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## Appeal Decision

Hearing held and site visit made on 17 January 2012

by Jane Miles BA (Hons) DipTP MRTPI

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

Decision date: 22 May 2012

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### Appeal Ref: APP/G3110/A/11/2159196

### Hernes House, Hernes Crescent, Oxford OX2 7PS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Grange Mill Developments against the decision of Oxford City Council.
  - The application ref: 10/02605/FUL, dated 24 September 2010, was refused by notice dated 29 July 2011.
  - The development proposed is demolition of Hernes House and erection of 9 dwellings (5 x 4 bedroom and 4 x 5 bedroom), provision of 18 car parking spaces, private amenity space and landscaping.
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### Decision

1. The appeal is allowed and *planning permission is granted* for demolition of Hernes House and erection of 9 dwellings (5 x 4 bedroom and 4 x 5 bedroom), provision of 18 car parking spaces, private amenity space and landscaping at Hernes House, Hernes Crescent, Oxford OX2 7PS, in accordance with the terms of the application, ref: 10/02605/FUL, dated 24 September 2010, *subject to the conditions listed at the end of this decision*.

### Procedural Matters

2. As clarified at the hearing, the above development description is consistent with the amended plans for the scheme, as refused by the Council. A signed and dated version of a unilateral undertaking (previously submitted as a draft) was handed in at the hearing: it provides for a contribution towards affordable housing elsewhere in the city. Further to discussion at the hearing, I agreed to allow extra time for revisions to be made. A revised, signed and dated version of the undertaking was submitted within the agreed timescale, and it is that version (dated 23 January 2012) to which I refer in the reasoning that follows.
3. The application and appeal submissions, and the Council's refusal reasons, refer to various Planning Policy Statements (PPS), most notably *PPS3:Housing*. All the PPSs have been replaced, since the hearing, by the National Planning Policy Framework (the Framework) and the Council and appellant have had an opportunity to comment on the implications of this for their cases. I have had regard to their written responses and to the Framework in making my decision, and note at the outset that the parties agree that relevant development plan policies<sup>1</sup> are up-to-date and/or consistent with the Framework.

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<sup>1</sup> In the Oxford Local Plan 2001-2016 (LP) (adopted in November 2005) and the Oxford Core Strategy 2026 (CS) (adopted in March 2011)

## Reasons

4. Although the Council's three refusal reasons are inter-related to some extent, I shall consider as the **first main issue** whether or not the proposal would accord with national and development plan policy regarding the efficient use of land. The **second main issue** is whether or not it would accord with national and development plan policy which seeks to ensure mixed and balanced communities: this is in terms of (a) the mix of dwelling sizes and (b) whether provision should be made (on or off-site) for affordable housing. My overall conclusions then follow.

### *Efficient use of land*

5. There is no dispute that the appeal site, with its disused and deteriorating institutional building, is previously developed land. The principle of redeveloping it was established some years ago: in 2008, approval was granted on appeal for 24 flats, as reserved matters to a previous outline permission. The permission remains extant, following compliance with pre-commencement conditions and some initial works. More recently an 8-dwelling scheme was refused by the Council (in 2010) on several grounds including two which, in essence, are repeated in this case<sup>2</sup>.
6. Saved LP Policy CP.6 seeks to ensure that proposals make maximum and appropriate use of land, subject to the need for compatibility with the site and surrounding area, and various more detailed criteria. In this suburban locality, comprising blocks of flats and also semi-detached and detached dwellings, either form of development would be appropriate in principle, in terms of general design compatibility with the surrounding area.
7. When seeking to make the most efficient use of a site it is also important to consider both practical matters and other policy objectives. The former includes, for example, safeguarding existing occupiers' living conditions and protected trees, and providing sufficient amenity and parking space for a development. The latter includes achieving mixed and balanced communities<sup>3</sup>, which is consistent with national policy in the Framework.
8. For various reasons, not least because individual private gardens are normally required for houses and for ground floor family-sized flats, it is usually easier to achieve higher densities with flatted developments. However, it is highly probable that building only flats on all sites where they would be compatible with their surroundings would fail to achieve the mix of dwelling types and sizes sought by CS Policy CS23 and the BoDs SPD.
9. The Council clarified at the hearing that, whilst it does not seek a scheme consisting wholly of flats, it considers the extant permission a clear indicator that more than 9 dwellings could be achieved, perhaps as a mix of houses and flats. However, significantly increasing the number of family-sized dwellings, whether houses or flats, is likely to increase the space needed for parking and especially for private gardens. The Council could not estimate how many more dwellings might feasibly be accommodated. Nor did it clearly explain how site

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<sup>2</sup> That is, failure to make the most efficient and effective use of the site, and thus failure to secure the appropriate levels of affordable housing

<sup>3</sup> An objective of CS Policy CS23 and the Balance of Dwellings Supplementary Planning Document (BoDs SPD) (adopted in January 2008)

constraints, practical requirements and other policy objectives should be balanced against each other.

10. Nonetheless, possibilities such as a pair of semi-detached houses on Plot 1 (rather than one detached house), or splitting one of the largest houses into 2 flats, were noted at the hearing. Having taken account of site constraints and requirements such as private amenity space, trees to be retained and parking, I consider there would be scope for at least one additional family dwelling. Depending on flexibility in parking provision, a few more might be accommodated. However, in the absence of any evidence to the contrary, I am not convinced that a substantially higher figure could be achieved if other development plan policies and guidance are also to be complied with.
11. The scheme's density, at roughly 39 dwellings per hectare, is only marginally less than the baseline of 40 in LP Policy CP.6: it is a reasonable figure for a scheme of this nature and would not be out of character in this particular site context. Moreover, if the 9 houses were a mix of 3 and 4 bed units (rather than 4 and 5 beds) thereby complying with CS Policy CS23 and the BoDs SPD, the density would still be 39 per hectare.
12. In summary, I find that the site could accommodate at least 10 family-sized dwellings, but not a substantially greater number. On balance, I find this insufficient reason to conclude that the appeal proposal fails to make efficient use of the site, or materially conflicts with LP Policy CP.6.

#### *Mixed and balanced communities*

##### *Mix of dwelling sizes:*

13. Influencing dwelling sizes is part of the Council's strategy to achieve mixed and balanced communities. After adoption of the LP, but before the CS, the Council produced the BoDs SPD to address a developing imbalance due to increasing numbers of small 1 and 2 bed dwellings and insufficient family units. The SPD sets out<sup>4</sup> a policy approach to influence this imbalance and promote provision of more family housing units. It specifies a mix of dwelling sizes for each defined area (the appeal site being in the Summertown 'Neighbourhood Area'). This aims to achieve a balanced mix 'within localities' and across Oxford as a whole. More recently, CS Policy CS23 also refers to the BoDs mixes for Neighbourhood Areas, and expects a balanced mix of housing to be provided 'within each site' as well as across the city as a whole.
14. In Summertown, no more than 50% of dwellings in a scheme of 4-9 units should have 4+ bedrooms and at least 30% should have 3 bedrooms, whilst some 1 or 2 bed units may be provided but are not required, thus reflecting the emphasis on family-sized dwellings. Thus the appeal scheme, with 9 units of 4+ bedrooms, would conflict with both Policy CS23 and the BoDs SPD.
15. It is notable that the extant scheme for 24 small flats also conflicts with the BoDs SPD, albeit this does not appear to have been an issue in the 2008 appeal<sup>5</sup>. Given the number of existing flats around the appeal site, it seems unlikely that scheme would assist in creating a more mixed and balanced community. Moreover I note that, in responding to this appeal application, several local residents supported a development of houses rather than flats.

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<sup>4</sup> In paragraph 59

<sup>5</sup> Appeal ref: APP/G3110/A/08/2068644, decision dated 24 June 2008

site provision and remain viable. I fully appreciate the uncertain future of this draft policy, but it does highlight a possible role for contributions to off-site provision to help improve the supply of affordable housing.

21. Taking account of all relevant matters, I conclude that provision should be made for affordable housing but, in this particular case, I am satisfied that a contribution towards off-site provision would be reasonable and would not conflict with the objectives of CS Policy CS24. I heard that there are schemes to which the contribution could be applied, and the sum of £600,000 in the revised unilateral undertaking has been explained. Its adequacy is not disputed by the Council and, despite some differing views as to how many affordable units it could fund, it is probable these would include family units, unlike the 7 small flats to be provided as affordable units in the extant scheme.
22. Thus I find that the planning obligation to secure the contribution is necessary to make the appeal development acceptable in planning terms. It would be directly related to the development, and fairly and reasonably related to it in scale and kind, thereby meeting the tests in Regulation 122 of the *Community Infrastructure Levy Regulations 2010*.

#### *Conclusions & conditions*

23. I recognise that within Oxford there is an identified need to provide not only more housing in total, but also more affordable housing and a more balanced mix of housing, all of which reflects national policy in the Framework. However it is likely that there will be occasions when not all of these objectives can be fully met. In this case, achieving a significantly larger number of dwellings than the 9 currently proposed is likely to involve smaller flatted units, similar to many others nearby and contrary to the mix of dwelling sizes sought in the BoDs SPD. The appeal scheme does not include any 3 bed units, also contrary to the BoDS SPD mix for this Neighbourhood Area, but it would nonetheless be beneficial in helping to meet the identified need for family housing.
24. As the appeal proposal is a small scheme which only just crosses the threshold to trigger a requirement for affordable housing provision, I consider it is reasonable to take a flexible approach to the way in which that provision is made. Funding for affordable housing elsewhere, as provided for, would help to offset the lack of on-site provision. Thus the proposal would facilitate a beneficial increase in affordable housing, broadly in accordance with the social dimension of sustainable development as explained in the Framework. It would also be beneficial in re-using previously developed land.
25. In summary therefore, I conclude in the particular circumstances of this case that the proposal would achieve an acceptable balance between the objective of making efficient use of land and that of ensuring mixed and balanced communities. Its overall benefits would outweigh the limited conflicts with relevant development plan policies and associated SPDs. I have had regard to all other matters raised, including the relationships that would be created with neighbouring properties, but have found nothing sufficient to alter or outweigh the balance of my conclusions that the appeal should succeed, and permission should be granted subject to conditions.

#### *Conditions:*

26. A condition specifying the approved plans is necessary for the avoidance of doubt and in the interests of proper planning. Conditions relating to materials

I have also borne in mind the particular history of this site, the lengthy negotiations with Council officers, and the absence of any mention of the mix of dwelling sizes in the 2010 refusal of the very similar scheme for 8 houses.

16. Taking full account of the policy background, which has developed during the course of successive proposals for this site, and this specific locality and set of circumstances, I consider that a scheme consisting entirely of family-sized houses would make a better contribution to the balance of dwellings within the locality than one consisting wholly or partly of flats. This is even though the inclusion of some flats could potentially increase the total number of units. Moreover, given that the BoDs SPD seeks to encourage more family housing in general, rather than any particular size of dwelling, I find on balance that the absence of 3 bed dwellings in the appeal scheme is not sufficient to justify refusing the proposal.
17. I note here that the appellant's unilateral undertaking provides for £600,000 towards affordable housing elsewhere in the city: it is likely that this would be in a different Neighbourhood Area and that at least some of such units would be 3 bed family dwellings. Although the appellant suggests the appeal scheme combined with affordable housing elsewhere could be a BoDs-compliant mix, I have found nothing in the development plan policies or SPD to support such an approach, and I therefore give very little weight to this suggestion.

*Affordable housing:*

18. Providing for affordable housing is another key objective of national and local policy, to meet local needs and to create inclusive and mixed communities. At present, it is addressed in both LP Policy HS.4 and CS Policy CS24, with further guidance in an adopted SPD<sup>6</sup>. The combined effect of the two policies is that affordable housing is expected from any development of at least 10 dwellings, including on a site with capacity for at least 10 dwellings, or at least 0.25 ha in area. Generally, the percentage of affordable housing should be at least 50%. As I have already found that the appeal site has capacity for at least 10 dwellings, it follows that provision should be made for affordable housing.
19. CS Policy CS24 is the most up-to-date local policy relating to the provision of affordable housing, post-dating the SPD. It states that provision should be made as part of the development unless the Council<sup>7</sup> and developer both consider it preferable to make a financial or other contribution towards provision on another site: the Council officers' report to Committee sets out a rationale for finding a contribution acceptable in the circumstances of this particular case, with which I do not disagree. Moreover, neither the policy itself nor its supporting text explicitly indicates that off-site provision is acceptable only in exceptional circumstances.
20. I heard that the Council's Draft Sites and Housing DPD<sup>8</sup>, which will replace LP Policy HS.4 in due course, had been approved for consultation. This is at an early stage and so carries little weight, but the reasoning for draft policy HP4 (concerning contributions towards affordable housing from small developments of 4-9 units) is of interest. In effect, this suggests that although providing 50% of dwellings as affordable housing on such sites is often not practicable, most of these small schemes could make a financial contribution towards off-

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<sup>6</sup> Affordable Housing SPD, adopted in November 2006

<sup>7</sup> Or Secretary of State where appropriate

<sup>8</sup> Development Plan Document

and landscaping are reasonable and necessary in the interests of visual amenity and to protect the long term health of trees the subject of a Tree Preservation Order (taking account of the Arboricultural Implications Assessment & Outline Method Statement submitted with the application).

27. The provision of sustainable drainage, cycle parking and bin storage is needed to ensure a sustainable form of development, whilst provision of parking spaces and visibility splays is important in the interests of highway safety. Given the demolition involved and the proximity of existing housing, a condition requiring a construction method statement is reasonable and necessary in the interests of residential amenity. Bearing in mind the size of the proposed buildings relative to the size of their garden areas, I find it reasonable to restrict permitted development rights to extend the dwellings.
28. However, as the site is in a long-established residential area, and in the absence of any evidence to justify the need for them, I am not persuaded that conditions relating to investigating contamination, providing for foul water drainage or providing for fire hydrants are necessary in this particular case. Nor is there any evidence sufficient to justify a need to exclude future occupiers of the development from eligibility for on-street parking permits.
29. Planning permission is therefore granted subject to the following conditions:
  - 1) The development hereby permitted shall be begun not later than three years from the date of this decision.
  - 2) The development hereby permitted shall be carried out in accordance with the approved plans, drawing nos. 09020-L01, 09020-P10/E, 09020-P11/A, 09020-P12/A, 09020-P13/E, 09020-P14/E, 09020-P15/D, 09020-P16.
  - 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
  - 4) No development shall take place until details for the implementation, maintenance and management of a sustainable drainage scheme, including permeable surfacing of all hardstanding and parking areas, have been submitted to and approved by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details.
  - 5) In this condition "retained tree" means an existing tree which is to be retained in accordance with the plans and details comprising 'Option 2' in the revised Arboricultural Implications Assessment & Outline Method Statement dated March 2011 (the Statement). No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the Statement, without the local planning authority's written approval. No site clearance shall begin until protection measures for the trees to be retained have been put in place, in accordance with the Option 2 plans and particulars in the Statement. Development shall be carried out at all times in accordance with the Statement (Option 2), unless otherwise approved in writing by the local planning authority.

- 6) No development shall take place until a scheme for hard and soft landscaping has been submitted to and approved in writing by the Council. The scheme shall include species, sizes, numbers and a planting schedule for new tree and shrub planting; details of all boundary treatments and of any minor artefacts and structures; materials to be used for hard-surfaced areas; a management plan for communal landscaped areas; and an implementation programme. The scheme shall be carried out as approved.
- 7) No development shall take place until a construction method statement has been submitted to and approved in writing by the local planning authority. The statement shall include details of: areas within the site to be used for loading, unloading and manoeuvring, for storage of materials and equipment and for parking for site personnel, operatives and visitors; wheel washing facilities; measures to minimise dust and noise from demolition and construction operations; operating hours for the use of power tools and machinery and for arrival and departure of vehicles associated with the demolition and construction works. Development shall be carried out in accordance with the approved statement.
- 8) The vehicle access to the communal parking area shall not be brought into use until it has been provided with pedestrian visibility splays, in accordance with the details which shall first have been submitted to and approved in writing by the local planning authority. The splays shall be retained as such thereafter.
- 9) None of the dwellings hereby permitted shall be occupied until vehicle parking and manoeuvring areas have been provided in accordance with the approved plans. The parking and manoeuvring areas shall be retained and kept available for such purposes at all times thereafter.
- 10) No dwelling hereby permitted shall be occupied until cycle parking and bin storage facilities for it have been provided in accordance with the approved plans, unless otherwise approved in writing by the local planning authority. These facilities shall be retained for such purposes thereafter.
- 11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order), no extensions shall be erected to the dwellings hereby permitted.

*Jane Miles*

INSPECTOR

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