

Appeal Decision

Inquiry opened on 14 June 2016

Site visit made on 24 June 2016

by Martin Whitehead LLB BSc(Hons) CEng MICE

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

Decision date: 01 August 2016

Appeal Ref: APP/C3105/W/15/3137608

Land to the west of Oxford Road, Bicester

- 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 CPG Development Projects Ltd against the decision of Cherwell District Council.
 - The application Ref 15/00250/OUT, dated 9 February 2015, was refused by notice dated 2 October 2015.
 - The development proposed is three Class A1 (Retail), three Class A3 (Café and Restaurants), one Class D2 (Gym), surface level car park, access, servicing and associated works.
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Decision

1. The appeal is dismissed.

Procedural and Preliminary Matters

2. The application was submitted in outline form with landscaping being the only matter of detail reserved for subsequent consideration.
3. The Inquiry opened on 14 June and sat for 6 days, closing on 24 June.

Main Issues

4. I am satisfied that the appellant has provided sufficient evidence to show that the proposal would not adversely affect the vitality and viability of Bicester Town Centre and the Council has confirmed that it no longer wishes to defend its first reason for refusal based on this issue. Therefore, I consider that the remaining main issues in this appeal are the effect of the proposal on the flow of traffic and safety on the surrounding highway network; its effect on local infrastructure; and its effect on the character and appearance of the surrounding area and future development in that area.

Reasons

Flow of traffic and safety on the surrounding highway network

5. The appellant submitted a Transport Assessment (TA), dated February 2015, with the application (February 2015 TA). This TA suggested that the proposed development would not have a material effect on the situation that would prevail when the already approved schemes are implemented. Also, the table in paragraph 6.56 indicates that the only one of the 4 junctions modelled that
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- would experience any significant congestion would be at the new Tesco access and this would be improved by the development. The Council Officer's report to Committee summarises the position of Oxfordshire County Council, as the Highway Authority (HA), as being that it considers that the impact upon junctions adjacent to the site would not be significant when considered against the permitted use, which is for Class B1 and B2 employment.
6. At the Inquiry, the main parties agreed that the HA consultation response was based on the appellant's February 2015 TA. Whilst the HA had been provided with copies of reports by Royal Haskoning DHV and Transport Planning Practice outlining the shortcomings of the February 2015 TA, I have nothing before me to show the HA's reasons for continuing not to object to the proposal or that it had considered the concerns expressed in these reports. The HA has not been present at the Inquiry and I have not received any statement from it to support its stance. However, following these reports, the appellant has submitted an 'Updated TA and Statement of Common Ground', dated June 2016 (June 2016 TA), which its transport expert at the Inquiry and author of the TA accepted as being the one to consider when assessing the impact of the proposal. Therefore, for the purposes of this appeal, I have based the appellant's highway and transport evidence on the June 2016 TA.
 7. The June 2016 TA has modelled the effect of the proposal in 2024 on the 4 adjacent junctions, allowing for the effect of the permitted Graven Hill development. I am satisfied that allowance should be made for the traffic that would be generated by this development in the 2024 modelling, as there are no mitigation measures included in the permission and it is due to be completed by 2026. Whilst not all the traffic generated may be on the network by 2024, in my opinion it would be prudent to model the impact based on completion, as the Council has indicated that the Graven Hill development could be completed prior to 2026. It would not be right to take account of any mitigation provided by a South East Perimeter Road for which land has been safeguarded in the Graven Hill permission, as there is currently no identified financing of that highway scheme and it is at a relatively early stage in its progress towards implementation.
 8. Table 8.3 in the June 2016 TA summarises the modelled traffic flows for the 2024 weekday pm peak that include the traffic forecast to be generated by the completed Graven Hill development. This would be the period of time when the Graven Hill development traffic would be likely to have the greatest impact on the highway network. It shows that the degree of saturation (DoS) at the junction to the Tesco entrance would be above 100% for two of the arms for the 'with development' scenario, and that at the South West Bicester/Site access junction the development would result in increasing the DoS on all the arms to above 95%. This demonstrates that the proposal would cause unacceptable traffic congestion, particularly at these two junctions.
 9. At the Inquiry, the appellant's transport expert accepted that the proposal would have a harmful impact, as it would worsen the situation, which is significantly different from what the HA was led to believe. Although he suggested that the resulting queue lengths at the junctions could be improved by adjusting the signal times, no evidence has been provided to show that this would prevent the severe congestion that the modelling indicates would occur.

10. In terms of the effect of the proposal on traffic at the Saturday and Sunday peak times, it would add to the already high volume of retail development in the area. Although the February 2015 TA did not model the Sunday peak traffic, the appellant accepted at the Inquiry that the traffic on that day would be likely to be similar to that on a Saturday. The Saturday trip rates that had been used, based on those used in the TA for the previously permitted Banbury Gateway scheme, have been accepted by the appellant as being unreliable. The appellant therefore indicated at the Inquiry that the Sunday peak hour figures in Table 8.2 of the June 2016 TA should be used and that the Saturday peak hour figures would be similar to those. These show that the proposed development would result in the DoS at 2 arms of the Tesco access junction increasing to above 90% and substantial increases in the DoS at the South West Bicester/Site access junction.
11. For the reasons given above, I find that the appellant's June 2016 TA shows that the proposed development would cause unacceptable congestion on at least 2 of the 4 junctions that have been modelled and that the residual cumulative impacts of the development would be severe. Therefore, in accordance with paragraph 32 of the National Planning Policy Framework (Framework), the development could be refused just on transport grounds. Furthermore, the evidence provided by the expert transport witness for Value Retail as a Rule 6 Party to the Inquiry and by the Council's transport expert at the Inquiry has identified matters where the June 2016 TA could have underestimated the traffic that would be generated by the proposed development, some of which I deal with below.
12. The matter that appears to me which would have the most significant impact is the percentage reduction that has been applied to the trips generated as a result of mezzanine floor space. The June 2016 TA applies a 70% reduction to those trips that would be generated by the equivalent ground floor space, based on what the appellant has claimed as being a standard reduction applied where the mezzanine is provided as an extension to an existing unit. Although the appellant has not supported this claim by any evidence to show where this reduction has been used for permitted new retail development that includes more than one floor, it has suggested that upper floor space is generally of less value to retailers than ground floor space, having regard to trade, footfall and the rent paid. However, I have nothing before me to connect any of this to reduced trip rates, and Value Retail's witness has given examples, including at the recently permitted Banbury Gateway development, where no reduction has been applied. This has not been disputed by the appellant. By not applying this reduction, or applying less of a reduction, the traffic impacts of the proposal would be likely to be significantly worse than those indicated in the June 2016 TA.
13. Further matters that could have resulted in an underestimate of the proposal's forecast traffic generation are with regard to 'pass-by' rates, 'transfer' trip rates, 'linked' trip rates and distribution. The evidence provided by the appellant has not been clear enough to demonstrate that the distribution rates used in the June 2016 TA would be reasonable, given that evidence has been provided by the Council and Value Retail to support other distributions of traffic that would be less favourable to the proposal. In terms of pass-by rates used, I accept that 30% could be appropriate for weekday traffic when those travelling to and from work might stop at the development, but it is likely to be significantly lower at weekends when fewer people are working. In addition,

although there is very little alternative retail analysis before me to that provided by the appellant, I have concerns that the transfer trip rates used may not have been robust and, accordingly, could have underestimated the impact.

14. I also have concerns that the linked trip rates used in the June 2016 TA to reduce the trips generated by the proposal could have been double counted. This is due to percentage reductions being applied to both trips for food linked to non-food trips and those for non-food linked to food trips. There is very little evidence to show that this has been carried out for the Banbury Gateway development TA that the appellant has given as being one of the sources it has used for determining linked trip rates. In addition, the TRICS data for determining the trip rates for the gym may result in an underestimate, as the gyms used are not comparable, being significantly larger than that proposed and therefore likely to generate lower trip rates per square metre.
15. Given the above matters, which in my opinion have not been fully addressed by the appellant, I am concerned that the impact of the proposal on the flow of traffic at the 4 adjacent junctions that have been assessed could be materially worse than that identified in the June 2016 TA. As such, there is a high degree of uncertainty about what mitigation measures, if any, would make the development acceptable in transport terms. Whilst it may be possible to provide infrastructure works as mitigation, as the appellant is in control of land adjacent to the highway and has not suggested that a financial contribution would make the development unviable, no such mitigation measures have been proposed.
16. The Grampian planning condition suggested by the appellant at the end of the Inquiry would not meet the tests in the national Planning Practice Guidance (PPG), particularly that of being enforceable, as the extent of mitigation measures that would be required and whether they would be possible to be implemented is unknown, given that the HA has not indicated that any mitigation would be necessary. Furthermore, any necessary mitigation could have a material effect on the development, as it could require land that has been identified as landscaping or may need changes to the layout, parking or scale of the proposed development. Any works that would involve alterations to the highway would require the approval of the HA. None of this has been agreed.
17. The appellant has referred to the mitigation that has been provided as part of the planning permission for the Kingsmere development that includes the appeal site. However, the appeal proposal involves a completely different application for planning permission and a development that requires its own mitigation.
18. Another area of concern is regarding the adequacy of the proposed 240 car parking spaces to cope with what I now consider to be an unproven parking demand for the proposed development. Value Retail has provided evidence which indicates that the car parking provision would be insufficient to meet the needs of the proposed development. As the justification for the proposed car parking provision appears to me to be mainly based on that provided for the Banbury Gateway development and data used in the February 2015 TA, which has now been superseded, I consider that it would be necessary to reassess parking demand. This should ensure that there would not be a shortage of

spaces that would result in overspill parking on the streets, which would contribute to the adverse transport impacts of the proposal. Although the appellant has suggested a planning condition requiring an approved car parking management plan to be implemented, it accepted at the Inquiry that it has not assessed the impact of any such plan. Therefore, I have insufficient information to show that a car parking management plan would be necessary, successful or able to be implemented, and that the proposed planning condition would meet the tests in the PPG.

19. In the absence of any mitigation of the residual cumulative transport impacts, I conclude on this main issue that the proposed development would have an unacceptable harmful effect on the flow of traffic, and as a result could harm highway safety, on the surrounding highway network. It would also fail to accord with Policy SLE 4 of the Cherwell Local Plan, as it would not provide financial or in-kind contributions to mitigate its transport impacts, would not be suitable for the roads that serve it and would have a severe traffic impact; and be contrary to policies in the Framework, as its residual cumulative transport impacts would be severe.

Local Infrastructure

20. The HA has recommended the provision of 2 bus stop laybys and associated works on the A41 to ensure that there would be convenient access to public transport from the development, to be secured through a S106 Agreement. At the Inquiry, the appellant submitted an engrossed S106 Unilateral Undertaking that the Council is satisfied would secure this provision. As such, the proposal would meet the transport infrastructure requirements that have been specified by the HA. However, I have previously concluded that the transport impacts of the proposal should be mitigated and that the form of this mitigation is uncertain. The mitigation could be in the form of further contributions towards improvements in transport infrastructure, to be secured by a S106 planning obligation.
21. Taking account of the above, I find on this main issue that the provision of 2 bus laybys may not be sufficient to prevent the proposal from having an adverse impact on local infrastructure. The provision of additional transport infrastructure could be part of the mitigation that would be required to ensure that the residual transport impacts of the proposed development would not be severe. I therefore conclude that the proposal would not accord with Policy INF 1 of the Cherwell Local Plan, as it has not been demonstrated that the infrastructure requirements of the development would be met.

Character and Appearance

22. The proposed development would be located on a site that has been granted outline planning permission for Class B1 and B2 employment use as part of a much larger development, known as Kingsmere. A Kingsmere Design Code, dated July 2008, has been prepared on behalf of the lead developer as a manual for the design of the development. It has been the subject of public consultation and is approved by the Council. The Council has not referred to it in its reasons for refusal and I accept that it is not part of the development plan or a Supplementary Planning Document. However, in the absence of a more appropriate guide to the design of development on the appeal site, I have taken the Kingsmere Design Code as a material consideration in my determination of the acceptability of the design of the appeal proposal.

23. The Design Code gives examples of the type of employment development that would be acceptable, including buildings to provide flexible space, combining storage, delivery and operations areas with offices. Whilst some of these buildings could have a utilitarian appearance, their design would be expected to accord with the Design Code, which indicates that within Kingsmere the frontages should address important local streets. In this respect, I accept that the constraints of retail development on the site are different from those of the permitted employment use, but I am not convinced by the reasons given for the failure of the proposal to provide a dual aspect to the proposed adjacent residential streets.
24. My particular concern is with regard to the elevation of Block A that would face the proposed residential development to the north west of the site, which has been accepted by the appellant as being one of the most sensitive interfaces. The details shown by the appellant indicate that the elevation would be a considerable length and height, with stone panel cladding over the whole of the façade nearest to the residential development. I accept that the height of this elevation would be within the maximum given in the Design Code and would appear lower from the proposed housing, as the land rises in that direction. Also, the separation distance would be at least 21m, which is greater than that identified in the Design Code. However, it would continue at the same height along the whole of that façade and would appear as a substantial, unbroken mass from the street and any future housing. Furthermore, the building would not provide any active frontage or natural surveillance along the proposed street.
25. The landscaping details are not to be determined with this appeal, but the details provided show a bund with landscaping on it between Block A and the proposed street. In my opinion, this would add to the sense of poor surveillance on that side of the street and would be insufficient to prevent the building appearing overpowering and dominant in the street scene, which would unacceptably compromise the design of the adjacent residential development. Although the appellant has indicated that the requirements of the retail development restrict the design of the buildings on the site, I am not convinced that this justifies the design of Block A, which should be able to include fenestration and a more varied profile to that side of the building without compromising any future residential amenity.
26. I am satisfied that the proposed development would not have a significant harmful visual impact on the A41, given the type of development that is viewed from that main route into Bicester and the space that would be available for landscaping. I also consider that the service yard and rear of Block A would be provided at the most appropriate location and, with the use of the proposed finish as shown on the elevations, would appear as an acceptable structure at a gateway into Bicester. The proposed variation in height of Block A to take it above the recommended maximum heights in the Design Code would help to break up its overall bulk when viewed from the proposed car park and A41. The highest point would be far enough into the site to ensure that this non-compliance with the Design Code would not have a significant impact on the building's relationship with the surrounding development. In addition, I find that the proposal for Block B would enable an acceptable street scene to be provided with the future residential development to the west.

27. Based on the above, I have found that much of the proposed design for retail development on the site would be acceptable, given the type of development that could have been provided under the permitted employment use of the site. However, I have serious concerns that the overall bulk and design of the north west elevation of Block A would result in it having an adverse visual impact on the future street scene. Therefore, for this reason, I conclude on this main issue that the proposal would have an adverse effect on the character and appearance of future development in the surrounding area and would fail to accord with Policy ESD 15 of the Cherwell Local Plan, as it would not be a high quality design.

Other Matters

28. I have noted the submissions made by Bicester Sports Association regarding the sequential test. However, the information provided by the appellant has demonstrated that the proposal satisfies the sequential test and the Council has agreed that this is the case. I have been given insufficient substantive evidence to convince me that there are more suitable sites in the area for the proposed development.
29. The appellant has provided details of the benefits of the proposal, which have not been disputed by the Council. One of the main benefits is that the development would support the identified need for new comparison goods floor space in Bicester. This would assist in addressing the problem of residents in Bicester travelling to other places for comparison goods shopping and would therefore reduce the overall vehicle mileage and trips that these residents currently make. It would also benefit the Kingsmere area by providing additional necessary facilities that would be accessible to present and future residents by foot and bicycle. In addition, the appellant has claimed that the proposal would support 300 new jobs, which should contribute to the economy. However, although the site is not allocated for employment use, it has been identified for employment purposes as part of the overall permitted mixed development of the South West Bicester strategic urban extension. The employment that would be provided by the proposal would therefore replace that which would have been provided by the permitted employment use of the site.
30. The appellant has suggested that the relevant retail policies in the Cherwell Local Plan are out of date or that the Local Plan is silent on future retail provision. However, the Local Plan has only recently been adopted following an Examination in Public and the Inspector found in his report that it is sound. In this respect, I am satisfied that the relevant policies in the Local Plan are not out of date. Although the details of the allocation for retail development are left to Part II of the Local Plan, which is at a relatively early stage in its progress towards adoption, Part I makes allocations and sets policy through the inclusion of 'areas of search'. As such, I find that the development plan is not silent on this matter in relation to the provisions of paragraph 14 of the Framework. Therefore, the proposal does not need to be determined in accordance with the last bullet point in paragraph 14 of the Framework.
31. I acknowledge the support expressed by local residents for the provision of the proposed shops on the appeal site and the appellant's claim that the evidence demonstrates that the proposal is viable and deliverable. However, there is

nothing before me to show that a more acceptable scheme to provide the proposed shops on the site would not also be deliverable and viable.

Conclusions

32. I have found that the proposal would have an adverse impact on the character and appearance of proposed future residential development in the surrounding area and a harmful effect on the flow of traffic on the surrounding highway network, which would not be adequately mitigated and could have an unacceptable effect on local infrastructure. It would also fail to accord with Cherwell Local Plan policies ESD 15, SLE 4 and INF 1 in these respects and the development plan as a whole. In addition, it would have severe residual cumulative transport impacts and would not represent sustainable development in accordance with the Framework. Even applying the test given in paragraph 14 of the Framework, I find that the adverse impacts of the proposal would significantly and demonstrably outweigh its benefits. Therefore, having regard to all matters raised, I conclude that the appeal should fail.

M J Whitehead

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Gary Grant	Of Counsel, instructed by the Solicitor to Cherwell District Council
He called	
David Frisby BSc(Hons) CEng FIHT	Director, Mode Transport Limited
Paul Semple BA(Hons) MRTPI	Divisional Planning Director, Bidwells LLP

FOR VALUE RETAIL (RULE 6 PARTY):

James Strachan	QC, instructed by Chris Goddard, Director of DP9
He called	
Philip Bell BEng(Hons) MCIT MILT MIHT	Director, Motion Consultants Limited

FOR THE APPELLANT:

David Elvin	QC, instructed by Bill Marshall Smith, Company Solicitor for the appellant
He called	
John Lowe CEng MICE MSc BSc	Partner, Turner Lowe Associates
Christian Gilham BA(Hons) Dip(Arch) RIBA	Director, Leach Rhodes Walker Architects
Arfon Hughes BSc(Hons) DipEngLaw MRTPI	Managing Director, Mango Planning and Development Limited

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Rebuttal Proof of Evidence and Appendices of John Lowe, submitted by the appellant at the Inquiry on 14 June.
- 2 Rebuttal by Cherwell District Council to Proof of Evidence of Arfon Hughes, submitted by the Council at the Inquiry on 14 June.
- 3 Oxfordshire County Council statement of justification for planning obligation requirements, submitted by the Council at the Inquiry on 14 June.
- 4 Statement and Appendices by Barton Willmore for Bicester Sports Association, submitted by Barton Willmore at the Inquiry on 14 June.
- 5 Council's letter of notification of the Inquiry, submitted by the Council at the Inquiry on 14 June.
- 6 Opening submissions on behalf of the appellant, submitted by the appellant at the Inquiry on 14 June.
- 7 Copy of an e-mail dated 19 May 2016 from John Liggins on behalf of Bicester Vision, submitted by John Liggins at the Inquiry on 14 June.
- 8 Opening Note on behalf of the local planning authority, submitted by the Council at the Inquiry on 14 June.
- 9 Opening Statement of Value Retail (Rule 6 Party), submitted by Value Retail at the Inquiry on 14 June.
- 10 Copy of a letter of support from Mrs D Bailey, submitted by the Council at the Inquiry on 14 June.
- 11 Summary Proof of Evidence of Paul Semple, submitted by the Council at the Inquiry on 15 June.
- 12 Extract from Cherwell Local Plan Examination Inspector's Report, submitted by the Council at the Inquiry on 15 June.
- 13 Extracts from the national Planning Practice Guidance, submitted by Value Retail at the Inquiry on 15 June.
- 14 Graven Hill Overview document, submitted by Value Retail at the Inquiry on 15 June.
- 15 Letters from DP9 to Cherwell District Council, submitted by Value Retail at the Inquiry on 16 June.
- 16 Plan of new residential and employment sites from Making the Connections, submitted by the appellant at the Inquiry on 16 June.
- 17 Copies of e-mails from Turner Lowe Associates, submitted by the appellant at the Inquiry on 16 June.
- 18 Banbury Gateway Saturday Trip Rates, submitted by the appellant at the Inquiry on 16 June.
- 19 Traffic data at access points into Banbury Gateway, submitted by the appellant at the Inquiry on 16 June.
- 20 Copy of a letter from WSP to Oxfordshire County Council, dated 13 September 2006 regarding proposed South West Bicester Development Transport comments, submitted by the appellant at the Inquiry on 16 June.
- 21 Report on the South East Perimeter Road, Bicester, 17 March 2016, submitted by Value Retail at the Inquiry on 17 June.
- 22 Copy of letter from John Lowe to Motion Consultants, dated 11 May 2016, submitted by Value Retail at the Inquiry on 17 June.
- 23 Statement of Common Ground on Highway Matters by Turner Lowe Associates, dated April 2016, submitted by Value Retail at the Inquiry on 17 June.
- 24 Copies of e-mails between John Lowe and Oxfordshire County Council, submitted by the appellant at the Inquiry on 17 June.
- 25 Extract from the Design Manual for Roads and Bridgeworks: Assessing Driver

- Stress, submitted by the Council at the Inquiry on 17 June.
- 26 Updated list of suggested Conditions, submitted by the Council at the Inquiry on 17 June.
- 27 Signed copy of a S106 Unilateral Undertaking, submitted by the appellant on 23 June.
- 28 Set of additional drawings as a supplement to the Proof of Evidence of Mr Gilham, submitted by the appellant on 23 June.
- 29 Extract from Banbury Gateway Retail Park Transport Assessment, submitted by the appellant on 23 June.
- 30 CBRE Critique of further supplementary information on town centre uses, dated 18 September 2015, submitted by the appellant on 23 June.
- 31 Amended suggested Conditions, submitted by the Council at the Inquiry on 24 June.
- 32 Closing Statement of Value Retail (Rule 6 Party), submitted by Value Retail at the Inquiry on 24 June.
- 33 Closing Submissions on behalf of the Council, submitted by the Council at the Inquiry on 24 June.
- 34 Report of Case *Suffolk Coastal DC v Hopkins Homes Ltd v SSCLG* EWCA Civ.168 per Linblom LJ,
- 35 Report of Case *BDW Trading Ltd (t/a David Wilson Homes) (Central, Mercia and W Midlands) v SSCLG* [2016] EWCA Civ 493
- 36 Copy of S106A Agreement, submitted by the appellant on 24 June.
- 37 Closing submissions on behalf of the appellant, submitted by the appellant on 24 June.

PLAN SUBMITTED AT THE INQUIRY

- A Plan of proposals in the area of the appeal site, submitted by Value Retail at the Inquiry on 14 June