



Report to Wendover Communities Board

Date:	28 February 2022
Title:	Land at the Old Rectory, Aston Clinton
Contact officer:	John Reed
Ward(s) affected:	Aston Clinton & Bierton
Recommendations:	That the Community Board consider the report and petition relating to Ollies Scout Hall, Aston Clinton.

1. Executive summary

- 1.1 This report is provided in accordance with the Petitions Scheme as outlined in the Constitution and represents the officer's response to the Petition. In the event the Community Board disagrees with the recommendations in this report the matter can be addressed to the Cabinet Member
- 1.2 Buckinghamshire Council holds a restrictive covenant at land known as the Land adjoining the Old Rectory, Aston Clinton. Developers have put forward proposals for housing and a scout hut on the site. Funding for the scout hut from the developer is dependent on the delivery of the development of housing. For the development to proceed, the covenants need to be removed.

2. Background Information

- 2.1 The petition relates to a plot of land known as the Land adjoining the Old Rectory, London Road, Aston Clinton (the 'subject land'). The location is shown below in Figure 1.



Figure 1 – Land adjacent to the Old Rectory, London Road, Aston Clinton

- 2.2 The subject land was originally part of a larger site owned by Buckinghamshire County Council and was sold in the 1930s. The original site (the ‘original site’) extended to just in excess of 10 acres (Figure 2) but has been broken up over the years into a number of separate parcels including the subject land. All of these are now in private ownership.



Figure 2 – Land covered by the original conveyance

- 2.3 In the 1930s transfer of the original site several covenants were included. Covenants place restrictions and obligations on the owner and subsequent owner(s) of the land as to what they may or may not do. These are binding on the original site, irrespective of how it may have been broken up over the years, and typically continue indefinitely. Buckinghamshire Council as the successor body to the Council that imposed the covenants would be required to give consent to remove or vary these. There is no legal obligation to do so.
- 2.4 A landowner can apply to the Land Registry to remove covenants that are considered obsolete, where there is no positive benefit or that it would not injure the beneficiary. The Council as a successor body remains in existence as the beneficiary of the covenants. External legal advice provided to the Council advises that the covenants remain in full force and effect, remain enforceable and that any

application made by the landowner to remove the covenant would most likely be unsuccessful. To remove or vary the covenants the landowner would need to negotiate with the Council to remove them.

- 2.5 The relevant covenants as far as this matter is concerned are found at Clause 2 and 3 of The Schedule to the 1938 conveyance. In summary, clause 2 states that no buildings shall be erected on the property save for any replacement of the original house whilst clause 3 details the permitted access to the site from the A41 London Road and B489 side road. The proposed development by the current landowner would breach both covenants and the Council could apply to the Court to enforce the covenant.
- 2.6 There is a further covenant entered into in 1948 between the original purchasers of the land and a purchaser of part of the site. No copy of the Deed is available from the Land Registry but it is believed to relate to the subject land. This also sets out that no buildings may be erected on the land or access created from the A41 London Road. Whilst the Council is not a beneficiary to the covenant and is not able to enforce any successors in title, the original purchasers may be able to.
- 2.7 Were the Council to remove the covenant there would be a risk of a claim from others affected/benefitting by the covenant by failing to uphold and enforce the conditions contained within the original covenant. In effect this relates to the current owners of land that made up the original site sold by the Council in the 1930s shown in figure 2. This could lead to a claim in damages against the Council. This is not yet quantifiable as the extent to which this may be challenged is not known, however the Council is aware of one owner of part of the original site who is opposed to the development. It is unlikely that indemnity insurance would be available for such an eventuality.
- 2.8 Buckinghamshire Council also owns a small strip of land fronting the public highway, but not forming part of it, between the road and the site (the 'verge land'). The agreement and consent of Buckinghamshire Council to access the site over this land is also required. This is shown in Figure 3.

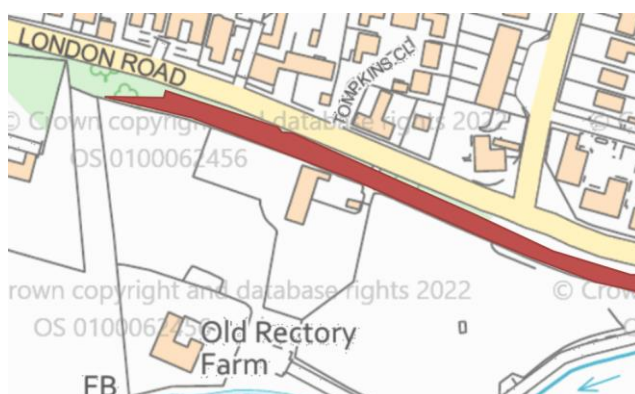


Figure 3 – The verge land

- 2.9 In addition to the Council's consent being required to remove the covenants referred to in the paragraph 2.5, the Council would also need to sell, lease or provide rights over the verge land to the owner of the subject land to allow for a new access to be created.
- 2.10 An offer of £250,000 has been received for removing the covenants and granting rights of access from the owner of the subject land. Whilst the level of the offer is would be subject to a commercial decision, this has been rejected by the Council in relation to the wider context set out below. Given that the principle of the covenant removal has not been accepted the value has not independently assessed to date.
- 2.11 The land was subject to a planning application to Aylesbury Vale District Council ('AVDC') in July 2015 for the erection of four individual dwelling houses and did not include the scout hut. AVDC refused the application in February 2016, the refusal was appealed, and the Planning Inspector's consent was granted on appeal in March 2017.
- 2.12 The Neighbourhood Plan for Aston Clinton supports housing development within the settlement area. Policy H1 defines the settlement boundary for housing policies. The land falls within this area. Policy H2 supports developments of 5 houses or less in infill sites where they accord with the wider design and development management policies of the Plan. It is noted that the Parish Council objected to the 2015 application, but supported the 2021 application.
- 2.13 The site lies within the Wendover Foothills (East) Landscape Character Area and is very close to the setting of the Council's own Green Park. Developers have submitted various planning applications, and these have been refused by the former AVDC council on no less than six occasions. The original 2015 Planning Application was not supported by the AVDC Planning Committee which is why the developer resorted to a Planning Appeal. The Appeal was upheld and outline permission for four dwellings (no scout hut) was granted. Evidence is that there is a history of the Council not being supportive of the proposed infill housing development and the Council has sought to enforce the covenants in the original conveyance.
- 2.14 The Inspector noted that the development "would erode the rural character of the site by introducing further built development in a suburban manner which would be detrimental to the rural, edge of settlement, location", but ultimately supported the scheme.
- 2.15 The land has since been sold to Laxton Properties and a revised planning application was submitted in February 2021 (21/00759/AOP) revising the scheme to five

dwelling houses and a scout hut. Consent was granted in August 2021. The site layout is shown below in Figure 4.



Figure 4 – Site Layout (21/00759/AOP)

- 2.16 The 2015 application received 35 objections and 1 supporting representation. The 2021 application received 33 supporting representations, 9 objecting and 1 neutral with the supporting representations predominantly commenting in being in favour of the scout hut.
- 2.17 Buckinghamshire Council in their capacity as landowner of the adjoining land and beneficiary of the covenants objected to the planning application in 2021. Specifically, this expressed the clear distinction between the north and south sides of the A41 London Road in this location. The southern side being very much undeveloped towards to Green Park which further supports the rural environment. There is a clear character to the southern side of the A41 London Road in the immediate vicinity and the setting is one of the rural fringes of the village. The development is at odds with this environment.
- 2.18 It would also impact on character of the grade II listed Old Rectory urbanising an ultimately rural setting. In response to the 2021 application the Council's heritage officer commented in relation to the impact on the Old Rectory, a grade II listed building ('LB'). She noted that "adequate tree and hedge screening appears to be retained to protect the LB (itself split into 2 dwellings) from the impact of the neighbouring development, however the increase in vehicle movements and density of the development has some potential to negatively impact on the setting of the LB and also the character of the local area".
- 2.19 The Planning Inspector also made reference to preserving the setting of the Old Rectory stating, "in this case, the development would have some impact on the wider setting of The Old Rectory, by introducing new development on the adjacent

site. However, this impact is minimal and is somewhat mitigated by the existing trees together with the proposed trees indicated on the layout plan". He however concluded that "the dwellings would lead to harm to the character and appearance of the area contrary to the provisions of Policy GP.35 of the LP which amongst other things seeks to protect the character and appearance of the area. The development would also be at odds with the similar underlining objectives of the Framework."

- 2.20 The Council does not have any statutory duty to provide a scout hut in Aston Clinton. However, following recent correspondence from residents in February 2022, the Leader has restated the Council's earlier position that it remains fully supportive of the proposed community use. The Council has put forward options to the scout group for alternative sites. The sites proposed are within the Council's ownership negating the need for complex negotiations with a third party to secure their availability. Officers met with representative from the scout group in January 2020 and subsequently options at Green Park (Figure 5) and Bulls Field (Figure 6) were proposed as alternative sites for them to consider.
- 2.21 Whilst Green Park no longer remains a viable option given the administration of The Adventure Learning Charity and lease restructuring required to securing a new operator in 2021, Bulls Field remains a potential alternative despite being outside the settlement area. This could be promoted in the new Local Plan call for sites or, if needed sooner, a planning application could be made, which would be subject to a Committee decision. The scout group did not express an interest in either considering both to be too far out from the centre of the village.



Figure 5 – Green Park



Figure 6 – Bulls Field

3. Next steps and review

3.1 It is recommended that the Wendover Community Board consider the petition in light of the above background information. The following points, in particular, should be noted:-

- The Council has historically opposed the development of the site for the reasons set out in this paper. The officer recommendation is not to depart from the Council's earlier position and to refuse the request set out in the Petition.
- Alternative options for the scout hut location have been put forward to the group
- There is a risk of a claim against the Council from those benefiting from the covenants if the covenants are removed.

In the event that the Community Board does not agree with the officer response to the Petition the Community Board can refer to the matter to the Cabinet Member for further consideration