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## Appeal Decisions

Hearing held on 15 June 2016

Site visit made on 15 June 2016

**by Simon Hand MA**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 25 August 2016**

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### **Appeal A: APP/D3125/W/16/3143114**

#### **Land to rear of 78-88 Brize Norton Road, Minster Lovell, Oxfordshire**

- 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 Ede Homes Ltd against the decision of West Oxfordshire District Council.
  - The application Ref 15/01783/OUT, dated 15 May 2015, was refused by notice dated 28 July 2015.
  - The development proposed is development of 74 dwellings and creation of new access onto Brize Norton Road.
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### **Appeal B: APP/D3125/W/16/3148659**

#### **Land to rear of 78-88 Brize Norton Road, Minster Lovell, Oxfordshire**

- 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 Ede Homes Ltd against the decision of West Oxfordshire District Council.
  - The application Ref 15/04463/OUT, dated 18 December 2015, was refused by notice dated 24 March 2016.
  - The development proposed is development of 58 dwellings and creation of new access onto Brize Norton Road.
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### **Decision on Both Appeals**

1. The appeals are dismissed.

### **Background to the Appeals**

2. Although in outline with only the access to be considered the appellant has provided illustrative plans showing the siting, layout and indicative landscaping of the two proposals. A revised illustrative scheme was produced for the 74 dwelling scheme following an analysis of the Council's criticisms. As the plans are illustrative and all parties involved have had plenty of opportunity to comment on them I shall consider the 74 dwelling appeal on the basis of the revised illustrative plan.

### **Main Issues**

3. The impact of the proposals on the historic character of Minster Lovell and on the setting of the listed cottage at No 86; the impact of the proposals on the character and appearance of the village as a whole and whether they represent

good design; whether an undesirable precedent would be set by allowing either appeal and the impact of the proposed schemes on sewerage and flooding in the village.

## **Policy Background**

4. The development plan comprises the West Oxfordshire Local Plan 2011, which was adopted in 2006. The examination into the emerging local plan was suspended because, amongst other issues, the Inspector was concerned that the Council could not demonstrate a 5 year housing land supply. In the Statement of Common Ground (SoCG) the parties agree for the sake of these appeals that this is the case. Although there is some dispute on the part of the Council as to whether they have 4.65 years or 3.21 years of supply, the Council accepted that I should have regard to the position taken by the Inspector at a recent inquiry in the district<sup>1</sup>. In this decision the Inspector favoured the lower figure of 3.21 years and I have no reason not to follow suit. Consequently, paragraph 49 of the NPPF is relevant and the policies for the supply of housing in the adopted local plan are considered to be out of date.
5. It is agreed in the SoCG that various policies of the 2006 local plan are up to date, the most relevant being BE2 which encourages good design that respects the quality of its surroundings, respecting scale, pattern and character and at e) does not adversely affect the landscape setting of villages; and BE4 which requires that proposals should not result in the loss of an open area that makes an important contribution to the distinctiveness of a settlement or the visual amenity or character of the locality.
6. There are a number of policies in the emerging plan, but given its early stage in the process and the uncertainty following the suspended examination, I shall give them only little weight. In any event those that are not housing policies, but deal with design, character, the historic environment and transport largely follow either the adopted plan or the NPPF.

## **Reasons**

7. Minster Lovell is a village split into three parts separated by the B4047, which links Burford and Witney. Little Minster is a scatter of dwellings to the north of the main road and Old Minster is an historic village also to the north of the B4047 astride the river Windrush. Both these lie in the river valley, but the main village of Minster Lovell lies to the south of the main road on a slightly higher plateau around the junction with Brize Norton Road. The main area of housing lies at the northern end of the village on the western side of Brize Norton Road which then turns into a ribbon of development that straggles down Brize Norton Road to its junction with the modern A40 dual carriageway. The eastern side of Brize Norton Road is essentially just a ribbon of development all the way down to the A40. The main northern housing area is sharply defined by field boundaries to the west and south and the western boundary runs from the Windrush all the way down to the A40.
8. The reason for this unusual development pattern is that the entire village was originally called Charterville and was a planned Chartist Village, dating from the late 1840s. This would have consisted of bungalows with small rear yards for pigs, chickens etc set in 2, 3 or 4 acre plotlands. A number of the original

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<sup>1</sup> APP/D3125/W/15/3019438 Land off Station Road, Eynsham – Issued 16 May 2016

bungalows remain scattered through the settlement and are listed, while many others are still visible, but beneath modern extensions and refurbishments. The form of the settlement has been lost at its northern end, where the back gardens and large plotlands have been developed with modern housing. Elsewhere the generously wide plots have been infilled with houses, mostly bungalows, to create the ribbon of development down Brize Norton Road. However, the modern houses appear to have been constrained within the original outlines of the Chartist settlement and this, once you know the history of the village, is strikingly clear from the map.

9. The proposal would occupy what would have been two original plotlands behind 6 bungalows that front Brize Norton Road. The first plotland would have belonged to No 80, a former but much altered Chartist bungalow, which it is proposed to remove in order to provide the access, and the second to No 86, a listed Chartist bungalow. The other bungalows are modern inserts. It would abut the last of the modern estates to the north and so continue the bulk of modern housing down behind the ribbon development.

***Historic character of the village the setting of the listed cottage***

10. Any backland development of the original plotlands would inevitably help to further erode the historic outline of the village. That is accepted by the appellant. However, they point out it is not a Conservation Area, nor are there any policies designed to protect this character in either the adopted or emerging local plans. I agree that the lack of Conservation Area status may be more to do with resources than an acceptance by the Council that one is not needed, but it is surprising that the Council, if they valued the historic landscape of the village, did not seek to provide some form of policy protection at the very least.
11. I also consider that the historic character is more apparent from the map than on the ground. As the bungalows are set well back from the road they do not stand out and it easy to overlook the listed Chartist bungalows. However, that does not mean they can safely be ignored. In the vicinity of the appeal site the bungalows, both modern and original, have been separated from the much larger plotlands. They have more usual sized, if still generous, back gardens. No 80 is an exception as its back garden wraps around the modern neighbours on either side to occupy the full width of the original plotland, but still is truncated. The bulk of the plotlands behind the bungalows are now fields, but still delineated with hedges and fences to their original widths.
12. Although not visible in public views these historic field divisions are clearly evident from the back gardens of the houses surrounding them and taken with the survival of some of the original bungalows makes it still possible to piece together the history of the village, which would be made harder by the development of the site. Such harm is permanent and irreversible and should be avoided if possible, but given the lack of any formal protection to the area I can only give this moderate weight.
13. The setting of No 86 is protected by s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires the decision maker to have special regard to the desirability of preserving the setting of a listed building. The appellant argues that No 86 has clearly been separated from the main area of the plotland and a small back garden created with the plotland beyond hedged off. This is correct, but it does not mean there is no visual connection

with the wider plotland nor that development of that plotland would have no impact on the setting of the bungalow. The significance of the Chartist bungalows lies very much in their connection with the land and the deliberate provision of large plotlands to encourage self-sufficiency. The land beyond No 86 is still clearly visible as a distinct field, the same size as the original plotland. Historically No 86 would have opened up onto this larger plotland and it was designed to back onto agricultural land, which it still does. Any appreciation of the wider setting of No 86 that is still possible would be lost if the land were developed and this loss would harm the setting of the bungalow contrary to s66(1). I would consider this to be less than substantial in terms of paragraph 134 of the NPPF and within that broad category, given the lack of direct connection between the bungalow and the field beyond towards the lower end of the level of harm.

### ***Character and appearance of the village and design of the proposal***

14. Setting aside the historic reasons for the development of Minster Lovell, the village is as described above. The housing developments of Cotswold Close and Ripley Avenue which lie immediately to the north of the site are very much of their time. They were described by one of the third parties as typical dormitory suburbs tacked onto any village in England. The character of the village is quite distinctively dominated by these developments and others like them at the northern end. As one proceeds south towards the site past Cotswold Close there is a car sales showroom and a line of small shops on the western side of the road and then the first of the bungalows in the ribbon development. On the other side of the road (the eastern side), there are a number of small developments that reduce the sense of it being a single house deep, until opposite the appeal site. On both sides of the road are two storey houses as well as bungalows, but at the point where the character of the village changes to the ribbon development there are only bungalows. This change is obvious from the street and the feel of the lower part of the village is quite different. There are views through to fields beyond on both sides. The bungalows are generally set back from the road in generous plots with large front gardens.
15. The development of Ripley Avenue bends around behind Cotswold Close and the garage/shops area and forms a distinct hard edge to development along the northern field boundary of the site. This can be seen through the gaps around the buildings to the south of the shops, especially the bungalows to the north of No 80. This gives a good feel as to how the proposed development would appear, when seen from the road to the south of No 80. Although the presence of new houses would be less stark than those of Ripley Avenue, because of proposed landscaping to the rear of the bungalows, the proposed 2 storey houses would still be likely to be visible, as well as a large portion of the estate which would be seen along the access road. This would have a seriously harmful impact on the character of the village at this point by extending the dense suburban development further along behind the bungalows, reducing the spacious feel to this part of the plotlands, appearing intrusive and over developed.
16. The open fields behind the bungalows are an important part of the character of the village. Ordinarily it is difficult to attribute any great value to the character of ribbon development, but in this case it is difficult to separate it from the specific historic reasons as to why it has developed. But, setting this aside, the

regular shape and size of the plotland fields do clearly differentiate the southern part of the village from the northern and their partial loss would be contrary to BE4 as they do make an important contribution to the distinctiveness of the settlement.

17. Although the application is in outline and the plans are illustrative only, there are clear design indications that can be drawn from the evidence. The density of the 58 house scheme is 22.7 dwellings per hectare, which is described by the appellant as low. This is certainly correct, although with the land taken out for landscaping and the access road the houses appear somewhat cramped together, very much in the style of the neighbouring estates to the north. This is at odds with the much more spacious feel to the ribbon development the estate would surround. It also seems to me the 58 dwelling scheme is determinedly utilitarian and little different from the standard estate style of the houses to the north. In terms of BE2 it does not respect the character of the bungalows along Brize Norton Road. I do not agree that the access road would seem to be little more than a large drive, typical of the area. It would clearly open into a reasonable sized housing estate, which it would be equally clear had been dropped in behind the frontage bungalows. Again this would not respect the character of this part of Minster Lovell.
18. The landscaping of the scheme is intended to screen the houses on the northern edge of the proposal from the backs of those in Ripley Avenue. These currently form a hard urban edge to the settlement and in the 58 house scheme a narrow strip of landscaping is proposed between the two developments, to be planted with trees. I agree with the Council that the management of this strip would be difficult, as it is narrower than the canopy of some of the trees shown on the plan and access would be problematic. Some of the houses in Ripley Avenue are very close to the site boundary. The proposed trees would both block sunlight into some of the houses and most of the gardens along the southern boundary of that estate and shed leaves and debris which may well lead to pressure for them to be kept low or removed, a process that would be made harder by the poor access to the landscaped strip.
19. In order to avoid a new hard urban edge further down the plotlands it is proposed to strengthen the southern field boundary which currently is rather sparse. Here no landscaping strip is proposed, the new planting would be in the back gardens of the proposed new houses. Again I can see this might well create management difficulties and possibly their removal by householders wishing to maximise their views and sunlight. There is a similar objection to the western boundary, which is currently well screened by trees, all of which would end up in the new back gardens. Essentially the design seems to be of a rectangle hidden from view on all four sides by lines of trees, which in the case of three sides I have serious doubts would fulfil that function.
20. Although it is possible the scheme could be redesigned, the appellant pointed out it had been a landscape led scheme from the beginning so I assume this is their preferred option. It is also difficult to see how 58 houses can be fitted into the space behind the bungalows, whilst providing for more landscaping without increasing the density and sense of urbanisation further. These are significant criticisms of the 58 house scheme, which would be harmful to the character and appearance of the area and be contrary to policies BE2 and BE4. They are also contrary to section 7 of the NPPF which requires good design to be achieved.

21. The 74 house scheme is, inevitably, denser, has less landscaping and open space, but otherwise is similar in concept to the 58 dwelling scheme. Any criticisms of the design of the 58 scheme are thus the same for the larger scheme only more so.

### ***Precedent***

22. Although each case has to be determined on its merits it is possible for development decisions to set a precedent that while not ensuring other sites would definitely be allowed or refused, do make it more likely. I consider this appeal site to be one of those. The situation of the appeal site is that it occupies plotlands to the south of an existing urban development and behind the ribbon of bungalows on Brize Norton Road, some of which are listed. If it were developed virtually the same situation would exist for the next set of plots. Although Brize Norton Road bends gently to the west so the plotlands get shorter as they get closer to the A40, there are still several large plots to the south of the appeal site which would be available for development. This would radically change the size and character of the village, and development of the appeal site would be a part of that process.
23. The appellant argued that if any precedent had been set it was by the Ripley Avenue development. However, that is not necessarily a precedent that should be repeated. It is also the case that the character of the village changes at the appeal site, and not just because that marks the end of the larger housing development, but the frontage development along Brize Norton Road is also different, as noted above. In my view therefore the development of the site would set a harmful precedent that would make further development to the south harder to resist.

### ***Third party concerns***

24. The Council did not raise any objections on water, sewerage or traffic grounds, nor on sustainability issues in terms of location or village facilities. However, these issues were raised by many local residents in writing and at the hearing.
25. The appellant describes the village amenities as including a primary school, various shops and a post office, a pub, community centre and playing fields, as well as an hourly bus service and local employment opportunities. All these facilities would be within easy walking distance of the appeal site which makes it a good location for housing. Local residents pointed out the school was popular and over subscribed and that the bus service was at best hourly, did not run at peak times and was under threat of closure.
26. The County Council did not raise an objection on the grounds of lack of school places, and have not asked for a financial contribution to provide for more capacity. As they are responsible for educational matters in the County their professional opinion has to carry more weight than the anecdotal evidence of villagers. The appellant has offered to support the bus service financially and improve the bus stop. Even if the bus service were to be withdrawn, paragraph 29 of the NPPF requires that people should have a real choice about how they travel. In this case many people will be able to walk or cycle to local facilities and the NPPF does recognise that the opportunity to maximise sustainable transport solutions will be different in rural as opposed to urban areas.

27. Locals also argued Brize Norton Road was too busy and the access was unsafe. The County Council as highways authority were satisfied that visibility splays for the proposed access would meet modern standards, and that given current traffic levels on Brize Norton Road further car journeys from the appeal site would not cause a highway issue. I have no doubt the road is busy, especially at peak times and school run times, but that is not to say it is at capacity and cannot safely carry any more vehicles.
28. On sewerage I heard evidence from local residents that there were existing sewerage problems in the village, and several houses close to the site suffered from blockages and overflows. Thames Water are the sewerage authority and they recognise there is an issue and have asked for an impact study from the developer, which they are currently considering. **The appellant's technical evidence is that this does not seem to be an insoluble issue and a Grampian condition has been suggested so that no development begins until an acceptable sewerage strategy has been agreed with Thames Water.**
29. The occupier of No 88 was concerned that the proposed sewerage pumping station would be located right next to their garden, at the lowest point of the site and so would not only smell but would also be prone to flooding. Again, **the appellant's technical evidence was that this should cause no problem.** However, it did seem the slope of the land was very slight and so there would be an opportunity to relocate the pumping station further from residential properties and this could be dealt with at reserved matters stage.
30. **On flooding, the appellant's soil testing suggested that a balancing pond was** not necessary as deep soakaways could deal with all the rain water that would fall on the site. Locals were concerned about run-off from nearby agricultural land that flooded the site and in turn nearby gardens during periods of **consistent rain. I agree that it is not the appellant's responsibility to solve the** problems of the wider area, as long as they can show they are not contributing to it. A well designed SUDS system should, even so, help improve matters by intercepting run-off, and one can be secured by condition.

## Other Matters

31. Signed and sealed s106 obligations were offered at the hearing for both 74 and 58 schemes. A planning agreement with the District Council provides for 40% **affordable housing, financial contributions for public art and children's play** facilities and a scheme for the maintenance and repair of open space and landscaping on the site. A separate unilateral undertaking provides a financial contribution to upgrade the bus stop, support the bus service and help fund the Witney to Carterton cyclepath. Both obligations provide for monitoring fees to be paid. It is agreed between the appellant, the District and the County Councils that all these matters are compliant with the CIL regulations, in particular regulation 122. I agree that this is the case and that all are directly related to a grant of planning permission for the scheme and are necessary for the scheme to go ahead.
32. The scheme would provide undoubted benefits in the form of much needed market housing in an area where there is no settled 5 year housing land supply and in a locationally sustainable village. Also it would provide for affordable homes, an economic boost to the area during the construction phase and afterwards with the potential spending from the extra villagers supporting local facilities and council tax revenues. The s106 unilateral obligations would in

addition provide support for the bus service, a new bus stop and a contribution to a cycleway all of which would benefit the wider community.

33. I have been referred to two other appeal decisions from 2012 and 2013<sup>2</sup> for development along Brize Norton Road, both of which were dismissed. However they were for a single dwelling and two dwellings respectively and neither deal **with the NPPF, but give full weight to the Council's housing policies. They are** thus quite different from the appeal before me and I have given them only limited weight.

## Conclusions

34. Because the Council do not have 5 years of housing land supply then paragraph 49 of the NPPF is relevant and the policies for the supply of housing in the local plan are to be considered out of date. The replacement local plan has stalled because of housing number issues and so its policies carry very little weight. Consequently, the fourth bulletpoint of paragraph 14 of the NPPF **is relevant, that permission should be granted unless "any adverse impacts of doing so would significantly and demonstrably outweigh the benefits"**. However, there are two relevant policies from the 2006 plan which are up to date and have been discussed above. There is no dispute that those two policies are not housing supply policies, are up to date and in accord with the NPPF.
35. The positive benefits are described above in paragraph 32. The harm I have identified is the impact on the historic character to the village and the less than substantial harm to the setting of the listed dwelling at No 86. Both of these are moderate harms. I have also found serious harm to the character of the village by extending dense urban development into the plotlands behind the frontage bungalows and have found the schemes represent poor design both through the unimaginative suburban layout which is at odds with the character of the village at and beyond the appeal site and I have serious doubts about the landscaping. These harms apply to both schemes. I also consider the proposals would set an undesirable precedent for further harmful development. The proposals are thus contrary to policies BE2 and BE4.
36. The proposal is thus contrary to the development plan as a whole and in accord with s38(6) should be dismissed unless material considerations indicate otherwise. Paragraph 14 of the NPPF is a significant material consideration. Nevertheless, I consider the adverse impacts of both schemes do significantly and demonstrably outweigh the benefits. Consequently, the scheme is not sustainable as defined by the NPPF and permission should not be granted. I have considered the conditions agreed between the parties but they do not alter the balance described above.

*Simon Hand*

Inspector

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<sup>2</sup> APP/D3125/A/11/2166985 – site visit 1 May 2012 and APP/D3125/A/13/2194043 – site visit 8 July 2013



## **APPEARANCES**

### FOR THE APPELLANT:

Miss Mary Cook	of counsel
Mike Gilbert MRTPI	Planning Agent
Julian Mumby	Oxford Archaeology
Lindsey Evers	PBA (Landscape)
Jonathan Ede	Appellant

### FOR THE LOCAL PLANNING AUTHORITY:

Miss Catherine Tetlow	West Oxfordshire DC
Bsc(Hons), MA, MRTPI	

### INTERESTED PERSONS:

Chris Nichols	Oxfordshire County Council
Jonathan Stowell	Minster Lovell Parish Council
Andrew Fielden	Society for the Preservation of Minster Lovell

Christine Eaglestone	Local Residents
Jean King	
John Forster	
Geoff Mills	
Hilary Townsend	
Keith Barden	

## **DOCUMENTS**

- 1 Signed statement of common ground (SOCG)
- 2 Appendices to the SOCG
- 3 Signed and sealed s106 obligations
- 4 Revised plan for 74 dwelling scheme