

REPORT TO THE NORTH AREA HUB PLANNING COMMITTEE

Date of Meeting	23rd April 2014
Application Number	N/13/00958/S73A
Site Address	Oaksey Park Lowfield farm Oaksey Wiltshire
Proposal	Removal of Conditions 8, 9 and 10 imposed on application reference 10/03612/S73A which varied condition No 7 of 02/01841/FUL and appeal APP/J3910/A/04/1145607, allowing the unrestricted residential occupancy of units 12 to 19 (8 in total)
Applicant	Oaksey Park Ltd
Town/Parish Council	OAKSEY
Grid Ref	399464 194156
Type of application	Full Planning
Case Officer	Lee Burman/Brian Taylor

Reason for the application being considered by Committee

The application has been called in for Committee consideration by Councillor Chuck Berry to allow assessment of the principle and sustainability of the development and implication for other similar proposals and facilities.

The application was deferred at the meeting of 12th March to enable Officers to seek additional information and provide additional comment. The application was then withdrawn from the Agenda of 2nd April 2014 to enable publication of a redacted version of the "Chesterton Humberts" Report. The main body of the report remains as presented on 12th March, with an additional section headed 'Further comments to Meeting of 2nd and 23rd April' added immediately prior to the 'Recommendation'. The Officers conclusions and recommendations remain unchanged.

1. Purpose of Report

To recommend that authority be delegated to the Area Development Manager to grant planning permission subject to the signing of a Section 106 agreement.

2. Report Summary

The main issues in the consideration of this application are:-

the viability of the existing units of accommodation with the currently attached conditions restricting the scope and nature of the residential use and occupancy i.e. as Holiday let accommodation linked to the adjacent Golf Course;

And whether or not the properties have been marketed appropriately and at valuations

reflecting the restrictive occupancy conditions;

The principles of the development proposal.

3. Site Description

The site is located within the open countryside to the east of the village of Oaksey. The application relates to a development of 25 semi detached and detached structures located adjacent a 9 hole golf course and its supporting clubhouse facility. The structures are modern in design two storey buildings built utilising render and timber with substantive glazing elements. The structures are surrounded by shared amenity spaces with new planting separating the properties from the golf course. The structures are residential in character but occupancy is restricted to holiday lets. Similarly there is established mature planting to the northern boundary separating the site and its access road from adjoin open countryside. The properties have ancillary group parking areas and the access road to the site runs from Wick Road, adjacent the golf course itself though the golf course car park and past the clubhouse facility. The land rises to the west and in the direction of the villages and adjacent unmaintained scrub land is situated against the western boundary of the site, albeit this land benefits from an extant consent for a final phase of the development which is as yet unbuilt.

4. Planning History

89/03470/F	Change of Use to residential holiday and staff accommodation of agricultural buildings. Reconstruction of Guest Lounge. Alts To Access and Driveway. Approved
02/01841/FUL	Erection Of 18 No 2 & 3 Bed Holiday Lodges And 1 No Bunkhouse With Covered Parking (1 No Space/Lodge) And Implement Shed, Workshop, Office And Reception Area And Associated Access Approved
03/02072/S73A	Variation of conditions attached to 89/03470/F (Condition 5) and 02/01841/FUL (Condition 7) Appeal allowed conditions varied
10/03612/S73A	Variation of Condition 7 of 02/01841/FUL & 1 of APP/J3910/A/04/1145607 - Relating to Residential Occupancy Relates to units: 3, 5, 6, 8 and 10 - 19 inclusive. Approved
11/02036	Variation of Condition 1 of APP/J3910/A/04/1145607 - Relating to Residential Occupancy (Original Variation of Condition 7 of 02/01841/FUL) Relates to unit 2. Approved
12/00034	Variation of Condition 1 of APP/J3910/A/04/1145607 - Relating to Residential Occupancy (Original Variation of Condition 7 of 02/01841/FUL).Relates to unit 4. Approved.
12/00050	Variation of Condition 1 of APP/J3910/A/04/1145607 - Relating to Residential Occupancy (Original Variation of Condition 7 of 02/01841/FUL). Relates to unit 7. Approved.

The above is a summary list of the historic applications at the site that are relevant and pertinent to the current proposals. It is not intended to be a definitive list of every single application at this site as this site history is very extensive and a great many of the applications are of no direct relevance. The applications and decisions referred to above are discussed in further detail below.

5. The Proposal

The application proposes the removal of conditions 8, 9 & 10 of Planning permission 10/03612/S73A and variation of condition 7 of 02/01841/FUL and Condition 1 attached to appeal decision APP/J3910/A04/1145607 – Relating to residential occupancy. The conditions are as follows:-

10/03612/S73A

8 Notwithstanding the Town and Country Planning (Use Classes) Order 1987 and the Use Classes (Amendment) Order 2005 (or any Order revoking and re-enacting those Orders, with or without modification), the building(s) hereby permitted shall be used for holiday accommodation only and for no other purpose.

REASON :- This site is in a position where the Local Planning Authority, having regard to the reasonable standards of residential amenity, access, and planning policies pertaining to the area, would not permit permanent residential accommodation.

POLICY: C3 of the adopted North Wiltshire Local Plan 2011, RLT9 of the Wiltshire and Swindon Structure Plan 2016 and the Good Practice Guide on Planning for Tourism

9 The building(s) hereby permitted shall not be occupied as a persons' sole or main place or residence.

REASON:- This site is in a position where the Local Planning Authority, having regard to the reasonable standards of residential amenity, access, and planning policies pertaining to the area, would not permit permanent residential accommodation.

POLICY: C3 of the adopted North Wiltshire Local Plan 2011, RLT9 of the Wiltshire and Swindon Structure Plan 2016 and the Good Practice Guide on Planning for Tourism

10 The owners / operators of the site shall maintain an up-to-date register of the names of all owners / occupiers of individual units identified in red upon drawing No. JC/001/2 and of their main home addresses, and shall make this information available at all reasonable times to the local planning authority.

REASON:- This site is in a position where the Local Planning Authority, having regard to the reasonable standards of residential amenity, access, and planning policies pertaining to the area, would not permit permanent residential accommodation.

POLICY: C3 of the adopted North Wiltshire Local Plan 2011, RLT9 of the Wiltshire and Swindon Structure Plan 2016 and the Good Practice Guide on Planning for Tourism

02/01841/FUL

7. The development shall be used only as holiday accommodation and no person shall be in occupation for more than 42 days in any calendar year.

Reason: To ensure that the development is not used as permanent accommodation or as dwellings.

APP/J3910/A04/1145607

1. The buildings shall not be occupied other than for holiday accommodation, and shall not be occupied from 6 January to 5 February inclusive in any year, and shall at no time be used for permanent residential accommodation.

The proposal in the original application related to the 20 remaining units of the site that had not already been sold to private ownership with the relevant restrictive conditions attached. This application and the description of development was varied by the applicant as follows:-

Removal of Conditions 8, 9 and 10 imposed on application reference 10/03612/S73A which varied condition No 7 of 02/01841/FUL and appeal APP/J3910/A/04/1145607, allowing the unrestricted residential occupancy of units 12 to 19 (8 in total)

It is this revised proposal – removal of the restrictive conditions on 8 units that is now before the Council.

6. Planning Policy

National Planning Policy Framework

North Wiltshire Local Plan 2016
C2 Community Infrastructure
C3 Development Control
CF3 Provision of Open Space

Wiltshire Core Strategy Submission Draft

It should be noted that there are no specific policies in any adopted planning policy document that directly address the variation or removal of planning conditions restricting residential occupancy to holiday accommodation use to allow unfettered residential use.

7. Consultations

The Council instructed a firm of Chartered Surveyors to assess the Market Viability Report submitted with the application. This process and the response received is referred to in greater detail below.

The Council extended the consultation period to allow for representations to be submitted following the receipt by the Council of the independent assessment of the viability report. Whilst the report was not published the conclusions were referenced by the case officer in discussions with consultees such as the Parish Council.

Highways Officers raised no objections to the proposals.

Education Officers have identified a requirement for secondary school place provision arising from the development.

Environment Services (Open Spaces) has identified a requirement for children's playspace

provision arising from the development.

Waste Team has identified a requirement for provision of waste collection facilities.

Oaksey Parish Council has objected to the application in respect of:

- The site is an inappropriate location for residential use, poor access, in the open countryside outside the defined village
- The development is out of scale with the landscape
- There is no evidence of housing need in the village
- The proposal makes no provision for “development gain” to contribute to the local community
- Issues of business viability are the result of other factors than the local property market including the business operator and the financing of the development
- A different operator is likely to succeed and transform the business potential
- The property market at the time of the review has been distorted by the recession and the business being in receivership
- The implementation of the existing holiday let conditions has poor suggesting lack of compliance – Wiltshire council has started enforcement proceedings
- A Neighbourhood Plan for Oaksey is under preparation consent for residential would render proposals for housing in the village redundant

Subsequent to the revision of the description of development a further 21 day period of consultation was undertaken. All parties were notified of the revised application.

Education officers have confirmed that the revised proposals generate a requirement for Secondary School places and a financial contribution is sought in this regard.

Environmental Services (Open Spaces) identified that the 8 units alone did not generate an open space requirement that could be met through on site provision and that given the site location off site financial contributions to enhanced provisions for children’s play space elsewhere could not be justified. However should the remaining 12 units also be the subject of proposals to remove restrictive occupancy conditions the on-site playspace provision requirement would be justified.

8. Publicity

The application has been advertised by press advert, site notice and through neighbour notification.

29 letters of objection have been received from local residents raising concerns in respect of:

- The Holiday Let units are a viable business operation under the right management;
- The Holiday Let units were permitted designed and constructed in relation to standards inappropriate to permanent residential accommodation;
- The original property purchase was not conducted on a sound basis
- The Oaksey Park facility only has two competitors (Windrush Lakes and Spring Lake, these facilities are run successfully and are viable
- The locality has a greater range of offer for tourism than referenced in the submitted reports
- The current facility is poorly maintained and the lack of finance available for full maintenance should not be a sound reason for removing the holiday let restrictions
- The marketing of the properties and demand has been affected by the poor quality maintenance at the site
- Inadequate parking provision and traffic generation
- Inadequate design
- Inadequate services for the residential use of the site e.g. waste, schools
- Inadequate consultation with existing owners at the site

- All properties at the site should be included in the decision/application
- Inconsistencies within the submitted supporting financial information
- The site is an inappropriate location for residential use, poor access, in the open countryside outside the defined village
- The development is out of scale with the landscape
- There is no evidence of housing need in the village
- Housing need in the village is for affordable housing
- The independent report commissioned by the Council should be made publicly available
- Sets a precedent across Wiltshire

Following the revision to the description of development a further 21 day period of consultation was undertaken including press notices, neighbour notifications and notifications to all parties having made representations on the original application proposals. Since that time four representations have been received raising objections to the proposed removal of the conditions. Separate correspondence has also been forwarded to the case officer from a further interested party. The representations identify that:-

- The revised proposals are not supported additional supporting documentation to explain and justify the revised scheme proposals
- Consultations with interested parties including the owners of the 5 properties already sold at the site have been inadequate
- If the restrictive conditions are removed on these properties that should also apply to the 5 properties already sold to private ownership
- The Council has commissioned its own assessment of the submitted viability report and this assessment should be made available to interested parties for review and comment
- Parking demand at the site is increasing indicating increased occupancy periods
- The submitted viability assessment is inadequate and does not demonstrate that the properties are unviable as holiday let units
- The site is an unsustainable location contrary to adopted policies for unrestricted residential development and the properties should remain as holiday lets as originally permitted

9. Planning Considerations

Background

The following assessment of the application is on the basis of the removal of restrictive conditions relating to 8 properties at the site. This position has arisen as a consequence of confusion in the independent assessment of the marketing and viability of original scheme proposals commissioned by the Council. The original instruction issued related to the 20 units however following liaison with the applicant, site meetings and provision of marketing and financial information by the applicant the independent surveyors understood that the proposal related to 8 units only. Their report was provided on that basis. Officers identified this confusion when preparing a report to Committee on the original scheme proposals. Further consultation with the independent surveyors assessing the proposals was undertaken and a revised report relating to the whole 20 units was prepared and submitted. This report concluded that the business as a going concern i.e. sold as a single entity was unviable. The assessment however also concluded that insufficient marketing for the whole 20 units had been undertaken and further marketing was therefore required to demonstrate that there was no viable demand for all 20 units with the restrictive conditions as separate individual properties.

As is discussed in more detail below the earlier version of the report relating to 8 units also concluded that the business as a going concern/single entity was not viable; also that the 8 individual units had been adequately marketed at reduced market valuations reflective of the restrictive conditions and that there was no proceedable interest in these properties.

The applicant was made aware of the findings of the independent assessor of both reports and subsequently revised the scheme proposals to relate to the relevant 8 properties only. The

independent assessor has subsequently resubmitted this original report in respect of the revised scheme proposals.

Principle

The principle of residential development in this location is not available for consideration as part of this application. The proposal is merely a variation and removal of conditions restricting occupancy of 8 holiday let accommodation units that are already built. The proposal is not for the erection of new residential development and as such the principle of a residential development in this location and the sustainability of such a development proposal is not available for consideration. The issue for assessment is specific to this site and this development in that the application asserts that the development is not a viable concern, that it has been marketed at reasonable valuation and there is no interest in it as a going concern. Further that the individual properties have been marketed at reduced valuations to reflect the restrictive occupancy conditions attached and that no proceedable interest has been identified. These matters are discussed in detail below but the relevant issue here is that these are material circumstances that are specific to this site only. These types of financial considerations are solely material to each individual site and the form and type of development that has been constructed and the circumstances relevant to the locality will inform such matters and will vary from site to site. As such they do not define any standard or establish any form of precedent that must be adhered to and which would restrict the determination of other such proposals on other sites. Other such holiday let facilities in other locations would need to be assessed on their own individual merits and site circumstances. It is also important to note in this context that the current financial climate is a relevant material factor. This is referenced further below but it should be noted that the economy has worsened considerably since the initial permissions were granted and development took place. These are changed material circumstances in this instance which may not always be prevalent during the future. This is specifically relevant here in respect of the availability of financing from banks for purchase of such restrictive occupancy properties and the viability of fairly small scale holiday let accommodation facilities.

Furthermore the Council in determining any application is duty bound to act reasonably and determine the applications that are submitted on the basis of relevant material considerations and circumstances. As such it is not appropriate or acceptable for any Local Planning Authority to determine an application on the basis of what may possibly happen in the future or what their position may have been with respect to a theoretical situation i.e. a wholly new proposal for residential development. The Council's decision must be defensible and justifiable in the event of an appeal. Refusal on the grounds that a new residential development would be unsustainable in this location would not meet this test.

In terms of the residential conditions that would result from an unrestricted residential occupancy arrangement it is considered that the site layout affords a reasonable level of residential amenity. It is certainly not considered to be the case that the arrangement is so sub-standard in terms of the amenities of future occupants that all other material considerations are overridden and consent should be refused. It will however be necessary to remove certain permitted development rights by condition to ensure control over this situation.

The Parish Council has previously objected that work taking place on the Neighbourhood Plan for Oaksey in respect of housing will be rendered redundant by approval of this application. This application is not a proposal for new residential development and cannot be assessed in those terms. The Wiltshire Core Strategy and the strategy for housing policies in Neighbourhood Plans (Policy CP2 is relevant) are framed as approximate requirements and clearly envisage that Neighbourhood Plans have the scope to propose additional housing over the minimum requirements identified. The Core Strategy Examination Inspector has also published an initial letter to the Council dated 2/12/13 which sets out his assessment that the housing requirement should be increased. As such the position is subject to amendment and work is ongoing. The preparation and evolution of Neighbourhood Plans is a part of that process. The Parish Council also refers to Wiltshire Council Enforcement Action in respect of

breaches of the Holiday Let conditions. There are two investigations underway and no formal action taken. One relates to the use of units 1 and 9 both of which have been sold separately and are not the subject of this application. The second investigation relates to the failure to maintain a guest register. It is not considered that this matter is so significant as to affect the consideration of this application in and of itself. Indeed it has yet to be demonstrated that this is in fact the case.

History & Conditions

In this instance the site history demonstrates that the Council has sought to ensure as far as it was able that the development would not lead to an unfettered residential development in this location, whilst also being supportive of a business venture that also provided leisure facilities within the local community. To this end permissions were issued but with restrictive conditions in place e.g.

N.89.3470.F

5 Each holiday unit (numbered 1-6 on the plans hereby approved) shall only be occupied by any single party for a period not exceeding 3 calendar months in any one period of 12 calendar months.

Reason: To restrict the use of the units to holiday accommodation. The site lies in an area where new dwellings are not normally permitted.

N/02/01841/FUL

7 The development shall only be used as holiday accommodation and no person shall be in occupation for more than 42 days in any calendar year.

Reason: To ensure that the development is not used as permanent accommodation or as dwellings.

These conditions were the subject of a subsequent application for variation to reduce the level of restriction and extend the period of use which was also refused by the Council. This decision was appealed and that appeal was allowed resulting in the following condition be applied:-

The buildings shall not be occupied other than for holiday accommodation, and shall not be occupied from 6 January to 5 February inclusive in any year, and shall at no time be used for permanent residential accommodation.

This condition was then also subject of four separate applications for variation of the terms as it related to separate units at the site all of which were approved. The applications also sought to vary condition 7 attached to 02/01841/FUL.

These resulted in conditions 8, 9 and 10 as referenced in section 5 above. Condition 8 is of specific relevance in this regard as restricts the use to holiday accommodation but places no time limit in this regard.

Whilst this approach to the site could be viewed as an attempt to progressively remove restrictions it could also be argued that both parties have sought to achieve a balanced approach to the occupation of the site and to apply conditions that maximise the possibility for the facility to be used as originally intended – holiday accommodation. The ongoing change to the terms of the restriction being evidence of the need to have greater flexibility in the terms of the holiday use to maximise the desirability of the location and broaden the market sector. Effectively representing an effort by the applicants and owner of the site to maintain a viable business. The fact is that the original conditions applied were deemed to be unreasonably restrictive by an Inspector considering the matter and the appeal against that restrictive approach was allowed. The Council has subsequently sought to maintain its support for the holiday accommodation business. That earlier appeal decision remains a material planning

consideration and is of increasing relevance given the changed economic circumstances and the submitted market viability appraisal.

It is also important to note that the applicant has discharged several of the other conditions relevant to the site and that should consent be granted these could not be reimposed.

Market Viability Appraisal

The applicant has submitted a Market Viability Report prepared by Strutt and Parker Chartered Surveyors. The report was prepared in behalf of administrators Price Waterhouse Cooper after Oaksey Park Limited was forced into administration. The purpose of the report as per the Instruction to Strutt and Parker was to assess the viability of and market for the Holiday Accommodation and the market for and viability of an alternative unfettered residential use for the site. In respect of the Holiday Accommodation the report concludes that:-

- Trading at a loss for the last three years
- Hosesasons have pulled out as commercially unviable.
- Price Waterhouse Cooper state that holiday use is also unviable with no foreseeable prospect of future growth.
- Strong competition, particularly from Cotswold Water Park

On this basis it concludes that the use is commercially unviable.

With respect to a use as unfettered residential accommodation the report identifies that this is a good long term investment with steady demand and that it would be commercially viable.

The Council sought independent assessment of this submitted Market Viability report. This report has not been published as it contains commercially sensitive and personal financial information. This approach has been disputed by several interested parties and local residents. A great deal of such information and assessments submitted with a wide range of planning applications throughout the country are treated in this manner. This is not unusual and is indeed a quite common occurrence, examples include the change of use of public houses to residential and their related viability reports and assessments. The submitted market viability report of the applicant has been made publicly available for review and comment however and a number of objectors have made their submissions in that regard as summarised above and in further detail below.

Initially the Case Officer sought the input of the Council's Estates Department but it was identified that the issues at hand, including valuations of and the market for Holiday let accommodation, were areas of specialist knowledge and expertise which was not available within the Council. As the case officer sought independent specialist assessment on behalf of the Council and instructed a private firm of Chartered Surveyors – Chesterton Humberts. The instruction was specifically to assess the applicant's submitted market viability report and to consider whether or not this was reasonable and sound in respect of the removal of conditions for the 20 units. As noted above subsequent discussions between the applicants surveyors' and Chesterton Humberts resulted in some confusion and a partial assessment relating the marketing of individual units (8 in total was completed). In so doing Chesterton Humberts considered both the viability of disposal of the 20 units as a going concern; also the viability of the sale of 8 individual units with the relevant restrictive conditions in place. This assessment also considered the marketing that took place and the valuations placed on the 8 units.

In undertaking the initial assessment Chesterton Humberts sought and received additional detailed information as to the marketing process and results that had taken place from the applicant.

The resubmitted independent assessment undertaken on behalf of the Council concludes that:-

- the marketing was reasonable and appropriate in relation to the 8 properties that are the subject of the current application;
- the valuations placed on the units individually was reasonable and appropriate (subject to caveat discussed below);
- the development as a whole going concern is unviable given the offer available and competition in the locality;
- the 8 units cannot be sold individually with the restrictive conditions in place as finance is not available from the banks.

With respect to the operation as whole no offers were identified in the recent marketing process. With respect to the sale of individual units offers were initially received however when these were investigated for progression it became apparent that the individuals making the offers could not obtain financing from their banks and as such were not “proceedable”.

Chesterton Humberts in their report do identify that with respect to the marketing and viability appraisal of the facility as a whole going concern the associated costs were significant. Indeed these incorporated the management and running costs associated with financing the purchase of the facility. The assessment was therefore undertaken on the basis of a reduction in these administrative costs with a significant discounting of the initial purchase prices. The report identifies that even with this discounting in place and with a reasonable level of overheads attached to the business acceptable levels of profitability were not available and as such the business as a whole going concern could not be considered as viable. Chesterton Humberts have stated that should the properties be offered to third parties at nil or close to nil value i.e. very heavily discounted/subsidised then a viable operation may be achievable. This has been a suggestion of some of the Third party objectors. However it is considered wholly unreasonable to require any landowner or business to dispose of assets at nil value merely to seek to maintain an established land use, which then may or may not prove to be viable in the longer term for a different operator/owner. It is not considered that such an approach, refusal of the application on this basis, would be defensible and justifiable in an appeal situation.

It should also be noted that a third party (a local resident who has previously investigated purchase of the facility) made representations to the Council regarding viability and available financial information. They have made submissions of their own in this regard and these were forwarded to Chesterton Humberts for review and consideration. Specifically Chesterton Humberts were asked to consider whether the further information affected their assessment in any way and altered their submitted assessment. Chesterton Humberts clearly stated that the information did not change or alter their assessment.

It must be made absolutely clear that Chesterton Humberts are a firm of Chartered Surveyors and as such they were instructed to examine the marketing information and viability matters only. Chesterton Humberts were not instructed to consider wider issues such as the principles of residential development in this location or indeed comment on the determination of the application in any way. This is the responsibility of the case officer and as noted the merits or otherwise of residential development in this location are not available for consideration as part of this application in any event.

S106

The application proposal would result in unrestricted residential use of the site and in all likelihood the sale of properties individually and thereby creating a new permanent residential community in this location. The current ly revised application relates to 8 units only but there is a potential for 12 further units to be similarly considered should the applicant choose to market those properties and propose the removal of conditions afterward. Certainly the evidence before the Council (the terms of the original application) indicates that this is the intention of the applicant. As such consideration of the impact of the new residential community on existing services and infrastructure in the context of the Council’s adopted policies C2 and CF3 of the NWLP in a two phase approach has been undertaken. As identified in the Consultations section

above Open Space, Education and Waste Collection requirements have been identified as necessary requirement arising from this development. In making the assessment of need consideration has been given to the Council's adopted policies supporting assessment information and the location of the site outside a defined settlement. On this basis the following requirements are considered to be necessary and justifiable:-

Education

In relation to the 8 units that are the subject of the current application 2 secondary school places are generated that cannot be accommodated within existing facilities. 2 primary school places are generated but can be accommodated within existing infrastructure. Existing secondary school capacity can be enhanced and so a financial contribution of £38,310 for secondary infrastructure is required based on current school place cost multipliers.

Open Spaces

The site lies adjacent a golf course and is within the open countryside but is not well related to major centres of population and existing public open space provision. Given the site circumstances and scale of residential accommodation that would result it is considered that on site provision of a children's Local Equipped Area for Play (LAP) is necessary and justifiable in relation to the 20 units originally proposed but no provision either on site or in terms of financial contributions could be justified in relation solely to the 8 units. This position can be addressed by the inclusion of a trigger for on site provision of play space (in a specific location and form to be agreed with the Council) should the second phase of 12 units ever be subject of a planning permission for removal of the restrictive occupancy conditions. Officers recommend that this would be most effectively maintained through a private management company arrangement and again this can be achieved by covenants for agreement of terms in a S106 agreement.

Waste Facilities

Officers identified a requirement for waste collection facilities (wheelie bins) and seek a financial contribution for provision for each of the twenty dwellings equating to £2,420. The applicant has however identified that there is already existing provision of such facilities at the site. As such it is agreed that further financial contributions are not justifiable in this respect.

These requirements have been identified and discussed with the applicant who has agreed to address matters through the preparation of a Section 106 agreement, in this instance a Unilateral Undertaking is proposed. A draft has been submitted for agreement but this has only just been received at the time of writing the report and legal review of the terms and conditions is required. As such the recommendation is to delegate authority to the Area Development Manager to grant consent subject to the finalisation of this agreement.

Phase 4 of the Development/Extant Permission

It should be noted that a final phase of development of holiday let units at the site remains unimplemented and is not covered by the current application proposals to remove restrictive occupancy conditions. The consent remains extant given the implementation of earlier phases and related works. An application to discharge conditions relevant conditions has been submitted. Officers were concerned that this indicated some level of intent on the part of the applicant which would therefore undermine the assertions as to viability and demand for the existing units that are the subject of this application. Officer sought Legal advice as to what if any action could be taken with respect to the consideration of the discharge of conditions and possibility of voiding the permission of the final phase of development. The advice received is that if the details are acceptable it would be unreasonable to withhold formal discharge of conditions and such an approach would not be justifiable or defensible..

With regard to the invalidation of the original permission with respect to the phase 4 development legal advice is that once a planning permission is granted it will continue in force. Where partially implemented it remains extant. In certain circumstances the grant of subsequent applications may make it impossible to complete implementation of the original consent, for example where the uses permitted are incompatible or there are physical constraints to the implementation of the two different permissions. Given the facts of this case in terms of the form and layout of the site and the remaining consented phase of development and given the compatible nature of the uses that would be permitted (holiday lets and residential units) the Legal team do not consider that there is an issue of incompatibility that would invalidate the phase 4 consent.

Should the phase 4 consent be implemented and then an application to vary or remove conditions be submitted on the grounds of viability the site history and in particular the position with regard to the current application and any future second phase application relating to the 12 units not covered herewith would be material considerations. It is officers' opinion that it would be impossible to justify the erection of the phase 4 units and then apply shortly thereafter for removal of conditions on the grounds of viability. It would be apparent to all parties that the investment should not have taken place because the units were known to be unviable.

The applicant has verbally commented that there is no intent to proceed with implementation of this phase 4 and that the purpose of discharging conditions relates to the valuation of the property as whole in relation to current financing arrangements.

10. Conclusion

It is considered that it has been satisfactorily demonstrated that the existing development of 20 holiday let units is not viable as a going concern and that adequate marketing of the facility at a reasonable valuation has been undertaken. Similarly it is considered that following appropriate and acceptable marketing there is no evidence of proceedable interest in 8 of the individual units with the restrictive conditions applied. There is verifiable evidence that the current business is operating at a loss and even taking into account significant level of discounting that a reasonable and appropriate level of profit cannot be achieved. The Council has sought and received independent assessment of this position. Consequently it is considered that the case has been made to justify removal of the restrictive occupancy conditions subject to the necessary consequent service and infrastructure requirements being addressed through a S106 agreement.

11. Further comments to Meetings of 2nd and 23rd April

The following paragraphs were included in the report to the meeting of 2nd April, however that report was withdrawn from the Agenda:

Further Comments to Meeting of 2nd April

At the Northern Area Planning Committee on 12th March 2014 Members resolved to defer making a decision to allow officers to seek further information and address a number of concerns that members raised. The main areas of concern that were identified were:

- Residential amenity, the provision for private amenity space for the units and impact this may have on the appearance of the development
- Details of the proposed legal agreement and contributions sought.
- Impact on Wiltshire Council provided services, in particular Waste collection
- Details of access to the highway

- Interpretation of paragraph 55 of the National Planning Policy Framework.

Residential amenity

This matter was addressed in the report to the 12th March NAPC. Under the 'Principle of development' heading the report noted:

"In terms of the residential conditions that would result from an unrestricted residential occupancy arrangement it is considered that the site layout affords a reasonable level of residential amenity. It is certainly not considered to be the case that the arrangement is so sub-standard in terms of the amenities of future occupants that all other material considerations are overridden and consent should be refused. It will however be necessary to remove certain permitted development rights by condition to ensure control over this situation."

Officers have reviewed the existing site layout. Whilst probably not the type of layout that would have been favoured for unrestricted residential occupation, it does afford acceptable levels of privacy and avoids overlooking. Clearly the layout does not provide private areas of garden or sitting out space, but these issues could be addressed with the introduction of fences or other boundary treatments. Any additional fencing will require permission if the proposed conditions are approved and this would give the Council the opportunity to consider what impact these would have on the appearance of the development or the wider landscape.

Details of proposed legal agreement

The details of the proposed contributions and restrictions to be sought are set out in the Officers report under the 'S106' heading. This detailed that a contribution of £38,310 was being sought for education. In terms of public open space there is no contribution being sought at this stage, however should the remaining units be subject to a similar application (to remove the restrictive conditions) this could trigger a contribution:

"the inclusion of a trigger for on site provision of play space (in a specific location and form to be agreed with the Council) should the second phase of 12 units ever be subject of a planning permission for removal of the restrictive occupancy conditions."

Impact on waste collection

This matter was also addressed in the report to the NAPC on 12th March under "S106":

"Officers identified a requirement for waste collection facilities (wheelie bins) and seek a financial contribution for provision for each of the twenty dwellings equating to £2,420. The applicant has however identified that there is already existing provision of such facilities at the site. As such it is agreed that further financial contributions are not justifiable in this respect."

The units are existing and could be occupied year round, albeit by 'holiday makers' rather than permanent residents. Both types of occupiers will create waste and this will need to be collected. The impact on waste collection at the site will be little different should the restrictive conditions be lifted.

Details on Highways access

Officers indicated at the NAPC Meeting on 12th March that access was afforded to the site via two points of access. However, whilst an access does exist from Wick Road to the east of the site this is not generally used. The principle point of access is via the main 'golf course' access to the south of the site.

The highways team has confirmed that they have no objection to the proposals. As with the comments on waste collection above the difference between traffic generated by the units with the restrictive conditions applied and an unrestricted residential unit is very minor. The access to the site is considered acceptable to serve the golf course plus the existing units and the, as yet to be implemented, phase iv units. Officers consider that it would be difficult to argue that the removal of the restrictive conditions would result in significantly more traffic using the access or that use of the existing access would become a danger to highway safety.

NPPF

Paragraph 55 of the NPPF seeks to restrict isolated homes in the countryside. This reflects long established policies at both national and local level that only allows for new homes where there is an agricultural justification, reuse/conversion of existing buildings or where a 'truly outstanding' design is proposed. However, this application is not for new build units or conversions and the application is not for the change of use of the buildings. In this case the Council is considering removing conditions that restrict the use of an existing group of residential properties. It is not considered that paragraph 55 is particularly pertinent to this proposal. A refusal based on the requirements of paragraph 55 would be difficult to justify.

For clarity Paragraph 55 states:

“To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as:

- the essential need for a rural worker to live permanently at or near their place of work in the countryside; or
- where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; or
- where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or
- the exceptional quality or innovative nature of the design of the dwelling. Such a design should:
 - be truly outstanding or innovative, helping to raise standards of design
 - more generally in rural areas;
 - reflect the highest standards in architecture;
 - significantly enhance its immediate setting; and
 - be sensitive to the defining characteristics of the local area.”

Further comments to the meeting of 23rd April

Following the receipt of a letter from Thrings solicitors the application was withdrawn from the Agenda for the following reason:

“A letter has been received from solicitors acting on behalf a third party which argues that should the Council make a decision to approve planning application reference 13/00958/s73a (Oaksey Park, Lowfield Farm, Oaksey) without first making publicly available all documents referred to in the officers report (specifically the Chesterton Humberts assessment of the schemes viability) then the decision may be vulnerable to challenge through the High Court. The report

was not made public because it was considered to contain personal and financially sensitive information, however a redacted form of the report was made available through the freedom of information act. However, Officers believe that in the interests of transparency the requested information should, as far as possible, be made available to the public alongside other planning documents. For that reason the application has been withdrawn from the agenda, to be considered at the next available Northern Area Planning Committee.”

A copy of the letter is attached as Appendix 1.

The argument set out in the Thrings letter of 31st March is that the Council should make available the Chesterton Humberts Report upon which the Officers report draws for some of its conclusions. Secondly, it argues that the highways matters have not been fully assessed.

In response a copy of the redacted Chesterton Humberts Report has been placed on the Council's website (it had already been made available under a Freedom of Information request). It is considered to be appropriate that some of the financial and personal information in the report remains confidential.

Secondly, whilst the Council is happy to make available any correspondence from the Highways team on this matter, there is no justification for the implied claim that the highways issues have not been assessed in the consideration of this application.

Prior to the Committee considering the application on 12th March Officers made some further observations about the content of the report, which sought to clarify some relatively minor points. For completeness these were:

- Under the heading 'Report Summary' it is said that the conditions regarding the holiday accommodation link it to the adjacent golf course. However, these operations (golf course and accommodation) are independent and are not formally linked (especially by condition) despite the obvious synergy that has operated over the years.
- In the above report Officers have summarised the Chesterton Humberts viability report findings and refers to the "reduced market valuations". The viability report is perhaps more direct, describing the marketing as having involved 'heavily discounted prices' and links the lack of interest 'purely on account of the restrictions in the planning consent'.

Conclusion

Having considered the matters that members raised in relation to this application on 12th March and the content of the Thrings letter of 31st March Officers consider that the recommendation originally presented to the NAPC meeting on 12th March remains appropriate.

RECOMMENDATION

That authority be delegated to the Area Development Manager to grant Planning Permission subject to the conditions listed below and the completion of a section 106 agreement to address education and open space service infrastructure requirements.

Conditions

1 The development hereby permitted shall be carried out in accordance with the documents (including plans) incorporated into this decision, previously and subsequently approved pursuant to

this decision (including details contained within letters dated 16th January 2004, 13th February 2004 and 22nd February 2004 from Nick Stickland Architect and their enclosures and a letter dated 16th February 2004 from Rationel Windows and Doors and its enclosure relating to hard and soft landscaping, external stonework and materials, external lighting and foul drainage), unless otherwise approved in writing by the local planning authority. Site Location Plan, Site Access Plan, Site Plan 09/04/2013. site layout plan Ref 958/10 date stamped 01/08/2013

REASON: To ensure that the development is implemented in accordance with this decision in the interests of public amenity.

2 The approved landscaping scheme (details set out in a letter dated 13th February 2004 from Nick Stickland Architect plus enclosures) shall be implemented within one year of either the first occupation or use of the development, whether in whole or in part, or its substantial completion, whichever is the sooner, and shall be maintained thereafter for a period of not less than five years. The maintenance shall include the replacement of any tree or shrub which is removed, destroyed or dies by a tree or shrub of the same size and species as that which it replaces, unless otherwise agreed in writing by the local planning authority.

REASON: In the interests of visual amenity in accordance with policy C3 of the North Wiltshire Local Plan 2011.

3 Notwithstanding the provision of the Town and Country Planning General Development Order no fences, walls or other means of enclosure other than those shown on the approved plans shall be erected anywhere on site.

REASON: To ensure that the open areas of the site remain in communal use.

4 The area between the nearside carriageway edge and lines drawn between a point 2.4 metres back from the carriageway edge along the centre line of the access and points on the carriageway edge 160m back from and on both sides of the centre line of the access shall be kept clear of obstruction to visibility at and above a height of 900mm above the nearside carriageway level and maintained free of obstruction at all times.

REASON: In the interests of highway safety in accordance with policy C3 of the North Wiltshire Local Plan 2011.

5 The development hereby permitted shall be served solely from the access shown in drawing c310/1.

REASON: In the interests of highway safety in accordance with policy C3 of the North Wiltshire Local Plan 2011.

6 The workshop / estate yard shall be used only for purposes ancillary to the golf course.

REASON: To prevent an inappropriate independent use.

7. The development hereby permitted relates solely to units 12 – 19 Inclusive as shown on site layout plan Ref 958/10 date stamped 01/08/2013.

REASON: To clarify the extent of the permission.

8. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), no buildings or structures, or gate, wall, fence or other means of enclosure, other than those shown on the approved plans, shall be erected or placed anywhere on the site on the approved plans.

REASON: To safeguard the character and appearance of the area.

9. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), no window, dormer window or rooflight, other than those shown on the approved plans, shall be inserted in the roofslope(s) of the development hereby permitted.

REASON: In the interests of residential amenity and privacy.

11. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), there shall be no additions/extensions or external alterations to any building forming part of the development hereby permitted.

REASON: In the interests of the amenity of the area and to enable the Local Planning Authority to consider individually whether planning permission should be granted for additions/extensions or external alterations.

INFORMATIVES:

Any alterations to the approved plans, brought about by compliance with Building Regulations or any other reason must first be agreed in writing with the Local Planning Authority before commencement of work.

This permission shall be read in conjunction with an Agreement made under Section 106 of the Town and Country Planning Act, 1990.

The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required it will be necessary for the applicant to obtain the landowners consent before such works commence.

If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.

Background Documents Used in the preparation of this Report:

- Application Documentation including Strutt and Parker Market Viability Report and Additional Supporting Information
- Chesterton Humberts Assessment of the Market Viability Report

THRINGS

For the attention of Lee Burman/Brian Taylor
Wiltshire Council
Monkton Park
Chippenham
Wiltshire
SN15 1ER

Also via email

31 March 2014

Your Reference: Our Reference:

AM/lcl/03864-1
Direct Line: 0117 9309575
Direct Fax: 0117 9293369
Email: amadden@thrings.com

Dear Sirs

Our Client: Martin Davies on behalf of Oaksey Parish Council

Application Number: N/13/00958/S73A ("the Application")

Application Site: Oaksey Park, Lowfield Farm, Oaksey, Wiltshire ("the Application Site")

Proposal: Removal of Conditions 8, 9 and 10 imposed on application reference 10/03612/S73A which varied condition number 7 of 02101841/FUL and appeal APP/J3910/A/04/1145607, allowing unrestricted residential occupancy of units 12 to 19 (8 in total)

We confirm we represent the above named who has previously lodged an objection to the above application.

It is our understanding that this Application will now be determined at Committee on 2 April 2014. The purpose of this letter is to request that the determination of this Application at Committee on the above date be deferred until the next available Committee date to allow the documents referred to below to be disclosed to our client and/or uploaded onto the Council's website so that they can be properly considered by our client (and other third parties). We have numbered the following paragraphs for ease of future reference.

1. Viability Report prepared by Chesterton Humberts

1.1 We understand from the Officer's report to Committee that Chesterton Humberts were instructed to specifically assess the Applicant's submitted market viability report and to consider whether or not this was reasonable and sound in respect of the removal of conditions for the 20 units; and also the viability of the sale of 8 individual units with the relevant restrictive conditions in place and the marketing that had taken place and the valuations placed on the 8 units which are the subject of the Application. The confusion between the surveyors for both parties and the partial assessment relating to the marketing of individual units is also material and duly noted.

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1.2 Although the contents of the report prepared by Chesterton Humberts are summarised in the Officer's report, a copy of the document is not available on the Council's website and therefore, those objecting to the Application have had neither the opportunity to fully consider the contents of the same nor to make appropriate representations.

1.3 Plainly, a failure to disclose the Chesterton Humberts report seriously prejudices the ability of third party objectors to consider first hand its contents and to make appropriate representations in relation to the same. In addition, such an omission, if submitted, contravenes the requirements of section 1000 of the Local Government Act 1972 (as amended) which provides, amongst other things, that background papers for a report are to be open to inspection by members of the public. Moreover it follows, therefore, that such an omission contravenes a statutory requirement and constitutes procedural impropriety which may result in the Council failing to take into account relevant material (in the form of third party representations) in the determination of the Application.

2. Highways Officer's Comments

2.1 Although it is noted that the Council's Highways team has confirmed that they have no objection to the proposals as set out in the Officer's report to Committee as it "would be difficult to argue that the removal of the restrictive conditions would result in significantly more traffic using the access or that use of the existing access would become a danger to highway safety" such reasoning appears, on the face of it, erroneously derived.

2.2 It is submitted that should the Application be approved and that the units become available for residential use (as opposed to use as a holiday let, which is, by its very nature, seasonal) then the use of the access to and from the Application Site will be intensified such that it could cause a real risk to highway safety. It follows, therefore, that this issue requires an appropriate assessment. For this reason, we require sight of aU internal communications between the Highways Officer and the Case Officer in order that we can be satisfied that this issue was properly considered and, if necessary, make representations in relation to the same.

2.3 Again, it is submitted, that without sight of the said communications which, in turn, will enable appropriate comment from third party objectors and their experts, there is a real risk that the Council will fail to have regard to relevant material if the Application is determined at Committee next week.

2.4 It is settled law that highway safety and capacity is a material consideration and, in particular, we refer you to the case of *R v Newbury District Council (ex parte Blackwell) [1999] JPL 680* where a Council's decision was overturned for failure to take into account the material consideration of highway safety.

3. To conclude, we submit that, for all of the above reasons, it will breach the rules of natural justice if the Application is not properly determined at Committee next week, since all of the information in support of the same has (a) not been publicly made available for consideration

by third parties and (b) those third parties have not had, therefore, the opportunity to submit any representations in respect of the same.

In the circumstances, we request that this Application be deferred to the next available Committee date once the requested documents have been disclosed (and/or uploaded onto the Council's website) so that third parties can have an opportunity to properly consider and comment on (if necessary) the same.

In the event that the Application is determined at Committee next week then the consequences of breaching statutory requirements amounting to procedural impropriety and failing to take into account relevant material will render any decision amenable to challenge in the High Court by way of judicial review.

We look forward to receiving your written confirmation that the determination of this Application will be deferred as above mentioned.

Please do not hesitate to contact the writer, Alex Madden, on the above number should you have any queries.

Yours faithfully

A handwritten signature in blue ink that reads "Thrings LLP".

Thrings LLP

