

ITEM NO: Location: **Land North of Luton Road, Offley**

6

Applicant: **Gladmans Developments**

Proposal: **Outline planning permission for up to 70 dwellings (including 40% affordable housing), new village gateway, new retail outlet/village facility, planting, landscaping, informal open space, children's play area and sustainable drainage system (SuDS). All matters reserved with the exception of access**

Ref. No: **17/01781/1**

Officer: **Simon Ellis**

Date of expiry of statutory period: N/A

Reason for Delay

N/A. This application is now the subject of an appeal to be heard by Public Inquiry starting 12 June 2018.

Background to Report and Reason for Referral to Committee

This planning application was originally reported to the meeting of the Planning Control Committee held on 9 November 2018 (report attached as appendix 1). At that Meeting Members resolved to refuse planning permission for the reasons set out in the decision notice attached as appendix 2.

The decision was made after the appellant had lodged an appeal against non-determination. Therefore, the reasons for refusal set out in the decision notice amounts to the current putative reasons for refusal that the Council would have agreed had the Committee been able to determine the planning application before the appeal was lodged.

Since this decision and on the basis that the case officer Kirstie Hough has left the authority, the Council have appointed an experienced planning consultant to act as the expert witness and provide a proof of evidence to defend the Committee's decision at the forthcoming public inquiry. Attached as appendix 3 is the statement of case that I have sent to the Planning Inspectorate.

The Council have also appointed Counsel to act as the Council's advocate at the Inquiry, which will start on 12 June 2018 and is scheduled to last 6 days. Appointed Counsel will present the Council's case, examine the Council's witness(es) and cross examine the appellant's witnesses.

Following advice, as this was an appeal against non-determination, and there are outstanding matters that may be addressed by the Appellant, the Council is able to review and refine its putative reasons for refusal.

The purpose of this report is to seek Members agreement to refine the putative reasons for refusal that will be presented at the forthcoming inquiry. An update is also provided on technical matters such as progress on archaeology, S106 Obligations and flood risk.

1.0 Relevant History

1.1 See committee report and decision notices attached as appendices 1 and 2

2.0 Policies

2.1 See committee report, decision notice and Statement of Case attached as appendices 1, 2 and 3.

3.0 Representations

3.1 All representations received as a result of consultation on the planning application have been sent to the Planning Inspectorate and all interested parties have been provided with an opportunity to make further comments to PINs and attend and participate in the forthcoming public inquiry.

4.0 Planning Considerations

4.1 Site & Surroundings

4.1.1 See committee report attached as appendix 1.

4.2 Proposal

4.2.1 See committee report attached as appendix 1.

4.3 Key Issues

4.3.1 As is explained above following advice from the Council's appointed planning consultant who will act as the lead expert witness at the forthcoming Public Inquiry and following his full assessment of the case, the purpose of this report is to seek Member's agreement to clarify matters and change the putative reasons for refusal of this application and therefore enable the Council's witness (es) to present a robust case at the Public Inquiry.

4.3.2 It is now considered that the outstanding key issues are:

- The Principle of Housing Development in this Location;
- The Effect upon Landscape Character and Visual Amenity;
- The Effect upon Designated Heritage Assets;
- The Effect upon Non-Designated Heritage Assets;

- The Effect upon Services, Facilities and Infrastructure; and
- Flood Risk and Drainage.

4.3.3 **Principle of Housing Development in this Location**

This matter was addressed in the Committee Report at Appendix 1. There are no changes or updates regarding this issue.

4.3.4 **Landscape Character and Visual Amenity**

The effect of the proposed development on the character and appearance of the countryside was addressed in the Committee Report at Appendix 1. In terms of landscape character, the site is relatively level in an elevated position within Local Character Area 211 Offley – St. Pauls Walden, which is identified as gently rolling upland plateau in the Landscape Character Study. To the north beyond the A505 lies the Chilterns Area of Outstanding Natural Beauty (AONB). The Landscape and Visual Impact Assessment submitted with the application, identified adverse impact upon the landscape because of the proposed development in relation to the sensitivity of the landscape and the magnitude of change, this is being re-assessed by Landscape Consultants, and the Committee will be updated that the meeting of the outcome of this work.

4.3.5 However, I consider that the proposed development would have a significant urbanising effect on the site and the surrounding landscape and the westward encroachment of the village into the countryside would have a significant impact upon the wider views of the settlement, to the significant detriment of the character of the landscape.

4.3.6 Regarding visual amenity, the proposed development would have a significant impact upon views from Public Rights of Way (PROW) within and adjacent to the site, including Luton Road. PROW 16 passes through the site.

4.3.7 **Designated Heritage Assets**

This issue was addressed in the Committee Report at Appendix 1. The site lies partially within and adjacent to the western boundary of Great Offley Conservation Area. There are also Grade II Listed Buildings to the east within Westbury Farm Close. I consider that the site is within the setting of the Conservation Area and nearby listed buildings.

4.3.8 There is a statutory duty under Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 that in the exercise of planning powers in conservation areas “special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area”. The Act requires special consideration, which is a stern test. However, this statutory duty does not extend to the setting of conservation areas, and whilst setting is not itself a heritage asset, its importance lies in what it contributes to the significance of the heritage asset or the ability to appreciate that significance.

4.3.9 There is also a statutory duty under Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 that where considering whether to grant planning permission for development that which affects a listed building or its setting special regard shall be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Given this statutory duty, which includes the setting of listed buildings, I consider that the effect of the proposed development upon the setting of nearby listed buildings should be addressed more fully.

4.3.10 The appeal site makes a significant and positive contribution to the significance of the Conservation Area and Grade II listed buildings on Westbury Farm Close as designated heritage assets. The relevant listed buildings are Westbury House, a former farmhouse, former barns and a dovecote. Whilst the barns have been converted to dwellings and new dwellings have been erected in the style of rural barns, there is nevertheless a visual, spatial and historical relationship between the appeal site and the listed buildings. The site contributes to the ability to appreciate the significance of both the conservation area and the listed buildings as heritage assets.

4.3.11 The appellant submitted an Archaeology and Heritage Assessment (AHA) with the application. This document confirms that the proposed development would cause less than substantial harm to the significance of the conservation area and the listed buildings as heritage assets. As indicated in the report at Appendix 1, Paragraph 132 of the Framework states:

“When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification.”

4.3.12 The AHA identifies the Conservation Area as a heritage asset of Highest Significance, and the Grade II listed buildings of High Significance, but less than Highest, as such significance would be attributed to Grade I and II* listed buildings. I would agree with this assessment.

4.3.13 Paragraph 134 of the Framework states

“where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use”

4.3.14 The AHA submitted with the application confirms that the proposed development would have less than substantial harm to the significance of the Conservation Area and the listed buildings as designated heritage assets. The AHA indicates overall the setting of the Conservation Area will remain as currently, a combination of agricultural land and post-war built form. As indicated in the report at Appendix 1, I disagree with this analysis, as I believe that the site makes a significant contribution to the open setting of the Conservation Area. I consider that the urbanisation of the land would have a detrimental impact upon its setting.

4.3.15 In addition, whilst the appellant's AHA accepts that the proposed development would have less than substantial harm to the setting of Westbury House and associated former barns, it considers at paragraph 6.13 in respect of Westbury House that the alteration of the character of historically associated agricultural land would have a negligible impact on the setting of this listed building, and that the proposed development would have a negligible impact on the outbuildings at Westbury Farm. However, I consider that the proposed development would have a significant impact upon the setting of these designated heritage assets, and whilst the effect upon their significance as designated heritage assets would be less than

substantial, I consider that effect would be greater than negligible as suggested by the Appellant. The current open appearance of the land and the agricultural use of part of the site allows the significance of the village character of the Conservation Area and the listed former farmhouse and former agricultural barns to be appreciated. That spatial, visual and historical appreciation would be diminished.

4.3.16 In conclusion on this issue it is considered that the proposed development would cause harm to the setting of Conservation Area and nearby listed buildings and that this would cause less than substantial harm to their significance as designated heritage assets. Whilst there would be public benefit from the delivery of houses, it is considered that this would not outweigh the harm.

4.3.17 **Non-designated Heritage Assets**

The effect upon archaeology was addressed in the Committee Report at Appendix 1. The Hertfordshire County Council Historic Environment Team commented that the proposed development is likely to have an impact on heritage assets of archaeological interest and recommended that that an archaeological evaluation of the site is undertaken prior to determination which should comprise a geophysical survey followed by trial trenching. Whilst a geophysical survey was submitted with the application, trial trenching had not been undertaken. I understand trial trenching has subsequently been undertaken and the results are awaited. I anticipate that these results will be available before the meeting and therefore members will be updated.

4.3.18 Until the results have been provided and assessed this matter remains a reason for refusal of planning permission.

4.3.19 **Services, Facilities and Infrastructure**

This matter was addressed in the Committee Report at Appendix 1.

4.3.20 The Appellants have indicated an intention to enter planning obligations. A draft S106 document has not yet been supplied. Members will be updated on this matter. However, this issue remains as a reason for refusal of planning permission.

4.3.21 **Flood Risk and Drainage**

As set out in the Committee Report at Appendix 1, the Local Lead Flood Authority (LLFA) recommended that planning permission be refused because the Flood Risk Assessment submitted with the application does not demonstrate a feasible discharge location in respect of the drainage of the site. It is understood that further discussions have taken place between the Appellant's drainage consultants and the LLFA. This matter had not been resolved at the time of writing this report and therefore this matter remains a reason for refusal of planning permission. However, Members will be updated on this matter at the meeting

4.4 **Conclusion**

4.4.1 I conclude that whilst there would be economic and social benefits of providing new housing the harm that would be caused by the development would significantly and demonstrably outweigh the benefits of allowing the development. It is considered that in respect of the identified harm to designated heritage assets policies of the Framework indicate that development should be restricted. It is considered that had the Council retained the power to determine the application that permission would be refused, and at the point of writing this report the reasons are set out below. It possible that with the provision of additional information by the Appellant some of the reasons for refusal may be addressed.

5.0 Legal Implications

- 5.1 In making decisions on applications submitted under the Town and Country Planning legislation, the Council is required to have regard to the provisions of the development plan and to any other material considerations. The decision must be in accordance with the plan unless the material considerations indicate otherwise. Where the decision is to refuse or restrictive conditions are attached, the applicant has a right of appeal against the decision.

6.0 Recommendation

- 6.1 That the Council's putative reason for refusal of this application to be presented at the forthcoming Public Inquiry be revised to the following:
1. By reason of its siting beyond the built limits of Offley, on open allotments and farmland in an area of countryside adjacent to the village, the proposal would be detrimental to the rural character and appearance of the area. The urban form of the development would afford significant and demonstrable harm the intrinsic character and beauty of the countryside in this sensitive location adjacent to the village of Offley. The proposal would be harmful to the landscape qualities of the area and given that the site is prominent from several public vantage points it would be harmful to the visual amenity of the area and in particular the users of public footpaths within and in the vicinity of the site. The proposal is therefore contrary to saved Policy 6 of the North Hertfordshire District Local Plan No. 2 with alterations and specific policies of the Framework. The development would also be contrary to Policy SP5 of the North Hertfordshire Emerging Local Plan 2011-2031.
 2. The proposed development would afford harm to the setting of Great Offley Conservation Area and the setting of nearby listed buildings. The site presents an attractive open setting to the Conservation Area and these nearby listed buildings and the ability to appreciate these designated heritage assets. The proposed development would fail to preserve or enhance the Conservation Area and would detract from the setting of the listed buildings. The proposal would cause less than substantial harm to the significance of these designated heritage assets, which would not be outweighed by the public benefits of delivering new housing development. The proposal would therefore conflict with the aims of Section 12 of the National Planning Policy Framework which seeks to conserve and enhance the historic environment.
 3. The submitted planning application has not been accompanied by a valid legal undertaking (in the form of a Section 106 Obligation) setting out how the shop would be delivered, along with the provision of 40% affordable housing and other necessary obligations as set out in the Council's Planning Obligations Supplementary Planning Document (SPD) (adopted November 2006) and the Planning obligation guidance – toolkit for Hertfordshire: Hertfordshire County Council's requirements January 2008. The secure delivery of these obligations and provision of the allotments is required to mitigate the impact of the development on the identified services in accordance with the adopted Planning Obligations SPD, Policy 51 of the North Hertfordshire District Local Plan No. 2 - with Alterations (Saved Policies 2007) or Proposed Local Plan Policy HS2 of the Council's Proposed Submission Local Plan (2011-2031). Without this mechanism to secure these provisions the development scheme cannot be

considered as sustainable form of development contrary to the requirements of the National Planning Policy Framework.

4. The Flood Risk Assessment carried out by MLM Consulting reference 618538-MLM-ZZ-XX-RP-C-000 Rev 3 dated 27 September 2017 does not provide a suitable basis for assessment to be made of the flood risks arising from the proposed development as it does not demonstrate a feasible discharge location.
 5. The proposed development lies immediately adjacent to an Area of Archaeological Significance. Records in close proximity to the site suggest it lies within an area of extremely significant archaeological potential. Given this and the large scale nature of the proposal, this development should be regarded as likely to have an impact on significant heritage assets with archaeological interest, some of which may be of sufficient importance to meet NPPF para 139. This could represent a significant constraint on development. In the absence of a full archaeological field evaluation, there is insufficient information to determine the importance of any archaeological remains on the site. The proposal will be contrary to Section 12 of the NPPF.
- 6.2 In the event of further progress on Archaeology, Flood Risk or S106 Obligation that Members allow the Council's case to be updated in advance of the Public Inquiry depending on progress in relation to these specific matters.