that removes permitted development rights from the proposed development. However, no clear reason has been provided as to why such a condition is necessary and so its imposition would be contrary to paragraph 53 of the Framework. Consequently, such a condition has not been imposed.

Conclusion

22. For these reasons, I allow the appeal as set out in the formal decision above.

Jonathan Edwards

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: PA01A, PA03A, PA05A, PA06A, PA07A, PA08, PA10, PA11, PA12, PA13, PA14, PA15, PA16A, PA17A, PA18A, 01/005 and FEDS-218054-002D
- 3) No construction work above floor slab level shall be commenced on the development hereby approved until details of earth moving operations, finished external levels and contours as well as an implementation programme for any proposed earthworks and planting as shown on the approved plans have been submitted to and approved in writing by, the local planning authority. The approved earthworks and planting shall be carried out fully and in accordance with the approved details and implementation programme.

- 4) No development shall commence until the tree protection details shown on the tree survey report and appendices submitted by Venners Arboriculture updated February 2019 have been put in place. Thereafter the tree protection shall be retained in situ for the duration of the construction of the development hereby approved. At all times during construction, the tree protected areas shall not be used to park or manoeuvre vehicles, site temporary offices or other structures, store building materials or soil, mix cement/concrete or light bonfires.
- 5) No part of the development hereby approved shall be occupied until the vehicular access, associated parking areas and turning spaces have been constructed and visibility splays provided in accordance with the details shown on the approved plans numbered PA03A, PA05A, PA06A, PA08 and PA17A. Thereafter, the parking and turning areas shall be kept permanently free of any obstruction to such use and the visibility splays shall be permanently maintained free of obstruction to vision.
- 6) No individual dwelling in the apartment building hereby approved shall be occupied until the covered bike stands as shown on the approved plans have been fully installed.
- 7) Prior to the first occupation of the development hereby approved details of electric vehicle charging facilities to be incorporated as part of the development shall be submitted to and approved in writing by the local planning authority. The approved facilities shall be installed prior to the first occupation of any unit(s) they are intended to serve.
- 8) No construction work above floor slab level shall be commenced on the development hereby approved until a detailed sustainable drainage scheme based on Forge Engineering Design Flood Risk Assessment (reference FEDES-218054D) has been submitted to and approved by the local planning authority. The drainage scheme shall include:
 - a) full details of a sustainable surface water drainage system based on ground permeability tests to BRE 365 and full consideration for the hydro geological context of the site;
 - b) design calculations with appropriate climate change allowance and storage areas sizing;
 - c) full construction details;
 - d) an assessment of groundwater and overland flow routes through the development to ensure that flood risk is not increased either to the development or elsewhere;
 - e) details of proposed site and floor levels; and
 - f) a full future management and maintenance plan for the drainage features.

The approved drainage system shall be fully implemented prior to the first occupation of the development hereby approved and managed and maintained in accordance with the approved details.



Costs Decision

Site visit made on 20 January 2020

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 February 2020

Costs application in relation to Appeal Ref: APP/V3120/W/19/3239078 70 Cumnor Hill, Oxford OX2 9HU

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Lucy Developments Ltd for a full award of costs against Vale of White Horse District Council.
 - The appeal was against the refusal of planning permission for the demolition of the existing dwelling. Erection of a 2 storey building with 6 flats (6 x 2 Bed) with 12 off-street parking spaces and associated amenity, refuse and cycle stores. Erection of 2 x 1.5 storey 4 Bedroom houses with double car ports and off-street parking (min. 3 spaces per house).
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. This application claims unreasonable behaviour by the Council in terms of failing to provide evidence to substantiate the refusal reason and making vague assertions about the impact of the proposal.
3. The Council's officers recommended that planning permission be granted for the proposed development. While the Council is not duty bound to follow the advice of its officers, it has to demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
4. In support of its case, the Council initially submitted a letter that describes the character of the area, sets out relevant policies and guidance and explains why it considered the proposal would harm the character and therefore fail to comply with the policies. A further letter has been submitted that provides a response to the appellant's appeal statement. The fact that the evidence has been provided in the form of letters rather than an appeal statement has no effect on its validity or purpose. The contents of the letters represent the Council's evidence to substantiate the refusal reason and therefore it has not failed to provide such evidence.
5. The refusal reason is complete, specific and relevant to the proposal. It clearly states the development plan policies on which it would rely and the reasons why the Council found the proposal would be contrary to the policies. The comments submitted in response to the appeal include comparisons between

the proposed development and the characteristics of the area to help justify the Council's case. As such, the Council's concerns with the proposal are not vague or imprecise and its case is supported by objective assessment. The effect of the proposal on the character of the area is a matter of judgement and whilst I have arrived at a different conclusion on the issue, the evidence demonstrates the Council has not been unreasonable in refusing permission.

6. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and an award of costs is therefore not justified.

Jonathan Edwards

INSPECTOR