



Appeal Decisions

Inquiry held on 12-15 August 2008 and 19-20 August 2008

Site visit made on 21 August 2008

by **Ava Wood** DIP ARCH MRTPI

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

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Decision date:
8 October 2008

Appeal A: Ref: APP/G3110/A/08/2070447

Land at Jericho Canalside, Canal Street, Oxford OX2 6BG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Spring Residential Ltd against the decision of Oxford City Council.
- The application Ref: 07/01234/FUL, dated 23 May 2007, was refused by notice dated 9 January 2008.
- The development proposed is residential development of 54 units (including 18 affordable units), public square, footbridge to canal footpath, boating facilities in the form of a winding hole and working berth and provision of 16 parking spaces.

Appeal B: Ref: APP/G3110/A/08/2070446

St Barnabas Church, St Barnabas Street, Jericho, Oxford OX2 6BG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Spring Residential Ltd against the decision of Oxford City Council.
- The application Ref: 07/01973/FUL, dated 15 August 2007, was refused by notice dated 20 December 2007.
- The development proposed is demolition of existing boiler house and boundary structures and erection of new boundary structures and landscape works.

Decision

1. I dismiss the appeals.

Preliminary matters

2. Following the Council's decision, amended plans were tabled by the appellants to overcome objections to the relationship of the new building with the vicarage on St Barnabas Street. The changes are not considerable and can be covered by a condition. My decision on Appeal A is based on the amended plans.
3. In the light of amendments to the scheme subsequent to the Council's decision, and the number of affordable units provided for in the S106 unilateral undertaking, it was agreed at the Inquiry that a fuller and more accurate description for the scheme forming the subject of Appeal A is this:

Demolition of existing buildings, erection of 54 flats (including 19 affordable units) in two blocks of 3 and 4 floors. Provision of 16 car parking spaces, cycle parking, bin stores and ancillary facilities. Construction of canal winding hole, public square, and lifting bridge plus boat repair berth.

4. Evidence was presented to the Inquiry on the basis of the above description and I make my decision in the same terms.
5. An earlier scheme for development on the appeal site (the Bellway proposal), comprising, amongst other things, 46 dwellings, restaurant and chandlery, was the subject of a decision by my colleague, RD Hiscox, on 5 August 2005¹. Planning permission was refused for this proposal. The decision letter is material to consideration of the schemes before me.

Main issues

6. Of the 6 issues identified at the Inquiry, three would be overcome by the unilateral undertaking submitted by the appellants. Therefore, the main issues in Appeal A on which my decision turns are:
 - i. The extent to which the proposed development would meet the affordable housing needs of the area and whether there is justification for a departure from the policy expectation of a 50% provision in the number of affordable homes.
 - ii. Whether the scheme makes adequate provision for canalside facilities, and
 - iii. The effect the proposal would have on the character and appearance of the area and on the setting of the Grade B listed St Barnabas Church, given the Government's emphasis on high quality design.
7. The issue of most significance in Appeal B is the effect of the proposed works on the setting of St Barnabas Church.

Reasons

Appeal A

Affordable Housing Issue

8. The most relevant policy background to this issue is contained in the Oxford Local Plan (LP) 2001-2016, adopted on 11 November 2005, and in particular Policy HS.5, which seeks the provision of generally a minimum of 50% affordable housing on qualifying sites. The Affordable Housing Supplementary Planning Document (SPD) of November 2006, gives detailed expression to Policy HS.5. Relevant to this case are the sections concerning the mix of affordable housing to be secured and matters relevant to the economic assessment of provision. The Council's policies on affordable housing are in response to a huge need for such dwellings in Oxford, as identified in the Housing Requirements Study of 2004.
9. Notwithstanding the 35% regional affordable housing target proposed in the emerging South East Plan, as well as the importance PPS3 attaches to Strategic Housing Market Assessments in setting plan-wide targets, the current position

¹ Appeal ref: APP/G3110/A/04/1152062

is that the extant local plan policy looks to development schemes to deliver 50% affordable homes, with scope for flexibility to take account of uneconomic site circumstances.

10. The appeal scheme would provide 19 units, or 35 % of the total dwellings, at a mix of 68% shared ownership and 32% social rented units. The proposal would therefore go some way to meeting the City's affordable housing needs, albeit not at the proportion and level of mix sought in policy and expanded upon in the SPD. The question is whether the financial or other circumstances of this case justify the lower than 50% provision and departure from the desired mix of units.
11. At the time the appeal site was purchased, the current Local Plan had been adopted for almost a year. The 50% requirement was a well known and established feature of Oxford's policy framework. Furthermore, the Affordable Housing SPD expects developers to have considered the financial implications of the affordable housing policy requirements when purchasing a site. This would have been known to the developers.
12. Extensive material giving chronological account of events, meetings and phone calls submitted by the main parties, makes it difficult to come to an unequivocal conclusion on whether the appellants were led to understand that a 35% provision would be acceptable to the Council, and therefore proceeded to purchase the site on that basis. Whether the Council's stance was implied or unintended is immaterial, in my view. The onus must fall on the developer to take on board the consequences of the affordable housing and other policy requirements at the time of purchasing the site, as advocated in the SPD. Inputting site purchase costs retrospectively into a viability assessment would not comply with such an approach and would have unacceptable widespread implications for the manner in which the City's affordable housing policies are interpreted. That said, a number of factors specific to this particular site and this case cause me to take a different view from the Council.
13. Firstly, the offers made by other bidders interested in purchasing the site from British Waterways were comparable to the price of just over £4 million paid by the appellants in 2006. I have no reason to believe that the other bidders were not seriously contemplating a purchase. Furthermore, comparisons with the value of land in nearby locations confirm that the price paid was at the top end but within the range of comparables in the year of purchase. Thirdly, the valuation witnesses agreed that the price paid for the land falls well within the "rule of thumb" range of 25-40% of the gross development value. There are sufficient indicators to conclude that the appellants acquired the site at market value and the price paid was not excessive nor over-inflated
14. The Inspector's decision letter on the Bellway scheme is also material to the issue of site and development costs. He accepted that a higher contribution of affordable homes than the 35% proposed would prejudice the viability of that scheme. This conclusion was made in the knowledge of the then emerging policy requirement for 50% affordable dwellings, which was supported by the local plan Inspector and accorded "*substantial weight*" in the decision making process. The appellants were therefore entitled to proceed on the basis that a 35% proportion would fall to be considered within the latitude offered by Policy HS.5.

15. In making the judgement the Inspector was mindful, as I am, that a scheme on this site has to bear the costs of the components of site specific LP Policy DS.13. The costs are specific to this site and reflect its unique circumstances of waterside location, of the need to provide for a community centre, to replace riverside/canal uses and to deliver the benefits of a public space and a new bridge for pedestrians and cyclists. In addition to which, since the Bellway decision, the costs to development on this site have increased as a result of policy requirements of contributions towards infrastructure (identified by Oxfordshire County Council) and for new development to comply with the Natural Resource and Impact Analysis SPD. These are now normal requirements for any development contemplated in the area, as indeed is the expectation of costs on previously developed urban sites. But the Policy DS.13 components are peculiar and specific to the appeal site alone.
16. Appraisals and detailed breakdown of development costs presented to the Inquiry undisputedly demonstrate that the site, at the purchase price of £4 million, cannot viably deliver any more than the 19 affordable units at the mix proposed, thus falling short of the affordable housing policy requirement by 8 units. Even with the offer in its current form, the developer would be unlikely to meet the expected profit margins of 15-20%. While any shortfall of affordable homes is a serious issue in an area where need is considerable, I believe that the benefits of land contribution for a new community centre, the public square and other Policy DS.13 requirements would, on balance, compensate for the relatively small deficit in the level of affordable units forthcoming.
17. Achieving a viable development on a neglected, brownfield site in a prominent and attractive location, together with an increase in the City's housing supply, additionally weigh in favour of the proposal and reinforce my view that there is some justification in this case for accepting the level and mix of affordable units offered. I come to this conclusion on the basis of the particular circumstances of this site and the background to the case before me. For those reasons, my decision to depart from the 50% proportion required by Policy HS.5 would not compromise the Council's ability to rigorously apply its affordable housing policies to future developments. The Secretary of State's 2005 decision on a development proposed at Norwich was relied upon to support the Council's position on affordable housing. I agree with the appellants that the size of development proposed at Norwich, as well as the scale of the affordable housing shortfall, render it distinguishable from the appeal case with few parallels on which to base a comparison.

Canal and Waterside Facilities

18. My colleague was party to detailed evidence covering this issue and his decision has helpfully established a number of principles. First, this is not a particularly suitable location for an intensive commercial boat repair business. Second, the absence of facilities for the lifting of boats and major repair and maintenance on site should not be a reason in itself for withholding planning permission and, finally, firm arrangements for replacement in an equally accessible and convenient location must be in place for the scheme to meet the provisions of Policies DS.13 and SR.12.

19. For the most part, the Council is satisfied that the package of measures which include the working berth on site, the winding hole, College Cruisers' yard, and future improvements to facilities at the relocated boatyard at Yarnton, would meet the spirit of LP policies, provided that mechanisms are in place to deliver the package. The Jericho Community Boatyard (JCBY), other represented action groups, boat dwellers as well as a number of individuals disagree. There is also much regret over the loss of the boatyard, which operated from the site, and with it the loss of a boating facility and of the community spirit engendered by the presence of the boatyard.
20. The appellants have taken considerable steps to address the matter of replacement facilities since the Bellway appeal. Additional investment, enhanced facilities and improved arrangements at the Alchemy boatyard at Yarnton, delivered through the S106 undertaking, would provide a greatly improved offer, including craning opportunities, within this stretch of the canal. Concerns about delivery of these improvements may be overstated; the tenure arrangements and condition discussed at the Inquiry give me confidence that incentive and measures are in place, and the yard would have the capacity to cater for over 100 local boats. College Cruisers' commitments to hire boats means that spare capacity in their yard is available mostly outside of the visitor cruising seasons, but their contributions cannot be discounted.
21. The berth and working area proposed at the site would be accessible, conveniently located and well placed to serve the local boat population. Diminished working and waterfront areas are regrettable, but the berth is one of a number of uses to be accommodated on this site, to meet the aspirations of Policy DS.13. Compromises are inevitable. In total, the upgraded boatyard at Yarnton, College Cruisers' facilities and the proposed working berth would have the capacity to serve the boating community's needs with a range of boat maintenance and repair opportunities, including work involving heavy operations.
22. However, I remain concerned that deficiencies in the Yarnton site, namely its distance from Jericho and the difficulties of carrying out DIY and maintenance work alongside the tow path, weigh against its accessibility and suitability. Without assurance of additional off-path berthing or working space in a convenient and sustainable location, I remain unconvinced that the expectations of Policy SR.12 would be fulfilled, even by the extent of the facilities delivered in the scheme and through the unilateral undertaking. Furthermore, the water related land use element of the scheme would be relegated to a small, discreet part of the appeal site, which is unfortunate in an area where canal and boating are important elements of its character. This criticism is particularly relevant to the third main issue, which I address below.

Effect on the area's character and appearance and on the setting of the church

23. Once again, the Bellway decision established principles of disposition of buildings on the site, alignment to the canal frontage, the height, scale and a contemporary architectural style. While the schemes have much in common, there are also considerable differences, as recognised in the appellants' evidence and in third party representations. The Design and Access statement accompanying the application, in combination with the appellants' evidence, provide a comprehensive understanding of the design content of the proposal

and respond to many of the objections raised on the topic. The appellants' evidence additionally assesses the scheme against the "Building for Life" standards used by CABE.

24. Considering first the positive aspects of the appeal proposal. The quantum of built development on the site would make effective use of urban land but without a sense of over-development; the alignment of buildings along the canal frontage, and of the scale intended, would be an appropriate response to the waterside context. The bridge would improve permeability and accessibility to Jericho. While I understand that locating the bridge opposite the square could add to its interest, the proposed location would not undermine the success of the scheme. The church would be opened up to public views, otherwise denied with the present arrangement of a boundary wall and the boatyard. The concept of a square is a positive asset, as it would allow public access to the canal frontage at an important point in Jericho. Unfortunately, as a prominent public space, and a key feature of the scheme, the square would fail to achieve its intended purpose, for the reasons I give below.
25. The scheme incorporates the land use components required of it through Policy DS.13 and, in the process, would fulfil the key objectives of providing affordable housing and land towards a new community centre. I understand that the viability of the scheme rests on maximising the amount of housing it would yield, but the preponderance of residential accommodation across the site, in particular around the edges of the square, would render it sterile and inactive, lacking a sense of distinctive place with little connection to the character or history of Jericho. The buildings' monotonous appearance would add to the sense of an inanimate environment.
26. Community and waterside uses or activities would occupy peripheral areas of the site, instead of enriching the square and encouraging people to pause and linger. The large winding hole intruding into the square would further compromise the way the space would function. It may well be a facility requested by British Waterways, but the need for it is questionable, given the proximity of the winding hole to the south and opportunities for larger boats to turn just beyond the Isis Lock.
27. The architectural style deployed may be distinctive in its own right. However, in the context of the modest, varied character of much of what exists at Jericho, the rigid geometric forms would appear out of place and forbidding, while also drawing little from the canalside buildings to the north of the site. To my mind, the canal facing facades would be repetitious and uninspiring. It has to be said, the buildings would lack elegance and lightness of touch that are important to the visual success of a scheme of this particular architectural language, and in such a prominent location.
28. Lack of active frontages to the canal facing elevations of the buildings is not a determinative issue, in my opinion. A non-residential frontage is more likely to create a feeling of active occupation but surveillance can be achieved as much through living and bedroom spaces as front doors. Concerns about the usefulness and safety of the new canalside path are understandable, but the path would provide a convenient link to and from the square. While a wider footpath would be desirable, usage of the path would not be so intensive as to prejudice its safety. Block C would indeed obscure views of the Grade I listed

Radcliffe Observatory, should the consultation version of the Radcliffe Infirmary Masterplan be implemented in its current form. It would be wrong to hamper a decision on this appeal on the basis of emerging plans for a site some distance away.

29. Integration of the western aspect of the church with the new square would benefit the setting of the church, which is currently hemmed in by its western boundary wall. Nevertheless, improvements brought about by removal of the wall would be negated by the inhospitable quality of the public domain and design of the new buildings. The effect, on balance, would be material harm to the setting of St Barnabas Church.
30. In the light of all of the above, my view is that the design fails to take the opportunities for improving the character and quality of this area and the way it functions, as required by Planning Policy Statement 1(PPS1). While the proposal displays some positive qualities, on balance, it would fail to engage successfully with its surroundings. The development would harm the character and appearance of the area. My conclusion on this final issue is that the proposal would fall short of the expectations of high quality design standards promoted by LP Policies CP.8, CP.9, by PPS1, PPS3 and articulated in Government endorsed publications and policies seeking to preserve heritage assets.

Other Matters

31. I am satisfied that the unilateral undertaking would provide adequate mechanisms for contributions to the new community centre and to Oxfordshire County Council's infrastructure requirements. Equally, a condition suggested by the Council, and accepted by the appellants, would enable the scheme to meet the requirements of the National Resource Impact Analysis SPD.
32. The solution to overcoming the Environment Agency's concerns about creating a new flood flow route may have consequences for the design of the public square. The options presented for my consideration illustrate that compensation measures are achievable without altering the layout or functioning of the square to any significant degree.
33. The traffic and parking implications of the scheme were raised by third parties. The proposal complies with the local plan parking standards. Increased parking provision on site would be wasteful of a valuable brownfield site and contrary to the policy objective of promoting sustainable transport choices. A car-free development in this location is indeed possible, but the option is not pursued by the appellants or promoted by the Council. I understand local residents' fears about disturbance, but increases in vehicular movements are inevitable, given the Local Plan expectations for this site. The effects of a vehicular access from Great Clarendon Street would be no more harmful than an entrance to the site from Cardigan Street.
34. Impact on residents' amenities was considered in the previous appeal and I see no reason to disagree with my colleague on this matter. Noise generated by boat repair activities in the area allotted for such works could be controlled by a condition restricting hours of operation, and which could be more effective than the voluntary code adopted successfully during last occupation of the site by a boatyard.

35. I have taken account of all other matters raised but find nothing to alter my conclusions on the three main issues. My findings in favour of the scheme on the affordable housing issue are not sufficient to outweigh concerns over waterside provision or the visual impact of the development, with implications for Jericho and the setting of the church. Annual monitoring reveals a housing supply position of just over 7 years in the area, which, for the purposes of considering the acceptability of the scheme, is sufficient for me to conclude that the objections prevail and cause the appeal to fail.

Appeal B

36. Integrating the western area of St Barnabas Church with the proposed public square is a long standing aspiration envisaged in the Council's 2001 development guidelines for the canalside land. As I indicated earlier, the approach is a good way forward and would benefit the setting of the church. The proposal would additionally allow for public access across church property from the redeveloped canalside site, which would improve links from Cardigan Street and St Barnabas Street to the opposite bank of the canal and the railway station beyond. I understand the diocese wishes to retain control over its the land and not permit a public right of way. Its willingness to implement the scheme and recognition of the likely benefits gives me little cause for concern about maintaining access over church land.

37. I agree that there is scope for improving the quality of the materials and design of the paving scheme, and the matters could be covered by conditions. Given the proximity of the tree at the south western corner of the site, its long term survival would be threatened by the works. Loss of the tree is regrettable but would be compensated by the benefits of access and an improved setting for the church. The proposal, however, cannot and should not proceed without redevelopment of the canalside land. In the absence of a suitable scheme and permission for the latter, Appeal B is also destined to fail.

Ava Wood
Inspector

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DOCUMENTS SUBMITTED ON BEHALF OF THE APPELLANTS

- APP1 Email dated 8 August 2008 from Peter Fowles to David Morris re: flooding
- APP2 Draft West End Area Viability Study – Executive Summary
- APP3 Inspector’s Report on the Examination into the Oxford West End Area Action Plan, 28 April 2008
- APP4 Note of meeting between OCC and Bellway Homes on 26 August 2005
- APP5 Affordable Housing Viability Appraisal Option 1 (35% affordable housing, 20% renewables and Oxfordshire County Contributions)
- APP6 Extract of Eric Hall (Castlemore Planning Director) Daybook entry of meeting with OCC on 12 May 2006
- APP7 Agreement between Mr Solomon (DVS) and Mr Lindley (Savill), 13 August 2008: land value as a percentage of gross development value
- APP8 Extract from “Under Lock and Quay”, Design Guidelines for Waterside Development
- APP9 Briefing note by Peter Brett Associates, dated 12 August 2008, re: pedestrian accessibility
- APP10 Extract from Circular 06/98 – Planning and Affordable Housing
- APP11 Extract from Landscape Design Manual, Vol 3, British Waterways
- APP12 Existing survey plans showing dimensioned pinch point locations
- APP13 Canalside walkway plans of the Bellway and Spring schemes, August 08
- APP14 Aerial image of Jericho
- APP15 Extract from the University of Oxford’s Radcliffe Infirmary Masterplan for public consultation, March 2007
- APP16 Letter dated July 2008, from Jack Moeran of the Environment Agency, to Mr Ishemo, re: flood mapping query, Yarnton
- APP17 Letter, dated 14 August 2008, with attached report on the Agreement for Lease and Lease for Yarnton Boatyard
- APP18 British Waterways South East Region, planning application supporting statement for Kings Canal Bridge, September 2006
- APP19 Email, dated 15 August 2008, from Jeff Whyatt, general manager British Waterways South East, to Spring Residential, re: planning application 08/1408/F
- APP20 Mobile phone bill record of Andy Wilkins of Spring Residential, highlighting calls to OCC
- APP21 Map – Lara’s Oxford
- APP22 Extract from report to committee on the Bellway scheme
- APP23 Engrossed S106
- APP24 Letter from appellants, dated 14 August 2008, re: future intentions for land should planning permission be refused
- APP25 Email, dated 14 August 2008, from British Waterways, re:

- lifting bridge
APP26 Supplementary statement from Mr Payne, re: the square
APP27 Supplementary statement from Peter Brett Associates re:
pedestrian and cycle traffic
APP28 Supplementary statement from BWB Consulting Ltd re:
design of the square
APP29 Executed S106 unilateral undertaking

DOCUMENTS SUBMITTED ON BEHALF OF OXFORD CITY COUNCIL

- OCC1 Letter from Environment Agency, dated 11 August 2008,
re: conditions
OCC2 Ground floor plan of Bellway scheme
OCC3 Viability appraisals using BCIS build costs.
OCC4 ODPM decision on appeal case at Norwich
OCC5 Extract from OCC Core Strategy Proposed Submission
Document, September 2008
OCC6 Email exchanges between OCC and DV, 30 November 2007
OCC7 Extracts from OCC Strategic Housing Land Availability
Assessment
OCC8 Letter, dated 24 October 2007, from Spring Residential to
OCC re: head of terms for S106 agreement
OCC9 Letter, dated 26 October 2007, from Mr Adams to Mr
Hancock
OCC10 Lists A and B of suggested conditions

DOCUMENTS SUBMITTED ON BEHALF OF JERICHO COMMUNITY BOATYARD

- JCBY1 Extract from British Waterways, Inland Marina Investment
Guide
JCBY2 British Waterways comments on application at Yarnton
JCBY3 Map showing total number of boats between Oxford and
Shipton-on-Cherwell

DOCUMENTS SUBMITTED ON BEHALF OF JERICHO LIVING HERITAGE TRUST AND
JERICHO COMMUNITY ASSOCIATION

- JCA1 Street Map
JCA2 University of Oxford's Radcliffe Infirmary Masterplan for
public consultation, March 2007
JCA3 Consultation response from Thames Valley Police
JCA4 Transportation summary – review of transport implications
JCA5 Inland Waterways Association policy statement – towing
paths
JCA6 Extract from Design and Access Statement
JCA7 Notional solution to addressing flooding concerns at the
square
JCA8 Bay window detail
JCA9 JCA response and suggestions for conditions

OTHER DOCUMENTS

- Doc 1 Statement of Common Ground

- Doc 2 Opening statement on behalf of the appellants
- Doc 3 Opening statement on behalf of the Council
- Doc 4 Closing submissions on behalf of the Jericho Community
Boatyard
- Doc 5 Closing submissions on behalf of the Jericho Living Heritage
Trust and Jericho community Association

- Doc 6 Closing submission on behalf of the Council
- Doc 7 Closing submissions on behalf of the appellants

- PLANS
- A1/A2 Selection of Bellway plans