

REPORT TO THE AREA PLANNING COMMITTEE

Date of Meeting	4 th June 2014
Application Number	N/13/00958/VAR (previously 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 Parish Council
Ward	Minety (Cllr Berry)
Grid Ref	399464 194156
Type of application	Full Planning
Case Officer	Lee Burman

Reason for the application being considered by Committee

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 The application was then withdrawn from the Agenda of 2nd April 2014 to enable publication of a redacted version of the "Chesterton Humberts" Report. The Application was withdrawn from the 23 April 2014 Committee to allow consideration and assessment of further information submitted by objectors by Officers as advised by Chesterton Humberts. A further opportunity for a range of interested parties was then allowed for further final submissions to be made and for these also to be assessed by Officers and Chesterton Humberts.

The report for the Committee of 23/4/14 is attached at Appendix A. 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 remained unchanged.

The following report addresses the additional submissions received and the consideration and assessment of this information by the Council's advisors Chesterton Humberts and their conclusions.

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 and conditions.

2. Report Summary

The main issues 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;

Whether or not the properties have been marketed appropriately and at valuations reflecting the restrictive occupancy conditions;

The evidence available to support arguments for or against viability and for marketing and valuation.

The principles of the development proposal.

Oaksey Parish Council maintain their objection to the proposal and summarise these objections as follows:-

- Non-viability has not been proven
- The application is entirely for the profit of the applicant
- WCC planning has not followed proper planning procedures
- WCC planning makes generalisations in the report which are not fact
- WCC make a fundamental error in the assessment of access
- There are glaring inconsistencies in the report
- The application does not conform to the Local plan or NPPF 55 despite WCC's claim that it does.
- Amenity (Waste, parking etc) has not been duly considered
- Highways have not given due consideration to the application
- Education needs have not been considered adequately
- The application for only 8 units is one of convenience and any application should be for the entire development

Since the previous deferral of the Committee report submissions supporting objections to the scheme have been received from 2 Local Residents. The submissions support their objection that the Holiday Let scheme is viable and that the properties have not been marketed effectively or at realistic prices. Objections are also raised in respect of the adequacy of the access to the site for vehicular traffic generated as result of the unrestricted residential use of the properties.

The representations received previously are summaries in the report attached at Appendix A

3. Site Description

As per the report attached at Appendix A.

4. Planning History

As per the report attached at Appendix A.

5. The Proposal

As per the report attached at Appendix A.

6. Planning Policy

As per the report attached at Appendix A. In addition it should be noted that objectors have asserted that paragraph 55 of the National Planning Policy Framework provides a basis for the assessment of the proposals and sound justification for the refusal of the application. This is addressed in the report contained at Appendix A but to summarise paragraph 55 NPPF specifically relates to new residential development within rural areas, including the change of use of existing buildings. This is not an application for new residential development or a change of use and Paragraph 55 does not apply directly given the material circumstances pertinent to this application. Paragraph 55 is reproduced in the report to Committee contained at Appendix A.

7. Consultations

As per the report in Appendix A. In addition the applicant team and objectors, including the Parish Council, who raised major concerns in respect of the proposals and sought to submit additional information for assessment and consideration. The report to Committee was deferred by two further cycles until this meeting to allow submission, assessment of submissions and reporting. Full re-consultation with all parties was not undertaken.

8. Publicity

As per the report attached at Appendix A.

9. Planning Considerations

Principle

As noted in the planning policy section above and the previous reports to Committee this application is not a proposal for new residential development on greenfield land. It is not an application to change the use of existing buildings. It is worth repeating this fact because many interested parties are in disagreement in this respect. The buildings are in place, they are currently in use for a form of residential occupancy (Dwellings and Holiday Lets are within the same Use Class – C3) albeit of a restricted nature and the original grant of permission and subsequent permissions granted at the site all allow for this form of residential usage of the site. This application seeks to further vary and remove conditions applied to previous permissions in respect of 8 of the constructed properties to allow for wholly unrestricted residential occupancy on the basis that there is no interest in purchasing the Holiday lets and that the business as a whole is financially unviable. Therefore as a matter of fact this is not an application for new residential development on Greenfield, previously undeveloped land and the application cannot be assessed in those terms or under national and local planning policies relevant to applications for such new residential development. This is not a change of use application for example agricultural buildings to residential. This application has specific material circumstances pertinent to its determination not addressed by para 55 i.e. financial viability and market interest in the business or individual properties at the site. It is considered that para 55 does not provide a policy basis for determination of this application and no sound and defensible basis for the refusal of the application.

Market Viability Appraisal and Additional Information Submissions

The Council has received the following additional information submissions:-

- Equimedia Report 5/9/14 for Oaksey Parish Council

- Oaksey Parish Council comments on Officer report to Committee
- Price Waterhouse Cooper Oaksey Park Ltd Administration Reports
- Correspondence From Objectors received by 9/5/14
- Rycal Investment Group marketing documents and related objector correspondence
- Oaksey Park Limited Company Accounts period to 31/12/10
- Strutt and Parker Marketing Documentation received from Objectors 17/4/14
- Applicant Correspondence received by 9/5/14
- Strutt and Parker Marketing Viability Assessment Update 9/5/14

All of the documentation, except the 2010 company accounts, was published to the Council's website upon receipt. The Council requested and received Company accounts for the period to the end of 2010. This contained sensitive financial information. The Council queried with the applicant's representatives whether or not this was available in any other forum/public domain and it was confirmed that it was not. The information has therefore not been published to the Council's website following advice received from the Freedom of Information and Legal Teams. The information was submitted to Chesterton Humberts for review and assessment. In summary the information shows a net loss for the period to 31/12/2010, however Chesterton Humberts consider that the accounts relate not solely to the Holiday Let units, including the Golf Facilities, and have therefore not relied on or given substantial weight to this information. Similarly Chesterton Humberts assess that the Price Waterhouse Cooper Administration reports also include accounts for the Golf Facilities and have again not relied on this information or given this substantial weight.

The Council forwarded all of these documents to Chesterton Humberts and issued instruction that these be assessed in full and consideration given as to whether or not the conclusions in the previous Chesterton Humberts report were affected in any way at all; if so to then provide revised conclusions. A revised report from Chesterton Humberts was published in full and un-redacted in any way to the Council's website on 27/5/14. This report is reproduced at Appendix B and the conclusions in that report are reproduced in full as follows:-

8. Conclusion

It is my opinion that under current market conditions the lettings business, consisting of 20 cottages, of which 8 are the subject of the planning application, does not represent a viable business as it has not shown an adequate return for an investor.

With regard to the viability of selling the individual properties, while the marketing of the 8 units by Rycal was unconventional and not employing the usual marketing tools, they did apparently identify purchasers for the property who agreed prices acceptable to the applicant and would have been prepared to proceed with the purchase had reasonable funding been available.

The difficulty of both arriving at a suitable value and achieving a sale of one of a restricted property has been highlighted by the double failure of the offering of Unit 1 at auction in February and April of this year.

Accordingly I am of the opinion that the proposition of disposing of the 8 units to individuals genuinely seeking holiday homes is unviable in this location.

Furthermore Council officers met with the author of the report to discuss the assessment and conclusions and to ensure that all the submitted information had been assessed and to raise some concerns identified by objectors and seek a response.

The Author confirmed that all information submitted had been reviewed in full. It was confirmed that the submitted information of objectors including the marketing information of Strutt & Parker (copied to Council 17/4/15) and the report for Oaksey Parish Council of Equimedia did not provide convincing and fully justified evidence that the holiday let business was indeed viable as is asserted by objectors. The Strutt and Parker marketing information identifies that it is marketing information that excludes certain substantive costs. The inclusion of such costs renders the business loss making. Even reduced costs burdens comparative to other similar business operations result in loss making, unviable operations or returns so low that they do not represent an attractive or reasonable business investment. The Equimedia report is based on income assumptions and cost reductions that are considered by Chesterton Humberts to be both unrealistic and unreasonable. As noted above both the 2010 Company Accounts and the Price Waterhouse Cooper administration accounts include data relating to the Golf Facilities at the site and are not exclusively accounts relating to the Holiday lets as such Chesterton Humberts have given these limited weight in their assessment. The Rycal Investment Group marketing information has been reviewed and is referenced in the revised Chesterton Humberts reports as unconventional. It is noted that expressions of interest and offers were received. Contrary to objectors assertions it is concluded that the offers were not supported by firm financing and did not materialise. The Author also concludes, contrary to objector's submissions, that the recent unsuccessful efforts (two separate public auctions) to auction property 1 at the site (in private ownership) at significantly reduced costs are relevant and are indicative of a lack of demand and proceedable interest for these properties with the conditions attached. Indeed weight is given to this actual sales process in the absence of further marketing post 2012 (it should be borne in mind that the application was submitted in 09/04/2013). The Author was specifically asked to comment further on the submissions that the Rycal marketing effort which produced offers for properties at the site. This is addressed in the attached report but to be clear the author considers that the available evidence, including the Strutt and Parker Market Viability Assessment Update, demonstrates that these offers were not supported and followed through with provision of finance and funding i.e. no banks or building societies would lend to the individuals to proceed with the purchases/offers.

The Price Waterhouse Cooper Administration reports have been assessed and as noted have been given limited weight as they include data for the Golf Facilities. However, these accounts appear to show net losses for every period covered except one – the period to 6/12/2011 where a small net profit of £741 is shown. The information was submitted by Oaksey Parish Council alongside the Equimedia report on the basis that this showed a significant profit in the depths of recession thereby highlighting the viability of the business. Officers met with Oaksey Parish Council following this submission on 15/5/14 at which it was requested that Oaksey Parish Council specify where in the submitted PWC reports the references to profits were shown. No response has been received at the time of writing. Officers and Chesterton Humberts cannot find any statement or section in the PWC Administration reports that specifically states or demonstrates a profit other than the single period to 6/12/2011. This level of profit (£741) during one single period is not considered to represent an attractive business investment and does not demonstrate that the business is viable.

It has been submitted by individual objectors and Oaksey Parish Council that Chesterton Humberts is not independent in this assessment as the company has previously marketed properties at the site. The Author of the Chesterton Humberts report confirmed that he and his specialist leisure colleague with whom he consulted in the preparation of the report had no prior involvement in and / or any knowledge of a previous period of marketing by the Chesterton Humberts. It should be noted that the marketing referred to by objectors took place was in 2008 and was undertaken by Humberts Leisure – predecessor company to the current Chesterton Humberts organisation, which was sold by Humberts prior to the formation of the current company. A London based office of Humberts Leisure undertook that work. The report informing determination of this application was prepared by staff from the Chippenham and Taunton Offices of Chesterton Humberts. The companies and staff members involved are wholly different and separate. On this basis it is considered that the report authors have been and remain wholly independent.

In conclusion it is considered that full opportunity has now been given to all interested parties to make their submissions and for these to be fully assessed. It is considered that the advice received by the Council from Chesterton Humberts is comprehensive, independent and sound. The conclusions of Chesterton Humberts clearly remain that the current whole business (20 holiday let units) is unviable as a going concern. In order to generate any business interest in the site and for it to operate as a viable and attractive business a combination of substantial cost reductions alongside significant investment would be required. These cost reductions require significant debt write offs by investors/creditors which is considered unreasonable and unrealistic. Similarly it is concluded that the individual 8 properties the subject of this application have been effectively marketed and at reasonable prices. Further that it has been demonstrated that there is no proceedable interest in the purchase of the properties individually with the restrictive occupancy conditions attached. Furthermore in order to generate any interest in the individual properties the valuations would need to be reduced to a level substantively below construction costs resulting in significant losses to the owner/applicant. It is not considered reasonable for a Local Planning Authority to determine applications on this basis i.e. to apply unrealistically low valuations in order to test the market as to whether or not other parties would be prepared to try and make the development a going concern or to generate individual sales as Holiday lets. There is no guarantee that this would result in a successful business operation or the long term retention of the individual properties as holiday lets. It should be noted that Chesterton Humberts consider that there are constraints to the success of a holiday let business of this scale in this location. This has been the Council's position since the development was first proposed and subsequently allowed on appeal. Whilst the Council's position has effectively been proven to be correct the reality is that the development has been constructed. It is Officers' opinion that operating the planning system in a manner that imposes such restrictions on an on-going basis regardless of material circumstances is inappropriate and unreasonable. Such an approach is disproportionate to the impacts of the application proposal. In this respect is worthwhile reiterating once again that this is not a new residential development.

Additional Matters – Waste Collection, Education Requirements, Open Space Requirements, Access & Parking

These matters are addressed in the report contained at Appendix A. In addition, and following the further submissions of interested parties received since the 23/4/14, officers comment as follows:-

As regards waste collection the Council's waste collection services operate at the site. Bins are provided. A condition is now proposed to ensure that sufficient space at the agreed collection point is made available in perpetuity for all occupants of the 8 dwellings the subject of this application and the remaining properties at the site regardless of their occupancy.

As regards Education the Council's Education Department has an adopted methodology for calculating requirements that is applicable to the site and future proposals should they emerge. This policy approach and related calculation methodology is kept under review and has recently been updated as approved at the Council's cabinet as of 18th March 2014. Officers are confident that the calculation methodology ensures that there is no disadvantage considering the proposals in phases as opposed to one whole application.

The Council's Open Spaces team identified a requirement for a Locally Equipped Area for Plan (LAP) arising from the unrestricted use of all 20 units. The unrestricted use of 8 units alone does not create a justifiable need under adopted national and local policies for such provision. Council officers have devised and agreed a methodology for on-site provision of the LAP should the whole 20 units come forward for removal of restrictive occupancy conditions. Details as to the form, layout and position of the LAP will be agreed at that time.

The position regarding access and Highways Officers input is addressed in full in the additional comments added at the end of the report contained at Appendix A.

As regards the remaining 12 existing properties at the site these will need to be the subject of marketing to demonstrate any lack of demand for these properties with the restrictive conditions attached. A grant of permission in respect of the 8 properties that are the subject of this application does not establish a precedent at the site that must be followed regardless of any other material considerations.

10. Conclusion

Whilst it is recognised that there is substantial local opposition to the unrestricted residential occupancy of the use of the holiday lets at this site the Council has sought to assess the application proposals on the basis of relevant material considerations and all material circumstances. It must be noted that this is not an application for new residential development at this site. The proposal cannot be considered in these terms. The Council has sought independent advice in respect of the viability of the site as whole holiday let business and in terms of the marketing and disposal of the properties. The conclusions have been reviewed several times by the author and in the light of a range of information submissions and representations by a range of interested parties. The conclusions remain that the holiday let business as a whole is unviable in this location. Also that both the business as whole and the 8 units that are the subject of this application have been effectively marketed and at reasonable valuations. It is further concluded that there is no proceedable interest in the business as whole or in respect of the 8 units as individual properties with the restrictive conditions attached. It is not considered that any other material considerations either cumulatively or individually indicate that the proposal should be refused.

RECOMMENDATION

To delegate authority to the Area Development Manager to grant planning permission subject to the signing of a Section 106 agreement and subject to the following conditions:

1. 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.

2. 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.

3. 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.

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

REASON: To prevent an inappropriate independent use.

5. 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.

6. 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.

7. 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.

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), 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.

9. Within one month of the date of this permission proposals for the provision and on-going retention of space for the storage of Wheelie Bins at the collection point agreed with Wiltshire Council refuse and waste collection services. The proposals shall include details and arrangements for the management of the space to ensure adequate provision for wheelie bins to serve all properties at the site.

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.

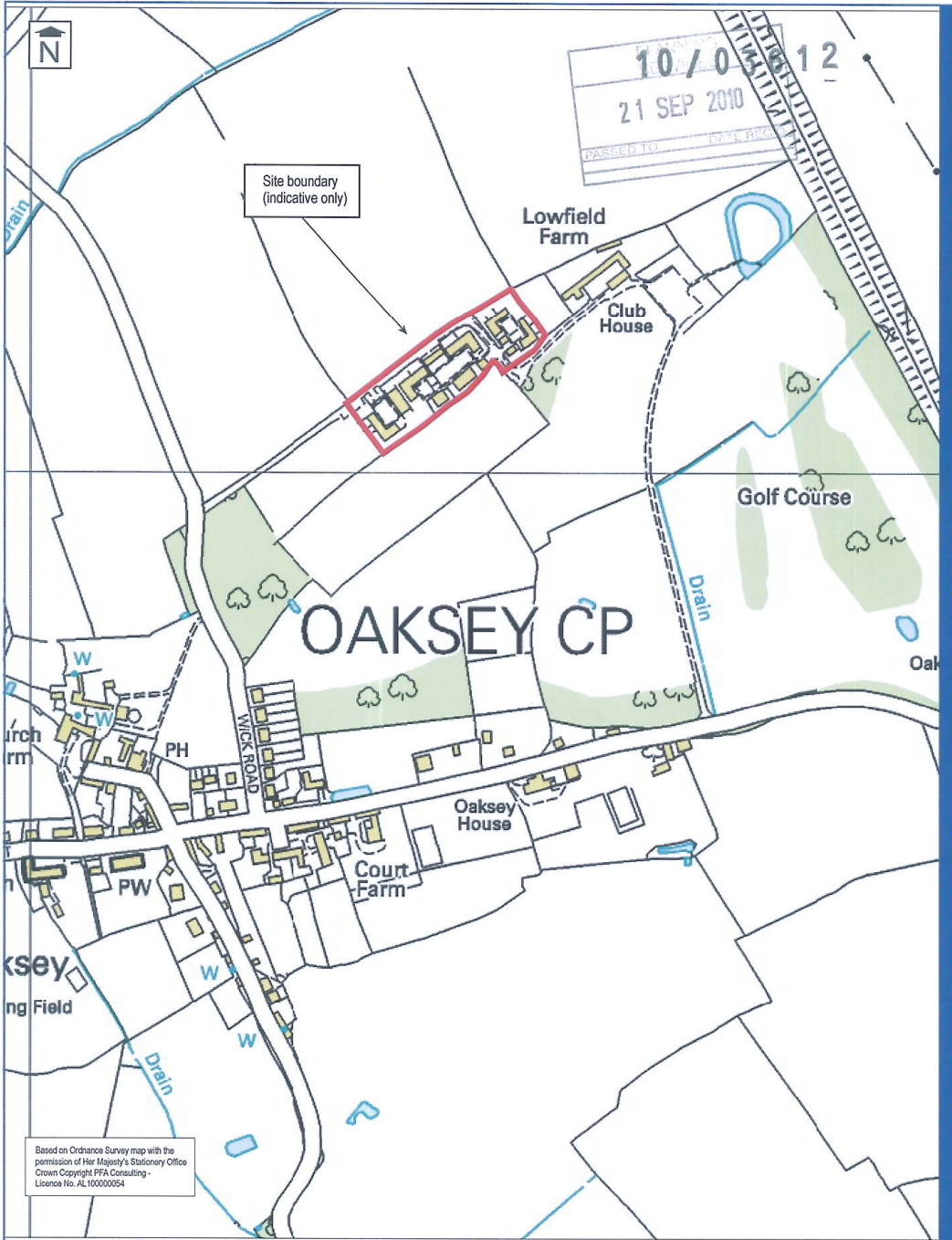
If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.

Appendices:

1. **Deferred Report to Committee 23 April 23-4-14**
2. **Chesterton Humberts Report 23/5/14**

Background Documents Used in the Preparation of this Report:

Chesterton Humberts Report 23/5/14
Equimedia Report 5/9/14 for Oaksey Parish Council
Oaksey Parish Council comments on Officer report to Committee
Price Waterhouse Copper Oaksey Park Ltd Administration Reports
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Strutt & Parker Market Viability Assessment Update 9/5/14
Deferred Report to Committee 23 April14



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Project
**Application to Vary
 Occupancy Restrictions**

Drawing Title
Location Plan

Figure No
JC/001/RG

Date September 2010
 Drawn By MM
 Checked By RG
 Scale NTS
 File Ref 1042/Oakse/Figures/Fig2.ai