



## Appeal Decision

Site visit made on 12 September 2023

by **G Sibley MPLAN MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 2 April 2024**

---

### **Appeal Ref: APP/D3125/W/22/3313678**

#### **Land at Chapel Lane, Enstone**

- 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 Messrs NJ & PN Melrose against the decision of West Oxfordshire District Council.
  - The application Ref 22/00838/OUT, dated 18 March 2022, was refused by notice dated 26 August 2022.
  - The development proposed is residential development (up to 8 dwellings), access, parking, public open space, landscaping and associated development infrastructure.
- 

#### **Decision**

1. The appeal is allowed and planning permission is granted for residential development (up to 8 dwellings), access, parking, public open space, landscaping and associated development infrastructure at Land at Chapel Lane, Enstone in accordance with the terms of the application Ref 22/00838/OUT, dated 18 March 2022, subject to the conditions contained in the Schedule of Conditions at the end of this decision.

#### **Preliminary Matters**

2. Since the council issued its decision the National Planning Policy Framework (the Framework) has been updated. The appellants and the council were given the opportunity to comment on the updated Framework and those comments have been taken into consideration in this decision.
3. The council's Statement of Case referenced a different site, arguing harm from matters that were not in the reason for refusal and referenced documents that were not related to this appeal site. The council confirmed that these matters did relate to a different site and identified the parts of the statement that were not relevant to this case and the appellants were given the opportunity to comment on this. As such, I am satisfied that the parties would not be prejudiced by this approach.
4. A S106 Planning Obligation by way of Unilateral Undertaking (Obligation) was submitted by the appellants during the determination of this appeal. The council were given the opportunity to comment on it and the appellants had the final say on this matter. I will discuss the implications of the Obligation later in my decision.

#### **Main Issue**

5. The main issue is the effect of the proposed development upon the character and appearance of the area.

## Reasons

6. Policy H2 of the West Oxfordshire Local Plan 2031 (LP) identifies in what circumstances new development in 'villages' would be permissible. Enstone is identified as one of these 'villages' in the LP. Policy H2 states that on undeveloped land within the built-up area new dwellings will be permitted if the proposal is in accordance with the general principles in the plan and in particular the general principles in Policy OS2 that new dwellings would be permitted. Policy OS2 states that villages are suitable for limited development which respects the village character and local distinctiveness and would help maintain the vitality of these communities.
7. The site is located off Chapel Lane and is bound by dwellings on all sides. A short distance from the site is the village shop and school. The A44 passes through Enstone with development located either side of it typically around cul-de-sacs that appear to have been developed sporadically over time. As a result, the dwellings vary in scale and design but there is a consistent use of materials, and this visually connects the developments and makes a positive contribution to the villages distinctive character.
8. The location of the proposed development would be consistent with development in Enstone insofar as it would be located just off the A44 and would be enclosed by the existing dwellings around Chapel Lane. The site is an undeveloped gap, however, given its location and the development around it, the site is located within the built-up-area for Enstone.
9. The topography around Enstone undulates considerably with significant dips and rises in the surrounding countryside and the site is consistent with this, with the ground level dropping towards the edge of the village. From the top of Chapel Lane there are views across the site to the open countryside, although these views are tempered by the houses that bound the site and thus the site is viewed as part of the village. From most viewpoints within the village the site and the wider countryside are screened by the houses around Chapel Lane as well as those along the A44. From in front of the village shop the countryside is visible across a section of the site and given the undulating topography of the wider area there are views of the open countryside from this location. This outlook provides an appreciation of the village's location within a rural area and this outlook does make a positive contribution to the village's distinctiveness.
10. The proposal includes open space across this viewpoint which would ensure it would not be enclosed by the proposed dwellings. By retaining this open outlook across this section of the site, the view from this part of the village to the open countryside would be retained. As such, the positive contribution this site makes towards the setting of the village would be preserved by the proposal. Furthermore, by retaining this view the location of the proposed open space would preserve the landscape character of the village. This would also ensure that the area of open space would continue to provide a relieving impact when viewed within the village as well as maintaining its connection with the countryside around Enstone.
11. The Obligation would seek to retain this area as on site public open space which would retain the openness of this area and the views across it. However, an Obligation should only be used where it would resolve a problem that would otherwise lead to the appeal being dismissed and the Framework states that

- planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.
12. It is necessary that the open space shown on the Framework Plan 09661-FPCR-XX-XX-DR-A-0002 Rev P05 to be kept free from development for the reasons given above. However, it would not be necessary for this area to be secured as public open space to achieve this.
  13. Given that the scheme is made in outline and landscaping as well as layout are reserved matters that could be secured through the imposition of a suitably worded condition, the retention of this area as open space would be achieved via a planning condition. Additionally, the Landscape and Ecological Management Plan which could also be the subject of a condition to provide the provisions for management of open spaces within the site. As a result, the Obligation would not be necessary to make the development acceptable in planning terms on this matter and the Obligation is not justified.
  14. From Public Right of Way (PRoW) 202/14 the land drops sharply towards the River Glyme and the site and village are mostly hidden from view by the intervening land. The land rises again beyond the river and there are views of the village but the site itself is enclosed by the houses around Chapel Lane. Accordingly, when viewed from the PRoW the development would mostly be enclosed by the existing development and the scheme would be seen as part of the village. The view from PRoW 202/15 is similar with the site enclosed by the houses on Chapel Lane from this viewpoint.
  15. The wall that bounds the site appears to be a Cotswold dry-stone wall and parts of this would have to be removed to provide the two vehicular access points as well as the public parking spaces. This wall bounds most of the site and there are similarly designed walls throughout the village. The consistent appearance of these walls throughout the village positively contributes to the village's distinctiveness. The loss of parts of this wall would cause limited harm to this distinctiveness, however, the scheme would retain much of this wall. As a result, the overall contribution this wall makes to the village's distinctiveness would not be significantly eroded and it would still retain the visual and historical connection with the rest of the village.
  16. Access is the only matter that is not reserved and as such the layout and even the number of dwellings could change upon the submission of a Reserved Matters application. Nevertheless, given the size of Enstone as a whole, eight dwellings would represent limited development. Furthermore, the scheme as shown on the Illustrative Masterplan would represent low density development with a large proportion of the site allocated as open space. The dwellings are shown to have generous plots with large gardens. The indicative plan also shows that the site could encompass two cul-de-sacs with access taken from either side of Chapel Lane. The development around Chapel Lane is more sporadic. However, development around cul-de-sacs is common throughout Enstone and when viewed as part of the wider village, the development shown on the indicative plan would respect the character of the village in this regard and would be a logical complement to the existing scale and pattern of development in the area.
  17. Therefore, for the reasons set out above the proposal would not harm the character or appearance of the area. Consequently, it would accord with Policies H2 and OS2 of the LP. It would also generally accord with the West

Oxfordshire Design Guide as well as the Framework. These seek, amongst other matters, to ensure development is delivered in a hierarchal manner and would respect the villages character and local distinctiveness.

### *Planning Obligation*

18. The Framework and Planning Practice Guidance states that planning Obligations should only be sought where they meet all 3 tests, including that the Obligation is necessary to make the development acceptable in planning terms.
19. The trigger to provide affordable housing in Policy H3 of the LP is for development of 11 or more units or which have a max combined floor space of more than 1000 squared metres. This outline scheme for 8 dwellings would be below this threshold and if no affordable homes were provided the scheme would comply with this policy. As there is no policy justification for seeking any affordable housing as part of the development the Obligation is not necessary to make the development acceptable in planning terms and does not meet the test set out above.

### **Other Matters**

20. I have been referred to an appeal that was dismissed on this site for residential development (Ref: T/APP/D3125/A/90/163762/P3). Since that decision was issued in 1991 a new local plan has since been adopted as well as changes to national policy. Furthermore, the size of development at the upper scale would have been significantly larger than that proposed with development located across the whole of the site. This larger scheme would have had a greater effect upon the character and appearance of the area than that proposed. Accordingly, the scheme as well as the policy position has substantively changed since that appeal was determined and as such, I attach limited weight to this matter.
21. I note the comments from interested parties regarding the brevity and timeliness of the Ecological Appraisal that was submitted with the application although it is notable that the council's Ecology Officer did not object to the application. A second Ecological Appraisal was undertaken at a later point of the year and covered several matters that were identified by the interested parties. This was submitted with the appeal and as a result the parties would have had an opportunity to comment on it in their representations. The Appraisal concluded that the site was of low intrinsic ecological value. The Appraisal also found that the site provided low quality potential foraging opportunities to several species but generally was not suitable for habitation. An eDNA survey was also undertaken for a waterbody located close to the site and found that Great Crested Newts were absent.
22. The proposals would result in the development of part of the site which would result in the loss of semi-improved grassland. However, I am satisfied that the controlled management of a smaller area through the conditioned Landscape and Ecological Management Plan would secure ecological enhancements for protected and non-protected species that the site does not currently provide for. It is noted that the site has provided a habitat for wildflowers, however, the controlled management of the open space would ensure a wildflower area could be secured long term. The dry-stone wall that bounds the site would be mostly retained and parts of the wall that would be removed would be reinstated after construction. This alongside the proposed bird boxes would

- secure habitats for several bird species and other legislation would ensure that wild bird species are protected from intentional harm during nesting season.
23. Delivering Biodiversity Net Gain is mandatory for developers on certain new applications submitted from 12<sup>th</sup> February 2024 for major development and from 4<sup>th</sup> April 2024 for other non-major development and the related application was submitted prior to these dates. However, the Ecological Appraisal identified how biodiversity net gain could be achieved. The Landscape and Ecological Management Plan (LEMP) which would be secured via a condition requires the LEMP to be carried out in accordance with the principles and recommendations set out in the Ecological Appraisal. The LEMP and development at Reserved Matters stage could also ensure the soil structure is protected. Given the size of the proposed open space there is no persuasive justification to indicate that this could not be secured.
  24. The visibility splays for the vehicular accesses were determined by the Local Highways Authority to be acceptable and given that there is no substantive evidence on the contrary and in light of the road configuration and the design of the proposed accesses to the site I see no reason to disagree.
  25. Notwithstanding when the traffic survey was undertaken the Local Highways Authority Officer did not object to the application and the proposal seeks permission for up to eight dwellings and the expected traffic generated from eight dwellings would be limited. The scheme does seek to widen part of Chapel Lane. However, given the limited number of dwellings that take access from Chapel Lane as well as the limited scale of the proposal there is no substantive evidence that the scheme would have an unacceptable impact on highway safety or that the residual cumulative impacts on the road network would be severe.
  26. Furthermore, the proposal would seek to address local parking provision concerns by providing additional public parking spaces on the site close to the village shop, bus stop and school. There are also bus services available a short walking distance from the site which has services to Oxford city centre and as such, the future occupiers would not be reliant on private car use.
  27. The site is in Flood Zone 1 and there is no substantive evidence that the proposals would increase the risk of flooding elsewhere. In light of this a condition to manage surface water with sustainable drainage proposals would be appropriate given the limited scale of the proposal.
  28. There would be some disruption during construction, but this disruption can be managed via a condition to protect neighbouring occupants' living conditions as well as in the interest of highway safety. Additionally, this disruption would be for a limited period of time.
  29. Given that the scheme was made in outline, matters related to overlooking and privacy would have to be taken into consideration as part of a Reserved Matters application when the final layout and siting of the dwellings would be determined.
  30. The site is in private ownership and based on the evidence before me it is not an area of public open space. Whilst the site may have been used for this purpose, it is not evident that there is a right for the public to access this site.

31. It is noted that a famous writer lived close to the site, however it is not evident that the site itself made a significant contribution to their works and there is no statutory protection of the site in this regard.
32. Regardless of whether the council can demonstrate a five-year supply of deliverable housing sites, application of paragraph 11(d) from the Framework would make no difference to the appeal outcome because I have found the proposed development is in accordance with the development plan and the Framework and the development plan in this case are pulling in the same direction.

### **Conditions**

33. I have considered the planning conditions suggested by the council and the appellants, having regard to the tests set out in the Framework. Where appropriate, I have amended the wording to ensure they are reasonable given the scale of the development and site context and to ensure that they meet all other Framework tests for conditions.
34. In addition to the conditions discussed above, and further to the statutory commencement condition for an outline permission [1], it is necessary in the interest of certainty that the development is carried out in accordance with the approved plans [3].
35. Several of the Reserved Matters have not been approved and a condition requiring them is necessary in the interest of character and appearance, highway safety and living conditions [2].
36. I have imposed several conditions which due to their nature require the submission of details prior to the commencement of development and these include drainage [4 and 5], nature conservation requirements [6 and 7], a construction management plan [8] and archaeology [9 and 10]. The imposition of these conditions has been agreed by the appellants and are in the interests of environmental management, nature conservation, living conditions and the historic environment. It is necessary for these conditions to be pre commencement to ensure plans are agreed before abortive works which may affect them are undertaken.
37. In the interest of nature conservation, a lighting plan, the installation of bird and bat boxes and a Landscape and Ecological Management Plan is necessary given the evidence of foraging and commuting bats as well as in the interest of the character and appearance of the area [7 and 12]. Whilst these could be delivered through the Reserve Matters application(s), conditions would ensure these matters which, in light of the supporting documentation, are necessary for the reasons given above, are secured.
38. In the interest of ensuring the provision of surface water drainage and / or to ensure flood risk is not exacerbated locally, conditions requiring a surface water drainage scheme and the exceedance flow rate are necessary [4 and 5]. It is necessary for these conditions to be pre commencement to ensure a scheme is agreed before works which may affect them are undertaken.
39. In the interest of protecting species and habitats that have been identified in relation to the site a condition for a Construction Environmental Method Statement for Ecology is necessary [6]. It is necessary for this condition to be



- pre commencement as the measures are precautionary to be agreed before abortive works which may affect them are undertaken.
40. Activities at all stages of construction have the potential to significantly adversely affect the living conditions of surrounding occupiers through noise and disturbance. It is therefore necessary to ensure a Construction Management Plan is in place and adhered to from the start of construction in the interest of protecting the living conditions of the neighbouring occupiers [8]. However, the wording of part a) would allow approval for management specific to this site and this would ensure that the other sections of the suggested condition would not be necessary, other than the control over construction hours which would be in the interests of preserving the living conditions of neighbouring occupants. It is necessary for this condition to be pre commencement to ensure a plan is agreed before construction works which may affect the living conditions of the neighbouring occupiers begins.
  41. As the site lies in an area of potential archaeological interest conditions for the evaluation and recording is necessary in order to ensure that appropriate provision is made so that the significance of the historic environment is recorded [9 and 10]. It is necessary for these conditions to be pre commencement to ensure provisions are in place in relation to matters of potential archaeological interest before abortive works which may affect them are undertaken.
  42. The provision of car parking and site access is necessary in the interests of highway safety [11]. Whilst I appreciate the intentions of the appellants and the Parish Council, based on the information before me it would not be necessary for these to be provided prior to the construction of the dwellings. However, it would be necessary in the interest of highway safety for these to be delivered prior to the occupation of the dwellings. This would provide safe access to the site for the occupiers of the proposed dwellings and deliver the associated public parking spaces which is a benefit of the scheme. Given that this information has already been submitted it is unnecessary to require it to be submitted again via a condition.
  43. The Framework identifies prudent use of natural resources as a key element of achieving sustainable development. Whilst there are mandatory national water efficiency standards set out by Building Regulations, the Planning Practice Guidance (2015)<sup>1</sup> allows for local planning authorities to require new dwellings to meet the tighter Building Regulations option requirement of 110 litres/person/day, where there is a clear local need. Policy OS3 of the LP sets out the optional Building Regulations requirement for water efficiency of 110/litres/person/day [13]. This is a policy in a LP adopted after the PPG was published and there is no evidence before me that this policy is inconsistent with national policy. Accordingly, it is necessary to include a condition related to this in the interest of the prudent use of natural resources.
  44. The effects of the development have been assessed based on a consideration of the disposition of development set out in the Framework Plan. As such, the Reserved Matters should be in accordance with the general principles of that plan to ensure that the effects of the development are not greater than those assessed [14].

---

<sup>1</sup> Paragraph: 014 Reference ID: 56-014-20150327

45. Given the limited scale of this development as well as in light of the supporting evidence, conditions suggested by the council regarding surface water capacity, drainage and biodiversity would have been particularly onerous. Furthermore, these matters are already dealt with by other conditions suggested by the council. As such there is no convincing justification that they are fairly and reasonably related to the development. Accordingly, to avoid repetition where necessary I have either removed these suggested conditions completely or incorporated them into other conditions.
46. There is no technical evidence to support the necessity of conditions requiring a contamination assessment and subsequent remediation scheme to be undertaken for the site. In the absence of any technical evidence to the contrary I am satisfied that these conditions are not necessary or reasonable.
47. Given the limited scale of the proposal there is no substantive evidence that foul drainage could not be appropriately dealt with through Building Regulations and the S104 drainage approvals process. Accordingly, I do not consider it is necessary to include a separate condition to control this.
48. The Planning Practice Guidance states that decisions should avoid duplication of regulations from other regimes. Electric vehicle charging points are now part of the updated Building Regulations approval and as such it is not necessary to include a condition requiring them.

### **Conclusion**

49. For the reasons given above I conclude that the development would accord with the development plan as a whole and the other considerations do not indicate that a decision should be made other than in accordance with it. Therefore, I conclude that the appeal should be allowed.

*G Sibley*

INSPECTOR



### Schedule of Conditions

- 1) a) application for approval of the Reserved Matters shall be made to the local planning authority not later than three years from the date of this decision; and  
b) the development hereby approved shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
- 2) Details of the Appearance, Landscape, Layout and Scale, (herein called the Reserved Matters) shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 3) The development hereby approved shall be carried out in accordance with the approved plans; Location Plan 09661-FPCR-XX-XX-DR-A-0001 Rev P05 and Proposed Access Design P20046-001D.
- 4) Prior to the commencement of the development, a 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 result of soakage tests carried out at the site, to demonstrate the infiltration rate. These test results shall be submitted for each soakage pit as per Building Research Establishment Digest 365, with the lowest infiltration rate (expressed in m/s) used for design. The details shall include a management plan setting out the maintenance of the drainage. The development shall be carried out in accordance with the approved details prior to the first occupation of the development and shall be maintained in accordance with the management plan thereafter.
- 5) The development shall not take place until an exceedance flow routing plan for flows above the 1 in 100 year +40% Climate Change event has been submitted to and approved in writing by the local planning authority. The development shall then be carried out in accordance with the exceedance flow routing plan and retained thereafter.
- 6) Prior to the commencement of the development, a Construction Environmental Method Statement for Ecology (CEMS:Ecology) shall be submitted to and approved in writing by the local planning authority in accordance with the principles and recommendations set out in the Ecological Appraisal (September 2022, prepared by fpcr). These shall include details of precautionary methods of working to protect badgers, nesting birds, hedgehogs, and other species from harm during works, measures for storage and disposal of waste (including vegetation and soils containing Schedule 9 invasive plant species), measures to ensure no Schedule 9 species can spread to the adjacent wildlife site. The CEMS:Ecology shall include full details of compensation and enhancement measures for species including the provision of bird and bat boxes and habitat connectivity measures for hedgehogs. The development shall be implemented in strict accordance with the CEMS:Ecology and retained thereafter.
- 7) Prior to the commencement of the development, a Landscape and Ecological Management Plan (LEMP) shall be submitted to and approved in writing by the local planning authority in accordance with the principles

- and recommendations set out in the Ecological Appraisal (September 2022, prepared by fpcr). The LEMP shall include measures for establishment, enhancement and management of habitats and open spaces within the site. It shall include details of planting including a schedule to provide linkages and connectivity to the wider landscape. This shall include a timetable for management activities as well as a monitoring schedule. The development shall be implemented in accordance with the measures in the LEMP and retained thereafter.
- 8) Prior to the commencement of the development a Construction Management Plan (CMP) shall be submitted to and approved in writing by the local planning authority. The CMP shall be adhered to throughout the construction of the development and shall include the following details:
    - a) details of measures to minimise the impacts arising from construction activities and construction traffic including a scheme for vehicle routing to and from the site, wheel cleaning and other measures to ensure that vehicles leaving the site do not deposit mud or other detritus on the public highway; and
    - b) construction working hours.
  - 9) Prior to the commencement of the development hereby approved an Archaeological Written Scheme of Investigation, relating to the application site area, shall be submitted to and approved in writing by the local planning authority.
  - 10) Following the approval of the Written Scheme of Investigation referred to in Condition 9, and prior to the commencement of the development hereby approved (other than in accordance with the agreed Written Scheme of Investigation), a staged programme of archaeological evaluation and mitigation shall be carried out by the commissioned archaeological organisation in accordance with the approved Written Scheme of Investigation. The programme of work shall include 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.
  - 11) No dwelling hereby permitted shall be occupied until the access to the site and the proposed car parking spaces have been constructed in accordance with the approved details and made available for parking. The car parking spaces shall be retained thereafter and kept available for the parking of vehicles at all times.
  - 12) Prior to the installation of external lighting for the development hereby approved, a lighting design strategy for biodiversity shall be submitted to and approved in writing by the local planning authority. The strategy must:
    - a) identify the areas and / or features on site that are particularly sensitive for foraging bats;
    - 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 bats using their commuter route.All external lighting shall be installed only in accordance with the specifications and locations set out in the strategy and retained thereafter.

- 13) The dwellings shall not be occupied until the optional requirement for water efficiency of 110 litres per person per day as set out in regulations 36 and 37 of the Buildings Regulations 2010 as amended, shall have been complied with.
- 14) The Reserved Matters submitted pursuant of Condition 2 of this decision shall generally accord with the principles for the development of the site as set out in the submitted Framework Plan 09661-FPCR-XX-XX-DR-A-0002 Rev P05.