

**Swerbrook Farm Hook Norton Road Wigginton  
OX15 4LH****Case Officer:** Shona King**Applicant:** Mr J Dunkley**Proposal:** Erection of an indoor horse training arena**Ward:** Deddington**Councillors:** Cllr. Hugo Brown, Cllr. Mike Kerford-Byrnes and Cllr Bryn Williams**Reason for Referral:** Major development**Expiry Date:** 11 February 2021**Expiry Date:** 11 February 2021**1. APPLICATION SITE AND LOCALITY**

- 1.1. The application site is located in open countryside on the south side of Hook Norton Road, between the villages of Hook Norton, Milcombe and Wigginton.
- 1.2. The site is not located within a conservation area and there are no listed buildings in proximity of the site. Public Footpath 409/1/10 runs to the northwest of the site.

**2. DESCRIPTION OF PROPOSED DEVELOPMENT**

- 2.1. Outline planning permission is sought for the erection of an indoor horse training arena. That said, only landscaping is a reserved matter, i.e. all matters apart from landscaping are to be determined under this application. The proposed building would be sited adjacent to the eastern boundary and would measure approx. 67.2 metres long by 22.8 metres wide (footprint of 1,532 sq m) and would have a height of approx. 5.85m. It would be constructed externally from timber boarded walls and a sheet metal roof. Access to the building would be via the existing access from Hook Norton Road shared with Swerbrook Farmhouse and the existing equestrian buildings on the site.

**3. RELEVANT PLANNING HISTORY**

- 3.1. The following planning history is considered relevant to the current proposal:

17/00489/F Demolition of existing dwelling and erection of replacement dwelling with associated landscaping and outbuilding - Application Permitted

17/01294/F Demolition of existing stables and grooms accommodation. Erection of replacement stables and groom's / staff accommodation. Retention of existing farm building for storage of hay, straw and equipment - Application Permitted

18/00372/F Change of use of land and operational development to form a horse training arena. Application Permitted

18/02011/F Erection of a horse walker - Application Permitted

19/00846/F Variation of Condition 2 (plans) of 17/00489/F - design changes to the fenestration on the garage block, the addition of a chimney to the dwelling, a plant room added to the garage, a link to the main house and a swimming pool and amended landscaping details - Application Permitted

19/01158/F Formalisation of temporary construction access and permanent retention to serve the dwelling and stables. Close off existing access. Provide new gates and piers to Hook Norton Road.

19/01159/OUT Erection of an indoor horse training arena. Application Withdrawn

#### **4. PRE-APPLICATION DISCUSSIONS**

4.1. No pre-application discussions have taken place with regard to this proposal

#### **5. RESPONSE TO PUBLICITY**

5.1. This application has been publicised by way of a site notice displayed near the site, and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records. The final date for comments was **8<sup>th</sup> December 2020**, although comments received after this date and before finalising this report have also been taken into account.

5.2. The comments raised by third parties are summarised as follows:

- Visual impact
- Siting should be closer to existing buildings
- Spreads development across site
- Overshadowing and overbearing on adjacent land
- Loss of view of sunset
- Impact on biodiversity
- Location of high-level windows and light pollution
- Condition to equestrian use only
- impact on neighbours during construction

5.3. The comments received can be viewed in full on the Council's website, via the online Planning Register.

#### **6. RESPONSE TO CONSULTATION**

6.1. Below is a summary of the consultation responses received at the time of writing this report. Responses are available to view in full on the Council's website, via the online Planning Register.

##### PARISH/TOWN COUNCIL AND NEIGHBOURHOOD FORUMS

6.2. MILCOMBE PARISH COUNCIL: **No objection**

##### OTHER CONSULTEES (CDC unless otherwise stated)

6.3. LOCAL HIGHWAY AUTHORITY (OCC): **No objection** subject to conditions restricting the use of the arena to private use only and that the additional hardstanding proposed is to be constructed from either porous materials or provision shall be made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the site, in the interest of flood prevention

- 6.4. ENVIRONMENTAL PROTECTION: **No objection** on grounds of noise, contaminated land, air quality, odour or light.
- 6.5. ECOLOGY: **Comments** that the site is within the Conservation Target Area and there is also a nearby record of polecats being present and as these are a Priority Species we need to have regard to their conservation so some enhancements aimed at this species should be included on site. Whilst there will not be any major ecological issues on site ideally a biodiversity report to confirm constraints and opportunities should be submitted. As a minimum, a condition is recommended requiring a biodiversity enhancement scheme be submitted which should include locations and types of bat and bird boxes (along with some integrated into the new building where possible) and additional planting (with polecats and the aims of the conservation target area in mind) with a brief statement on management of the hedgerow, surrounding vegetation and benefits to wildlife of the scheme.
- 6.6. LANDSCAPE OFFICER: **No comment to date**

## **7. RELEVANT PLANNING POLICY AND GUIDANCE**

- 7.1. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 7.2. The Cherwell Local Plan 2011-2031 - Part 1 was formally adopted by Cherwell District Council on 20th July 2015 and provides the strategic planning policy framework for the District to 2031. The Local Plan 2011-2031 – Part 1 replaced a number of the ‘saved’ policies of the adopted Cherwell Local Plan 1996 though many of its policies are retained and remain part of the development plan. The relevant planning policies of Cherwell District’s statutory Development Plan are set out below:

### CHERWELL LOCAL PLAN 2011 - 2031 PART 1 (CLP 2015)

- ESD13 – Local Landscape Protection and Enhancement
- ESD15 - The Character of the Built and Historic Environment

### CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- C8: Sporadic development in the countryside
- C28 – Layout, design and external appearance of new development
- AG5: Development involving horses

- 7.3. Other Material Planning Considerations
- National Planning Policy Framework (NPPF)
  - Planning Practice Guidance (PPG)

## **8. APPRAISAL**

- 8.1. The key issues for consideration in this case are:

- Principle of development
- Design, and impact on the character of the area
- Residential amenity
- Highway safety
- Ecology

### Principle of the development

- 8.2. Paragraph 11 of the National Planning Policy Framework (NPPF) states that decisions should apply a presumption of sustainable development. The NPPF explains that the purpose of the planning system is to contribute to the achievement of sustainable development. This is defined as meeting the needs of the present without compromising the ability of future generations to meet their own needs.
- 8.3. Paragraph 12 of the NPPF notes that the development plan is the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise.
- 8.4. The application seeks outline planning permission for the erection of an indoor horse training arena. Saved Policy AG5 states that proposal for horse related development will normally be permitted provided they do not adversely affect the character and appearance of the countryside and are not detrimental to the amenity of the neighbouring properties. The proposed development will be considered against Policy AG5 further below. This is consistent with Paragraph 83 of the NPPF which promotes the “development and diversification of agricultural and other land-based rural businesses”.
- 8.5. Therefore, the principle of equestrian related development in this rural location is acceptable in principle; the acceptability of this particular proposal is subject to other material considerations.

### Design and impact on the character of the area

- 8.6. Paragraph 124 of the NPPF states that: *‘Good design is a key aspect of sustainable development’* and that it *‘creates better places in which to live and work’*. This is reflected in Policy ESD15 of the CLP 2015, which states that new development proposals should: *be designed to improve the quality and appearance of an area and the way it functions...contribute positively to an area’s character and identity by creating or reinforcing local distinctiveness...(and) respect the traditional pattern of routes, spaces, blocks, plots, enclosures and the form, scale and massing of buildings.* Saved Policy C28 of the CLP 1996 reinforces this, stating: *standards of layout, design, and external appearance, including the choice of external-finish materials, are sympathetic to the character of the urban or rural context.*
- 8.7. Policy ESD13 of the CLP 2015 states that development will be expected to respect and enhance local landscape character securing appropriate mitigation where damage to local landscape character cannot be avoided. Proposals will not be permitted where, amongst other criteria, they would cause undue visual intrusion into the countryside or cause undue harm to important natural landscape features and topography.
- 8.8. The application site is in the open countryside, with only sporadic dwellings in the vicinity located outside of the nearby villages of Milcombe and Wigginton. Saved Policy C8 of the CLP 1996 seeks to resist sporadic development in the open countryside. However, the site is in equestrian use and the building would be used in association with the existing use of the land.
- 8.9. The previous submissions under application 18/00372/F and 19/01159/OUT were for a training arena parallel to the Hook Norton Road and closer to the other buildings. The comments received from CDC Landscape Officer in respect of 18/00372/F were:

*“The site is contained by the conifer hedge on the western boundary and the roadside hedgerow and trees. This vegetation must therefore be retained at sufficient height and density to screen the ménage from visual receptors (walkers) on the PRow to the west and road users. There appears to be sufficient structural vegetation/cover i.e. intervening hedgerows and trees between the site and Woodlands Farm.”*

- 8.10. The proposed building has been rotated relative to those previous proposals such that the narrower part of the building faces public views.
- 8.11. The part of the site in which the building is to be located is flat, before the levels of the land drop to the south towards the valley. In addition, the building would be set down from the level of the highway and cut into the site as indicated on drawing No. 16047 PP0052 – B. It would be sited away from the boundaries of the site and therefore the existing boundary hedges can be protected during construction and retained.
- 8.12. Despite its floor area, the building would not be particularly prominent in public views due to the orientation with the ridge running north/south, rather than east west as previously approved.
- 8.13. Additional planting has taken place immediately to the south and west of the site for the proposed building and this would further mitigate any longer distance views of the building gained from the south.
- 8.14. The site location plan has been amended during the course of the application to allow for a landscaping plan. The original submission showed the red line tightly around the building and access, affording no space within the site for landscaping, important for mitigating visual impact and because this is an outline application but with only landscaping a reserved matter.
- 8.15. Overall, given its siting, design and materials, it is considered that the proposed building would appear as an agricultural building in the landscape and would not result in any significant harm to the rural character of the area, compliant with the local and national policies cited above.

#### Residential amenity

- 8.16. The proposed building would be located approximately 180m from the closest residential property. Given this relationship it is considered that the building would not result in any significant levels of overlooking or be overbearing on the outlook from that dwelling.
- 8.17. Concerns have been raised in the representations about the potential overbearing/overshadowing impact on the access drive to the adjacent dwelling, light pollution from the high-level windows and the loss of the view of the sunset. Whilst the building would extend down the shared driveway it would not result in any significant adverse impacts on the living amenities of the adjacent dwelling and the retention of the hedgerow between the building and the dwelling would help to mitigate any light pollution arising from the high-level windows in the east elevation of the building. The loss of the view of the sunset is not a matter that can be taken into consideration in the determination of the application.
- 8.18. The proposal is therefore considered acceptable in residential amenity terms and compliant with Policy ESD15 of the CLP 2015 and Government guidance in the NPPF.

### Highway safety

- 8.19. The proposed development would utilise an existing access onto the highway approved under application 19/01158/F. The local highway authority has raised no objections to the proposals.
- 8.20. It is considered that the level of vehicular movements would not increase significantly with the use of the building as set out in the information submitted with the application. It is therefore considered that the development would not result in any significant detriment to highway safety to warrant refusal of the application.
- 8.21. Conditions are recommended restricting the use of the arena to private use only and that the additional hardstanding proposed is to be constructed from either porous materials or provision shall be made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the site, in the interest of flood prevention.
- 8.22. The proposal is therefore considered acceptable in highway safety terms and compliant with Policy ESD15 of the CLP 2015 and Government guidance in the NPPF.

### Ecology

- 8.23. The Planning Practice Guidance (2014) post-dates the previous Government Circular on Biodiversity and Geological Conservation (ODPM Circular 06/2005), although this remains extant. The PPG states that Local Planning Authorities (LPAs) should only require ecological surveys where clearly justified, for example if there is a reasonable likelihood of a protected species being present and affected by development. Assessments should be proportionate to the nature and scale of development proposed and the likely impact on biodiversity.
- 8.24. Natural England's Standing Advice states that an LPA only needs to ask an applicant to carry out a survey if it's likely that protected species are:
- present on or near the proposed site, such as protected bats at a proposed barn conversion
  - affected by the development
- 8.25. It also states that LPAs can also ask for:
- a scoping survey to be carried out (often called an 'extended phase 1 survey'), which is useful for assessing whether a species-specific survey is needed, in cases where it's not clear which species is present, if at all
  - an extra survey to be done, as a condition of the planning permission for outline plans or multi-phased developments, to make sure protected species aren't affected at each stage (this is known as a 'condition survey')
- 8.26. The Standing Advice sets out habitats that may have the potential for protected species, and in this regard there are a number of mature trees and hedgerows within and adjacent the site, and therefore the site has the potential to be suitable habitat for bats, breeding birds, and badgers.
- 8.27. Section 40 of the Natural Environment and Rural Communities Act 2006 (NERC 2006) states that "every public authority must, in exercising its functions, have

regard ... to the purpose of conserving (including restoring / enhancing) biodiversity”.

- 8.28. Strict statutory provisions apply where European Protected Species (EPS) are affected, as prescribed in Regulation 9(5) of Conservation of Habitats and Species Regulations 2010. When determining a planning application that affects a EPS, local planning authorities must have regard to the requirements of the EC Habitats Directive which states that “a competent authority, in exercising any of their functions, must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions”.
- 8.29. Under Regulation 41 of the Conservation Regulations 2010 it is a criminal offence to cause harm to an EPS and/or their habitats which includes damage or destruction of a breeding site or resting place. However, licenses from Natural England for certain purposes can be granted to allow otherwise unlawful activities to proceed when offences are likely to be committed, but only if 3 strict legal derogation tests are met which include:
- 1) Is the development needed for public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature?
  - 2) Is there any satisfactory alternative?
  - 3) Is there adequate compensation being provided to maintain the favourable conservation status of the species?
- 8.21. In order for the LPA to discharge its legal duty under Reg 9(5) of the Conservation Regulations 2010 when considering a planning application where EPS are likely or found to be present at the site or surrounding area, LPAs must firstly assess whether an offence under the Regulations is likely to be committed. If so, the LPA should then consider whether Natural England would be likely to grant a licence for the development. In so doing to authority has to consider itself the 3 derogation tests above.
- 8.22. In respect of planning applications and the Council discharging of its legal duties, case law has shown that if it is clear/very likely that Natural England will not grant a licence then the Council should refuse planning permission; if it is likely or unclear whether Natural England will grant the licence then the Council may grant planning permission.
- 8.23 Previously the Council's Ecologist has advised that the land is already grazed pasture and therefore unlikely to be of any particular ecological value and that the proposals did not include the loss of any hedgerows or trees or affect watercourses. This remains the case under this application and as such it is unlikely that there will be any major ecological issues on site.
- 8.24 The site is now, however, within a Conservation Target Area and there is also a nearby record of polecats being present. These are a Priority Species and regard to their conservation is required.
- 8.25 It is therefore recommended that a biodiversity enhancement scheme is conditioned which should include locations and types of bat and bird boxes (along with some integrated into the new building where possible) and additional planting (with polecats and the aims of the conservation target area in mind) with a brief statement on management of the hedgerow, surrounding vegetation and benefits to wildlife of the scheme.

## **9. PLANNING BALANCE AND CONCLUSION**

- 9.1. Section 38(6) of the Planning and Compulsory Act 2004 requires planning applications to be determined against the provisions of the development plan unless material considerations indicate otherwise.
- 9.2. The principle of development is acceptable, as the building would not result in a change of use and would support the existing equestrian business. The building would be well screened from the public domain and would be a sufficient distance away from the nearest residential property so as not adversely affect the living conditions of that neighbour and would not affect the safety of the local highway network. The proposed development is therefore considered to be in accordance with the Development Plan, and thus acceptable, subject to the conditions below.

## **10. RECOMMENDATION**

**RECOMMENDATION – DELEGATE TO THE ASSISTANT DIRECTOR FOR PLANNING AND DEVELOPMENT TO GRANT PERMISSION, SUBJECT TO THE CONDITIONS SET OUT BELOW (AND ANY AMENDMENTS TO THOSE CONDITIONS AS DEEMED NECESSARY)**

### CONDITIONS

#### **Submission of Reserved Matters**

1. No development shall commence until full details of the landscaping (hereafter referred to as reserved matters) of the hereby approved development have been submitted to and approved in writing by the Local Planning Authority.

Reason - This permission is in outline only and is granted to comply with the provisions of Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004, and Article 5(1) of the Town and Country Planning (General Development Procedure) Order 2015 (as amended).

#### **Time Limit**

2. In the case of the reserved matters, no application for approval shall be made later than the expiration of three years beginning with the date of this permission.

Reason - This permission is in outline only and is granted to comply with the provisions of Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004, and Article 5(1) of the Town and Country Planning (General Development Procedure) Order 2015 (as amended).

3. The development to which this permission relates shall be begun not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

Reason - This permission is in outline only and is granted to comply with the provisions of Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004, and Article 5(1) of the Town and Country Planning (General Development Procedure) Order 2015 (as amended).



## **Plans**

4. Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the application forms and drawings numbered L0006A, PP0051, PP0053B, PP0130D and PP0131A.

Reason – For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and comply with Government guidance contained within the National Planning Policy Framework.

## **Access and Manoeuvring Area**

5. The access and manoeuvring areas shall be provided in accordance with the plan approved (Drawing No. 16047 - L0006 - B) prior to the first use/of the development hereby approved and shall be constructed from porous materials or provision shall be made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the site. The access and manoeuvring areas shall be retained in accordance with the approved details thereafter and shall be unobstructed except for the access and manoeuvring of vehicles at all times.

Reason - In the interests of highway safety and flood prevention and to comply with Policies ESD7 and ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

## **Retention of Hedgerow**

6. The existing hedgerow along the northern and eastern boundaries of the site shall be retained and properly maintained at a height of not less than 3 metres, and if any hedgerow plant dies within five years from the completion of the development it shall be replaced and shall thereafter be properly maintained in accordance with this condition.

Reason - In the interests of the visual amenities of the area, to provide an effective screen to the proposed development and to comply with Policies ESD13 and ESD15 of the Cherwell Local Plan 2011-2031 Part 1, saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

## **Ecology**

7. No development shall commence, including any works of site clearance, unless and until a method statement for enhancing the habitat for bats, birds and polecats and the aims of the Conservation Target Area shall be submitted to and approved in writing by the Local Planning Authority. The biodiversity enhancement measures shall be carried out in accordance with the approved details and shall be retained as such thereafter. The method statement shall include locations and types of bat and bird boxes (along with some integrated into the new building where possible) and additional planting with details of the management of the hedgerow, surrounding vegetation and benefits to wildlife of the scheme.

Reason - To protect habitats of importance to biodiversity conservation from any loss or damage in accordance with Policy ESD10 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

### **Restriction of Use**

8. The horse training area hereby permitted shall be used for private recreation only, by the occupants of Swerbrook Farm, and shall not be used for any commercial equestrian purpose whatsoever including riding lessons, tuition, livery or competitions.

Reason - In order to maintain the rural character of the area in the interests of sustainability and highway safety, in accordance with Policy ESD15 of the Cherwell Local Plan 2011 - 2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

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