



CHARTERED TOWN PLANNERS

PLANNING STATEMENT

**Application to modify a planning obligation
in relation to**

**Erection of 16 flats (6 x 3 bed, 8 x 2 bed and 2 x 1 bed) on
3 floors, with provision of 19 car parking spaces**

at

**Site of Former Jack Russell Public House, 21 Salford
Road, Marston, Oxford, OX3 0RX**

May 2019

1.0 INTRODUCTION

1.1 This planning statement has been prepared by JPPC on behalf of Messrs Zaiqat and Shoqat Ali Saddique to support an application seeking to discharge the planning obligation which runs alongside the planning permission for the erection of a new three storey 16-unit residential scheme on the site of the former Jack Russell Public House, Marston. The development has been commenced. Due to viability concerns the applicants are seeking to discharge the s106 for the development that is dated 15th July 2016 and as such this report should be read in conjunction with the report from Savills dated May 2019 which is submitted as part of this submission.

2.0 PLANNING HISTORY

2.1 An outline application (15/02282/OUT) was granted on 20th July 2016, with a subsequent reserved matters application (16/03108/RES) was granted on 16th March 2017. All necessary pre-commencement conditions were discharged under 15/02282/CND & 16/03108/CND.

- 15/02282/OUT – Demolition of public house. Outline application (with all matters reserved) for the erection of 16 flats (6 x 3bed, 8 x 2 bed, 2 x 1 bed) on 3 floors. Provision of 19 car parking spaces. (Amended plans);
- 16/03108/RES – Demolition of public house, erection of 16 flats (6 x 3-bed, 8 x 2-bed, 2 x 1-bed) on three floors. Provision of 19 car parking spaces. (Reserved matters of outline planning permission 15/02282/OUT seeking approval of access, appearance, landscaping, layout and scale).(Amended plans);
- 15/02282/CND – Details submitted in compliance with conditions 4 (Landscape Plan), 7 (Car parking), 8(Cycle Parking), 10 (Travel information pack), 11 (Construction Traffic Management Plan), 13 (Drainage strategy), 14 (Biodiversity Enhancement) and 15 (Refuse and Recycling) of Planning Permission 15/02282/OUT; and
- 16/03108/CND – Details submitted in compliance with conditions 3 (Samples), 4 (Bat assessment) and 5 (Contaminated Land 1) of Planning Permission 16/03108/RES.

- 2.2 Construction of the approved scheme commenced in August 2018, and construction of the proposed flats up to first floor level was achieved by December 2018. However, as will be explained below, construction has ceased and the site is currently shut down.
- 2.3 Via the planning obligation the original scheme (15/02282/OUT) included the provision of 50% affordable housing provision. As part of the S106 legal agreement, it was said that the applicant shall not cause or permit commencement of continuance of the development prior to entering a legal agreement with a registered provider in relation to the operation of a shared register of people in need of affordable housing in the administrative area of the City Council and the allocation of social rented housing.
- 2.4 The applicant was unsuccessful in their efforts to agree terms with any of the numerous Registered Providers (RP) they approached. The applicant consequently, in light of being unable to agree a legal agreement with a registered provider, implemented works on site.
- 2.5 The applicant is now unfortunately in the position, where the viability of the implemented permission (15/02282/OUT) is in serious doubt. Consequently, he has ceased construction and builders have vacate the site.
- 2.6 JPPC on behalf of the applicant submitted a pre-application submission (19/00382/PAC) to the City Council on this viability/RP issue and were advised to submit this formal application for the discharge/modification of the s106, after having again tested whether any RP would take on the 50% on-site affordable housing. Despite requests no providers came forward with any offers for the site's affordable housing.
- 2.7 RPs contacted include:
1. A2dominion
 2. SOHA
 3. Homegroup
 4. Thames Valley
 5. Greensquare
 6. Catalyst
 7. AgeUk Oxfordshire
 8. BPHA
 9. Bromford
 10. Sovereign
 11. Stonewater

2.8 The reason that RPs gave were as follows:

- That Marston/Oxford is not an area in which they are seeking to take on new housing.
- Of those working in the area the accommodation was deemed unsuitable due to the mixed nature of the accommodation and tenure and its small size and difficulty of management.
- None of the issues presented by RPs are matters that the applicant can address to allow provision of on-site affordable housing.

2.9 Subsequent to failing to secure an RP partner the applicant approached Savills for advice.

3.0 PROPOSAL

3.1 The proposed development remains for the erection of 16 flats (6 x 3 bed, 8 x 2 bed, 2 x 1 bed) on 3 floors, with the provision of 19 car parking spaces, and the proposed development is identical in all aspects (appearance, means of access, landscaping, layout and scale, etc) to the approved scheme associated with 15/02282/OUT & 16/03108/RES and details discharged under 15/02282/CND & 16/03108/CND.

3.2 In light of the viability concerns over the original permissions, the application is supported by a comprehensive viability assessment prepared by Savills. This has found that the site cannot sustain the provision of any on-site affordable housing, and assesses the cascade considerations set out in the Council's affordable housing system. In accordance with the findings of the viability assessment the proposed development concludes that the development cannot sustain any affordable housing either on-site housing by way of an affordable housing monetary contribution.

3.3 Accordingly, as a direct result of these findings the application seeks discharge of the s106 legal agreement rather as compliance with it would render the scheme unviable and modification (say to allow for affordable housing provision by way of contribution) is not appropriate as that too would render the scheme unviable.

4.0 PLANNING POLICY AND OTHER MATERIAL CONSIDERATIONS

- 4.1 Under Section 38(6) of the Planning Compulsory Purchase Act 2004 there is a statutory obligation to determine planning applications and appeals in accordance with the development plan unless material considerations indicate otherwise. Material considerations can include Government guidance and any other matters relevant to the use and development of land.
- 4.2 The development plan for Oxford City Council includes the Oxford Local Plan 2001-2016, the Core Strategy 2026, the Sites and Housing Plan, and the Policies Map 2013.
- 4.3 The above development plan is the same as the development used to determine 15/02282/OUT & 16/03108/RES.
- 4.4 The emerging Oxford Local Plan 2016-2036, will in due course replace and supersede the aforementioned development plan documentation. However, `only limited weight can be given to policies in the emerging Oxford Local Plan 2036 as the plan is only at Proposed Submission Draft stage` - source OCC West Area Planning Committee Agenda Pack 9th April 2019.

Revised National Planning Policy Framework (NPPF) 2018

- 4.5 Paragraph 9 of the Revised NPPF states planning policies and decision should play an active role in guiding development towards sustainable solutions, but in doing so should take local circumstances into account, to reflect the character, needs and opportunities of the area.
- 4.6 Paragraph 10 of the Revised NPPF states to ensure that sustainable development is pursued in a positive way, at the heart of the Framework is a presumption in favour of sustainable development
- 4.7 Paragraph 11 of the Revised NPPF states Plans and decisions should apply a presumption in favour of sustainable development. For decision takers this means:
- Approving development proposals that accord with an up-to-date development plan without delay; or

- where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
 - i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

4.8 Paragraph 57 of the Revised NPPF states where up-to-date policies have set out the contributions expected from development; planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force.

4.9 Paragraph 62 of the Revised NPPF states where a need for affordable housing is identified, planning policies should specify the type of affordable housing required, and expect it to be met on-site unless:

- a. off-site provision or an appropriate financial contribution in lieu can be robustly justified; and
- b. the agreed approach contributes to the objective of creating mixed and balanced communities.

Oxford Local Plan 2001-2016

- 4.10 The following policies are applicable to the proposed development:
- CP1 (Development Proposals);
 - CP6 (Efficient Use of Land and Density);
 - CP8 (Designing Development);
 - CP10 (Siting of Development to Meet its Functional Needs);
 - CP11 (Landscape Design);
 - CP13 (Accessibility);
 - CP19 (Nuisance);

- CP20 (Lighting); and
- CP21 (Noise).

Core Strategy 2026

4.11 The following policies are applicable to the proposed development:

- CS2 (Previously Developed Land and Greenfield Land);
- CS9 (Energy and Natural Resources);
- CS10 (Waste and Recycling);
- CS11 (Flooding);
- CS12 (Biodiversity);
- CS13 (Supporting access to new development);
- CS17 (Infrastructure and developer contributions);
- CS18 (Urban design, townscape character and the historic environment);
- CS23 (Mix of housing); and
- CS24 (Affordable housing).

Sites and Housing Plan

4.12 The following policies are applicable to the proposed development:

- HP2 (Accessible and Adaptable Homes);
- HP3 (Affordable Homes from Large Housing Sites);
- HP9 (Design, Character and Context);
- HP10 (Developing on residential gardens);
- HP11 (Low Carbon Homes);
- HP12 (Indoor Space);
- HP13 (Outdoor Space);
- HP14 (Privacy and Daylight);
- HP15 (Residential cycle parking); and
- HP16 (Residential car parking).

Supplementary Planning Documents (SPD)

4.13 The following SPD are relevant to the proposed development:

- Affordable Housing and Planning Obligations SPD

Community Infrastructure Levy

4.14 The City Council approved Oxford's CIL Charging Schedule at a full Council meeting on 30 September 2013. The applicant in association with the original permission, has paid the appropriate CIL contributions to date.

5.0 PLANNING ASSESSMENT

Principle of Development

- 5.1 The proposed development is for the erection of 16 flats (6 x 3 bed, 8 x 2 bed, 2 x 1 bed) but with a new/addendum planning obligation to be provided (as the original version does not contain provisions allowing a contribution in place of on-site provision)
- 5.2 The City Council in their assessment of 15/02282/OUT stated:
‘The proposed development is submitted in outline form with matters of access, landscape, scale, appearance, and layout reserved for a later date. The proposed development would make an efficient use of an existing previously developed and under-used site and would provide much needed good quality affordable and market housing while at the same time establishing a balanced and mixed community. ... The proposed development has also demonstrated that it would not have a significant impact upon biodiversity; trees; flood risk; drainage; air quality; land contamination; or noise impact and any such impact relating to these matters could be successfully mitigated through the reserved matters applications and appropriate measures secured by condition or associated legal agreements. The proposal would accord with the overall aims of the National Planning Policy Framework and relevant policies of the Oxford Core Strategy (2011), Oxford Local Plan 2001-2016, and Sites and Housing Plan (2013).’
- 5.3 The City Council in their assessment of 16/03108/RES stated:
‘Whilst a large number of objection comments have been received in relation to the loss of a community asset, the principle of the development (demolition of the existing pub and erection of 16no. residential units) has already been established and planning permission has been granted. This application seeks the approval of the reserved matters only, all of which were reserved.’
- 5.4 The principle of development is therefore in accordance the development plan.

Affordable Housing

- 5.5 Policy CS24 (Affordable Housing) states if it can be demonstrated by open book evidence, that the affordable housing contribution from either residential or

commercial development makes a site unviable developer and the City Council will work through a cascade approach until a site is made viable. Developers will have to provide affordable housing as part of the proposed development unless the City Council, or the Secretary of State where appropriate, and the developer both consider that it is preferable to make a financial or other contribution towards the delivery of affordable housing on another site.

5.6 Policy HP3 (Affordable Homes from Large Housing Sites) states planning permission will only be granted for residential development on sites with capacity for 10 or more dwellings, if generally a minimum 50% of dwellings on the site are provided as affordable homes. A minimum 80% of the affordable homes must be provided as social rented, with remaining affordable homes provided as intermediate housing.* Exceptions will be made only if it can be robustly demonstrated that this level of provision makes a site unviable, in which case developers and the City Council will work through a cascade approach in the following order until a scheme is made viable:

- firstly, reduce the percentage of affordable housing provided (to a minimum of 40% of all homes) by reducing the intermediate housing element only;
- secondly, at 40% affordable housing, reintroduce an element of intermediate housing incrementally up to a maximum 8% of all homes;
- thirdly, make a financial contribution in lieu of on-site provision, to be calculated using the approach set out.

5.7 In this instance it is clear that no providers are interested in taking on the site in its present form and the cascade mechanism would worsen their position on the site. Without any offers it is impossible to provide on-site housing. As such having failed to attract any RP offers the applicant then instructed Savills to consider viability and they have produced a formal report that accompanies this application. The applicant acknowledges that the Council will review and test the report.

5.8 As no affordable housing can be provided on site (as the level of profit would be unreasonably low) it is relevant to consider whether a financial contribution would represent a reasonable offer. The policy allows for non-provision on-site where a scheme would not be viable and for development to be considered to comply with the development plan still.

- 5.9 Savills report sets how the relevant factors are to be taken into account and then then tests those factors for the development. The report is a robust one as it has been based upon actual costs of development which are known given that work has commenced.
- 5.10 Savills report concludes that a contribution cannot be afforded and that is therefore the basis of this application- that the legal agreement should be discharged because making any form of payment by way of contribution to affordable housing provision in the City would render the scheme unviable.

6.0 CONCLUSIONS

- 6.1 It is regrettable that this request has to be made at this point following the commencement of work but the evidence submitted here is that the terms of the original agreement cannot be met and it is appropriate to reconsider affordable housing provision/contributions.
- 6.2 The report by Savills sets out that the scheme cannot afford to make any contributions.
- 6.3 As it would still be desirable for the development to go ahead- not least because it has been begun and halted- we trust that the conclusions of the Savills report will be agreed and that the land will be released from the requirement of the S106, by the discharge of the planning obligation.