



Appeal Decision

Hearing Held on 29 November 2017

Site visit made on 29 November 2017

by Jonathan Price BA(Hons) DMS DipTP MRTPI

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

Decision date: 3rd January 2018

Appeal Ref: APP/C3105/W/17/3182065

Co-operative Food Store and land to rear, 27 High Street, Kidlington, Oxfordshire OX5 2DH

- 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 Midcounties Co-operative Society and Cantay Estates Limited against the decision of Cherwell District Council.
 - The application Ref 15/01872/F, dated 12 October 2015, was refused by notice dated 22 February 2017.
 - The development proposed is erection of new buildings off Sterling Approach to contain 44 x 2 bedroom flats, conversion of offices above existing store to form 8 x 2 bedroom flats and alteration to existing retail store. Construction of new accesses, car parking, servicing and turning areas. Landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of new buildings off Sterling Approach to contain 44 x 2 bedroom flats, conversion of offices above existing store to form 8 x 2 bedroom flats and alteration to existing retail store, construction of new accesses, car parking, servicing and turning areas and provision of landscaping at Co-operative Food Store and land to rear, 27 High Street, Kidlington, Oxfordshire OX5 2DH in accordance with the terms of the application, Ref 15/01872/F, dated 12 October 2015, subject to the conditions set out in the attached Schedule.

Procedural Matters

2. As noted in paragraph 4.2 of the Statement of Common Ground the proposal was revised prior to the Council's decision and the description of the development amended to 44 x 2 bedroom flats, conversion of offices above existing store to form 8 x 2 bedroom flats and alteration to existing retail store. Therefore the description of the proposal reflects the scheme as amended.
3. The appellants had originally provided with the appeal a Unilateral Undertaking (UU) to the District Council and Oxfordshire County Council committing contributions to various off-site facilities. A few days prior to the hearing the County Council withdrew its request for contributions towards bus service support. The appellants' position is that a viable scheme could contribute a maximum of £150,000 towards supporting infrastructure, including affordable housing. The late withdrawal of the County Council's request was the subject of an urgent report to the Council's Planning Committee on 23 November 2017.

The Council resolved that should the appellants' viability case be accepted that the £150,000 be put entirely towards the provision of affordable housing.

4. At the hearing both main parties agreed the £150,000 would fund the provision of three of the proposed residential units at a discount of 75% market rent for 25 years. Given the late change in circumstances the appellants were provided the opportunity to provide a revised UU to this effect which was duly submitted and dated 12 December 2017. My decision takes account of the offer made in this revised UU.

Main Issues

5. The main issues are whether the proposal would:
 - Meet the policy requirements to strengthen and regenerate the village centre of Kidlington.
 - Make adequate provision for the necessary supporting infrastructure, including affordable housing.

Background

6. Kidlington is an expanded village with the surrounding Green Belt providing a clearly defined built-up area. The A4260 runs north to south through the village towards Oxford which is about five miles away. It has a compact centre with a pedestrianized core and commercial development mainly along the High Street and with a parade running south along the adjacent section of A4260 Oxford Road. This parade runs as far as the junction with Sterling Road Approach and this road turns to link back north with the High Street.
7. The proposal relates to the existing Co-op food store which fronts onto the High Street at its junction with Sterling Road Approach and includes the large car park that extends to the south. This car park is located between Sterling Road Approach and the rear boundaries of the commercial uses fronting Oxford Road.
8. The scheme includes a large residential development of 44 two-bed units which would occupy the car park area and be articulated into four four-storey blocks reducing to three-storeys at the southern end. The rear part of the Co-op store would be demolished and a reduced site redeveloped to a design matching that of the flats. The new retail unit would be reconfigured as a smaller ground-floor food outlet, with post office and travel agent, with eight two-bed flats over two storeys above. The demolished part of the Co-op building would provide the new entrance to the store car park and service area and that for the housing. The parking for the residential units would be to the rear of the building and the access would link through to a second entrance at the southern end of the site.

Policy Framework

9. The development plan comprises the policies of the Cherwell Local Plan 2011-2031 adopted in July 2015 (LP) and those saved in the Cherwell Local Plan of 1996. The Council's refusal of this scheme rests on the conflict with LP Policy Kidlington 2 (K2), the various LP policies setting out infrastructure

requirements and the aspirations of the Kidlington Framework Masterplan¹ (KFM). The latter was adopted in December 2016 as a Supplementary Planning Document.

10. Part 1 of the LP is currently the subject of a partial review to provide the land allocations required to meet the overspill housing need for Oxford City. This partial review is reaching a quite advanced stage and a substantial amount of housing is proposed around Kidlington. A Part 2 Local Plan is also being prepared to provide more detailed development management policies for Cherwell which, when approved, will replace those saved in the 1996 Local Plan. This is at a relatively less advanced stage compared to the progress made on the LP Part 1 partial review.
11. Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework (the Framework) is one such material consideration.

Reasons

Whether the proposal would strengthen and regenerate the village centre

12. Although nominally a village the number and range of retail units in Kidlington are comparable to those of a small town centre. As a centre it is smaller than the two main Cherwell District towns of Banbury and Bicester but has a greater amount and range of retail provision than that offered in other larger villages. However, Kidlington is also closer to Oxford than either Banbury or Bicester which has an impact on its retail role and offer.
13. The buildings in Kidlington are of a varied architectural appearance and the front elevation of the existing Co-op store contributes to the mixed and active character of the High Street. The Sterling Road Approach frontage makes a less positive contribution to the character of the village centre as it comprises the rather featureless side elevation of the Co-op store with a large expanse of car parking to the rear. The views across the car park are towards the somewhat incoherent and visually less satisfactory rear elevations of the various commercial uses along the Oxford Road.
14. The relatively large site is in a prominent position within the village centre. Its development has the potential to play an important part in strengthening Kidlington village centre and the starting point is whether this proposal would comply with K2 in this respect.
15. The proposal falls entirely within the Kidlington village centre as defined in the LP with the boundary to Sterling Road Approach forming an edge. K2 states that shopping, leisure and other main town centre uses will be supported within the boundary of Kidlington village centre. Residential development is not a main town centre use as defined in the Framework. However, K2 goes on to say that residential development will be supported in appropriate locations in the village centre except where it will lead to a loss of retail or other main town centre uses.

¹ Kidlington Framework Masterplan Supplementary Document Part 1: Kidlington Tomorrow – Realising the Potential – Cherwell District Council December 2016.

16. The Framework recognises that residential development can play an important role in insuring the vitality of centres where encouraged by development plan policies on appropriate sites. K2 states that the change of use of sites used for main town centre uses in the village centre for residential development will normally be permitted if proposals contribute significantly to its regeneration.
17. K2 concludes by saying that mixed-use schemes will be encouraged and proposals should be considered against Policies SLE 2 (securing dynamic town centres), ESD 10 (protection and enhancement of biodiversity and the natural environment) and ESD 15 (character of the built and historic environment).
18. In respect of meeting the terms of K2 the evidence persuades me that the 44 new residential units on the existing car park would contribute significantly to the regeneration of Kidlington centre by helping boost its vitality and providing revenue to existing commercial uses. This would indirectly help support an enhanced evening economy.
19. The redevelopment of the Co-op store would result in the loss of retail floorspace which has already occurred with the existing reconfiguration that has taken place within this unit. The eight flats proposed above the new store would replace existing office units. The Council has stated that the principal concern relates to the loss of existing retail and office uses and the failure to consider the potential for other town centre uses as part of a mixed-use development. The application form states that the proposal would result in the loss of 643m² of gross internal retail floorspace and 532m² of office floorspace.
20. The DPDS report² prepared on behalf of the Council concludes that even if there were a loss of trading for the Co-op store, the convenience nature of the trade within the centre would mean that this would likely be diverted to other town centre providers and would not be lost to the village. The report concludes that the proposal to reduce retail floorspace will not in itself have a detrimental impact upon the vitality and viability of the village centre. Similarly the report concludes that the loss of office floorspace is unlikely to have a significant adverse impact. I concur with this and find no conflict with LP Policy SLE 2 in respect of securing a dynamic village centre.
21. Although the proposal would result in a loss of retail and office floorspace it would retain the primary shopping frontage towards the High Street and a convenience store, with post office and travel agents, would be kept. I am persuaded that the change of use of the site for a substantial residential development which retains a High Street shopping unit would contribute significantly to the regeneration of the village centre and outweigh the loss of retail floorspace. Consequently I consider the proposal would comply with the main aim of K2 to strengthen Kidlington village centre.
22. K2 states that mixed-use schemes will be encouraged. Although the proposal is literally a mixed scheme, in that it provides both for retail and residential, it is housing which predominates. The KFM provides for the type of mixed-use scheme that would be encouraged on the appeal site. The car park is identified as providing the opportunity for community uses, secondary retail and residential with a limited element of primary retail proposed opposite the rear entrance of the Co-op to encourage connectivity towards Oxford Road.

² Retail and Office Impact Assessment Application 15/01872F Co-op Kidlington December 2016.

23. The Council's case is that this proposal would fail to comply with K2 by not addressing appropriately the layout and land use indicated in the KFM. However, the Council has made it clear the KFM is not prescriptive. The village centre remains to be the subject of a more detailed masterplan and for relevant policies to be taken through to Examination in the Part 2 Local Plan. Therefore only limited weight can be given to the conflict found with the aspirations of the KFM for a mixed-use development with connectivity through the site. K2 encourages mixed-use schemes. However, the conflict found with the KFM would be insufficient to alter my conclusion that the proposal would satisfy K2.
24. The 2012 Retail Study undertaken by CBRE, which formed part of the evidence base to K2, concluded that significant new development should not be directed to Kidlington but that the centre is in need of further environmental improvements and the evening economy should be encouraged. The evidence does not persuade me that the preferred mixed-use development, as envisaged through the KFM and including what the Council states as only some small scale retail focussed on a new pedestrian link through to the Oxford Road, would be viable or outweigh the case made for the mainly residential scheme proposed.
25. The outcome of the LP Part 1 partial review will increase the population catchment of Kidlington village centre at some point in the future. Should this require additional service provision in Kidlington then the proposed expansion of the village centre, to include land west of Oxford Road and to be determined through the emerging Part 2 Local Plan, could allow for this. Therefore I can give limited weight to the Council's case that this proposal would prejudice the future service needs in Kidlington in relation to the growth proposed in the LP Part 1 partial review.
26. Regarding the concerns over scale, massing and density the proposal would provide the well-designed, high density residential development appropriate in an urban centre and substantially improve on the current lacklustre appearance of the car park and existing Co-op building. The development would enhance the townscape and, whilst not offering a commercially active frontage, provide a strong, well-designed façade along Sterling Road Approach. I find there would be little conflict with the aims of LP Policy ESD 15 regarding the design of the development proposed which, whilst understanding appearance to be a subjective matter, I find to be acceptable.
27. The KFM states that the village centre should be the focus for significant change and improvement, although this proposal would not achieve the mixed-use aspirations for this site. However, the retention of the High Street convenience store, in combination with an appropriately high density urban housing development, would help strengthen and regenerate the village centre of Kidlington. This would comply with K2 to which the greater weight is given.

Whether adequate provision is made for supporting infrastructure, including affordable housing

28. The Council's second reason for refusal related to the lack of a satisfactory planning obligation for the scheme to secure the on and off site infrastructure, including appropriate affordable housing, necessary to comply with LP policies INF 1 (infrastructure), BSC3 (affordable housing), BSC10 (open space, outdoor

- space and recreation) and BSC11 (local standards of provision – outdoor recreation).
29. For reasons outside the parties control the UU originally submitted was no longer relevant at the time of the hearing. For the reasons explained above the appellants were provided time to submit an appropriate revised version relating to their viability case and providing for affordable housing.
 30. Paragraph 173 of the Framework requires careful attention to viability in decision-taking. It states that to ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable. The Council's policies regarding supporting infrastructure, including affordable housing, all take account of viability considerations and are consistent in this respect with the Framework.
 31. Both parties have produced residual appraisals based on the residential element of the development being entirely market housing and with the agreed planning obligation contribution of £150,000 embedded in this. The Council has previously agreed with the appellants that the Existing Use Value (EUV) of the appeal site is £3.35m and this is used in both the appraisals. The unencumbered Residual Land Value (RLV) of the proposed redevelopment (i.e. without affordable housing) must exceed the EUV or otherwise there would be no incentive for the scheme to come forward.
 32. The appellants' revised viability assessment³, prepared by Connells in June 2107, updates the original scheme viability assessment and accounts for the loss of two residential units in the amended plan and adjusts development costs and sale values. The Council has produced a review of this prepared by Bruton Knowles which includes its own viability appraisal, applying specialist cost advice provided by the Cox Development Consultancy. This in turn reviews the appellants' costs as updated by Davies Ellis Partnership.
 33. The parties differ mainly in respect of sale values of the residential units and total scheme construction costs. Compared to the appellants' appraisal the Council are more optimistic over final sales values of the residential units and calculate somewhat lower development costs.
 34. The Council has updated its RLV calculation to £3,611,355 based on the build costs inflation allowance to November 2017 tabled at the hearing⁴. This is calculated to meet the costs of a further five affordable residential units at a discount of 75% to market rent in addition to the three already provided for by the revised UU. The appellants' appraisal provides a RLV which falls below the EUV and would demonstrate that contributing more than three affordable rent units would make the scheme unviable.
 35. Regarding sales values I have given regard to the evidence prepared by Bruton Knowles on behalf of the Council which reviews and responds to that provided by Connells. The Council's evidence provides a Gross Development Value for

³ Viability Report Co-Operative Store, High Street, Kidlington, OX5 2DH. Connells June 2017

⁴ Council's Briefing Note 2.

the residential part of the scheme of £14,955,000 averaging as £287,596 per flat (£412 per sq. ft.). I have cross-referenced this estimate to the evidence in both reports of recent sale values of equivalent properties in the area.

36. Account has been given to the nature of the scheme proposed, of which there is little directly comparable in this village, and the evidence that Kidlington has experienced strong house price growth in recent years linked to relative affordability and the new Oxford Parkway rail station. However, the Council's GDV is not so significantly more optimistic than the equivalent Connell's figure for me to dismiss the latter. I accept the argument that current economic uncertainty and fiscal changes might serve to dampen the price levels gained for the completed flats and I am not persuaded to reject the appellants' estimates in regard to value.
37. Regarding construction costs I agree that how this is estimated has a significant impact on viability. I am persuaded that there is a significant level of cost risk linked to the relative complexity of the project, particularly in relation to the enabling part, which would maintain the store operation and involve redevelopment of a confined site, and with respect to ground conditions and potential contamination in the car park. The Council's cost evidence identifies only a small number of areas of difference.
38. Overall the relatively small level of variance in the two appraisals provides an insufficient basis for me not to accept the appellants' assessment of viability. Consequently I conclude that the proposal would make adequate provision for supporting infrastructure, including affordable housing, and that there would be no material conflict with the aims of LP policies INF 1, BSC3, BSC10 and BSC11.

Other Matters

39. Consideration has been given to the further matters raised by interested parties, including the Parish Council which was represented at the hearing. I find no reason to differ from the Council's position that adequate on-site parking would be provided and that this meets adopted standards. The existing parking is privately owned and there were inadequate grounds for the Council to resist the loss of this. Having had regard to the alternative provision for public car parking in the village centre I find no reason to disagree.

Unilateral Undertaking

40. Consideration has been given to the UU dated 12 December 2017 made by Midcounties Co-operative Society and Cantay Estates Limited to Cherwell District Council. I am satisfied that the UU comprises an obligation meeting the requirements of Section 106 of the Town and Country Planning Act 1990. The obligation made in respect of affordable housing provision meets the three tests set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and paragraph 204 of the Framework and has been given weight in arriving at the appeal decision.

Conditions

41. The conditions agreed with without prejudice in the Statement of Common Ground meet the tests in paragraph 206 of the Framework and have been applied to this decision. In addition to the standard time limit for commencement, certainty necessitates that the approved plans are specified.

External materials, means of enclosure, finished floor levels and landscaping need all to be agreed to ensure the satisfactory appearance of the development.

42. For highway safety reasons and to ensure adequate parking, conditions require agreement over details of the site accesses and the on-site spaces and turning provision. To ensure adequate foul and surface water drainage details of these matters must be agreed. Agreement to a Travel Plan Statement is necessary to influence sustainable transport choices. Details of cycle parking and bin storage shall be first agreed to ensure adequate provision. In the interests of the living and working conditions of neighbouring occupiers it is necessary to govern external lighting and require the application of an agreed Construction Environment Management Plan.

Planning Balance and Conclusion

43. Weight has been given to the level of community support for the aspirations set out in the KFM, including that for a permeable, mixed-use of this site and for a good level of affordable housing. However, I am persuaded by the viability argument that has led to the limited affordable housing offered by this proposal. In this case the benefits of an appropriate level and density of housing in an urban centre regeneration scheme, which would secure the High Street retail frontage and be of an acceptable design, leads to the balance of considerations being in favour of the proposal. For the reasons given, and having taken into consideration all other matters raised, I conclude that the appeal should be allowed.

Jonathan Price

INSPECTOR

Schedule of Conditions
Appeal Ref: APP/C3105/W/17/3182065
Co-operative Food Store and land to rear, 27 High Street, Kidlington,
Oxfordshire OX5 2DH

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 160414 008 rev B, 160414 009 rev D, 160414 040 rev D, 160414 041 rev D, 160414 042 rev D, 160414 043 rev C, 160414 044 rev C, 160414 045 rev C, 160414 046 rev C, 160414 047 rev C, 160414 066 View, A160414 066 View A, 160414 067 View B, 160414 068 View C, A160414 069 View D, 160414 070 View E, 160414 071 View F, A160414 072 View G, Design and Access Statement, Arboricultural Impact Assessment, Transport Statement and Planning Statement.
- 3) Before above ground construction commences, a schedule of materials (including samples) to be used on the roof and elevations, including the colour of all external joinery, of the proposed development shall be submitted to and approved in writing by the local planning authority. The development shall be constructed in the approved materials.
- 4) Prior to the commencement of the development hereby approved a plan showing full details of the finished floor levels in relation to the existing ground levels on the site for the proposed buildings shall be submitted to and approved in writing by the local planning authority. Thereafter the development shall be carried out in accordance with the approved finished floor levels plan.
- 5) Prior to the commencement of the above ground works full details of the enclosures along all boundaries of the site (including fencing and/ or hedging along Sterling Road Approach) shall be submitted to and approved in writing by the local planning authority. Thereafter, the approved means of enclosure shall be erected prior to the first occupation of any of the dwellings.
- 6) Prior to the commencement of the development hereby approved, full details of the means of access between the land and the highway, including two vehicular accesses and any proposed pedestrian accesses, details to include position, layout, construction, drainage and vision splays shall be submitted to and approved in writing by the local planning authority. Thereafter, the means of access shall be constructed and retained in accordance with the approved details.
- 7) Prior to the commencement of the development hereby approved, full specification details (including construction, layout, surfacing and drainage) of the turning area and parking spaces within the curtilage of the site, arranged so that motor vehicle may enter, turn and leave in a forward direction and vehicles may park off the highway shall be submitted to and approved in writing by the local planning authority. Thereafter, and prior to the first occupation of any part of the development, the turning area and car parking spaces shall be constructed in accordance with the approved details and shall be retained for the parking and manoeuvring of vehicles and all times thereafter.

- 8) Prior to the commencement of the development hereby approved, a detailed scheme for the disposal of surface and foul and surface water drainage shall be submitted to and approved in writing by the local planning authority. Thereafter and prior to the first occupation of any building to which the scheme relates the approved foul and surface water drainage scheme shall be installed on site.
- 9) Prior to the commencement of the development hereby approved, a Construction Environment Management Plan (CEMP) which shall include details of the measures to ensure construction works do not adversely affect residential properties adjacent to and surrounding the site together with details of the consultation and communication to be carried out with local residents shall be submitted to and approved in writing by the local planning authority. Thereafter the development shall be carried out in accordance with the approved CEMP.
- 10) Prior to the first occupation of the development hereby approved, a Travel Plan Statement, prepared in accordance with the County Council's Guidance on Transport Assessments and Travel Plans shall be submitted to and approved in writing by the local planning authority. This shall include a requirement to provide all new residents with travel information packs which must first be approved in writing by the County Council's Travel Plans Team. Thereafter the Travel Plan Statement shall be implemented and operates in accordance with the approved details.
- 11) Prior to the first use of the development hereby approved, covered cycle parking facilities and bin storage facilities shall be provided in accordance with details which have first been submitted to and approved in writing by the local planning authority. The cycle parking and bin storage shall be provided in accordance with the approved details and shall thereafter be retained unobstructed.
- 12) Prior to that part of the development hereby approved commencing, full details of the external lighting shall be submitted to and approved in writing by the local planning authority. Thereafter the lighting shall be carried out and retained in accordance with the approved details.
- 13) Prior to that part of the development hereby approved commencing, a landscaping scheme shall be submitted to and approved in writing by the local planning authority. The scheme for landscaping the site shall include:-
 - (a) details of the proposed tree and shrub planting including their species, number, sizes and positions, together with grass seeded/turfed areas;
 - (b) details of the existing trees and hedgerows to be retained as well as those to be felled, including existing and proposed soil levels at the base of each tree/hedgerow and the minimum distance between the base of the tree and the nearest edge of any excavation;
 - (c) details of the hard surface areas, including pavements, pedestrian areas, reduced-dig areas, crossing points and steps.
- 14) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in accordance with BS 4428:1989 Code of Practice for general landscape operations (excluding hard surfaces), or the most up to date and current British Standard, in the first planting and

seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner. Any trees, herbaceous planting and plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the current/next planting season with others of similar size and species.

---End of Conditions---

DOCUMENTS SUBMITTED AT THE HEARING

1. Council's Draft Briefing note concerning Unilateral Undertaking – prepared by Bob Duxbury (Major Projects Manager) CDC 28.11.17 1700HRS
2. Council Briefing Note 2 bringing build cost inflation up to November 2017 and revising the residual appraisals to Appendix 5 and 6 of the Bruton Knowles report.

APPEARANCES

FOR THE APPELLANTS:

Jon Westerman BA(Hons) DipTP MRTPI	Edgars Limited
Dawn Brodie	Edgars Limited
Tony Nolan	Cantay Group
Sarah Gadsden	Cantay Group
James Andrews	KLM Retail
Mike Peters BSc(Hons) MRICS	Connells
Roger Tamplin DArch RIBA	Coleman Hicks Partnership

FOR THE LOCAL PLANNING AUTHORITY:

Joanna Chambers BA BTP MRTPI	Consultant
Clare Coats BSc(Hons) DipLA CMLI	Alan Baxter Limited
Guy Emmerson BSc(Hons) MRICS	Bruton Knowles
Stuart Cox BSc(Hons) MRICS	Cox Consultancy
Hilary Kernohan	Cherwell District Council

INTERESTED PERSONS:

Councillor Gillian Hopcroft	Kidlington Parish Council
Councillor David Betts	Kidlington Parish Council
Councillor Nigel Simpson	Kidlington Parish Council
Dr James Hamilton	Local resident
Katharine Hamilton	Local resident
Richard Holmes	Local resident