

Committee: Planning Committee
Date: Thursday 11 December 2008
Time: 4.00 pm
Venue: Bodicote House, Bodicote, Banbury, OX15 4AA

Membership

Councillor Fred Blackwell (Chairman)	Councillor Mrs Catherine Fulljames (Vice-Chairman)	
Councillor Ken Atack	Councillor Alastair Milne Home	Councillor Leslie F Sibley
Councillor Maurice Billington	Councillor David Hughes	Councillor Chris Smithson
Councillor Colin Clarke	Councillor James Macnamara	Councillor Lawrie Stratford
Councillor Diana Edwards	Councillor Christopher Pack	Councillor Rose Stratford
Councillor Michael Gibbard	Councillor D M Pickford	
Councillor Eric Heath	Councillor G A Reynolds	

Substitutes

Councillor Luke Annaly, Councillor Rick Atkinson, Councillor Margaret Cullip, Councillor Andrew Fulljames, Councillor Timothy Hallchurch MBE, Councillor P A O'Sullivan, Councillor George Parish, Councillor Trevor Stevens, Councillor Carol Steward, Councillor Nicholas Turner, Councillor Barry Wood and Councillor John Wyse

AGENDA

1. **Apologies for Absence and Notification of Substitute Members**
2. **Declarations of Interest**

Members are asked to declare any interest and the nature of that interest which they may have in any of the items under consideration at this meeting

3. **Petitions and Requests to Address the Meeting**

The Chairman to report on any requests to submit petitions or to address the meeting.

4. **Urgent Business**

The Chairman to advise whether they have agreed to any item of urgent business being admitted to the agenda.

5. **Minutes** (Pages 1 - 5)

To confirm as a correct record the Minutes of the meeting of the Committee held on 20 November 2008.

Planning Applications

6.	Formerly Neithrop County Primary Infants School, Prescott Close, Banbury	08/02066/F	Banbury Ruscote	8 - 16
7.	Manor Farm, Ardley Road, Middleton Stoney	08/02112/F	Ambrosden and Chesterton	17 - 20
8.	Land North of Willowbank Farm, Fewcott Road, Fritwell	08/02236/F	Caversfield	21 - 25
9.	Amenity Area At Sandford Green, Banbury	08/02292/CDC	Banbury Ruscote	26 - 30
10.	Oxhay Farm, Mollington Road, Cropredy, Oxfordshire	06/01346/F	Cropredy	31 - 60

Tree Preservation Orders

11. **Tree Preservation Order (No 03) 2008, Applegate, East End, Hook Norton** (Pages 61 - 65)

Summary

The purpose of this report is to advise Members of an objection received to the above-mentioned Tree Preservation Order (TPO) and to seek approval to confirm the Order.

Recommendation

It is **RECOMMENDED** that after consideration of the objection, the comments of the Head of Urban & Rural Services and Head of Development Control and Major Developments the Tree Preservation Order (No.03) 2008 be confirmed.

12. **Tree Preservation Order (no. 4) 2008 Ash Tree at Land Adjacent to 60 Tadmarton Road, Bloxham** (Pages 66 - 68)

Summary

To seek the confirmation of an unopposed Tree Preservation Order relating to an ash tree at land adjacent to 60 Tadmarton Road, Bloxham (copy plan attached as Annex 1).

Recommendation

It is **RECOMMENDED** that the Committee resolves to confirm the Order without modification.

13. **Tree Preservation order (no. 5) 2008 - Norway Maple at Heriot house, 8 Dog Close, Adderbury** (Pages 69 - 72)

Summary

To seek the confirmation of an unopposed Tree Preservation Order relating to a Norway maple at Heriot House, 8 Dog Close, Adderbury (copy plan attached as Annex 1).

Recommendation

It is RECOMMENDED that the Committee resolves to confirm the Order without modification.

Review and Monitoring Reports

14. **Appeals Progress Report** (Pages 73 - 75)

Summary

This is a standard report item, the aim of which is to keep Members informed upon applications which have been determined by the Council, where new appeals have been lodged, Public Inquiries/Hearings scheduled or appeal results received.

Recommendation

It is **RECOMMENDED** that the Committee resolves to accept this position statement.

15. **Decisions Subject to Various Requirements - Progress Report,** (Pages 76 - 77)

Summary

This is a standard report item the aim of which is to keep Members informed upon applications which they have authorised decisions upon subject to various requirements which must be complied with prior to the issue of decisions.

Recommendation

It is **RECOMMENDED** that the Committee resolve to accept this position statement.

16. Exclusion of the Public and Press

The following report(s) contain exempt information as defined in the following paragraph(s) of Part 1, Schedule 12A of Local Government Act 1972. 7 – Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

Members are reminded that whilst the following item(s) have been marked as exempt, it is for the meeting to decide whether or not to consider each of them in private or in public. In making the decision, Members should balance the interests of individuals or the Council itself in having access to the information. In considering their discretion Members should also be mindful of the advice of Council Officers.

Should Members decide not to make a decision in public, they are **RECOMMENDED** to pass the following recommendation:

“That in accordance with Section 100A (4) of Local government Act 1972, the press and public be excluded from the meeting for the following item(s) of business, on the grounds that they could involve the likely disclosure of exempt information as defined in paragraph(s) 7 of Schedule 12A of that Act”.

17. Prosecution Report (Pages 78 - 79)

Information about this Agenda

Apologies for Absence

Apologies for absence should be notified to democracy@cherwell-dc.gov.uk or 01295 221587 prior to the start of the meeting.

Declarations of Interest

Members are asked to declare interests at item 2 on the agenda or if arriving after the start of the meeting, at the start of the relevant agenda item. The definition of personal and prejudicial interests is set out in Part 5 Section A of the constitution. The Democratic Support Officer will have a copy available for inspection at all meetings.

Personal Interest: Members must declare the interest but may stay in the room, debate and vote on the issue.

Prejudicial Interest: Member must withdraw from the meeting room and should inform the Chairman accordingly.

With the exception of the some very specific circumstances, a Member with a personal interest also has a prejudicial interest if it is one which a Member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest.

Local Government and Finance Act 1992 – Budget Setting, Contracts & Supplementary Estimates

Members are reminded that any member who is two months in arrears with Council Tax must declare the fact and may speak but not vote on any decision which involves budget setting, extending or agreeing contracts or incurring expenditure not provided for in the agreed budget for a given year and could affect calculations on the level of Council Tax.

Queries Regarding this Agenda

Please contact Alexa Coates, Legal and Democratic Services alexa.coates@cherwell-dc.gov.uk
(01295) 221591

Mary Harpley
Chief Executive

Published on Wednesday 3 December 2008

Agenda Item 5

Cherwell District Council

Planning Committee

Minutes of a meeting of the Planning Committee held in at Bodicote House, Bodicote, Banbury, OX15 4AA, on 20 November 2008 at 4.00 pm

Present: Councillor Fred Blackwell (Chairman)

Councillor Mrs Catherine Fulljames
Councillor Ken Atack
Councillor Colin Clarke
Councillor Michael Gibbard
Councillor Eric Heath
Councillor Alastair Milne Home
Councillor David Hughes
Councillor D M Pickford
Councillor G A Reynolds
Councillor Leslie F Sibley
Councillor Chris Smithson
Councillor Lawrie Stratford
Councillor Rose Stratford

Substitute
Members: Councillor Trevor Stevens (In place of Councillor Diana Edwards)

Apologies for absence were received from Councillors Maurice Billington, Diana Edwards, James Macnamara and Christopher Pack

Officers: Jameson Bridgwater, Head of Development Control & Major Developments
Bob Duxbury, Development and Control Team Leader
Sue Christie, Solicitor
Alexa Coates, Senior Democratic and Scrutiny Officer
Paul Manning, Assistant Solicitor
Rebekah Neville, Trainee Planning Officer

81 **Urgent Business**

There was no urgent business.

82 **Minutes**

The Minutes of the meeting held on 20 October 2008 were approved as a correct record and signed by the Chairman.

83 **Land at Tramway Road Banbury**

The Committee considered a report of the Head of Development Control and Major Developments for the erection of a building for Class B1 office development with associated access and car and cycle parking.

The Committee were satisfied with the evidence presented by the Head of Development Control and Major Developments

Resolved

Following consideration of the Officers' report and presentation the committee resolved that application 08/01897/F be approved subject to the following conditions:

- (i) an amendment to the existing S106 agreement
- (ii) the following conditions
 1. SC 1.4A
 2. That the following materials will be used in the construction of the development hereby approved, as agreed through the discharge of Condition 2 of 07/02639/F, unless otherwise agreed in writing by the Local Planning;
 - a. Ibstock brick, Berkshire Orange/Parham Red Blend for the external walls
 - b. Powder coated aluminium RAL 7024 for the windows and curtain walling
 - c. Bath wet cast fine etch masonry for the portico and curtain walling
 - d. Marley Edgemere Eternite Thrutone Slate for the roof
 - e. Marshalls Tegular Concrete Sett Paving for the external surfaces.
 - f. Tarmac with granite setts on the car park.
 - RC4
 3. That the finished floor levels of the building, shall be built in accordance with plan no. 100 'Site Layout' which shows the floor levels in relation to the existing ground levels on site which was submitted to the Local Planning Authority 29 October 2008 with the agents email dated 29 October 2008. (RC7)
 4. That the landscaping of the site be carried out in accordance with drawing nos. 002A 'External Works Construction Details' and 004A 'Proposed Planting Plan' as received by the Local Planning Authority on 13 October 2008 with the agents letter dated 10 October 2008.(RC10)
 5. SC 3.1 (RC10)
 6. SC 4.0AA (RC13B) 'construction' 'building'
 7. SC 4.13CC (RC13B)
 8. SC 4.14D (RC66)
 9. SC 8.13 (RC80)
 10. SC 8.14 (RC81)
 11. That the building shall be used only as offices falling within Class B1 (a) of the Town and Country Planning (Use Classes) Order 1987 (as amended 2006) and for no other purposes whatsoever including any other use falling within Class B1. Reason: In order to maintain the character of the area and safeguard the amenities of the occupants of the adjoining premises in accordance with Policy G2 of the Oxfordshire Structure Plan 2016.
 12. The cycle parking provision hereby approved shall be provided on site prior to the first use of the development hereby permitted and shall thereafter be retained and maintained for the parking of cycles in connection with the development. Reason: In the interests of sustainability and to ensure a satisfactory form of development, in accordance with Policies G1 and T1 of the Oxfordshire Structure Plan 2016.
 13. That full details of the enclosures along all boundaries and within the site shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The approved enclosures shall be

erected prior to the building first being brought into use. Reason: To ensure the satisfactory appearance of the completed development and to comply with Policy G2 of the Oxfordshire Structure Plan 2016 and Policy C28 of the adopted Cherwell Local Plan.

(**Note:** Councillor Colin Clarke declared a personal interest in this item as a member of Banbury Town Council

Councillor Alastair Milne-Home declared a personal interest in this item as a member of Banbury Town Council Planning Committee

Councillor George Reynolds declared a prejudicial interest in this item as a member of Oxfordshire County Council.)

84 **Ardley composting Site, Ashgrove Farm**

The Committee considered a report of the Head of Development Control and Major Developments for consultation on the erection and operation of an In-Vessel composting centre, comprising weighbridge, reception building, composting tunnels, officer/welfare facility, bio-filter and maturation pad.

The Committee discussed the noise and odour impact and were advised by the Head of Development Control and Major Developments that the recommendation that the committee raise no objection to the proposal was subject to the imposition of a condition relating to noise and odour impact.

Resolved

Following consideration of the Officers' report, written updates and presentation the committee resolved to raise no objection to application 08/01897/CM subject to the imposition of condition concerning hours of operation (proposes 0800-1800 Mon – Fri and 0800-1230 Saturday only – as current operation); landscaping; surface water drainage; dust suppression; maximum height of material stock piles; floodlighting appraisal; odour control system (including complaints process); noise complaints process; archaeological watching brief; no retailing compost.

(**Note:** Councillor Mrs Catherine Fulljames declared a prejudicial interest in this item as a member of Oxfordshire County Council Planning Committee

Councillor Michael Gibbard declared a prejudicial interest in this item as a member of Oxfordshire County Council Planning Committee

Councillor George Reynolds declared a prejudicial interest in this item as a member of Oxfordshire County Council Planning Committee

Councillor Lawrie Stratford declared a personal interest in this item as a member of Oxfordshire County Council.)

85 **Campsfield House, Kidlington**

The Committee considered a report of the Head of Development Control and Major Developments for the erection of a new multi-faith education workshop unit.

The Committee discussed the height of the buildings and Oxford Airport's comments relating to the impact on gaining radar in the future and concerns were expressed relating to the potential impact of the application on the greenbelt.

The Committee also discussed the potential facilities elsewhere and the need for improved facilities at Campsfield.

Resolved

Following consideration of the Officers' report and presentation the committee resolved that application 08/01942/F be approved subject to the following conditions:

- (i) the completion of departure procedures; and
- (ii) the following conditions:-
 1. SC 1.4 Full Duration Limit (3 years) (RC2)
 2. SC 2.0 Details of Matls and Ext Fns (RC4)
 3. SC 3.6 Reinforce Hedge (RC11) 'south'
 4. That no development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a scheme for landscaping the site which shall include:-

(a) details of the proposed tree and shrub planting including their species, number, sizes and positions, together with grass seeded/turfed areas,

Reason - In the interests of the visual amenities of the area, to ensure the creation of a pleasant environment for the development and to comply with Policies G2 and EN1 of the Oxfordshire Structure Plan 2016 and Policy C28 of the adopted Cherwell Local Plan.

5. SC 3.1 Impl Landsc Sch and Reqs (RC10)

86 **Decisions Subject to Various Requirements - Progress Report**

The Committee considered a report of the Head of Development Control and Major Developments updating members upon applications which they had authorised decisions upon, subject to various requirements.

Resolved

To accept the position statement.

87 **Appeals - Progress Report**

The Committee considered a report of the Head of Development Control and Major Developments updating Members upon applications which had been determined by the Council, where new appeals had been lodged, public inquires/hearings scheduled or appeal results received.

Resolved

To accept the position statement.

88 **Exclusion of the Public and Press**

that, in accordance with Section 100A(4) of Local Government Act 1972, the press and public be excluded from the meeting for the following item of business, on the grounds that they could involve the likely disclosure of exempt information as defined in paragraph 7 of Schedule 12A of that Act.

89 **Prosecution Proceedings - Progress Report**

The Committee considered a joint report of the Head of Development Control and Major Developments and the Head of Legal and Democratic Services relating to the progress upon authorised enforcement action and prosecution proceeding against authorised developments.

Resolved

To accept the position statement.

90

Petitions and Requests to Address the Meeting

There were none.

The meeting ended at 4.42 pm

Chairman:

Date:

Agenda Annex

CHERWELL DISTRICT COUNCIL

PLANNING COMMITTEE

11 December 2008

PLANNING APPLICATIONS INDEX

The Officer's recommendations are given at the end of the report on each application.

Members should get in touch with staff as soon as possible after receiving this agenda if they wish to have any further information on the applications.

Any responses to consultations, or information which has been received after the application report was finalised, will be reported at the meeting.

The individual reports normally only refer to the main topic policies in the Cherwell Local Plan that are appropriate to the proposal. However, there may be other policies in the Development Plan, or the Local Plan, or other national and local planning guidance that are material to the proposal but are not specifically referred to.

The reports also only include a summary of the planning issues received in consultee representations and statements submitted on an application. Full copies of the comments received are available for inspection by Members in advance of the meeting.

Legal, Health and Safety, Crime and Disorder, Sustainability and Equalities Implications

Any relevant matters pertaining to the specific applications are as set out in the individual reports.

Human Rights Implications

The recommendations in the reports may, if accepted, affect the human rights of individuals under Article 8 and Article 1 of the First Protocol of the European Convention on Human Rights. However, in all the circumstances relating to the development proposals, it is concluded that the recommendations are in accordance with the law and are necessary in a democratic society for the protection of the rights and freedom of others and are also necessary to control the use of property in the interest of the public.

Background Papers

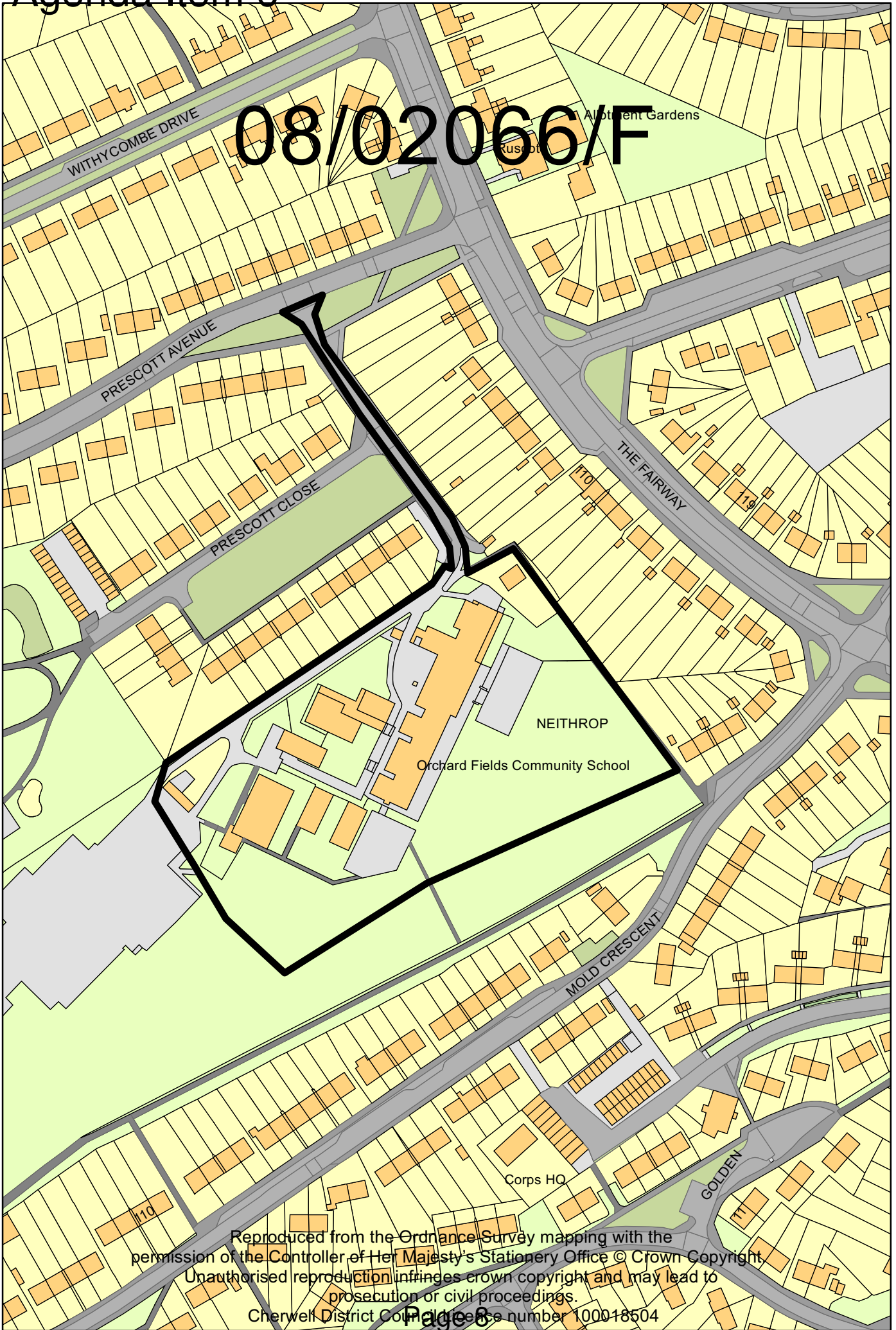
For each of the applications listed are: the application form; the accompanying certificates and plans and any other information provided by the applicant/agent; representations made by bodies or persons consulted on the application; any submissions supporting or objecting to the application; any decision notices or letters containing previous planning decisions relating to the application site.

Applications

Site	Application No.	Ward	Recommendation	Contact Officer
6 Formerly Neithrop County Primary Infants School, Prescott Close, Banbury	08/02066/F	Banbury: Ruscote	Approval	Caroline Roche
7 Manor Farm, Ardley Road, Middleton Stoney	08/02112/CM	Ambrosden and Chesterton	Approval	Tracey Morrisey
8 Land North of Willowbank Farm, Fewcott Road, Fritwell	08/02236/F	Caversfield	Approval	
9 Amenity Area At Sandford Green, Banbury	08/02292/CDC	Banbury: Ruscote	Approval	Rebekah Neville
10 Oxhay Farm, Mollington Road, Cropredy, Oxfordshire	06/01346/F	Cropredy	Refusal	Robert Duxbury

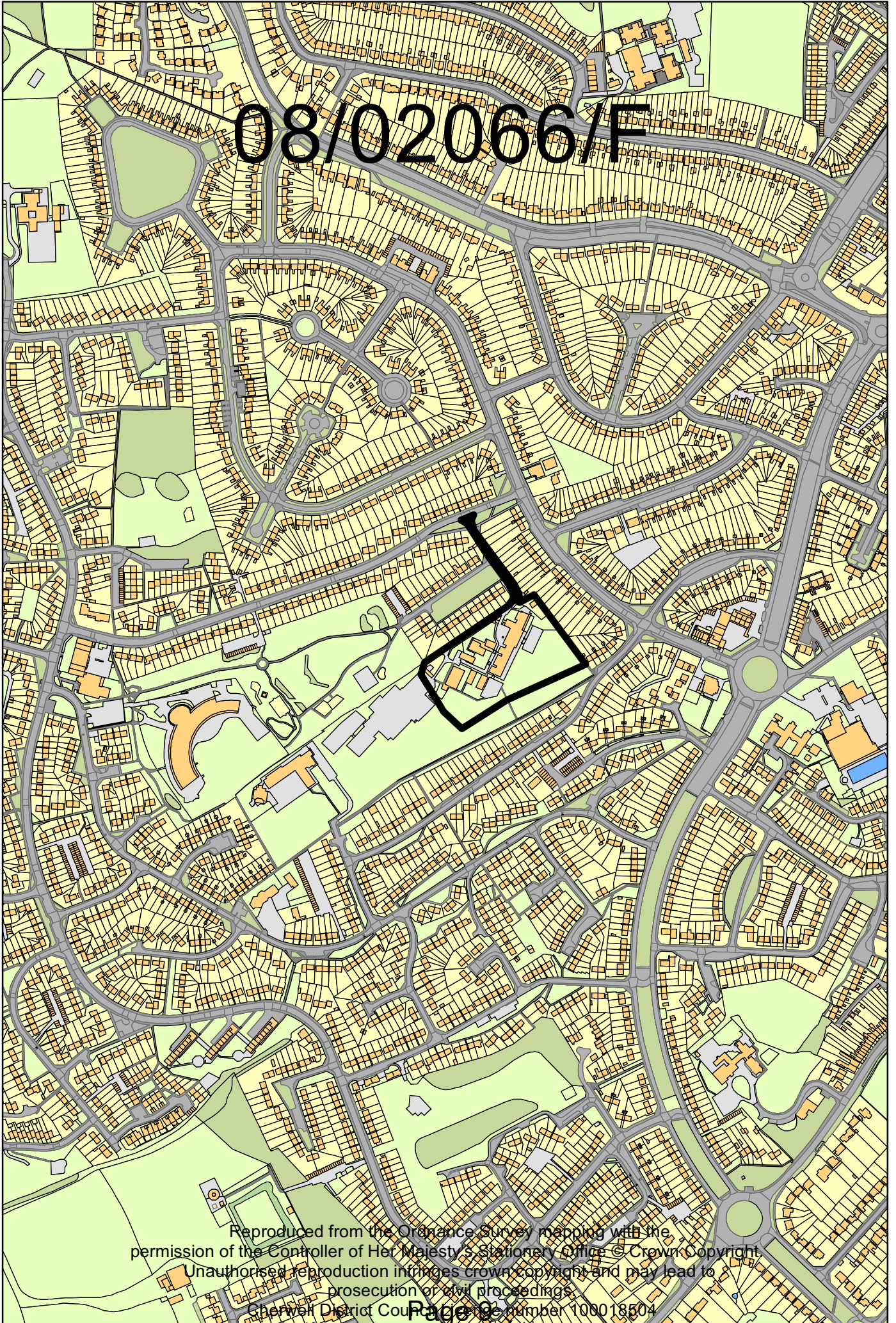
Agenda Item 6

08/02066/F



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08/02066/F



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Application No: 08/02066/F **Ward:** Banbury Ruscote

Date Valid: 29/09/08

Applicant: Oxfordshire Care Partnership

Site Address: Formerly Neithrop County Primary Infants School, Prescott Close, Banbury

Proposal: Construction of extra care block of 40 No. flats and 60 bed care home with associated gardens and 42 car parking spaces.

1. Site Description and Proposal

The site was previously occupied by Neithrop County Primary School, sometimes referred to as Orchard Fields. The site has a total area of 1.6 hectares. To the north west of the site are the rear gardens of the properties on Prescott Close, to the north east is a public footpath and the rear gardens of properties on The Fairway, to the south east is a strip of open space, public footpath and properties along Mold Crescent whilst to the south west is the open space.

The site itself is accessed from Prescott Close and slopes down considerably towards the south east. The original school buildings have all been demolished resulting in a large expanse of open space with areas of hard standing and foundations remaining on site. There are a number of trees on the site and along the entire boundary is a 2 metre high green palisade fence with some areas of hedging and trees that partially screen the site.

The proposal is for the construction of a block of 40 extra care flats and a 60 bed care home. The development consists of two independent buildings each of which will be 2 and 3 stories in height, making use of the sloping land levels. The proposal provides 42 parking spaces, garden areas and landscaping.

Relevant Planning History

04/01206/OUT – Outline, New residential development, including provision of access from Prescott Close. **Approved**

2. Application Publicity

The application has been advertised by way of a press notice, site notice and neighbour notification letters. The final date for third party comments on the application was 30 October 2008.

One letter has been received from a local resident. Issues that they raise include;

- Supporting new use of site
- Concern about conflict between the access to the site and residents parking on Prescott Close
- Residents currently park on either 'the green' or the access to the site. This may become problematic as a result of increased traffic into the site

3. Consultations

Banbury Town Council objects to the application. There is extreme concern about the lack of parking provision for this development especially bearing in mind the existing parking congestion experienced in Prescott Close. Although it is appreciated that this type of development could not contribute to the easing of these problems (rather than a private housing development) the provision appears to be totally inadequate, for staff, residents and visitors, especially at weekends. Parking on the access road would also seriously

hamper access for emergency vehicles.

The Local Highway Authority states that by the nature of the establishment the likely trip generation of the site will be mainly visitors and employees and this is likely to be mainly off peak. The B5 'Premium' bus route runs along The Fairway but to make bus travel more attractive to the home a bus stop is required near Prescott Close. The cost of creating one with a shelter is £8,000. In view of the likely low level of car trips in the peak hour is considered that a contribution of £8,000 to a bus stop with shelter is more appropriate than the normal DIDITS formulaic contribution.

No objections were raised subject to the inclusion of planning conditions.

The Council's Housing Officer supports the application and states that the mix of units and tenure is in line with the needs analysis.

The Council's Principal Engineer did object to the application in the absence of any information relating to dealing with surface water run off. However following the receipt of a FRA no objections are raised subject to the inclusion of planning conditions.

The Council's Landscape Planning Officer has made thorough comments about the proposal but concludes that;

- The layout plan needs to show the trees and hedges to be retained
- There needs to be more tree planting shown
- I have concerns about the location of the gardens for the residents and whether they will provide a usable sheltered space
- Screen planting to the houses on the NE boundary needs to be improved
- The entrance needs to be given more thought
- I note reference to the retaining wall. If it is to be over 1m high it should have a structural engineers calculation to prove it will work and be brick faced
- A detailed landscape plan should be produced by a suitably qualified person

The Head of Landscape and Leisure Services requested developer contributions to off site play equipment.

The Head of Health and Recreation did not object to the application and requested developer contributions to public art, community halls and indoor and outdoor sports.

The Environment Agency originally objected to the application as there was no Flood Risk Assessment submitted. However they have withdrawn their objection on the basis that a satisfactory Flood Risk Assessment was submitted and conditions can be included.

Thames Water raises no objections to the applications subject to the inclusion of conditions and informatives.

Thames Valley Police raises no objections but suggests the use of informatives.

4. Relevant Planning Policies

Oxfordshire Structure Plan 2016	-	Saved Policies	G2, T8
Adopted Cherwell Local Plan 1996	-	Saved Policies	H4, C28
Non-Statutory Cherwell Local Plan 2011	-	Policies	H6, TR5, TR11, D1

5. Appraisal

The application should be considered in terms of;

- the acceptability of the principle of development
- its impact on the character and appearance of the area
- its impact on the residential amenities of neighbouring properties, and
- highway safety.

History

The site has been the subject of a previous proposal for outline consent for residential development. The reuse of the old school site was linked with an overall package involving the creation of a new primary school on part of Princess Diana Park and the retention of some of the school site as open space. The residential application was in outline only therefore no details were ever submitted. However the site was included in the Urban Housing Potential Study 2005 which made an assessment of the potential of existing 'urban' areas to accommodate additional residential development. This study found that the site had a likely yield of 60 dwellings and a theoretical yield of 75 dwellings. This was based broadly on a suburban density of 45 dwellings per hectare but also took into account individual site characteristics. Therefore it is clear to see that outline consent for residential development could result in a high density development with large numbers of traffic movements.

Principle

This current application for extra care flats and care home by its nature is a less intensive use of the site. Policy H4 of the adopted Cherwell Local Plan states that the provision of housing schemes for the elderly and people with disabilities will be encouraged on sites within convenient reach of shops, community facilities and public transport. This site is relatively close to the town centre and is in easy reach of local facilities. The S106 also seeks to require a bus stop on an existing route. It is also relevant to note that one element of the accommodation provided is a care home from which it is unlikely that residents will leave the site to carry out daily activities. In this respect it is considered that the proposal complies with policy H4 of the adopted Cherwell Local Plan. Policy H6 of the Non-Statutory Cherwell Local Plan also reflects the above policy. PPS3 – Housing encourages development that makes efficient use of land, including re-use of previously developed land. It also encourages mixed communities which include housing for the elderly. Given these policies and the fact that the principle of residential development has been established it seems reasonable to suggest that the principle of a care home and extra care flats is an appropriate use for the site subject to other issues to be considered in the following paragraphs.

Character and Appearance

In terms of visual appearance the site is easily viewed from public footpaths surrounding the site. It is currently a large area of open space within an area built up by residential properties. A residential care home and extra care flats would not be out of place on this site in terms of character and land use. The design of the proposal is quite institutional but this is a result of the proposed use and the requirement for certain layout requirements. The buildings are largely two storey in height with some three storey elements which utilise the drop in land levels. Due to the span of the buildings the roof is quite large. Materials are proposed that will be in keeping with the surrounding area. However a condition of the consent requires that sample materials are submitted for approval. It is considered that the buildings will not cause harm to the character and appearance of the area.

Neighbouring Amenity

Whilst the proposal is a relatively large scale of development it is not considered to cause detriment to the living amenities of neighbouring properties. Many properties on Prescott Close and The Fairway have rear gardens backing onto the site. The minimum distance between any of the dwellings and the nearest point of the care home is 30 metres. Furthermore, no part of the proposed buildings directly back on to the rear of the dwellings. The parking area is largely centrally located in the site. This ensures that it is a sufficient distance from neighbouring gardens so as to not cause additional noise and disturbance. Given the orientation of the proposal, its layout and the way it utilises the sloping site it will not cause a significant level of overbearing, loss of light or loss of privacy.

There are gardens and areas of landscaping allocated as residents garden areas. Despite the likelihood of a new boundary fence being constructed these areas of garden will help integrate the development into the surrounding public open space. There are existing trees on the site, some of which will be retained. A full landscaping schedule to include existing and proposed planting is to be submitted as part of the condition of development. The issues raised by the Council's Landscape Planning Officer have been brought to the attention of the agent. In summary the applicant/agent is happy to cover a number of the issues through the submission of detailed landscaping plans as part of the conditions. It is also stated that the 8 trees referred to as being retained are outside the construction zone of the buildings therefore there is no intention to remove them, screening to the north east boundary will be addressed through the conditions, the siting of the buildings, gardens and the car park are in the most appropriate positions to meet the clients needs and to relocate the car park would result in more access road and less space for landscaping.

Given the above comments it is considered that the proposals comply with Policies G2 of the Oxfordshire Structure Plan and Policy C28 of the Cherwell Local Plan.

Highway Safety

In terms of highway safety the Local Highway Authority are of the opinion that sufficient parking is provided on site and due to the nature of the development it is recognised that the main flow of traffic will be from visitors and employees and largely during off peak times. This flow of traffic will also be partially eased by the fact that the access road (Prescott Close) will be widened. This was a condition of the previous consent and has been carried through to this proposal. This will mean that the road is wide enough for cars to pass in opposite directions. As with the previous scheme the road widening can be achieved without affecting the oak trees adjacent to the road. The Town Council has raised objections to the proposal based on their view that the proposal will not provide sufficient parking on the site and this may worsen the existing problems with vehicles being parked on the access road. However, given the nature of the proposal and the comments from the Local Highway Authority the proposal is considered not to have a detrimental impact on highway safety and therefore complies with Policy T8 of the Oxfordshire Structure Plan.

Developer Contributions

The proposal is of a scale that meets the threshold for requesting developer contributions. A Section 106 agreement was produced in relation to the previous scheme for residential development. However an entirely new one is required for this development as it is a different land use. The S106 seeks to secure highways contributions to the provision of a bus stop with a shelter, contributions for off site play equipment, contributions to public art, community halls and outdoor sports facilities and library contributions.

Members may be aware that the previous application for residential development secured contributions towards the provision of an off road parking area for the residents of Prescott Close. To date the developers have not been requested to provide this contribution. Officers are of the view that it is unreasonable to require this of the developer as the current proposal is likely to generate significantly less traffic than a high density residential scheme. The Town Council in their objections acknowledge that 'this type of development could not contribute to the easing of the problems (rather than a private development)'. Furthermore the proposal provides a sufficient level of parking on site and the developers are proposing to carry out the widening of the access road as previously considered.

In light of the above assessment it is recommended that this application be approved subject to the conditions set out below.

6. Recommendation

Approval subject to

i) The applicant entering into a Legal Agreement to secure highways contributions to the provision of a bus stop with a shelter, contributions for off site play equipment, contributions to public art, community halls and outdoor sports facilities and library contributions and the following conditions;

- 1) SC 1.4A (RC2)
- 2) SC 2.2A (RC4) 'bricks' 'care home and extra care flats'
- 3) SC 2.8 (RC4) 'render'
- 4) SC 2.2B(RC4) 'tiles/slates' 'care home and extra care flats'
- 5) SC 2.10 (RC7) 'care home and extra care flats'
- 6) SC 5.5A (RC4) 'windows and doors'
- 7) SC 3.0 (RC10)
- 8) SC 3.1 (RC10)
- 9) SC 3.4B (RC11) 'north-western' '2.5'
- 10) That full details of the enclosures along all boundaries of the site shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development, and such means of enclosure shall be erected prior to the first occupation of the care home or extra care flats whichever is the earliest. (RC12) Remove 'and proposed dwellings' from the reason.
- 11) That prior to the commencement of development on the site the existing access road to the site (Prescott Close) shall be widened in accordance with the details shown on plan No. 5003446/921/003/4110/A accompanying the application (as modified by the requirement to safeguard the health of the two oak trees) to a specification to be first submitted to and agreed in writing by the Local Planning Authority relating to phased road works to take account of construction vehicles and final completion. (RC14A)
- 12) SC 4.12A (RC14A) 'Car parking and internal access road'
- 13) SC 9.6 (RC87)
- 14) Development shall not begin until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed. The scheme shall also include details of how the scheme shall be maintained and managed after completion. Reason: To prevent the increased risk of flooding, to improve and protect water quality, improve habitat and amenity, and

ensure future maintenance of the drainage system.

- 15) Prior to the commencement of development approved by this planning permission (or such other date or stage in development as may be agreed in writing with the local planning authority), the following components of a scheme to deal with the risks associated with contamination of the site shall each be submitted to an approved, in writing, by the local planning authority:
1. A preliminary risk assessment which has identified:
 - All previous uses
 - Potential contaminants associated with those uses
 - A conceptual model of the site indicating sources, pathways and receptors
 - Potentially unacceptable risks arising from contamination at the site.
 2. A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
 3. The site investigation results and the detailed risk assessment (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
 4. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the express consent of the local planning authority. The scheme shall be implemented as approved.

Reason: The previous use of the site points to potential source of contamination, such as oil tanks used for heating. The proposed development sits on top of a minor aquifer and the ground water needs to be protected.

INFORMATIVES

- a) With regard to surface water drainage it is the responsibility of a developer to make proper provision for drainage to ground, water courses or a suitable sewer. In respect of surface water it is recommended that the applicant should ensure that the storm flows are attenuated or regulated into the receiving public network through on or off site storage. When it is proposed to connect to a combined sewer, the site drainage should be separate and combined at the final manhole nearest the boundary. Connections are not permitted for the removal of ground water. Where the developer proposes to discharge to a public sewer, prior approval from Thames Water Developer Services will be required. They can be contacted on 0845 850 2777.
- b) Thames Water would recommend that petrol/oil interceptors be fitted in all car parking/washing/repair facilities. Failure to enforce the effective use of petrol/oil interceptors could result in oil-polluting discharges entering local watercourses.
- c) Thames Water will aim to provide customers with a minimum pressure of 10m head (approx 1 bar) and a flow rate of 9 litres/minute at the point where it leaves Thames Water pipes. The developer should take account of this minimum pressure in the design of the proposed development.
- d) The Council's Engineer has suggested that it would be beneficial for the existing surface water drainage system to be retained as a high level overflow to the proposed SUDS.
- e) That the completed development shall comply with the Secured By Design

certification. For more information on this matter the developer should contact David Campbell, Crime Prevention Design Advisor, Thames Valley Police on 01869 364560.

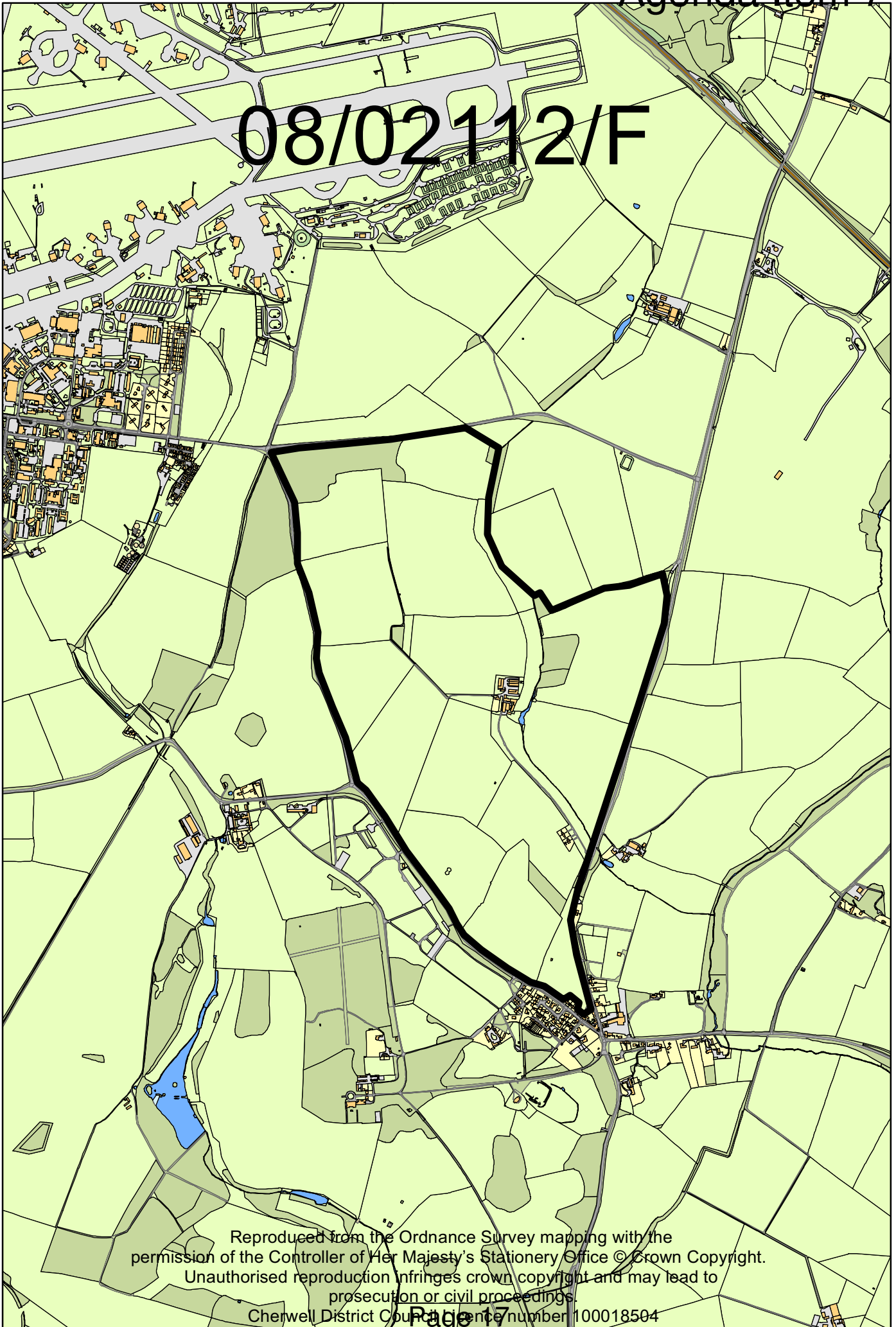
- f) Attention is drawn to a Legal Agreement related to this development or land which has been made pursuant to Section 106 of the Town and Country Planning Act 1990, Sections 111 and 139 of the Local Government Act 1972 and/or other enabling powers.

SUMMARY OF REASONS FOR THE GRANT OF PLANNING PERMISSION AND RELEVANT DEVELOPMENT PLAN POLICIES

The Council, as local planning authority, has determined this application in accordance with the development plan unless material considerations indicated otherwise. The development is considered to be acceptable on its planning merits as the proposal pays proper regard to the character and appearance of the site and surrounding area and has no undue adverse impact upon the residential amenities of neighbouring properties or highway safety. It also complies with the general ethos of PPS3 which seeks to make efficient use of previously developed land within settlements. As such the proposal is in accordance with PPS3, Policies G2 and T8 of the Oxfordshire Structure Plan 2016 and Policies C28 of the adopted Cherwell Local Plan. For the reasons given above and having proper regard to all other matters raised the Council considered that the application should be approved and planning permission granted subject to appropriate conditions as set out above.

Case Officer: Caroline Roche **Direct Dial:** 01295 221816

08/02112/F



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Application No: 08/02112/F Ward: Ambrosden & Chesterton Date Valid: 08.10.08

Applicant: Trustees of A Deeley d'cd, c/o Calcutt Farms, Radwell Grounds, Duns Tew Road, Hempton, Deddington, OX15 0QZ

Site Address: Manor Farm, Ardley Road, Middleton Stoney

Proposal: Erection of new grain store

1. Site Description and Proposal

This application relates to Manor Farm, a mixed farming activity comprising a holding of approx. 450 acres (182 ha.). The site is located to the north of Middleton Stoney and is accessed off the B430 Ardley Road. A large spinney screens the site from the easterly direction when viewed from the B430 and is some distance separated from the Heyford Road to the west. No public footpaths run through or close to the site.

Manor Farm includes a farmhouse, range of traditional stone and brick barns, Dutch barn style equivalents and a small grain store. Planning permission was recently granted for the conversion of the traditional buildings to the south of the proposed grain store to form 4 no. dwellings (07/02588/F refers).

Consent is sought for the erection of a purpose built and functionally suitable grain storage and drying building for the agricultural holding. In terms of its siting the building will replace a large open-fronted triple sectional building on the north side of the farm complex, and in terms of its function it will replace an existing grain store which is wholly inadequate in size and compliance with Farm Assured standards.

Measuring 36.5m (l) x 30m (w) x 10m (ridge height), the building will be constructed from steel stanchions with olive green vent air sheeting walls over concrete panels and natural fibre cement roof. The height of the building will be higher to allow for larger vehicles and machinery to tip up throughout the period prior to storage.

A separate fan room to the side of the grain store which will assist with the drying process of the cereals. The building will be sited on a concrete pad with a turning apron around the building.

2. Application Publicity

The application was advertised in the local press and a site notice was posted. No representations have been received.

3. Consultations

Oxfordshire County Council as Local Highway Authority raise no objection

Middleton Stoney Parish Council raise no objection

Environment Agency make no comment.

Agricultural Advisor finds that there is a genuine functional need for the proposed development, as the building will support the agricultural activities occurring at the farm and

will be constructed to comply with the Assured combinable Crops Scheme regulations that came into effect on 1st October 2008.

4. Relevant Planning Policies

Oxfordshire Structure Plan 2016	- Saved Policies	G2 and EN1
Adopted Cherwell Local Plan 1996	- Saved Policies	AG2, C7 and C28
Non-Statutory Cherwell Local Plan 2011	- Policies	EMP8 and EN34
National Government Guidance	- PPS7	Sustainable Development in Rural Areas

5. Appraisal

The key issues to be considered are:

- Essential need for the purposes of the holding
- Visual impact

When considering the acceptability of new agricultural buildings the fundamental issue is establishing whether there is a functional need for the building proposed and whether such proposals are necessitated by the need to comply with new environmental, hygiene and welfare legislation and the need for a building to be practical and functional.

Policy AG2 of the adopted Cherwell Local Plan and EMP8 of the Non-Statutory Cherwell Local Plan 2011 deal with the construction of farm buildings and seek to ensure that they are so sited that they do not intrude into the landscape and that materials chosen ensure that the development fits sympathetically into its rural landscape.

The Council's Agricultural adviser wholly supports the application on the basis that there is a genuine functional requirement for the building proposed as it would be required to support the agricultural activities occurring at Manor Farm.

The second issue of concern would be the visual impact of the building on the rural landscape. The building will replace a large open framed building of about 8m high which has a floor area of 828m² (this building serves no further functional need) and the overall proposal will result in an increase floor area of 264m². The building will be sited adjacent an existing large farm building and will be constructed in materials suitable for its rural context. No additional landscape requirements are considered necessary.

It is considered that the form, siting and construction materials proposed for the new grain store building will have a minimal impact upon the immediate and wider landscape and will be concealed from the wider public domain by the natural topography, trees and hedgerows and complies with the relevant development plan policies

6. Recommendation

It is therefore recommended that the application is approved subject to:

1. SC 1.4 Full Duration Limit (3 years) (RC2)
2. SC 2.0 Details of materials and finishes (RC4) – GRAIN STORE AND FAN ROOM
3. SC 8.5 Noise Emission Plant and Equipment (RC4)

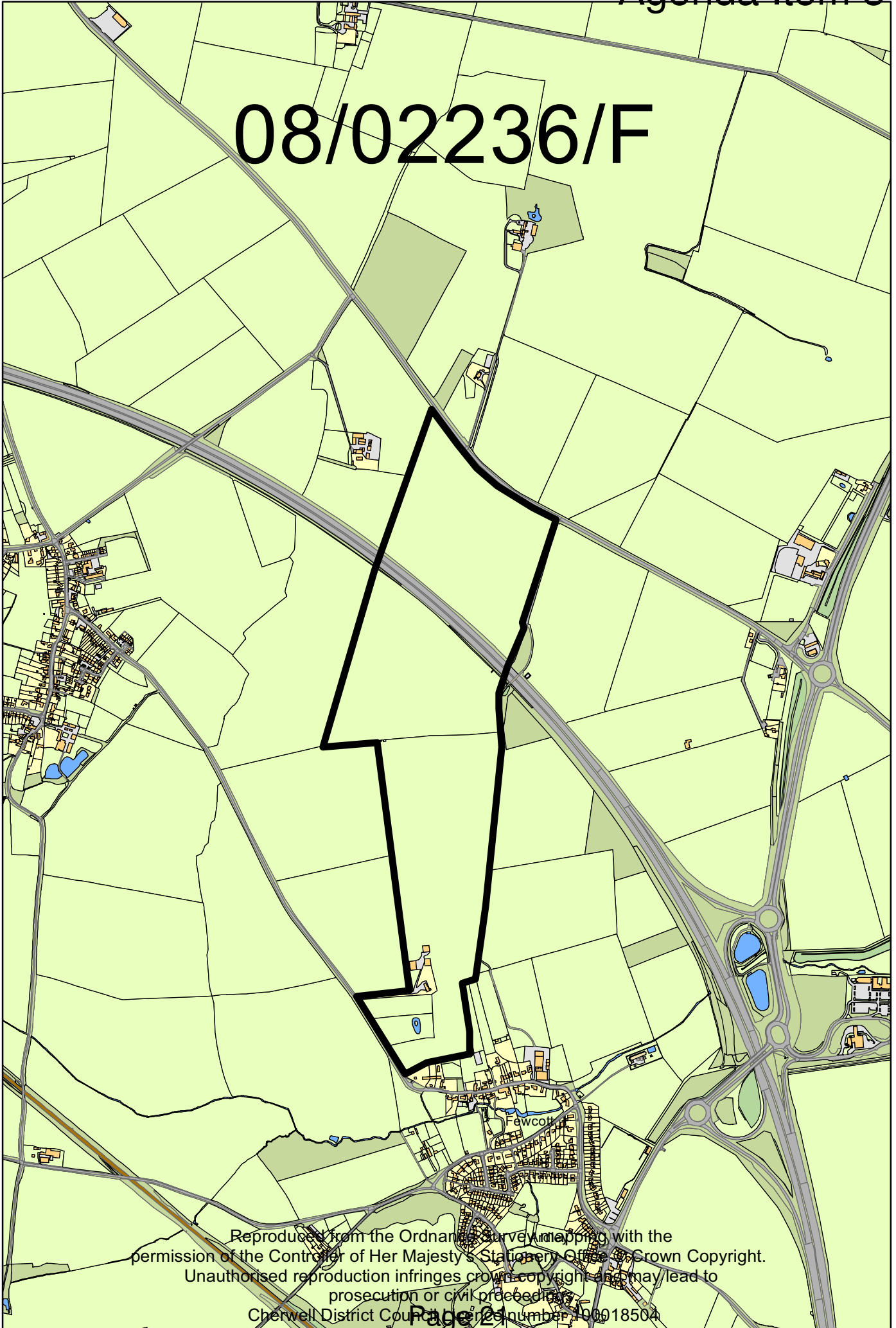
SUMMARY OF REASONS FOR THE GRANT OF PLANNING PERMISSION AND RELEVANT DEVELOPMENT PLAN POLICIES

The Council, as local planning authority, has determined this application in accordance with the development plan unless material considerations indicated otherwise. The development is considered to be acceptable on its planning merits as there is an essential functional agricultural need for the proposed building which will replace an existing, redundant building on the farm complex without resulting in a significant increase in its built form, which also fits sympathetically within the rural landscape. As such the proposal is in accordance with Policies G2 and EN1 of the Oxfordshire Structure Plan 2016 and saved Policies AG2, C7 and C28 of the adopted Cherwell Local Plan and Policies EMP8 and EN34 of the Non-Statutory Cherwell Local Plan 2011 and PPS7. For the reasons given above and having regard to all other matters raised, the Council considers that the application should be approved and planning permission granted subject to appropriate conditions, as set out above.

CONTACT OFFICER: Tracey Morrissey

TELEPHONE NO: 01295 221812

08/02236/F



Application No: 08/02236/F **Ward:** Caversfield

Date Valid: 21/10/08

Applicant: Bolsterstone Innovative Energy (Fewcott) Ltd

Site Address: Land North of Willowbank Farm, Fewcott Road, Fritwell

Proposal: Installation and operation of a Meteorological testing mast for the period of one year to evaluate wind resource

1. Site Description and Proposal

The site is within an agricultural field associated with Willowbank Farm near Fewcott. It is approximately 360m west of the M40 motorway and approximately 1.2km north of Fewcott village. The land is relatively flat and there are public footpaths and bridleways running in close proximity to the site.

The proposal is for the installation and operation of a meteorological testing mast for a period of one year. The mast has an overall height of 60 metres, is 20cm in diameter and is secured by guy wires made from stainless steel which span 60 metres. At the top of the mast are booms which hold the measuring instruments. The mast is secured into the ground using galvanised iron ground anchors. These anchors can be completely removed at the end of the consent period.

Access to the site is achieved via the existing farm access off the Fewcott Road.

2. Application Publicity

The application was advertised by way of a press notice and 6 site notices. These were displayed at the access to Willowbank Farm, the access to the footpath to the south east of Willowbank Farm, the access to the bridleway at the B4100, the access to the Bridleway opposite the village hall in Fritwell, the Parish notice board at the Post Office in Fritwell and the Parish notice board at Ardley and Fewcott village hall. The last day for comment on the application is 5 December 2008.

At the time of writing the report no comments had been received specifically in relation to the test mast. If any comments are received these will form part of an update at the Committee meeting.

Whilst this application is solely for the test mast its submission has overlapped with the developers carrying out public exhibitions relating to a potential wind farm on the site. This has led to the receipt of two letters expressing views on this potential future development. Although not directly relevant to this application one makes reference to this application number therefore should be reported. In summary the comments are as follows;

- Strong objection to wind turbines
- The area is becoming a dumping ground for quarries, incinerators, houses, wind turbines
- A turbine has been turned down at a house in Fewcott because it was near a footpath. If the turbines are approved they will all be close to footpaths
- They will be three stories high and a blot on the landscape
- The turbines will produce enough electricity for 5 and half thousand homes in Bicester, why not put them in Bicester. The conclusion has been reached that it is

better to upset a couple of hundred people in 2 villages than a few thousand in Bicester

- We're also surrounded by flyovers and motorway noise. Wind turbines are very noisy too
- There is no way that this project will supply enough energy to thousands of homes, there is insufficient wind at this site
- This is not the way to achieve targets of 10% of electrical energy to come from renewable sources – wind farms should be coastal, not inland
- The effect on wildlife has the potential to be overwhelming, especially to Bats
- The offer of a community fund to provide valuable services to the local community is derisory

3. Consultations

Ardley with Fewcott and Fritwell Parish Council's have not yet commented on the application.

The Local Highway Authority raises no objections.

The Council's Anti Social Behaviour Manager has no observations or objections.

The Council's Landscape Services Department has stated that the proposal is not within a designated area of High Landscape Value although it is within 1km of the conservation areas of Fritwell and Fewcott. Policy EN34 of the Non Statutory Cherwell Local Plan 2011 seeks to conserve and enhance the character and appearance of the landscape through the control of development. Proposals will not be permitted if they cause undue visual intrusion into the open countryside, are inconsistent with local character or harm the setting of settlements. A 60m high mast with guy ropes spreading to 60m diameter is not an insignificant structure albeit fairly light weight in density. However the permission is for one year only. On this basis and provided that we won't be setting a precedence for any future development on this site objections are not raised. Is it possible to condition that it be promptly removed at the end of the 12 month period?

Oxford Airport states that the mast as a temporary structure does not cause any problems to the airport currently. If longer term the mast becomes permanent, it must be noted that any future radar installation at the airport may be affected requiring an in depth safeguarding survey. This will be formally reassessed on receipt of a formal application.

The Defence Estates Safeguarding Team has written to request that the application is not taken forward until they have provided a full response to the proposal. It has been requested that this be submitted prior to committee.

4. Relevant Planning Policies

Oxfordshire Structure Plan 2016	- Saved Policies	EN1
Adopted Cherwell Local Plan 1996	- Saved Policies	C7
National Policy		PPS1, Delivering Sustainable Development PPS7, Sustainable Development in Rural Areas

5. Appraisal

The assessment of this application is based on the following criteria;

- The principle of the development and national policy
- Impact on residential properties
- Visual impact
- Highway safety

Principle and national policy

Government Planning Policy Statement 22 on renewable energy is supplemented by a companion guide, which provides detailed guidance on various renewable energy schemes. The issue of temporary monitoring masts is addressed in Technical Annex – Wind, Paragraph 32, which states:

“Assessing whether a particular site will harness wind power satisfactorily entails using historic meteorological data and information derived from anemometers placed on site. Anemometer masts are normally required for at least 12 months; the longer the measurements are taken the better the prediction will be. The measurements from anemometers help to determine whether or not a candidate site is suitable and, if it is, the measurements help to determine the best position for the wind turbines within the site’s boundary. The masts should be approximately as tall as the hub height of the planned turbine. However, often when the mast is erected it is not known either if the site is suitable for wind farming or which turbine type would be most suitable. Masts are usually 25-60 metres tall”.

This proposal is in accordance with this technical advice. Whilst it is acknowledged that the data from the monitoring equipment on the mast would inform the technical suitability of the site for the operation of wind turbines, any decision to grant temporary planning permission would not prejudice any decisions that the Council would subsequently make. Should an application be received for a wind farm on the site, this will need to be accompanied by an Environmental Impact Assessment and would be considered at that time on its individual merits, having regard to adopted policy and other material considerations.

The site falls within a safeguarded area where the Ministry of Defence should be consulted on proposals for tall structures. At the time of drafting the report no formal response had been received.

Residential Impact

There are no residential properties or other buildings in the immediate vicinity of the application site. The mast will be visible from residential properties but the structure itself will not cause any adverse impact on residential amenities as it is silent in nature.

Visual Impact

The main planning issue with the proposed wind monitoring mast is considered to be its visual impact on the rural landscape. The site is within an area of generally flat open countryside. Field boundaries are often marked with a variety of trees and hedging of

various heights. There are also existing manmade breaks in the skyline caused by two telephone masts, road bridges crossing the motorway and the motorway itself. The overall impression however is an expanse of countryside characterised by openness. It is accepted that the proposed mast will be clearly seen in the immediate vicinity of the site. However, it is the officers view that this proposal, due to the slimness of the pole and the wire rope guys, would not be unduly conspicuous in the rural landscape. There is a public footpath and bridleway which pass close to the proposed position of the mast, which would allow closer inspection, but the proposal would not obstruct the use of these routes. The mast is unlikely to be any more conspicuous than electricity pylons. It is considered therefore, that the impact of the proposal upon the wider rural landscape would not justify a refusal on visual amenity grounds. The proposal therefore complies with Policy EN1 of the Oxfordshire Structure Plan and Policy C7 of the adopted Cherwell Local Plan which seeks to restrict development that would cause demonstrable harm to the topography and character of the landscape.

Access

The Local Highway Authority raises no objections as the access to the site is considered to be appropriate and the structure itself will not cause harm to highway safety.

6. Recommendation

Approve, subject to the following conditions

1. SC 1.4A (RC2)
2. That the developer shall inform the Local Planning Authority, in writing, of the date of installation of the meteorological testing mast and that at the expiration of one year from the date of installation the mast shall be removed from the site and the land shall be restored to its former condition on or before that date. Reason To enable the Council to review the position at the expiration of the stated period, in order not to prejudice the consideration of future proposals for the land.

SUMMARY OF REASONS FOR THE GRANT OF PLANNING PERMISSION AND RELEVANT DEVELOPMENT PLAN POLICIES

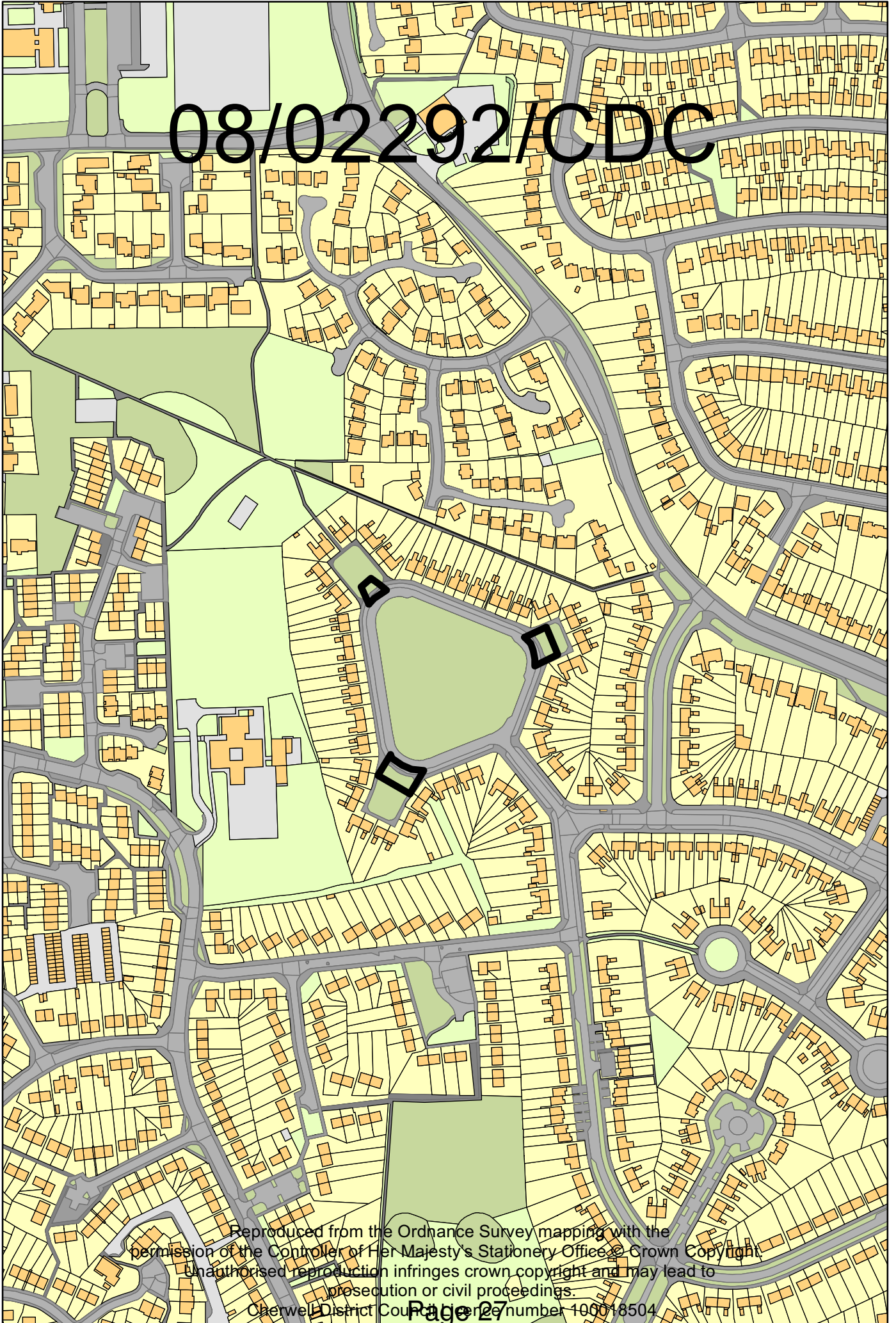
The Council, as local planning authority, has determined this application in accordance with the development plan unless material considerations indicated otherwise. The development is considered to be acceptable on its planning merits as the proposal pays proper regard to the character and appearance of the site and surrounding area and has no undue adverse impact upon the residential amenities of neighbouring properties or highway safety. It also complies with the technical guidance set out in the Companion Guide to PPS22. As such the proposal is in accordance with National Policy Guidance, Policies EN1 and T8 of the Oxfordshire Structure Plan 2016 and Policy C7 of the adopted Cherwell Local Plan. For the reasons given above and having proper regard to all other matters raised the Council considered that the application should be approved and planning permission granted subject to appropriate conditions as set out above.

Agenda Item 9

08/02292/CDC



08/02292/CDC



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Application No: 08/02292/CDC Ward: Banbury Ruscote Date Valid: 28.10.2008

Applicant: Cherwell District Council

Site Address: Amenity Area At Sandford Green, Banbury

Proposal: Change of use of open space to car parking

1. Site Description and Proposal

The proposal seeks consent for a change of use of part of the amenity area at Sandford Green, Banbury to parking for the residents. Sandford Green lies within the suburbs of Banbury, it does not lie within a Conservation Area, and there are no listed buildings, TPO trees or public footpaths within the vicinity of the site.

The proposal involves three elements of parking provision which would be positioned on the small grass areas in each corner, and includes the provision of a post and rail fence at each to prevent further encroachment on these amenity areas.

The plans indicate that 19 parking bays will be provided as a result of the proposal; 8 in the southwest area, 4 in the northwest area and 7 in the east area. These will include the provision of 3 disabled parking spaces, 1 in each area.

There is existing parking on the west and south sides of the central amenity area, and approval was granted (08/00187/CDC) on 14 March 2008 for 16 additional spaces parallel to the road on the northeast and southeast side of the central amenity area. If this application is approved, it is the applicant's intention to implement both consents simultaneously.

2. Application Publicity

The application was publicised by way of site notice, press notice and neighbour letter. The final date for comments was 11 December 2008

1 letter has objection has been received.

Material planning considerations:

- Detrimental impact on visual amenity

Non-material comments:

- Adverse affect of property value

3. Consultations

Awaiting comments from Oxfordshire County Council Highways

4. Relevant Planning Policies

Oxfordshire Structure Plan 2016 Saved Policies: G2 and T8

Adopted Cherwell Local Plan 1996 Saved Policy: C28

PPG 13: Transport

5. Appraisal

The proposal stands to be assessed mainly against issues relating to visual amenity and highway safety.

The three areas for proposed parking are currently grassed amenity areas but due to their condition it is clear that local residents use these areas for parking. Large ruts have been created, tyre marks are visible in the grass and there are mud patches where the grass has been worn.

With regard to the impact of the proposal upon visual amenity, the proposed parking areas would comprise a very small percentage of the amenity area. There is evidence that residents frequently use these grassed areas for the parking of vehicles, therefore it is not considered that the parking of a row of vehicles adjacent to the road (once the hardstanding has been laid) would be detrimental to visual amenity and furthermore the extent of the loss of amenity area would be minimal. It is considered that the proposal will be an environmental enhancement.

In terms of highway safety, we are awaiting comments from the Local Highway Authority and members will be provided with an update sheet with their relevant comments. However, the proposal is as a result of parking issues in this area and consequently designated parking areas will resolve this long standing problem for the residents.

Whilst the neighbour has stated that they feel the proposal will have a detrimental effect on the view from their property, it was noted during the site visit that cars currently park on the grass immediately outside this property and therefore it is considered that there will not be a significant detrimental impact as a result of the proposed development.

The proposal would have no serious impact upon neighbouring amenity in terms of loss of light or privacy.

Permeable concrete blocks to cover the parking areas are proposed, which will provide a sustainable drainage solution.

Given the above assessment, it is considered that the proposal would not cause undue harm to neighbouring or visual amenity, nor would it cause harm to highway safety. The proposal complies with the relevant development plan policies.

The application is brought before Members of the Committee due to the fact that Cherwell District Council is the applicant.

6. Recommendation

Approval; subject to conditions and any other deemed necessary by the Local Highway Authority.

1. S.C 1.4A (RC2) [Time]
2. S.C 4.13CC (RC13B) [Parking and Manoeuvring Area Retained]
3. That samples of the concrete block pavers to be used in the construction of the parking areas shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The development shall be carried out in accordance with the samples so approved. (RC4)
4. That three of the nineteen parking spaces shall be disabled parking spaces and be retained for the life of the development. Reason – In the interests of highway

safety and to comply with Government advice contained in PPG13: transport and Policy T8 of the Oxfordshire Structure Plan 2016.

Planning Note(s)

The applicant is advised that they may be required to enter into a Section 38 Agreement with the County Council in relation to the adoption of the parking spaces within the highway.

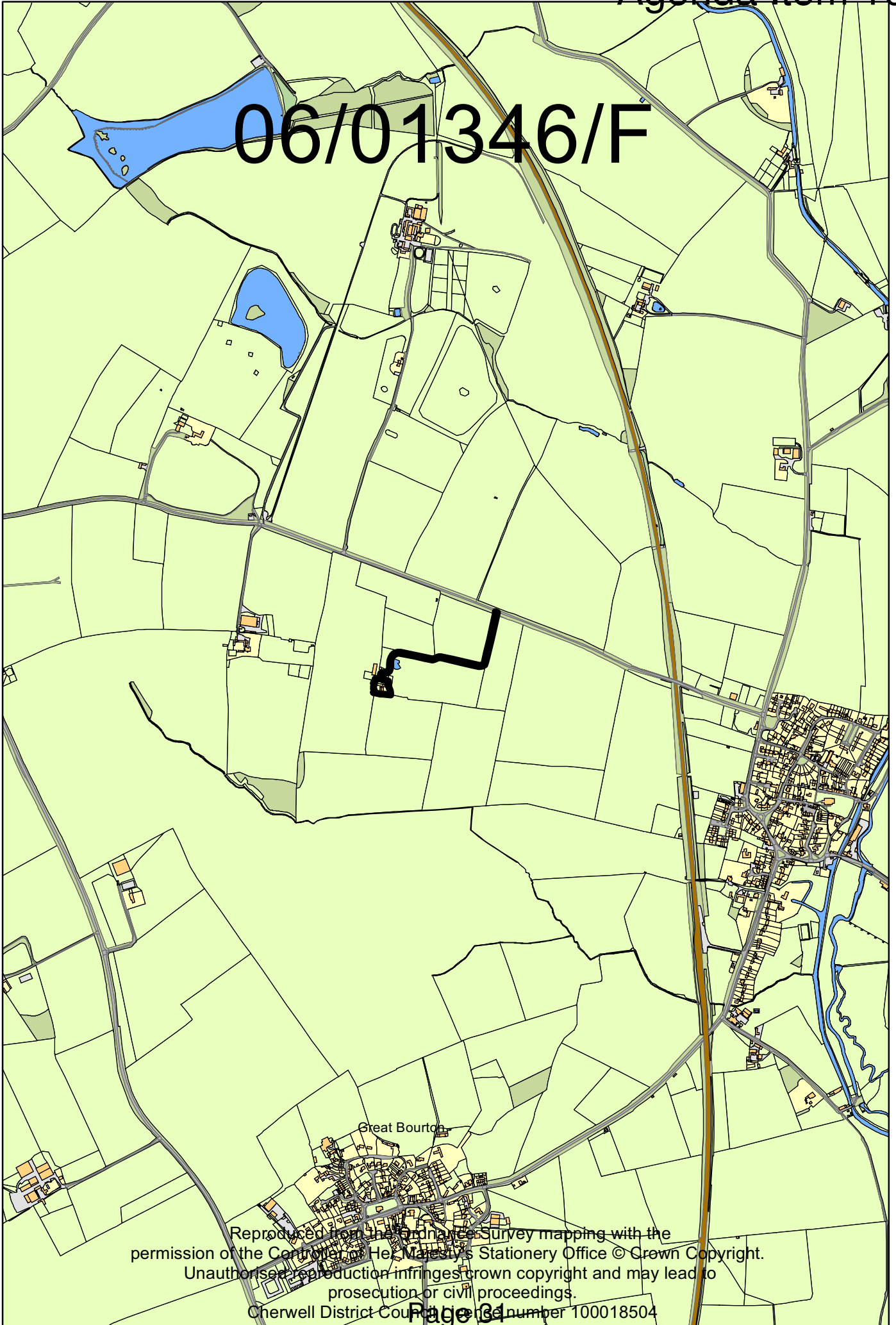
SUMMARY OF REASONS FOR THE GRANT OF PLANNING PERMISSION AND RELEVANT DEVELOPMENT PLAN POLICIES

The Council, as local planning authority, has determined this application in accordance with the development plan unless material considerations indicated otherwise. The development is considered to be acceptable on its planning merits as the proposal seeks to improve parking provision for the local residents and will not seriously harm the amenity of neighbouring properties or visual amenity of the locality. As such the proposal is in accordance with Policies G2 and T8 of the Oxfordshire Structure Plan 2016 and Policy C28 of the adopted Cherwell Local Plan. For the reasons given above and having proper regard to all other matters raised the Council considered that the application should be approved and planning permission granted subject to appropriate conditions as set out above.

CONTACT OFFICER: Rebekah Neville

TELEPHONE NO: 01295 221822

06/01346/F



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Application No: 06/01346/F Ward: Cropredy

Date Valid: 06/07/06

Site Address: Oxhay Farm, Mollington Road, Cropredy, Oxfordshire

Applicant: Mr N Joyce C/o Berry Morris, 44 South Bar, Banbury, Oxon

Proposal: Replacement of existing dwelling and re-use of two small barns for further accommodation and garaging.

1. Site Description and Proposal

Oxhay Farm is a relatively small farm holding of some 26.14 ha (69.55 acres) which is located about 2 km to the west of the village of Cropredy and lies about 400 metres back from Oxhay Hill (Mollington Road). It consists of a series of small fields, a farmhouse and a number of outbuildings (located in the centre of the holding), and is served by a long access track from Oxhay Hill. The land slopes gently upwards in an east-west direction. The group of buildings sits comfortably in what may be regarded as a traditional agricultural landscape.

Oxhay Farm comprises the following: six tenanted fields totalling 26.141ha, one field of 2.017ha owned by the tenant, being a total of 28.158ha (69.55 acres), the two-bedroom farmhouse and a number of small barns, several of which are attached to the house. The house is centrally located within the farm and is accessed from Mollington Road (Oxhay Hill).

The ground floor of the farmhouse comprises an entrance porch and bathroom within a single-storey front extension, kitchen and living room. The first floor has two double bedrooms. Attached to the house is a relatively long range of outbuildings, for the most part used as feed storage and to accommodate livestock. When the site was visited in the autumn, part of one of the buildings was also in use as temporary domestic storage.

The application site comprises an area surrounding the existing house, barns and outbuildings and has a width of between 25 and 35 metres with a depth averaging around 28 metres. The site also includes the existing vehicular access up to the public highway. The remainder of the existing farm area is now in the separate ownership of a third party, with the exception of the field which the tenant farmer owns with a frontage onto Mollington Road.

The proposal is for the construction of a replacement dwelling on the site of the existing and for the conversion of two adjacent farm building wings to create a 5 bedroomed house. The replacement dwelling would be of traditional design. It could be slightly taller than the existing (0.8 metres). Access would continue to be gained via the existing access road. The dwelling is not proposed as the farmhouse for the adjacent land.

2. Application Publicity

The application was advertised by means of a site notice.

No third party representations were received.

3. Consultations

Cropredy Parish Council – No objections.

Oxfordshire County Highways – No objections subject to conditions.

Warwickshire County Council (WCC) (acting as the Council's original agricultural consultant) – The consultation response received in July 2007 concluded that there was a functional need for the existing tenants to have full means of access to the land and the farming business requires the existing farm building accommodation in full to support the agricultural activities occurring on site. Coupled with this is the need for the farmhouse to provide the actual accommodation for key workers of Oxhay Farm.

In a separate letter to the agricultural advisors of the farming tenants, copied to all parties, the WCC states that the current dwelling is of a size commensurate with the size of the holding and not the requirements of the individual. The proposed development is far more substantial than the current size of dwelling and would be disproportionate to the farming operations.

Without either the right of access, or the farmhouse, WCC considers that the agricultural business would not be viable and certainly would not be in a position to function in any form through the sole use of the Dutch barn alone. Therefore WCC recommends that the application is not viewed in a positive manner as the farming operation would have to cease without the accommodation area provided through the buildings and farmhouse.

WCC wrote to the tenants' adviser on 7th September 2007, copied to the parties involved, including the Council's representative. The letter confirmed the opinion that the viability of Oxhay Farm as a working unit would be questionable if the farmhouse was removed and not available to the existing tenants and future farming occupants.

A further letter from WCC dated 3rd October 2007 was sent to the agents for the applicant in response to representations made by the latter and was again copied to the parties. The purpose of the letter and supplementary report was to provide clarification for the reasons behind the "functional need" element of the earlier report. (The representations on behalf of the applicant included an assurance that the tenants would be given full access to the land and remaining building upon relinquishing the remainder). WCC's further conclusions in this letter are as follows:

In accordance with the tests contained within Annex A of PPS7, there is clearly an existing established functional need for a farm dwelling; that the need for accommodation relates to a full-time employee and one who is currently employed in agriculture and that the business is financially sound. The letter continues:

"In addition, due to the livestock enterprise being the core to the farming business, it is critical that there is someone on site to deal with any emergencies to ensure minimal mortality losses and loss of business.

Without the farm dwelling and associated buildings, the business would not be viable and certainly would not be in a position to function in any form through the use of the Dutch barn alone.

Finally, the proposed accommodation for Oxhay Farm put forward by the applicant would be against Rural Planning Policy as it would not be commensurate to the farm holding and would be a size too large for the farming operations presently occurring and planned for the future.”

WCC received further representations from the agents acting on behalf of the applicant including an addendum farm management report and a statement from the applicant’s solicitors. WCC were requested, on behalf of this Council, to confirm whether or not these representations had resulted in any changes to their (WCC’s) previously expressed views.

The officer of WCC who had been acting in the capacity of consultee had in the meantime left the County Council to set up her own consultancy. In the interests of continuity, her services were engaged by the District Council specifically to clarify her position with regard to the representations made on behalf of the applicant. In a report of 4 July 2008 she states that her conclusions in her revised report of October 2007 still remain applicable and there is therefore a need for a farm dwelling in order to maintain and allow for future development of agricultural operations at Oxhay Farm. The agent for the tenants who was copied in to the correspondence and has sent a written response on these to the Council.

In the light of continued criticism of the advice give by our original consultant, and after taking expert legal advice the Council has sought further guidance on the agricultural matters. This latest guidance is attached in its entirety at Annex A.

Monson Engineering (building consultancy appointed by the Council) - In summary, it is considered that the structure of the building is considered to be in reasonable condition generally. However, it is strongly recommended that damp proofing and a number of maintenance and improvement items be carried out. (See HDC&MD’s assessment below)

Representations were received on behalf of the tenants of Oxhay Farm prior to the original determination of the application and subsequently.

The representations on behalf of the tenants following re-consultation make the following key points:

- The responses to the notice served on the tenants is a material planning consideration, since the granting of planning permission for a non-agricultural (dwelling) creates circumstances whereby possession of the property may be sought by the landlord under the provisions of the Agricultural Holdings Act 1986.
- The existing dwelling is commensurate to the scale of agricultural activities run from the holding. Although in need of repair and improvements, it is capable of being refurbished and replacement is unnecessary.
- The replacement dwelling is substantially larger than the existing.
- The application is fundamentally flawed when considered against PPS7 and Policy H18 of the NSCLP.

- The granting of planning permission may result in the tenants being displaced from their home, but remaining agricultural tenants, in which case there would be a need for a replacement farmhouse. This would need to be located within the field owned by the Hills which fronts onto Mollington Road. There would also be a need for replacement farm buildings. The cumulative effects on the character of the countryside should therefore be considered.

4. Relevant Planning Policies

PPS7: “Sustainable Development in Rural Areas” sets out the Government’s policies for achieving its objectives for rural areas In paragraph 9 (ii), local planning authorities are advised to strictly control new houses (including single dwellings) in the countryside and goes on in paragraph 10 to state that isolated houses in the countryside will require special justification for planning permission to be granted. Essential need for a worker to live permanently at or near the place of work could provide such special justification.

Saved Policies in the Oxfordshire Structure Plan 2016 (OSP) - Policy G2: Improving the quality and design of development. This is a general policy which states that all development should be of a scale and type appropriate to its surroundings and not cause harm to the character and amenities of the area.....Development which would have an unacceptable impact on the environment because of its nature, scale, location, or cumulative effects will not be permitted.

OSP – Policy G5: Development outside settlements advises that “all development should:

- a) be of a scale and type appropriate to the site and its surroundings, and not cause harm to the character and amenities of the area;
- b) incorporate a high quality of layout, design and landscaping; and
- c) be designed so as to reduce the need to travel and encourage the use of walking, cycling and public transport and telecommunications as alternatives to the car.

Development which would have an unacceptable impact on the environment because of its nature, scale, location or cumulative effects will not be permitted.”

OSP – Policy EN1: Landscape character states that “Local planning authorities will ensure that the proposals for development contribute to the protection, maintenance and, where possible, enhancement of Oxfordshire’s landscape character..... Development will be permitted only if it does not unacceptably damage the local landscape.”

Saved Policies in the Adopted Cherwell Local Plan (ACLP) 1996 Policy H17 - General Housing Policies. This states that the one-for-one replacement of an existing statutorily unfit or substandard dwelling will normally be permitted provided that

- the building is not a listed building capable of restoration or suitable for an appropriate alternative and beneficial use,
- in cases where the existing building lies outside the limits of an existing settlement, the use as a dwelling has not been abandoned and its proposed replacement is similar in scale and within the same cartilage

- the proposal meets the requirements of other policies in the plan.

The supporting justification, in paragraph 2.75, makes it clear that the protection of the character of the countryside will be a primary objective in all cases, and proposals for substantially larger and more conspicuous dwellings in the landscape will be resisted.

Policy H18 – New dwellings in the Countryside states that planning permission will only be granted for the construction of new dwellings beyond the built-up limits of settlements other than those identified under Policy H1 when

- (i) it is essential for agriculture or other existing undertakings, or
- (ii) the proposal meets the criteria set out in Policy H6 (relates to small-scale low cost housing) and
- (iii) the proposal would not conflict with other policies in this plan

Paragraph 2.76 of the ACLP advises that the intention of this policy is to ensure that the countryside is protected from sporadic development whilst, at the same time, recognising the legitimate needs of agriculture and forestry.

Policy H19 – Conversion of buildings in the Countryside. Generally supports the appropriate conversion of rural buildings.

1996 Policy C7 Landscape Conservation. This states that development will not normally be permitted if it would cause harm to the topography and character of the landscape.

The Non-Statutory Cherwell Local Plan 2011(NSCLP) – Approved as interim policy for development control purposes December 2004 - Policy H18. This relates specifically to replacement dwellings, as with the corresponding Policy H17 of the ACLP. It states that proposals for the one-for-one replacement of an existing statutorily unfit or substandard dwelling will be permitted providedits proposed replacement is similar in size and scale to the existing building and is situated within the same curtilage....

The reasoned justification in paragraph 3.148 is further strengthened compared with the adopted plan with the explicit sentence “The policy does not apply to dwellings which are not unfit or substandard”.

Policy H19 – New Dwellings in the Countryside – states that planning permission for new dwellings in the countryside will only be given when it is essential for agriculture or other undertakings in accordance with Policy H20 (Agricultural Workers Dwellings) or meets the criteria set out in Policy H8 (Affordable Housing).

Policy H22 - Conversion of Rural Buildings. This aims to encourage the conversion of traditional farm buildings whose usefulness has been replaced by modern farming methods. It seeks to prioritise employment re-use over residential conversion.

Policy EN34 – Landscape Character. Proposals will not be permitted if they would cause undue intrusion into the open countryside or otherwise harm the landscape.

The policies of the NSCLP are approved as interim policy. The contents of the Plan are up to date as of December 2004 and although they do not have development plan status, they are an important material consideration in the determination of this application.

5. Background to this Report

The application was previously considered under delegated powers (2006) and granted planning permission subject to conditions.

However, that decision was challenged in the High Court on behalf of the farm tenants on the following grounds:

- (a) The Council had failed to properly interpret and apply Policy H18 of the Cherwell Local Plan Revised Deposit Draft (September 2002) (approved as interim policy by the Council on 13 December 2004) which permits replacement dwellings when the existing dwelling is statutorily unfit or substandard and where the replacement is “similar in size and scale.” The reason for granting the permission referred, *inter alia*, to the proposal being in accordance with Policy H18 even though the replacement dwelling has five bedrooms as opposed to the current dwelling’s two and had a floor area three times more extensive than the current house.
- (b) The Council failed to acknowledge that the personal circumstances of the Applicants (Claimants) were material considerations.
- (c) The Council’s report did not consider the impact of the need for further agricultural buildings that would be required.

On 5th April 2007, the High Court (Queen’s Bench Division) issued an Order quashing the planning permission with no order as to costs. The Claimant and the Council agreed to the Order on these terms. This had the effect of the application being required to be re-considered, taking into account all material considerations, including those identified above which formed the basis of the High Court challenge.

At the outset, it needs to be made clear that the application is not for a replacement farmhouse and the proposed dwelling is intended for private occupation by the applicant, not by the present tenant with the remainder of the holding remaining as tenanted agricultural land and not therefore forming part of the application. The occupation of the existing farmhouse is not subject to a planning condition limiting occupation to a person or persons employed in agriculture or the dependants thereof, Oxhay Farm having existed since long before the advent of the Planning system.

A report on this application appeared on the Committee agenda for 7 August 2008 but was the subject to criticism by the solicitors acting for the applicants. I attach as Annex B the email received on 6 August 2008. In the light of that communication the Committee were advised to defer consideration of the application. Since that time further advice has been received.

6. HDC&MD's Assessment

This report sets out the assessment of the proposal in the context of the foregoing High Court Order. However, because the Council consented to the Order to quash the decision, based on legal advice, there was therefore no reasoned judgement. Expert legal advice to the Local Planning Authority was that the report on which the decision to grant planning permission was based was seriously flawed. It is accepted that all three grounds of challenge address material considerations and should now therefore together with all other material considerations be given consideration in reaching a recommendation on this application.

The proposal remains as previously considered in 2006, but additional consultations have been carried out with Warwickshire County Council as agricultural consultants to this Council, Monson Engineering who were commissioned to undertake an independent assessment of the condition of the existing farmhouse, and now with Reading Agricultural consultants. In re-considering the application, the previous officer reports remains as public documents.

The present report has been undertaken with regard to the grounds of the High Court challenge, to the consultation responses and to the representations received, both prior to the original consideration of the application and subsequently.

Because of the background to this application, the opportunity has been given to all interested parties to make comment upon consultee responses and further representations received.

The applicant has engaged the services of solicitors who have made detailed submissions in respect of what they consider to be material considerations. These are stated to be: 1. The planning history and in particular the original application, assessment and the decision thereto. 2. The condition of the property and related to this, whether it is unfit and/or substandard and the costs previously incurred and likely to be incurred in the future. 3. The existing tenancy. 4. The report undertaken by Warwickshire County Council with particular reference to the viability of the holding. 5. The scale of the proposed development.

These submissions will be considered in the assessment of the application. Before continuing with the assessment, the matter of the significance of the previous Council decision on this application requires addressing. The point is made on behalf the applicant that the validity or otherwise of the planning permission (which was quashed through a consent order) was never challenged. The quashed planning permission must therefore be material and carry weight, as should the original officer's report.

However, the Council, in agreeing to the consent order, acknowledged that the decision to grant permission, informed by the officer's report, was flawed. The case did not proceed to a hearing because of this, thereby saving the Council considerable cost. This has also meant that there is no detailed judgement and none of the three grounds of legal challenge have been subject to independent consideration. The planning permission has been quashed and this was not opposed by the applicant. The effect of this is that the application falls to be determined afresh.

The key issues in the consideration of the application (and having regard to the consent order to quash the grant of planning permission) and hence, in relation to the relevant local plan policies,

- whether the building is statutorily unfit or substandard and if so, whether satisfactory improvement works can be achieved to bring the dwelling to a reasonable standard
- whether the proposed dwelling is of a similar size and scale to the existing house
- Is there an essential need for the proposed dwelling (test against Policy H18 of the adopted local plan)
- how far the granting of planning permission would impact on the operation of Oxhay Farm and hence whether there would be a need for a replacement farmhouse.
- the personal circumstances of the tenant and his family.

Building Condition - When the application was submitted in July 2006, the basis for the proposal was set out in a supporting letter from the agents acting for the applicant. This stated that the existing farmhouse is in extremely poor condition and that attempts to rectify this have involved considerable sums to no effect. The letter states that it is seen as a false economy to retain a building which continually needs funding to keep it in reasonable order. This contention is supported by a building survey report accompanying the application. The report was commissioned "in order to ascertain what measures will be required to bring the building up to modern standards and in to a habitable state." The report concludes that extensive works are required in order to bring the property up to modern habitable standards complying with the latest Building Regulations and the extent of work necessary for compliance cannot be justified.

In response to this, the tenants commissioned a surveyor to report on the condition of the farmhouse. In summary, this considers that the property has considerable potential but some general repair and expenditure is required to improve the property to modern acceptable standards. The estimated cost of these repairs is between £8,000 and £10,000.

The original officer assessment came down in favour of demolition of the farmhouse, based on a judgement that the dwelling would need very extensive works to bring it to the higher modern standards of heating and insulation. There was an awareness that the Council had been involved in protracted proceedings with the applicant and tenant from as long ago as 1992, when the Council found the farmhouse to be "unfit" according to the legislation then prevailing, in response to complaints by the tenants. Various works have been undertaken, but these have not always proved successful and have often been the source of dispute between landlord and tenant as to what was the most appropriate work to be carried out. The Council continued to be actively involved until 1997 when it last carried out an inspection. After this the Council considered it was appropriate for outstanding matters to be being pursued through the tenancy. In 1999 of a Notice of Repair under the Agricultural Holdings Act 1986 on the owner. Although no further inspections were carried out , there remained correspondence on the Council's file until 2004

However, housing legislation has evolved since the initial involvement of the Council's Housing Department and the term "unfit" no longer applies. There is no longer a simple statutory minimum "fitness standard". The Housing Act 2004 has instead introduced a hazard rating system. Under this system, a dwelling should be able to supply the basic needs for the everyday life of the range of households who could normally be expected to live in a dwelling of that size and type. The dwelling should not contain any deficiency that might give rise to a hazard which interferes with, or puts at risk, the health or safety, or even the lives, of the occupants. Council officers use numbers to represent the likelihood of an occurrence as a result of a hazard and to represent the possible spread of harm. In this way a score is produced to reflect the inspecting officer's judgement as to the severity of a hazard. Only the highest scores justify demolition and there are various types of lesser enforcement action.

In the context of the current application, there are further surveys to consider. In July 2007, the applicant instructed a further condition survey "to assess the various shortcomings and lack of compliance with the current Building Regulations which are suitable yardsticks to assess whether or not (the property) can be described as sub-standard." The report found problems relating to the roof, walls, floors, windows, heating, wiring and energy efficiency. The building is stated to be sub-standard, due mainly to the method of its original construction and works subsequently carried out to attempt to mitigate the problems encountered by that method of construction.

In the light of this conflicting evidence the Council commissioned an independent condition report from Monson Engineering Ltd (see Consultations/representations above). This was completed in September 2007 and concludes that the structure of the building is considered to be in reasonable condition generally except for damp in the walls which should be treated. There are items of maintenance which should be carried out to reduce heat losses from the building and improvements made to the method of heating. The conclusion is that "The building is not statutorily unfit or substandard at present..."

Following the receipt of this independent assessment undertaken on behalf of the Council the applicant commissioned a response. This maintains that the extreme levels of dampness affecting lower walls, the lack of a proper heating system, lack of insulation in the roof and on the walls, old electrics, poor bathroom arrangement and kitchen requiring substantial alteration mean that repairs are not economically viable.

In December 2007, Monson made further observations, in particular with regard to the damp walls of the property. There is agreement with the conclusions of the applicant's consultants relating to the render and its effect on dampness and also with comments made concerning rising damp. It is concluded however that the majority of the damp issues could be cured if suitable solutions were to be applied. The works, if they had originally been carried out correctly, should not have cost an unreasonable amount in relation to the improvements achieved.

Monson consider that the quality of the work carried out at the property is not of a high standard and in the case of rendering, may have been counter-productive. Whilst the amount of money spent on the property over the years is considerable, it may not have been spent wisely.

From the evidence available, it is recognised that the house requires general modernisation notably in heating, insulation and damp-proofing. However, the same can be said of many such older dwellings and under a different set of circumstances, appropriate work might otherwise already have been carried out satisfactorily. From the evidence of the reports commissioned by the tenants and by the Council, the dwelling is capable of being brought up to a reasonable standard. The Council does not accept that Building Regulations are an appropriate measure of the fitness of the building because it is likely that only the most recently constructed houses will comply with them. The site visit undertaken on behalf of the Council revealed that the dwelling possesses some character, derived from its age and setting and would benefit in terms of comfort and convenience from appropriate and selective maintenance and improvements.

There is clearly a difference in approach between the surveyors as to condition of the property and the steps required to be taken. Monson's advice is that some maintenance and repair is required, rather than to the more costly and comprehensive works advocated on behalf of the applicant.

Scale of Proposed Dwelling – Consequently the HDCMD does not believe that the applicant can rely upon Policy H17 of the adopted Cherwell Local Plan. Notwithstanding the above discussion, the condition of the building is not necessarily pivotal, since even if it were to be considered to be substandard, the Council still has to look beyond this within Policy H17 of the ALP and Policies H18 and H19 of the NSCLP and to assess if the proposed replacement is similar in size and scale to the existing dwelling.

The previous officer report did not consider the proposal in relation to ALP Policies H17 and H18 and did not address the issue of size and scale. Nor did it consider NSLP Policy H19.

No existing floor plans, other than those of the older barns and an outline of the farmhouse are provided with the application, but the floor area of the farmhouse can be estimated from the outline of the building shown on plan and is approximately 102m². That of the proposed dwelling is in the region of 250m², an increase almost of 2^{1/2} times.

The accommodation of the existing farmhouse has been described earlier (2 bedrooms, kitchen, living room, bathroom).

The proposed dwelling would involve the demolition of the existing farmhouse and its replacement on a similar footprint at two storeys. The accommodation would comprise: ground floor - sitting room, study, hall, w.c. and porch; first floor - two bedrooms, bathroom and galleried landing at first floor. A family room, kitchen/breakfast room, store and utility would be formed from the larger part of the existing free-standing pens, connected to the remainder of the house by a glazed link. Additional accommodation is proposed by converting the existing attached barns into a dining area, three bedrooms and two bathrooms. More than half the accommodation would therefore be formed from the existing farm buildings. The present tenant has no need for such extensive accommodation and the previous service of notice to quit, together with the subdivision of ownership, clearly demonstrates that the proposal is not for a replacement farmhouse, but is intended as a private house with no agricultural connections.

The applicant has made the latter clear at all times. Since the replacement dwelling (new-build plus conversion) would be so much larger than the existing dwelling, it can be considered to be in conflict with ALP Policy H17 in that it is not sufficiently similar in scale to be a one-for-one replacement. It also conflicts with ALP Policy H18 in that it is a new dwelling which is not justified by any of the criteria in the policy. The same comments apply to Policies 18 and H19 of the NSCLP.

Assessment against Policy H18 of the adopted Cherwell Local Plan – Given the above conclusion, that the new dwelling cannot be classified as a replacement, it must therefore be assessed against Policy H18 of the adopted Local Plan. As noted elsewhere the applicants are specific in not putting the case that this is essential to agriculture or its occupation is intended to be unrelated to the use of the adjacent land. The proposal is therefore contrary to Policy H18 (and H19 of the NSCLP). Neither can it be classified as being a conversion (albeit that some of the new accommodation is created in that way) and therefore cannot benefit from the permissive policy elements of Policy H19 of the adopted Local Plan.

Impact of the granting of planning permission upon the operation of Oxhay Farm and the Personal Circumstances of the Tenants - The personal circumstances of the tenants were referred to as a material consideration in the Judicial Review claim. It is accepted that personal circumstances are capable of being a material planning consideration. In particular, the result of granting planning permission for the proposed dwelling would be to deprive the farm of buildings which are considered by the tenants as essential to the operation of the business. The inclusion of the access from the highway within the application site could also mean the loss of access rights to the tenant but this is denied by the applicants. The granting of planning permission may lead to a repeat of the service of notice to quit, as occurred when planning permission was granted last September. It is understood that the quashing of the decision led to the withdrawal of the notice. It has been made clear on behalf of the applicant that the tenancy on the remainder of the land comprising the farm would remain.

In Annex A it will be seen that Reading Agricultural Consultants (acting for the Council) have carefully weighed the comments received from our previous consultants and from agents acting for both the applicant (Mr Ewence) and the tenants (Mr Frampton). On page 6 of that Annex it will be seen that they form the view that:

- the proposed dwelling would not be related to the needs of the current agricultural tenants in any form;
- the brick farm buildings are not essential to the continuation of the existing farming operations;
- there is no certainty that the dwelling would be severed from the farmholding – as this is a matter ultimately for the Lands Tribunal;
- the existing farming enterprise is unlikely to require additional agricultural buildings;

- any replacement dwelling for the agricultural enterprise would depend on the needs scale and nature of the agricultural enterprise at the time of an application (and it is noted earlier in the text that it would be possible to continue the existing farm enterprise whilst (living off-site).
- The impact of any future development on the character of the landscape cannot be assessed until they are proposed.

The HDCMD considers that this recent assessment has carefully and fully assessed the issues and commends this advice to the Committee. As a consequence the recommendation below does not contain the previously advanced refusal reason related to operation of the farming enterprise or the possible impact of any future buildings upon the character of the landscape.

The personal circumstances of the tenants were not discussed in the previous delegated report, other than to refer to the representations made on behalf of the tenants. From the latter it appeared at that time that the proposed dwelling was for occupation by the tenant, although concern was expressed that it would be too large for the tenants' needs. However, the threat to the tenancy was also recognised by the tenants' professional advisers. The Agricultural Holdings Act 1986 gives agricultural tenants security of tenure by limiting the circumstances in which a landlord can recover possession. These circumstances are prescribed by the Act itself. One such circumstance is contained under Case B of Schedule 3 of the Act which enables a landlord to serve a Notice to Quit where it is ".....given on the ground that the land is required for a use, other than for agriculture, for which permission has been granted on an application made under the enactments relating to town and country planning." Thus a landlord may seek to recover possession from a sitting tenant through the granting of planning permission for a use of the land unconnected with agriculture. This is what occurred following the original granting of planning permission in September 2006. However, the High Court Order which quashed the permission rendered the Notice to Quit ineffective.

I attach as Annex C a letter from the tenants agent expressing their concerns about the impact of the granting of planning permission upon the agricultural tenancy. In the light of the most recent agricultural advice it would appear that farming operations could continue from a remote dwelling and without the need for further agricultural buildings.

7. Conclusion

The current proposal is for a new dwelling in the countryside to replace an existing smaller farmhouse. It is not required in connection with agriculture and is of much greater floor area than the existing dwelling. The existing dwelling is in need of investment to rectify a number of deficiencies due to its age and maintenance. However, an independent assessment considers that the property can be brought up to reasonable standards. and demolition is not therefore necessary or justified.

Although much of the proposed additional floorspace is intended to be formed by the conversion of existing farm buildings, this is still contrary to policy in terms of the comparative sizes of the current and proposed dwellings.

The essential need for a worker to live permanently at or near the place of work which could provide the special justification identified in PPS7 does not apply in the present case, since the proposed dwelling would have no agricultural connection. Similarly, ALP Policy H18 and NSLP Policy H19 states that new dwellings in the countryside will only be permitted when essential for agriculture or other existing undertakings. However, the proposed development is for residential occupation which is unconnected with the farm holding.

Members will be aware that a decision to refuse planning permission is subject to a right of appeal to the Planning Inspectorate, unlike an approval where the remedy may be through the judicial review process. In the present case, it is concluded that the proposed development is contrary to a number of planning policies. The recommended reasons for refusal are sound, clear-cut and related to the relevant planning policies and can be defended at appeal.

8. Recommendation

1. The existing dwelling is not regarded as being either statutorily unfit or substandard and is capable of being improved in terms of thermal insulation and resistance to damp without incurring excessive cost. Furthermore the proposed development would result in the replacement of the existing farmhouse by a dwelling having an overall floor area approximately two and a half times greater than the existing. The development would therefore be contrary to the provisions of Policy H17 of the Adopted Cherwell Local Plan 1996 and Policy H18 of the Non Statutory Cherwell Local Plan 2004.
2. The erection of an isolated new house in the countryside without any site-specific justification, such as being essential for the proper functioning of a viable agricultural holding, is contrary to the provisions of Planning Policy Statement 7 (PPS7): Sustainable Development in Rural Areas, to Policy H18 of the Cherwell Local Plan and to Policy H19 of the Non Statutory Cherwell Local Plan 2004.

Case Officer: Robert Duxbury **Direct Dial:** 01295 221821

Our Ref 4427
Your Ref 06/01346/F

14 November 2008

For the attention of Sue Christie

Cherwell District Council
Customer Service & Resources
Bodicote House
Bodicote
Banbury
Oxfordshire
OX15 4AA

Dear Ms Christie

Oxhay Farm, Mollington Road, Cropredy

Thank you for your letter of 9 October in relation to the application by Mr Joyce, the owner of the farmhouse, farm buildings and access at Oxhay Farm, to replace the existing dwelling and reuse two barns for further accommodation and garaging

I have read all the enclosures to your letter and those subsequently received on 7 November which comprise

- i) the draft Report to Committee prepared by the Tyler-Parkes Partnership,
- ii) reports by Charlotte Cox (then the Warwickshire County Land Agent) dated 18 July 2007 and 3 October 2007,
- iii) a report prepared on behalf of the applicant by Mike Ewence of Roy Gasson & Associates, dated September 2007, and addendum dated October 2007,
- iv) a report prepared on behalf of the applicant by Pritpal Singh-Swarn of Wright Hassall LLP, dated November 2007, including at Appendix 3, the Agricultural Tenancy Agreement dated 1 January 1982, and at Appendix 4, a letter from Needham & James LLP dated 27 September 2007,
- v) a letter on behalf of the tenant farmers from Humberts to the District Council, dated 1 June 2007,
- vi) a letter on behalf of the tenant farmers from Framptons to the District Council dated 1 June 2007,
- vii) the Consent Order of 5 April 2007 made pursuant to Judicial Review by the tenant farmers, Mr John Hill and Mr Tristan Hill,
- viii) relevant Local Plan policies

I have also seen a copy of the original permission for an identical application issued on 1 September 2006 and the accompanying Officer's Report of 31 August 2006. This decision was challenged in the High Court on behalf of the tenant farmers on the grounds that the Council

- i) had failed to properly to interpret and apply Policy H18 of the Non Statutory Cherwell Local Plan 2004 for replacement dwellings,

- ii) had failed to acknowledge that the personal circumstances of the claimants were material considerations, and
- iii) did not consider the impact of the need for further agricultural buildings that would be required

The High Court issued an Order quashing the permission and requiring the application to be reconsidered

A draft Report to Committee has been prepared by the Tyler-Parkes Partnership, recommending refusal for three reasons. You have asked for my opinion on whether the second reason for refusal is well-founded, particularly in the light of the doubt that has been cast by the applicant's advisors on the advice received from Charlotte Cox

This proposed reason for refusal states

"The proposed development would involve the incorporation of existing farm buildings into the proposed residential accommodation, resulting in a dwelling greatly in excess of the needs of the current agricultural tenants and the agricultural holding and in the loss of buildings which are essential to the continuation of the current agricultural operations. With the severance of the proposed dwelling from the farm holding, there could be a requirement for the construction of replacement agricultural buildings and replacement residential accommodation which would result in a proliferation of buildings, likely to be detrimental to the character of the landscape in the vicinity of the site. This would be contrary to the provisions of Policy G2 of the Oxfordshire Structure Plan 2016, to Policy C7 of the Adopted Cherwell Local Plan 1996 and Policy EN34 of the Non Statutory Cherwell Local Plan 2004."

For the sake of completeness, proposed reason for refusal no. 1 is that the proposal would be contrary to H17 of the adopted Local Plan 1996 and H18 of the Non Statutory Local Plan 2004 as the replacement would have a floor area two and half times greater than the existing dwelling, and the existing dwelling is not regarded as unfit or substandard

Proposed reason for refusal no. 3 is that the proposal would be contrary to PPS7, and to policies H18 and H19 of the Non Statutory Local Plan 2004 as there is no site-specific justification for the erection of an isolated new house in the countryside

As instructed, I concentrate my comments on the second proposed reason for refusal which relies heavily on the advice received from Charlotte Cox

Before examining this in further detail, however, I set out below the policies relied on in the proposed reason for refusal

Policy G2 of the Oxfordshire Structure Plan 2016 is entitled 'Improving the quality and design of development' and states that

"All development should,

- a) *be of a scale and type appropriate to the site and its surroundings, and not cause harm to the character and amenities of the area,*
- b) *incorporate a high quality of layout, design and landscaping, and*
- c) *be designed so as to reduce the need to travel and encourage the use of walking, cycling and public transport and telecommunications as alternatives to the car*

Development which would have an unacceptable impact on the environment because of its nature, scale, location or cumulative effects will not be permitted."

Policy C7 of the adopted Local Plan 1996 is entitled 'Landscape Conservation' and states that

"Development will not normally be permitted if it would cause demonstrable harm to the topography and character of the landscape."

Policy EN34 of the Non Statutory Local Plan 2004 is entitled 'Landscape Character' and states

"The Council will seek to conserve and enhance the character and appearance of the landscape through the control of development. Proposals will not be permitted if they would

- (i) cause undue visual intrusion into the open countryside,*
- (ii) cause undue harm to important natural landscape features and topography,*
- (iii) be inconsistent with local character,*
- (iv) harm the setting of settlements, buildings, structures or other landmark features,*
- (v) harm the historic value of the landscape "*

It seems to me that the key phrase within the second reason for refusal is *"with the severance of the proposed dwelling from the farm holding, there could be a requirement for the construction of replacement agricultural buildings and replacement residential accommodation"* There is, of course, no application currently before the Council for replacement farm buildings or a replacement farm house. In such circumstances, it is difficult to see how any harm on the landscape and open countryside can be assessed.

Both reports from Charlotte Cox explain that the basis of them is *"to investigate whether or not the unit is viable without the farm buildings and dwelling"* As I have not seen her instructions, I am not clear of the policy context in which she was asked to comment on the future viability of the farm holding should this application be approved.

Whilst Government policy is to encourage a sustainable, diverse and adaptable agricultural sector (see, for example, the fourth objective in the introduction to PPS7 and the Defra website which explains that it is the Government's policy to secure an environment in which a competitive and sustainable agricultural industry with a strong market focus can flourish), there is no policy at national or local level to maintain viable farm holdings per se.

In addition to one of the four key objectives mentioned above, PPS7 encourages local planning authorities to support development that delivers diverse and sustainable farming enterprises (paragraph 16 (i)). Paragraph 27 recognises the important and varied roles of agriculture, including the maintenance and management of the countryside and valued landscapes, and encourages local planning authorities to support development proposals that enable farming and farmers to

- "(i) become more competitive, sustainable and environmentally friendly,*
- (ii) adapt to new and changing markets,*
- (iii) comply with changing legislation and associated guidance,*
- (iv) diversify into new agricultural opportunities (e.g. renewable energy crops), or*
- (v) broaden their operations to 'add value' to their primary produce "*

However, the only reference in PPS7 to viable farm units is found in paragraph 8 of Annex A. This states that

"New permanent accommodation cannot be justified on agricultural grounds unless the farming enterprise is economically viable. A financial test is necessary for this purpose, and to provide evidence of the size of dwelling which the unit can sustain "

This guidance clearly refers only to proposals for new permanent agricultural dwellings. There is no policy at any level to protect the viability of existing farm holdings, primarily I suspect because all the forces that determine the viability of agricultural units (such as market conditions, agricultural legislation and personal decisions taken by individual farmers) lie outside the control of the planning system.

Irrespective of this policy vacuum - but for sake of completeness to assist your deliberations - I agree with Charlotte Cox from my reading of the papers that the holding would not be 'viable' without the house and buildings. I assume from her discussion and application of the tests in Annex A to PPS 7 that Charlotte Cox is using the word 'viable' primarily in its financial sense, equating it with the test of financial soundness applied to applications for new agricultural dwellings in paragraph 3 of Annex A.

However, there has been no evidence brought forward which indicates that the holding is currently financially viable and that this application would lead to a change in that status. I note that Mike Ewence requested a copy of the farm's accounts from the tenants' agents but these do not appear to have been provided to any party in this matter. In their place, Mike Ewence has estimated the likely profit or loss from the unit using standard farm management data. These show losses of about £8,500 at low stocking levels and £4,800 at average stocking levels (the latter should be increased to a loss of £5,400 as Mike Ewence has misquoted the average gross margin). Even using more up-to-date figures available since the report was compiled, standard data still show that an enterprise on this scale would be expected to be loss-making. The evidence available therefore suggests that the farm is probably not financially viable now in the sense used by Charlotte Cox in her report.

However, in fairness to Charlotte Cox, whilst she does not define her understanding of the word 'viable', she does discuss issues other than just financial by considering the future availability of access to the land, and the future availability of farm buildings and a dwelling. In a broad land use context, it must be the case that the farm is currently *operationally* viable in the sense that it has carried out agricultural operations on the land to acceptable standards (for otherwise I would have expected the landlord to have served a notice to quit on the grounds of bad husbandry) for nearly 27 years.

This application would not affect any of the farm access issues raised by Charlotte Cox in the first three paragraphs of her section 7.

The application would however remove the three traditional brick buildings from farm use. Charlotte Cox indicates that these provide livestock accommodation, fodder storage, implement storage and a workshop. However, Mike Ewence describes one of the buildings as "*full of household artefacts*" with no sign of recent use by any livestock, with the other two occupied by two Shetland ponies and by a sick ewe and some orphan lambs.

Whichever description is correct, the farm would be left with a single modern Dutch barn which extends to five bays and a floor area of 300m² (and a volume of 3,000m³). Charlotte Cox indicates that this building would be inadequate on its own "*as the Hills are currently utilising to maximum capacity a larger floor area*". This is disputed by Mike Ewence's description of the traditional buildings and his indication that the Dutch barn was not used to full capacity at the time of his site visit in September 2007 (after a hay crop had been taken).

Neither party sets out a calculation of the building requirements for the existing enterprise. Standard farm management data (The Agricultural Budgeting and Costing Book, 67th edition, November 2008) indicates that large ewes and lambs need between 1.4 to 1.9m² of floor space (excluding internal feed passages). A flock of 120 ewes, if all lambed in one batch, would therefore require between 168 and 228m².

The other main use for the barn would be to store hay (machinery would be expected to be moved outside during the lambing season) on the assumption of 1kg/ewe/day, a flock of 120 ewes is likely to require 22 t of hay over a six-month period, or about 900 25kg bales. At 6-7m³/t, these will require up to 150m³ of storage or about 40m² if stacked to about 4m. During the peak lambing time, the existing Dutch barn should therefore be sufficient for the current needs of the enterprise.

It follows that a significant expansion of the flock or the introduction of additional livestock enterprises would be likely to give rise to a need for additional buildings, although there may be other options available (such as lambing in more than one batch or using straw bales for shelter) to reduce this need and cost.

The potential loss of the farmhouse is clearly a material consideration as it is the sole residence of the tenants. The loss would also undoubtedly disadvantage the farm enterprise as it is without question preferable to manage any livestock enterprise from on- rather than off-site in order to meet the welfare requirements of those animals. However, it would not be essential to live on site in order to manage a flock of 120 ewes, I am aware of many substantially larger flocks that have been successfully managed for many years without the provision of on-site accommodation for the shepherd, including a very well-established one of 1,400 ewes just along the road from our offices.

Therefore, given the evidence that the existing enterprise would have unhindered access to the land and remaining building, that the building is of sufficient size for the existing enterprise, and that it would not be essential to live on site to manage a flock of this size, I cannot agree with Charlotte Cox's conclusion that the business would not be able to function "in any form" just with the use of the land and the Dutch barn.

I also have difficulty in understanding why Charlotte Cox has been asked to consider a proposal for a new agricultural dwelling in the terms of Annex A to PPS7 and Policy H20 of the Non Statutory Local Plan 2011 when the application is for a replacement house in the countryside unrelated to agriculture and as such should be considered against Policy H18.

Charlotte Cox's application of the tests in Annex A to PPS7 - which are concerned solely with applications for new agricultural dwellings - to an existing agricultural business supported by an existing dwelling seems to me without foundation. There is no indication anywhere to suggest that these tests should be used to determine whether a dwelling should remain associated with an agricultural enterprise and, for all dwellings that were built before the introduction of the planning system (such as this one), there is no obligation to keep them available for agricultural workers.

In Charlotte Cox's view, the tests in paragraph 3 of Annex A are met but I fail to understand the relevance of these tests to this particular application. Again for the sake of completeness and your information, I agree with Mike Ewence that a functional need has not been demonstrated, the labour required to manage a unit of this size with this number of stock has been considerably overstated and that no evidence has been brought forward to demonstrate the financial soundness of the enterprise.

There is though a danger that this approach pre-appraises an application for a new agricultural dwelling on the land owned by Messrs Hill which has not been submitted and may never be submitted. In my view, it does not immediately follow that an application for a new agricultural dwelling on the Hills' land would be submitted if this application is granted permission.

It is certainly the case that the granting of permission would provide the opportunity for the landlord to serve a notice to quit where there would not otherwise be that opportunity and, given the landlord's previous actions, it is a reasonable assumption that this notice would be served. It is also a reasonable assumption that this notice will be challenged by the tenants. However, thereafter, it is unknown.

- i) if the notice would be upheld by the Agricultural Lands Tribunal,
- ii) if upheld, if the tenants would wish to continue farming the land or whether they would seek compensation for the loss of the tenancy,
- iii) if they would wish to farm the holding in an identical manner to present,
- iv) if the enterprise existing at that time (which may or may not be the same scale and nature to that presently existing) would require on-site accommodation or whether any supervisory needs could be met by other existing accommodation in the area,
- v) if the tenants would apply for permission for an agricultural dwelling on their own land and if that permission would be granted.

In my view, the proposed reason for refusal no 2 is not well-founded To dissect it

- i) the proposed dwelling would not be related to the needs of the current agricultural tenants in any form, let alone in excess of their needs,
- ii) the evidence suggests that the brick buildings are not essential to the continuation of the current agricultural operations,
- iii) there is no certainty that the dwelling would be severed from the remainder of the farm holding in terms of occupation as this would be a matter for the Agricultural Lands Tribunal,
- iv) the existing enterprise is unlikely to require additional agricultural buildings,
- v) any replacement residential accommodation will depend on the needs, scale and nature of the agricultural enterprise existing at the time of any application,
- vi) the impact of any future developments on the character of the landscape cannot be assessed before they are proposed

I hope these comments and observations are helpful

Yours sincerely

Alastair Field

ANNEX B

Bob Duxbury

From: Planning
Sent: 07 August 2008 08:44
To: Bob Duxbury
Cc: Carolyn Mangnall
Subject: FW: 06/01346/F Cropredy - Oxhay Farm Mollington Road Cropredy Oxfordshire - Update
Importance: High
Attachments: Oxhay farm final doc, mike ewence report pdf

From: Pritpal Singh-Swarn [mailto:Pritpal.Singh-Swarn@wrighthassall.co.uk]
Sent: 06 August 2008 19:52
To: Planning
Subject: 06/01346/F Cropredy - Oxhay Farm Mollington Road Cropredy Oxfordshire - Update
Importance: High

CONFIDENTIAL

<<Oxhay farm final doc>> <<mike ewence report pdf>>

06/07/06 Replacement of existing dwelling and re-use of two small barns for
 Local Sites

**Please place before members of the planning committee scheduled for the 7th
 August 4 pm.**

The product of

The site in connection with the above planning application scheduled to be heard
 by the Planning committee on the 7th August 2008 4pm

The purpose of this update, is to be viewed in two respects,

(i) provide expert evidence prepared by Mike Ewence, which appears not have been
 considered by the LPA in its assessment of this application, and

(ii) the nature of the report presented to the planning committee does not appear
 to reflect a fair and balanced view or show evidence of a reasonable assessment
 of the case put on behalf of the applicant. It would further appear that members
 have not been presented with all the information the LPA has had in its
 possession, to allow members to make a fair and fully informed balanced decision
 on this application.

The contents of this email and attachments are not further submissions but an
 update and clarification of the applicant's position. It is the writer's view
 that this has been necessary because the report before members does not appear to
 have fully reflected the case of the applicant.

Further Recommendations

This email is copied to the Chair and Vice-Chair of the planning committee with the following recommendations,

- (i) the planning committee defer the consideration of this application to properly consider the attached submissions (of which the applicant considers are vital as part of the decision making process and that members have the very basics i.e expert evidence and also a true analysis of the applicant's case), to enable a proper debate, and
- (ii) the planning committee to carry out a site visit and obtain a visual perception of the property in question

Reasons for Refusal

Members should note by way of update the following observations, which the applicant believes are not fairly reflective in the officer's report

In respect of reason for refusal 2 loss of buildings which are essential to the continuation of the current agricultural operations There has never been any evidence to come to this conclusion The applicant has engaged his own expert, who is highly regarded in the farming community and has never been able to conclude any support for the second reason for refusal

Members may be aware there is a history to this matter and that in part is set out in the planning officer's report Members are referred to the factual observations of the previous planning officer who dealt with the initial planning application,

Contrast to previous case officer's findings (i.e. **"not suitable for modern farming techniques"**)

Members should note it is wrong in planning law to assume there could be a requirement for a construction of a replacement accommodation and buildings There is no such application before members and there is no evidence submitted that there would be a proliferation of buildings (as alleged by the planning officer) It is not relevant to consider the impact of the need for further agricultural buildings that would be required (in the absence of any evidence), the planning authority appear to be clearly pre-empting the tenant to make a submission for new agricultural and residential buildings This should not form to be a reason for refusal

Member should note, the planning officer has it would appear provided only one side of the application of PPS7 (reference to which the applicant believes is flawed in any event) This is not an application or the justification to support a farming operation The established use of the land is in my view established residential and agricultural, with no farming ties or restrictions The land is therefore **not** exclusively agricultural

There is no change of use of the established residential aspect Emphasis on policy PPS7 is wrong, this is **NOT** a new house creating a new use Reference and application to PPS7 is both misleading and misconstrued and members are invited to take further expert advice on this point and are also invited to take into account the expert evidence submitted by Mike Ewence

Members are referred to the original assessment of this planning application and that assessment, there was never any mention of or reference to the Structure Plan or any policies contained within

reference to Structure plan is largely irrelevant, in context of this application. Reference to the Local Plan will reflect the legal position (section 51 of the Town and Country Planning Act 1990). This application should be viewed as an application for replacement of a one for one residential property incorporating some barns which were described by the original planning officer (appears to be supported by a senior planning officer or a line manager), as

" ..only worthy of very low key uses.The buildings are simple and falling into disrepair, as such are not likely to be suitable for more modern farming techniques"

Local Challenge

Members must be clear that merits or otherwise of the Judicial Review were not tested and it was agreed between the parties to remit the planning application back for reconsideration.

Members are invited to consider the submissions attached to this email.

In terms of the high court challenge there is differing legal views of whether the original planning officer's initial assessment was flawed on all accounts. As indicated this was never challenged or tested. The applicant or its legal advisors have never seen the expert legal advice to which this planning officer's report refers. However, members cannot simply ignore the previous findings by the original planning officer, these are material considerations and supported by case law.

Members must also note that the original assessment on the 31/08/06 by the planning officer and subsequently supported by the senior planning officer, were both of the view that,

" as such the dwelling can only be considered as a dwelling in the open country site in terms of relating it to planning policy. In this respect there is no assumption that the replacement dwelling must be commensurate with the size of the agricultural holding"

Members therefore need to ask the question what is so fundamentally different now than when the original planning officer assessed the application (which was also supported by the planning officer's line manager or a senior planner), two years ago, in the absence of any change of policy or circumstances.

Policy H19

Reference has been made to Policy H19. Members should be clear this application is not for a new dwelling in the countryside. This is a replacement for a one for one, including some barns. The facts are quite clear and this policy is irrelevant.

Expert Agricultural Evidence

Members are referred to the expert evidence of Mike Ewence, regarding viability and functional need. This report appears to be sidestepped and not mentioned in the body of the report prepared on behalf of WCC. It is very important that members do have sight of this report because it casts doubt on the evidence presented by the Council's expert. Put very simply, there is no evidence to substantiate the findings of the Council's expert. Members are therefore invited to also consider the attached report and question the basis upon which WCC has submitted its report. Members need to ask where is the evidence to substantiate the claim of viability and functional relationship. Certainly no accounts have been viewed, farming stock is questionable. Very strong evidence is required as set out in

PPs, The writer has set out reference to case law supporting the position and also Inspectorate decisions on appeal

Members need this evidence before a properly informed decision can be made

The planning officers appeared to have confused the whole issue with residential use and the farm holding. It is a fact that there is no agricultural tie. It is also a fact that the residential use and the farming element predates planning legislation. It is a fact this planning application is for a stand alone dwelling and the farming operation is separate and will continue.

Statutorily Unfit/Substandard

In terms of the condition of the property members must be aware the findings by the Council's own Environmental Health Dept, who throughout the history of the department's involvement, has considered the property substandard and not statutorily unfit. Even by the new ratings under the Housing Act 2004, a property could be unfit if it is not free from dampness. It appears the report is perhaps not providing members with all the necessary information that is set out in the Housing Act 2004. Members are invited to ask for further clarification on the relevant parts of the Housing Act before any decision is made on this application. Members are also invited to consider the assessment and application of the Hazardous Rating System under the 2004 in the attached assessment by the writer.

Material

Members are also invited to look at all the money that has been spent on the property hitherto. It is a material consideration and a very important one for members to understand that the applicant cannot simply carry on continuing to repair what its own Environmental Health dept considered unfit. A site visit is therefore imperative and members are urged not to make any decision without first making a site visit.

The report does not give members the vital information and supporting evidence to show how cases have been decided by other LPAs and by Inspectors on appeal. As indicated above there is a lack of evidence in the report commissioned through HCC, which flies in the face of all planning decisions on appeal in respect of larger farm holdings. Members must defer to look at this evidence before making an decision.

To conclude, the report is confusing in parts, appears not to properly apply the applicant's case and also has misinterpreted policy and not provided members with all the evidence/information for what is considered to be vital which members would need to consider, when making an informed decision.

Members are respectfully asked to endorse the above recommendations to give correct effect to the consideration of this application.

Regards

Pritpal Singh Swarn

Solicitor

Planning and Environment Team

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ANNEX C

Our Ref PJF/JF/PF/8391

29th November 2007

Mr H Gore
The Tyler Parkes Partnership
Centre Court
1301 Stratford Road
Hall Green
Birmingham
B28 9HH

Dear Mr Gore

**TOWN AND COUNTRY PLANNING ACT 1990
PLANNING APPLICATION FOR THE PROPOSED REPLACEMENT OF
EXISTING DWELLING AND RE-USE OF TWO SMALL BARNS FOR FURTHER
ACCOMMODATION AND GARAGING AT OXHAY FARM, MOLLINGTON
ROAD, CROPEDY, BANBURY
PLANNING APPLICATION REF 06/01346/F**

I refer to the enclosures provided by Mr Pritpal Singh-Swarn of Wright Hassall comprising a Supporting Statement dated November 2007, and a set of Appendices thereto

I make the following submissions on behalf of the agricultural tenants of Oxhay Farm, Messrs J C and T F Hill, in response

The planning relevance of the Agricultural Tenancy

Mr Singh-Swarn seeks to suggest that the existence of the agricultural tenancy is irrelevant within the planning process. That suggestion is misleading and incorrect. Messrs Hill commenced judicial review proceedings against the District Council on the basis of its failure to take account of the existence of the agricultural tenancy as a material consideration. The District Council submitted to a court order quashing its original decision so that the application could be properly re-determined.

Article 19 (i) of the Town and Country Planning General Development Procedure Order 1995 states

'A local planning authority shall in determining an application for planning permission take into account any representations made, where any notice of the application has been -

b) served on –

(i) *an owner of the land or a tenant of an agricultural holding under Article 6 '*

The agricultural tenancy is material to this application in the context that

A - the current position

- The agricultural tenants reside in the existing dwelling and use the farm buildings in connection with their agricultural business at Oxhay Farm
- The agricultural tenancy extends to the entirety of the holding, beyond the land included in the landlord's planning application. The tenancy of the farmland (the freehold of which has recently been transferred from the landlord to his sister) will remain whatever the outcome of the planning application
- Currently the landlord has no right to occupy the land which is the subject of his planning application. In his statement, Mr Singh-Swarn confirms that the landlord is intending to use any new dwelling for himself and his family. However, at present, and until such time as the agricultural tenancy is determined, the landlord has no right to possession and (in the event that planning permission is granted) no right to implement any permission
- It is therefore material to consider whether the proposed accommodation is commensurate to the agricultural holding because that is the current use of the land. The landlord's intentions, or otherwise, to operate any farming activity in the future are irrelevant. What is relevant is the current use of the land by the agricultural tenants in actual occupation

B – the impact of a grant of planning permission

- Under Case B of the Agricultural Holdings Act 1986, a landlord is entitled to recover possession for a use, other than for agriculture, for which planning permission is required. When the previous planning permission was granted, the landlord purported to serve a Notice to Quit on Messrs Hill to determine their tenancy of the farmhouse, buildings and access drive
- In the event that planning permission is granted, it is anticipated that the landlord would serve a further Notice to Quit on the tenants and seek to argue (again) that the grant entitles him to terminate their tenancy of the farmhouse and buildings. The landlord's right to recover possession would be determined by arbitration, but it is the grant of permission that would trigger the Notice to Quit
- If the landlord were successful in his argument, the tenants would be dispossessed of the farmhouse, land and buildings included in the landlord's application

- In such circumstances, there will be a requirement for
 - (i) a new farm dwelling (the proposed replacement dwelling is not of a size commensurate with the functional requirements of the agricultural holding),
 - (ii) replacement agricultural buildings to support the tenants' farming of the remainder of the holding (which, at present, comprises bare land), and
 - (iii) a new access from the farmland onto the highway

It would be entirely wrong for the District Council to determine this application without paying sufficient regard to (a) the existence of the present agricultural tenancy and (b) the future land use planning implications that would arise from the implementation of a planning permission for the proposed replacement dwelling. The potential land use planning consequences of a grant of planning permission on the agricultural tenancy are clearly material considerations.

Relevance of the Report of Ms Charlotte Cox

Charlotte Cox, as independent agricultural consultant to the District Council, is not being asked to consider whether there is a justification for a new agricultural dwelling. Ms Cox has properly considered the functional need for a farm dwelling in the context of this long established agricultural holding.

Mr Singh-Swam invites you to consider the 'viability' of the holding by reference to the provisions of The Agricultural Holding (Units of Production) (England) Order 2006 and 2007. In doing so, he uses the Orders entirely outside their appropriate statutory context. The Orders provide a basis, in the context of succession applications, for calculating whether a would-be agricultural tenant satisfies the "commercial unit occupation test" required to succeed to a tenancy under the Agricultural Holdings Act 1986. They are not intended to provide a general test of 'viability' and are irrelevant for planning purposes.

In contrast, Ms Cox has been instructed on behalf of the District Council to determine whether the holding would be viable as an agricultural unit without the farm buildings and dwelling. In making that assessment, Ms Cox has had regard to Standard Man Day requirements (which are an industry standard for assessing the requirement for a full-time agricultural worker on site) and to animal health and welfare legislation.

Ms Cox is very clear in her expert opinion that there is a continuing functional need for a dwelling to serve the existing agricultural enterprise. She finds that the holding is currently a viable agricultural unit but would cease to be viable without the dwelling and associated buildings.

Conclusion

The granting of planning permission for a replacement dwelling – of a size that is commensurate with the ‘established functional requirements’ – coupled with the imposition of an agricultural worker's occupancy condition, would secure the improvements to the domestic accommodation which the landlord accepts need to be undertaken, while ensuring that the dwelling is available to serve the agricultural holding

However, manifestly the provision of improved domestic accommodation for the tenants is not the underlying purpose of this application. This application is for -

- a replacement dwelling which is not similar in size and scale to the existing building (Policy H18)
- is unrelated to the needs of the agricultural holding
- may (in the event planning permission is granted and the landlord, in reliance on that permission, recovers possession of the holding) lead to a need to
 - provide a new farm dwelling
 - provide replacement farm buildings
 - provide replacement access from the highway

I submit that, on re-consideration of all the material planning considerations raised by this proposal, planning permission should be denied on the basis that the proposal is in conflict with the provisions of Policy H18

The proposed replacement dwelling is not ‘similar in size and scale to the existing building’. Fundamentally, in the absence of control over the existing property, the application can not establish that the proposal is a ‘one for one replacement’. The balance of probability – evidenced by the expert opinion of Ms Charlotte Cox - is that if the applicant secured possession of the existing dwelling, there would be a need for a second dwelling in the open countryside to serve the continuing agricultural need of the holding (as the tenants would remain in possession of the farmland). Furthermore there would be a requirement for replacement agricultural buildings arising directly from the loss of farm buildings in order to provide domestic accommodation unrelated to the farm.

In my submission planning permission should be refused for the sound and clear cut reason the proposal is contrary to Policy H18

Yours sincerely,

PP 

P J Frampton
(Signed in the absence to avoid delay)

cc Mr T Hill
Mr G Baddeley
Mr F Harrison-James
Mr D Chadwick
Mr P Singh-Swam



CHERWELL DISTRICT COUNCIL

PLANNING COMMITTEE

11 DECEMBER 2008

REPORT OF THE HEAD OF DEVELOPMENT CONTROL AND MAJOR DEVELOPMENTS

TREE PRESERVATION ORDER (NO 03) 2008
'APPLEGATE', EAST END, HOOK NORTON, OXFORDSHIRE, OX15 5LH

1 Introduction and Purpose of Report

- 1.1 The purpose of this report is to advise Members of an objection received to the above-mentioned Tree Preservation Order (TPO) and to seek approval to confirm the Order.

2 Wards Affected

- 2.1 Hook Norton.

3 Effect on Policy

- 3.1 Nil.

4 Contact Officer(s)

- 4.1 Jon Brewin (extension 1708).

5 Background

- 5.1 The Order relates to a silver birch tree located at 'Applegate', East End, Hook Norton (see plan attached at **Annex 1**). It was made on 9th October 2008 following submission of a Conservation Area Notification (a Section 211 Notice), reference 08/01995/TCA, advising the Council of their intent to fell 1 No silver birch tree. In order to prevent the removal of the silver birch, the Council had to serve Tree Preservation Order (No. 03) 2008.

6 Grounds of Objection and Support

- 6.1 A letter of objection has been received regarding this TPO from Mr J.B. Hamilton the current owner and resident of 'Applegate'. A copy of the letter has been included at **Annex 2** of this report. The letter received has been summarised below:

- 6.1.1 Letter from Mr J.B. Hamilton
- Two trees, very close to the tree in question were felled last. The tree in question is now exposed to prevailing winds.
 - Silver birch have shallow roots, leaving it more vulnerable to falling over in the direction of a neighbours property.
 - The tree is in the second half of its lifespan and therefore now would be an appropriate time to undertake replacement planting.

- There are concerns regarding the presence of Honey fungus in close proximity to the tree in question. One maple tree located in close proximity to the birch has recently been felled due to Honey fungus.
- Honey fungus is believed to be present on the site which, used to be an orchard. The fungus may survive in the soil for decades. The birch tree appears to have a less healthy canopy this year than last year and we have concerns that the tree is infected and may become dangerous as a result.

7 Comments of the Head of Urban and Rural Services and Head of Development Control and Major Developments

- 7.1 The primary purpose of a TPO is to protect trees whose removal would have a significant and detrimental impact on local amenity. This tree is considered to be an important feature in its immediate locality. The tree is visible to approximately 12 – 15 surrounding residential properties and from specific locations on East End / Station Road which runs through the village. The tree appears to be in good physiological and structural health with no evidence of infection by Honey fungus. A remaining stump, from a previously removed tree was noted close to the stem base of the birch. No evidence of Honey fungus was noted on this stump. The tree clearly has amenity value.
- 7.2 The Town and Country Planning Act (1990) does not define amenity. But, the TPO guidelines state that it is the Secretary of State's view that TPOs should be used to protect trees, if their removal would have a 'significant impact on the local environment and its enjoyment by the public'. In this case the tree is visible from a number of public and private places and its size age and maturity contribute significantly to the local environment including wildlife benefits.
- 7.3 If Honey fungus was in the future showing any evidence of infecting the tree and causes concerns regarding the trees physiological or structural condition then the advice of a qualified arborist should be sought.
- 7.4 The tree has been linked to a potential development application in which its removal may facilitate such a proposal. The removal of this tree would have a significant impact upon the local environment.
- 7.5 It is noted that this tree has an age classification of mature with a potential longevity of a further 20 – 40 years. However, it is not considered that the tree has yet reached the limit of its safe useful life expectancy. The Council's TPO evaluation form suggests a tree worthy of protection should have a minimum safe useful life expectancy of 10 years.
- 7.5.1 Although adjacent trees have been historically removed, there is no evidence to suggest that any damage has occurred to the tree as a result of any increased exposures. The tree will adapt to its environment and will develop reactionary growth in order to compensate for any significant or unusual stress loading. Should the tree have developed with a lean due to adjacent growth competition, then additional wood tissue will be laid down within the root system and throughout the stem and branch structure in order to compensate for any associated stresses. There is also no evidence to suggest that birch trees have a shallower rooting system compared to other species of trees.
- 7.6 As the tree is a mature specimen, then it would be good arboricultural practice to consider planting a replacement tree anyway regardless of the current issues. This would provide a level of continuity and uniformity within the local environment.

8 Risk Assessment, Financial Effects and Contribution to Efficiency Savings

- 8.1 The following details have been approved by Rosemary Watts (Risk) (Extension 1566) and Eric Meadows (Financial) (Extension 1552).
- 8.2 Risk assessment - The position relating to risk assessment is that the existence of a Tree Preservation Order does not remove the landowner's duty of care to ensure that such trees are structurally sound and pose no danger to passers by and/or adjacent property. The TPO legislation does contain provisions relating to payment of compensation by the Local Planning Authority in certain circumstances, but these relate to refusal of applications to carry out works under the Order, and no compensation is payable for loss or damage occurring before an application is made.
- 8.3 Financial effects - The cost of processing this Order can be contained within existing estimates.
- 8.4 Efficiency savings - none.

9 Recommendations

- 9.1 It is **RECOMMENDED** that after consideration of the objection, the comments of the Head of Urban & Rural Services and Head of Development Control and Major Developments the Tree Preservation Order (No.03) 2008 be confirmed.

Background Papers:

- (a) correspondence on File TT.440

COPY

Applegate
East End
Hook Norton
Oxon
OX15 5LH
29.08.08

Mr J Brewin
Arboriculture Officer
Bodicote
Banbury
Oxfordshire
OX15 4AA

Dear Mr Brewin

After giving more consideration to the felling of a Silver Birch tree in our garden, we would be very grateful if you would include the factors 'below' in the notification, together with the those in the original notification, as we are becoming more concerned about the safety of the tree.

- Two trees, very close to the tree in question, were felled last year. These trees provided protection against the prevailing winds, thus giving collective strength against them. The protection is therefore no longer there.
- As Silver Birch trees have shallow roots, we feel this tree, now being very exposed, is ever more vulnerable to falling over – possibly into a neighbour's garden which is the direction in which it is leaning.
- We realize that Silver Birch trees have a comparatively short life span. We understand from a previous owner of the property, that the trees were planted in the 1960's. This leads us to believe that the tree is in the 2nd half of its life. Now would be an appropriate time to plant a replacement tree.
- Several neighbours in this area of Hook Norton are very concerned about the presence of honey fungus in their gardens. Indeed, two weeks ago a large Maple tree, very close to the silver birch in question, has been felled due to honey fungus.
- Our garden used to be an apple orchard, hence the name 'Applegate'. We understand that honey fungus can be prevalent among fruit trees and can survive in the soil for many decades. The tree in question appears to have a less healthy canopy this year, and we are concerned that it may succumb to an attack of honey fungus in the near future, and become dangerous as a result.

The tree is situated at the bottom of a 'dead-end' lane and about 200 metres from the public highway. The immediate neighbours can see it. However it is only visible to the public in general, after a very careful and detailed study of the area.

Once again, thank you for your help in this matter

Yours sincerely

J.B.Hamilton

Agenda Item 12



CHERWELL DISTRICT COUNCIL

PLANNING COMMITTEE

11 DECEMBER 2008

REPORT OF THE HEAD OF DEVELOPMENT CONTROL AND MAJOR DEVELOPMENTS

**TREE PRESERVATION ORDER (NO. 4) 2008
ASH TREE AT LAND ADJACENT TO 60 TADMARTON ROAD, BLOXHAM**

1 Introduction and Purpose of Report

- 1.1 To seek the confirmation of an unopposed Tree Preservation Order relating to an ash tree at land adjacent to 60 Tadmarton Road, Bloxham (copy plan attached as Annex 1).

2 Wards Affected

- 2.1 Bloxham and Bodicote.

3 Effect on Policy

- 3.1 None.

4 Contact Officer(s)

- 4.1 Jon Brewin (Ext 1708),
Malcolm Saunders (1692).

5 Background

- 5.1 The Scheme of Reference and Delegation authorises the Head of Development Control and Major Developments or the Head of Urban and Rural Services to make Tree Preservation Orders under the provisions of Section 201 of the Town and Country Planning Act 1990, subject to there being reason to believe that the trees in question are under imminent threat and that their retention is expedient in the interests of amenity. The power to confirm Tree Preservation Orders remains with the Planning Committee.
- 5.2 The above mentioned Tree Preservation Order was authorised by the Head of Development Control and Major Developments and made on 14 October 2008. The statutory objection period has now expired and no objections were received to the Order.

6 Risk Assessment, Financial Effects and Contributions to Efficiency Savings

- 6.1 The following details have been approved by Rosemary Watts (Ext 1566) (Risk) and Eric Meadows (Ext 1552) (Financial).
- 6.2 Risk assessment – the existence of a Tree Preservation Order does not remove the landowner's duty of care to ensure that such trees are structurally sound and pose no

danger to passers by and/or adjacent property. The TPO legislation does contain provisions relating to payment of compensation by the Local Planning Authority in certain circumstances, but these relate to refusal of applications to carry out works under the Order and no compensation is payable for loss or damage occurring before an application is made.

6.3 Financial effects – the cost of processing the Order can be contained within existing estimates.

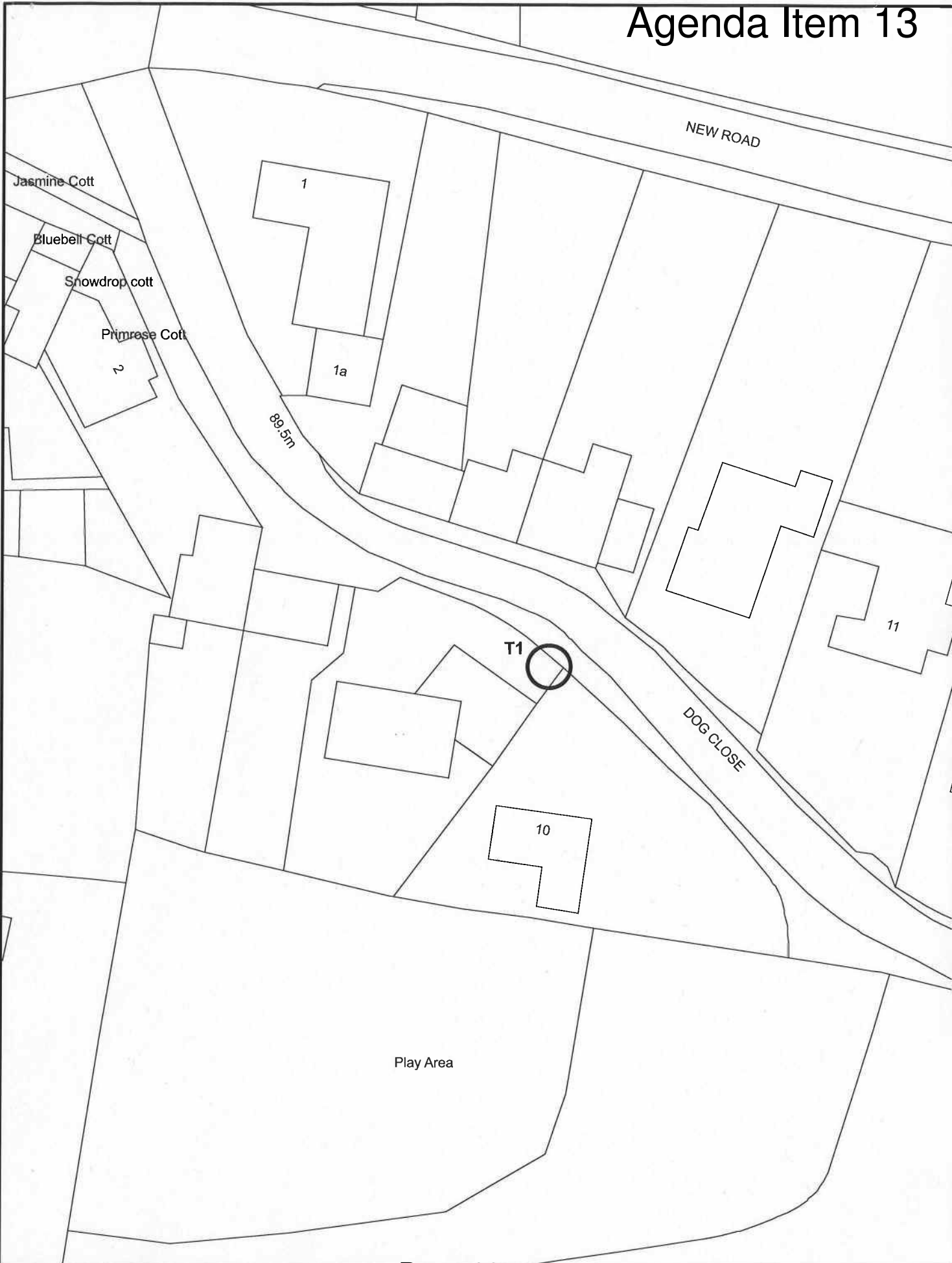
6.4 Efficiency savings – none.

7 Recommendation

7.1 It is RECOMMENDED that the Committee resolves to confirm the Order without modification.

Background Papers:

(a) TPO file reference TT.464



CHERWELL DISTRICT COUNCIL

PLANNING COMMITTEE

11 DECEMBER 2008

REPORT OF THE HEAD OF DEVELOPMENT CONTROL AND MAJOR DEVELOPMENTS

**TREE PRESERVATION ORDER (NO. 5) 2008
NORWAY MAPLE AT HERIOT HOUSE, 8 DOG CLOSE, ADDERBURY**

1 Introduction and Purpose of Report

- 1.1 To seek the confirmation of an unopposed Tree Preservation Order relating to a Norway maple at Heriot House, 8 Dog Close, Adderbury (copy plan attached as Annex 1).

2 Wards Affected

- 2.1 Adderbury.

3 Effect on Policy

- 3.1 None.

4 Contact Officer(s)

- 4.1 Jon Brewin (Ext 1708),
Malcolm Saunders (1692).

5 Background

- 5.1 The Scheme of Reference and Delegation authorises the Head of Development Control and Major Developments or the Head of Urban and Rural Services to make Tree Preservation Orders under the provisions of Section 201 of the Town and Country Planning Act 1990, subject to there being reason to believe that the trees in question are under imminent threat and that their retention is expedient in the interests of amenity. The power to confirm Tree Preservation Orders remains with the Planning Committee.
- 5.2 The above mentioned Tree Preservation Order was authorised by the Head of Development Control and Major Developments and made on 22 October 2008. The statutory objection period has now expired and no objections were received to the Order.

6 Risk Assessment, Financial Effects and Contributions to Efficiency Savings

- 6.1 The following details have been approved by Rosemary Watts (Ext 1566) (Risk) and Eric Meadows (Ext 1552) (Financial).
- 6.2 Risk assessment – the existence of a Tree Preservation Order does not remove the landowner's duty of care to ensure that such trees are structurally sound and pose no

danger to passers by and/or adjacent property. The TPO legislation does contain provisions relating to payment of compensation by the Local Planning Authority in certain circumstances, but these relate to refusal of applications to carry out works under the Order and no compensation is payable for loss or damage occurring before an application is made.

6.3 Financial effects – the cost of processing the Order can be contained within existing estimates.

6.4 Efficiency savings – none.

7 Recommendation

7.1 It is RECOMMENDED that the Committee resolves to confirm the Order without modification.

Background Papers:

(a) TPO file reference TT.465

Agenda Item 14

CHERWELL DISTRICT COUNCIL

PLANNING COMMITTEE

11 DECEMBER 2008

REPORT OF THE HEAD OF DEVELOPMENT CONTROL AND MAJOR DEVELOPMENTS

APPEALS – PROGRESS REPORT

1 Introduction and Purpose of Report

- 1.1 This is a standard report item, the aim of which is to keep Members informed upon applications which have been determined by the Council, where new appeals have been lodged, Public Inquiries/Hearings scheduled or appeal results received.
- 1.2 An update on any changes since the preparation of the report will be given.

2 Wards Affected

- 2.1 All wards in the District.

3 Effect on Policy

- 3.1 Nil.

4 Contact Officer(s)

- 4.1 R Duxbury (extension 1821)

5 New Appeals

- 5.1 08/00825/F – appeal by Mr & Mrs Trivizas against the refusal of planning permission for the garden awning to be retained at the Rock of Gibraltar Public House, Enslow Wharf, Station Road, Enslow – Written Reps
- 5.2 08/02041/F – appeal by M K Forrester against the refusal of planning permission for 1 no. two storey dwelling with car parking at 36 Lock Crescent Kidlington – Written Reps
- 5.3 08/01039/F – appeal by Mr Ian Brooke against the refusal of planning permission for extensions and change of use of existing building from 1 no. house and 1 no. flat to 4 no. houses 1no. flat at The Court House, 42 – 50 Crown Road, Kidlington – Written Reps
- 5.4 Enf 34/08 – appeal by North Oxfordshire Consortium against the service of an enforcement notice alleging a breach of planning control – continued use of land for vehicle storage, warehouse, offices and storage in yard at part of building 221, Heyford Park, Camp Road, Upper Heyford – Inquiry

- 5.5 Enf 32/08 – appeal by North Oxfordshire Consortium against the service of an enforcement notice alleging a breach of planning control – change of use of the land to B8 storage at Building 3053 at Heyford Park, Camp Road, Upper Heyford – Inquiry
- 5.6 Enf 36/08 – appeal by Horace G Walker against the service of an enforcement notice alleging a breach of planning control – change of use of the land from agriculture to mixed use at OS parcel 2300 and 4300 North West of St Mary’s Farm, Oxford Road, Adderbury – Written Repts
- 5.7 08/00609/ECOU – appeal by Mr D Morgan against the service of an enforcement notice alleging a breach of planning control – change of use of the land to use as part of the residential curtilage including storage of items and materials associated with the owner’s business at the Lone Barn, Stoke Lyne. – Hearing
- 5.8 08/00610/EBCON – appeal by Mr D Morgan against the service of an enforcement notice alleging a breach of planning control – breach of condition 3 of 01/01749/F in that the stables and tackroom appear to be used as a separate dwelling at Lone Barn, Stoke Lyne. - Hearing

6 Forthcoming Public Inquiries and Hearings between 11 December 2008 and 8 January 2009

- 6.1 None

7 Results

- 7.1 Inspectors appointed by the Secretary of State have:
- 7.2 Dismissed the appeal by Mr R Beale against the refusal of application 07/02641/F for the demolition of existing 3 bedroom detached dwelling and single storey garage, and construction of new three storey building to accommodate eight 1 bed flats and one 2 bed flat at 121 Buckingham Road, Bicester (Delegated) – The Inspector stated that “ given it’s proximity to the highway relative to adjacent and nearby buildings, the proposed development would compromise the spacious character of the area, views along the street would be dominated by the deep, flank walls of the flats projecting in front of neighbouring buildings.” and concluded that the appeal scheme would harm the character and appearance of the area. Although the Inspector did not share the Council’s concerns about outlook, concern was expressed about the impact of extending the drive beyond the existing garage and introducing car parking into the rear garden area. The activity associated with the parking and manoeuvring of seven cars in what is at present a quiet, green space would be likely to disturb the occupiers of 123 Buckingham Road. The consequent harm to living conditions would conflict with Policy C30 (iii) and reinforced the conclusion that the appeal should fail.
- 7.3 Dismissed the appeal by Mrs H Hunt against the refusal of application 08/00901/F for a two storey side extension at Windermere, Twyford Grove, Twyford (Delegated) – The Inspector considered the main issue to be the effect on the living conditions of the adjoining bungalow Mandalay and stated that an extension of the size and form proposed would appear overbearing and would significantly affect the light received at Mandalay. The overall effect would, be so harmful as to make the appeal proposal unacceptable in its present form.

- 7.4 Allowed the appeal by Mr & Mrs A Plant against the refusal of application 07/02627/F for a detached double garage at 7 Chaucer Close Bicester (Delegated) – The Inspector found that a garage in the position proposed would, in the event of the existing section of fence being removed, have less impact on the light entering the window in the flank wall of No. 8. Chaucer Close when compared with the existing situation and agreed with the Council that the imposition of a condition requiring the gap between the rear wall of the garage and the flank wall of no. 8 to be kept clear of all obstacles and obstructions, including fencing, at all times would be appropriate. In addition, the Inspector considered the neighbours concern's with regard to the potential damage to his property in the event of a vehicle being driven through the rear wall of the garage but concluded that eventuality highly unlikely.

8 Risk Assessment, Financial Effects and Contribution to Efficiency Savings

- 8.1 The following details have been approved by Eric Meadows (Ext 1552) (Financial) and Rosemary Watts (Ext 1566) (Risk)
- 8.2 Risk assessment – this is a monitoring report where no additional action is proposed. As such there are no risks from accepting the recommendation.
- 8.3 Financial effects – the cost of defending appeals can normally be met from within existing budgets. Where this is not possible a separate report is made to the Executive to consider the need for a supplementary revenue estimate.
- 8.4 Efficiency savings – there are no efficiency savings arising from this report.

9 Recommendations

- 9.1 It is **RECOMMENDED** that the Committee resolves to accept this position statement.

Background Papers:

All papers attached to the planning application files reported in this report.

CHERWELL DISTRICT COUNCIL

PLANNING COMMITTEE

11 DECEMBER 2008

REPORT OF THE HEAD OF DEVELOPMENT CONTROL AND MAJOR DEVELOPMENTS

DECISIONS SUBJECT TO VARIOUS REQUIREMENTS – PROGRESS REPORT

1 Introduction and Purpose of Report

- 1.1 This is a standard report item the aim of which is to keep Members informed upon applications which they have authorised decisions upon subject to various requirements which must be complied with prior to the issue of decisions.
- 1.2 An update on any changes since the preparation of the report will be given.

2 Wards Affected

- 2.1 All wards in the southern part of District.

3 Effect on Policy

- 3.1 Nil.

4 Contact Officer(s)

- 4.1 R Duxbury (Ext 1821).

5 The Committee to note that the following applications remain outstanding for the reasons stated:

5.1 Subject to Legal Agreement with Cherwell District Council and Oxfordshire County Council

01/00662/OUT	Begbroke Business and Science Park, Sandy Lane, Yarnton – Subject to legal agreement re: off-site highway works, green travel plan, and control over occupancy now under discussion. Revised access arrangements refused 30 October 2008.
05/01337/F	Land NE of Oxford Road, West of Oxford Canal and East of Bankside, Banbury. Subject to Section 106 Agreement with other side for signing. Update given to Committee 30.10.08
07/00422/F	Bicester Town Centre Scheme – Subject to a detailed S106 legal agreement.-draft with other side.
07/01106/OUT	Land to south East of A41 Oxford Road, Bicester. Subject to departure procedures and legal agreements with Oxfordshire

County Council re: off-site transportation contributions and HGV routing during construction.

08/01171/OUT

Pow Wow Water site, Langford Lane, Kidlington
Subject to agreement re transport infrastructure payments

5.2 Subject to Other Matters

08/00444/F

OS 4900, adj Leycroft Barn, Souldern.
Subject to legal agreement re earlier permissions.

08/00709/F

Former Lear site, Bessemer Close, Bicester
Subject to legal agreement with OCC

08/00876/F

Chilling Place Farm, Piddington
Subject to legal agreement re occupancy of main house and ancillary accommodation.

6 Risk Assessment, Financial Effects and Contribution to Efficiency Savings

6.1 The following details have been approved by David Spilsbury (Risk) (Ext 1560) and Eric Meadows (Financial) (Extension 1556).

6.2 Risk assessment – this is a monitoring report where no additional action is proposed. As such there are no risks arising from accept the recommendation.

6.3 Financial effects – there are no additional financial effects for the Council arising from this report.

6.4 Efficiency savings – there are no efficiency savings arising from this report.

7 Recommendations

7.1 It is **RECOMMENDED** that the Committee resolve to accept this position statement.

Background papers: All papers attached to the planning application files referred to in this report.

By virtue of paragraph(s) 7 of Part 1 of Schedule 12A of the Local Government Act 1972.

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