

Application No: 11/00243/F	Ward: Otmoor	Date Valid: 16 February 2011
Applicant:	Mr. R Brown	
Site Address:	Select France, 2 Fiveacres, Murcott, Kidlington, Oxfordshire, OX5 2RP	

Proposal: Erection of 1 No. detached cottage – re-submission of 10/01311/F

1. Site Description and Proposal

1.1 The site is situated within the Fiveacres housing development within the village of Murcott. A single storey building is currently on site, which has been used for commercial purposes in the past. Surrounding the site are residential properties, including 1 Fiveacres to the north, which is a listed building. To the south east is the village hall and playground. The site is within the Oxford Green Belt but is outside of a conservation area.

1.2 This application seeks planning permission to demolish the existing single storey building on the site and erect 1 detached cottage. The cottage would be positioned against the rear wall of the site, and on a similar angle to the cottage at 1 Fiveacres. The proposed cottage would be two storeys, but with a ridge height of only 6.3m. Off road parking would be provided at the front of the property. The property would be constructed from local natural stone, a natural slate roof and timber windows and doors.

1.3 The most relevant planning history is application 10/01311/F which was dealt with by Officers under delegated powers, for the erection of 1 No. detached cottage. This was refused in October 2010 for the following reason:

The proposal, due to its siting, height and positioning of windows serving habitable rooms to the front of the proposed dwelling, will have a seriously detrimental effect on the occupiers of the opposite properties 14 and 15 Fiveacres, by reason of its overall domination, over bearing impact, loss of privacy and light at present currently enjoyed by these occupiers. The development is therefore contrary to PPS1: Delivering Sustainable Development, PPS3: Housing, saved Policy C30 of the adopted Cherwell Local Plan and Policy D6 of the non statutory Cherwell Local Plan 2011.

Eleven dwellings were approved at Fiveacres under application CHS.710/90. A further three dwellings directly opposite the site were approved at Fiveacres under application 07/01345/F.

1.4 The application is being presented to committee for determination at the request of the Local Ward Member.

2. Application Publicity

2.1 The application has been advertised by way of a site notice and press notice. The final date for comment was 8 April 2011.

- 2.2 13 letters of objection have been received raising the following points (some from the same individuals):
- Increase density of Fiveacres to levels above that of a rural village and of many urban areas
 - Comments on the consultation process and that neighbours have not been directly consulted
 - Proposal will overlook village hall and green restricting the light, which will also be taken away from neighbouring properties, one of which is listed
 - No pavements in the area and the road is narrow, another property would result in on road parking compromising safety of pedestrians and other road users. This will also compromise residents safety
 - Difficulty with accessing parking currently
 - Is there sufficient room for a further property? Seems to be squeezed into a small plot
 - Site is unsuitable for a dwelling house being too small and awkwardly shaped
 - Murcott does not need development crammed in, which is not in keeping with the village
 - Height of house will overshadow property opposite
 - Currently views are possible over towards the village hall. The proposal will make it similar to a modern town estate
 - Children use park facilities on a regular basis and groups use the village hall. Two storey property would block sunshine from the playing area and ruin the enjoyment of the children
 - Parish green/ playing area is an integral area of the community, many people come to use it and it should be preserved for generations to come
 - Conflict between users of the park and the residents of the new house
 - Imposing on the village green and will create a sense of insecurity
 - Currently use part of this area to park car to keep it off the road
 - Noise and physical development will be detrimental. Construction of proposal will cause major obstructions and could be dangerous if emergency access is needed. Detrimental damage to the character building proven by the development opposite
 - Detrimental effect on value and setting of the close for all properties
 - Windows of bedroom in number 1 will look directly into the garden of the property
 - Redesign is not considered to overcome previous refusal reason
 - Proposal will directly overlook the rear of 1 Fiveacres, Council unlikely to enforce obscure glazing and opening windows cannot be stopped
 - Plan does not indicate close proximity of neighbouring properties opposite being less than 10m from the front of number 15 and will be detrimental to their privacy. They are marked as only an approximate position on the plans
 - Proposal will overshadow properties opposite
 - Impact on the setting of the listed building by overshadowing it, and spoiling the appearance of the area. Detrimental impact on the setting of the listed building
 - Impact on value of nearby properties
 - Contrary to planning policies relating to sustainable development and good design
 - The 'small gap' is not suitable for development and is not in keeping with the street scene or character. Village is characterized by a mix of house types and designs, but with space around them and soft landscaping, which defines the

- character of the village. Proposal will a significantly detrimental impact
- Bats have been seen in the area
- Poor design, no respect for existing dwellings in this area of the village
- Proposal will have a worse impact on the character of Murcott
- Shadowing effect on number 1 Fiveacres
- Against the Council's view to support sustainable development, the village has no shop, no school, limited bus services so reliance will be on the private car. Will it be built to code level 4 or 5? Does no meet lifetime homes standards
- Minor changes between previously refused application and current proposal. Due to window positions at the front of the house, the loss of privacy is likely to be worse than the previously refused proposal. Illogical to approve this when the previous proposal was refused
- Village Hall committee firmly object, substantial area of boundary will be incorporated into side wall of new house, unacceptable as it will change the nature of the hall facility, dominate the green, cast a shadow. Affect the way children are able to use the space as balls may be kicked against the rear wall of the house. Possibility that windows may be proposed in the wall facing the play area, which will create tensions between the residents and users of the field.

2 letters of support have been received:

- Individual lives opposite Fiveacres and would be happy to see the application approved
- No objections, children will continue to use the park as they always have done. Fiveacres is a densely populated space and to add one more to this area will make little difference

3. Consultations

- 3.1 **Fencott and Murcott Parish Council:** Object on the grounds that the re-sited position due to it being taller than surrounding properties (intended height omitted from the plans), would still have an imposing impact on houses on the opposite side of the road and that it would have an inappropriately dominating presence overlooking the village hall and children's playground
- 3.2 **OCC Highways:** No Objection subject to conditions
- 3.3 **OCC Archaeology:** Unlikely to be any impact, planning note could be used
- 3.4 **CDC Design and Conservation:** To the current application, comment that the design for the cottage is based on the traditional cottage, with a contemporary overlay. The design would be aesthetically better and give the front elevation a focal point if the front door were relocated onto the front so that it is seen directly from the highway.
To the previous application, comments were received stating that the proposal is to remove a number of unsightly, dilapidated, modern single storey buildings and to replace them with a traditional looking vernacular style cottage. It was considered that the proposal positively enhanced the setting of the listed building and providing the site is tidied up on the rear boundary would also contribute to the general ambience of the village.
- 3.5 **CDC Ecology:** Survey submitted is sufficient is scope and depth and no other

ecological impacts are likely to arise

4. Relevant Planning Policies

- 4.1 PPS1: Planning for Sustainable Development
PPG2: Green Belts
PPS5: Planning for the Historic Environment
PPS9: Biodiversity and Ecological Conservation
- 4.2 The South East Plan: Policies CO4, BE1, BE6
- 4.3 Adopted Cherwell Local Plan: Policies GB1, C2, C28, C30

5. Appraisal

- 5.1 The key points to be considered are:
 - Principle of the development in the Green Belt and taking into account the history of the site
 - Visual amenity
 - Impact on the setting of the listed building
 - Neighbour amenity
 - Highway safety
 - Other issues
- 5.2 Principle of the development

As the site is situated within the Oxford Green Belt, the assessment in terms of the principle of the development must be made in accordance with Green Belt policy. Development is restricted in the Green Belt unless it falls within a category of development deemed to be appropriate. If development is not within this category, it is considered to be inappropriate and there is a presumption against inappropriate development, which should not be approved except in very special circumstances which outweigh any harm caused. The most important attribute of Green Belts is their openness and this must not be harmed by development. Furthermore the visual amenities of the Green Belt are important and should not be injured by development.
- 5.3 PPG2 sets out the categories of development which are appropriate development within the Green Belt. Limited infilling within existing villages, is identified as appropriate development. This is reflected within Policy GB1 of the adopted Cherwell Local Plan, which states that infilling within settlements in the Green Belt may be permitted providing it does not conflict with the purposes of the Green Belt or its open and rural character. Infilling is defined within this policy as the development of a small gap in an otherwise continuous built up frontage suitable for the erection of one or two dwellings. PPG2 also suggests that the Local Plan should include policies to ensure that any infill does not have an adverse effect on the character of the village concerned.
- 5.4 It is considered that this site constitutes infill development as it is contained within the village and forms a small gap in a built up part of the village. Furthermore, due to the proposed dwelling being within the village, there is unlikely to be any significant impact upon the openness of the Green Belt. The impact of the proposal

on the visual amenities of the area and the Green Belt will be discussed below.

In terms of the planning history, Members will see that an application was refused in 2009 for a similar development. However the refusal reason related to the impact upon the residential amenity of neighbouring properties only and the officer's report demonstrates that it was considered the proposal was acceptable in principle. As such, the refusal of the previous application does not necessarily mean the current application is unacceptable if the previous issues can be overcome (which will be discussed below).

5.5 As such, it is the view of the SDPHE that the proposal is acceptable in principle. The detail of the scheme and its overall impact will now be discussed.

5.6 Visual amenity

The site is in a sensitive position being close to the listed building, and is amongst several modern dwellings including the three opposite. The dwelling itself is traditional in appearance and proportions and will be constructed from natural materials. Murcott is characterized by a mixture of properties including some large dwellings which are spaciouly spaced, but also small cottages. The proposed dwelling is fairly small, on a relatively small site, which may reduce some of the open feeling in this area. However it is a modest addition to the site, being smaller than the adjacent listed building, and it is not considered that the size is so significantly different that it would cause harm to the street scene or that the change would be detrimental to the wider area.

5.7 The dwelling being on the same angle as the listed building helps the proposed dwelling to sit comfortably on the site and being set back from the site frontage ensures that it does not over dominate the street scene from Fiveacres.

5.8 The fenestration has been designed to overcome the impact upon neighbouring amenity, which will be discussed below, however this form is not considered to cause harm to visual amenity. The Conservation Officer has commented on the position of the front door, which is appreciated, however the position on the side is not considered so detrimental to visual amenity that the proposal could be resisted on these grounds.

5.9 The proposal is considered to be sympathetic to the context of the development, will sit comfortably in the street scene, is appropriate in design for this area and the use of traditional local building materials is proposed. As such, it is considered that the proposal causes limited harm to visual amenity and the proposal complies with Policy C28 of the adopted Cherwell Local Plan.

5.10 Setting of the listed building

Due to the proximity of the site to the listed building at 1 Fiveacres, the impact of the proposal on its setting must be considered. PPS5: Planning for the Historic Environment requires this assessment to be made and states that Local Planning Authorities must consider the significance of the heritage asset and the value that it holds for this and future generations. Local Planning Authorities should also take into account the desirability of new development making a positive contribution to the character and local distinctiveness of the historic environment. This should include scale, height, massing, alignment, materials and use. Specifically in relation to the setting of a heritage asset, Local Planning Authorities should treat favourably applications that preserve those elements of the setting that make a positive

contribution to or better reveal the significance of the asset.

- 5.11 The proposed development is set back from the road frontage, is fairly traditional in design, form and the materials to be used and as such is sympathetic to the setting of the adjacent listed building. It is the view of the SDPHE that it is unlikely the proposal will have a serious impact upon the setting of the listed building, will not harm its significance and will not detract from the importance of the listed building. As such, it is considered that the proposal complies with the provisions of PPS5: Planning for the Historic Environment.
- 5.12 Comments from the Conservation Officer have been received, just suggesting that the door be moved to the front elevation, which are addressed above, however comments were also received with respect to the previous application. The view was that that proposal (which was to remove a number of unsightly, dilapidated, modern single storey buildings and replace them with a traditional looking vernacular style cottage) positively enhanced the setting of the listed building and providing the site was also tidied up on the rear boundary wall will contribute to the general ambiance of the village. These comments are agreed with and it is considered that they are also relevant to the current application.
- 5.13 Due to the condition and modern nature of the buildings on site, they are not considered to be curtilage listed buildings and therefore no Listed Building Consent is necessary for their removal.
- 5.14 Residential amenity of neighbouring properties
Given that the previous refusal reason related directly to the impact this development may have on the residential amenity of neighbouring properties, particularly those opposite, it is important that this issue is given consideration as to whether the refusal reason has been overcome.
- 5.15 The proposed dwelling is now set back on the site, and at an angle to the road and parallel to the rear boundary wall, this means that the dwelling is set as far away as possible from the neighbouring properties opposite and due to the angle, means that the proposal is not directly opposite to the properties on the other side of the road. The distance between the proposal and those opposite and the angle the property is now positioned at, is considered to help to overcome the impact by over dominance and loss of light that would have been caused by the previous proposal, and any impact caused would not be so serious that the proposal could be refused on these grounds and then sustained at appeal.
- 5.16 The proposed dwelling has also been designed with its fenestration to remove any windows at first floor to the front or rear elevations, other than roof lights, which would be positioned with the bottom of them at least 1.5m from the floor level in the room in which they serve (the front ones would be 1.65m from the floor level). This level means that there is very unlikely to be any direct overlooking at first floor level and so in terms of the neighbouring properties on the opposite side of the road in Fiveacres, the impact caused by loss of privacy to these properties is considered to be to an acceptable level. The windows at ground floor on the front elevation are not considered to cause such harm, particularly given the distances involved and the angles meaning that the windows are not directly opposite each other. It is appreciated that the perception of overlooking is also important, however due to the above assessment; it is not considered that the harm caused to the neighbouring

properties opposite would be so serious to cause harm that could be a reason to refuse the application on these grounds.

- 5.17 A further window is proposed on each of the gable ends of the proposed dwelling, both of which serve a bedroom and which are shown to be openable escape windows, with the window in the north east elevation being obscurely glazed and the window in the south west elevation being clear glazed. The window in the south west elevation is in such a position that it will face down the street of Fiveacres and as such, there is very unlikely to be any impact upon residential amenity from this window. The window shown on the north east elevation is however more of a concern, particularly due to the fact that it opens and there would then be the possibility of over looking to the house and garden of 1 Fiveacres. This window was originally proposed to form a means of escape, however having spoken to the Building Control department, there is an alternative in that fire doors and a protective staircase could be used, which would still result in the property complying with the Building Regulations. As such, and given that there could be still the perception of being overlooked, a condition has been recommended to ensure that the window on the north east gable elevation is not installed. This would ensure that there is no undue impact upon the residential amenity of the occupiers of 1 Fiveacres. A door would still be in this elevation, but given there is some existing boundary treatment, and the fact that it is at ground floor level only, the impact from this door would be minimal.
- 5.18 Given the above assessment, it is considered that the proposal has overcome the previous concerns that were held in relation to the impact upon residential amenity and that the proposal is acceptable. As such, the proposal is considered to comply with policy C30 of the adopted Cherwell Local Plan.
- 5.19 Highway safety
The proposal forms a two bed cottage and two off-road parking spaces are proposed. The Local Highway Authority has assessed the application and raises no objections subject to the imposition of a condition, which has been recommended. The proposal is therefore considered to be acceptable in highway safety terms. The concerns from the neighbouring properties in relation to this matter are appreciated, however given the view of the Highway Authority, it is not considered that the proposal would have such an impact the proposal could be resisted on these grounds.
- 5.20 Ecology
Concern was expressed by a neighbouring property that there may be bats in the building to be demolished.
- 5.21 PPS9: Biodiversity and Geological Conservation places a duty upon local planning authorities to ensure that a protected species survey be undertaken prior to determination of a planning application. The presence of a protected species is a material consideration when a planning authority is considering a development proposal. PPS9 states that "It is essential that the presence or otherwise of a protected species, and the extent to that they may be affected by the proposed development is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision."

- 5.22 Paragraph. 98 of Circular 06/05: Biodiversity and Geological Conservation – statutory obligations and their impact within the planning system states that, “local planning authorities should consult Natural England before granting planning permission” and paragraph 99 goes onto advise that “it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.”
Section 40 of the Natural Environment and Rural Communities Act 2006 (NERC 2006) states that “every public authority must in exercising its functions, must have regard ... to the purpose of conserving (including restoring / enhancing) biodiversity” and;
Local planning authorities must also have regards to the requirements of the EC Habitats Directive when determining a planning application where European Protected Species (EPS) are affected, as prescribed in Regulation 9(5) of Conservation Regulations 2010, which states that “a competent authority, in exercising any of their functions, must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions”.
- 5.23 Articles 12 and 16 of the EC Habitats Directive are aimed at the establishment and implementation of a strict protection regime for animal species listed in Annex IV(a) of the Habitats Directive within the whole territory of Member States to prohibit the deterioration or destruction of their breeding sites or resting places.
Under Regulation 41 of Conservation Regulations 2010 it is a criminal offence to damage or destroy a breeding site or resting place, but under Regulation 53 of Conservation Regulations 2010, licenses from Natural England for certain purposes can be granted to allow otherwise unlawful activities to proceed when offences are likely to be committed, but only if 3 strict legal derogation tests are met which include:
- 1) is the development needed for **public health or public safety** or **other imperative reasons of overriding public interest including those of a social or economic nature** (development).
 - 2) Is there any **satisfactory alternative**?
 - 3) Is there **adequate mitigation** being provided to maintain the favourable conservation status of the population of the species?
- 5.24 Therefore where planning permission is required and protected species are found to be present at the site or surrounding area, Regulation 9(5) of Conservation Regulations 2010 provides that local planning authorities must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions and also the derogation requirements (the 3 tests) might be met. Consequently a protected species survey must be undertaken and it is for the applicant to demonstrate to the Local planning authority that the 3 strict derogation tests can be met prior to the determination of the application. Following the consultation with Natural England and the Council’s Ecologist advice given (or using their standing advice) must therefore be duly considered and recommendations followed, prior to the determination of the application.
- 5.25 In respect of planning applications and the Council discharging of its legal duties, case law has shown that:

- 1) if it is clear/perhaps very likely that **Natural England will not grant a licence** then the Council should refuse planning permission
- 2) if it is likely that **Natural England will grant the licence** then the Council may grant planning permission
- 3) if it is **unclear/uncertain** whether Natural England will grant a licence then the Council must refuse planning permission (Morge has clarified Woolley)

[R (Morge) v Hampshire County Council – June 2010 Court of Appeal case]
[R (Woolley) v Cheshire East Borough Council – May 2009 High Court case]

- 5.26 As such, an ecological survey has been carried out and submitted. The survey conducted found no evidence of bats within the building and recommended that no further surveys or mitigation measures were necessary. The Council's Ecologist has reviewed the survey and considers that the survey is sufficient and that the methodology is fine and it is agreed that there is low potential for bats and that no further surveys are required. It is considered that the applicant should be made aware of the protected species legislation and what to do should any evidence be found during construction works. It is also noted that there are no other ecological impacts likely to arise from the proposals.
- 5.27 Consequently it is considered that art.12(1) of the EC Habitats Directive has been duly considered and there are no protected species on site, which are likely to be affected. The proposal therefore accords with PPS9 and Policy C2 of the adopted Cherwell Local Plan.
- 5.28 Other matters
 The comments of the County Archaeologist are noted and a planning note has been recommended. The comments of third parties and the Parish Council are noted and have either been addressed above or will be considered now.
- 5.29 Several neighbouring properties have commented on the fact that they were not directly consulted, but that it appeared they had been on the Council's website. This application was registered around the time the Council stopped consulting neighbouring properties directly, but in this case, a list of neighbours was produced. The proposal has been advertised correctly however, both by a site notice and in the Local press.
- 5.30 There have been a number of concerns raised about the impact of the development on the village playground, just to the rear of the site and the possible future implications this may bring and the impact by loss of light, over dominance and the possible impact by kicking of balls against the rear wall of the house. Whilst the concerns are appreciated, there are no planning policies which would directly protect a play area from this type of development and although policies relating to protecting the wider environment and the character of the area are in place, the overall impact caused is not considered to be so serious that the proposal could be refused on these grounds. The proposal will not stop the play ground from being used, it represents only a relatively small part of the boundary with the play ground, there are no windows proposed in the rear elevation overlooking the play ground (and permitted development rights for these have been removed) and due to the

orientation, loss of light and overshadowing would only occur later in the evening and only affect a small area of the play ground. Furthermore, the residents of the dwelling would know the situation with the play ground. This impact however is considered not a reason to refuse a planning application.

- 5.31 The arguments relating to sustainability are noted, however given this proposal is for one additional dwelling, in a green belt village where infill development is acceptable, this argument is not considered to be so strong, the proposal could be resisted on these grounds.
- 5.32 Loss of property value is not a planning matter. Furthermore, issues of construction are not a matter an application could be refused on.
- 5.33 Conclusion
As has been demonstrated, the proposal is considered to cause limited harm and is considered to comply with the above mentioned policies. The proposal is therefore recommended for approval, subject to the following conditions

6. Recommendation

Approval; subject to the following conditions:

1. 1.4A (RC2) [Full permission: Duration limit (3 years)]
2. Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the following plans and documents: application forms, design and access statement and drawing number BRO/11/01 B
Reason - For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and to comply with PPS1: Delivering Sustainable Development
3. 2.3DD (RC5B) [Natural stone – Limestone – (Not weathered)] insert 'dwelling and rear boundary wall'
4. 2.2BB (RC4A) [Samples of roofing materials] insert 'slate' 'dwelling'
5. 5.5BB (RC5B) [Painted timber windows]
6. 2.10A (RC7A) [Floor levels] insert 'dwelling'
7. 2.13AA (RC8A) [Demolition of Buildings – before commencement of the development]
8. 4.13CD (RC13BB) [Parking and manoeuvring area retained]
9. Notwithstanding the approved plans, the first floor window in the north east elevation of the dwelling shall not be installed. (RC6A)
10. The development hereby permitted shall be carried out in accordance with the recommendations set out Bat Survey report by Cotswold Wildlife Surveys dated 13 May 2011 unless otherwise agreed in writing by the Local Planning Authority. (RC85A)
11. 6.2AA (RC32A) [Residential – No extensions]
12. 6.3A (RC333) [Residential – No new windows]

Planning notes

- X1 – Ecology
- O1 – Archaeology
- S1 – Post permission changes
- T1 – Third party interests

U1 – Construction sites
ZZ – Unsuspected contamination

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 preserves the significance of the parallel listed building. The proposal has no undue adverse impact upon the residential amenities of neighbouring properties or highway safety. The proposal is also considered to be appropriate development in the Green Belt and will not harm its openness or visual amenities. As such the proposal is in accordance with PPS1: Delivering Sustainable Development, PPG2: Green Belts, PPS5: Planning for the Historic Environment, PPS9: Biodiversity and Ecological Conservation, Policies CO4, BE1 and BE6 of The South East Plan and Policies C2, C28, C30 and GB1 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.

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