

<b>Application No:</b> 11/01071/OUT	<b>Ward: Kirtlington</b>	<b>Date Valid: 08/07/10</b>
<b>Applicant:</b>	Minns Estates Ltd.	
<b>Site Address:</b>	Land at Station Road, Enslow	

**Proposal:** Demolition of existing buildings, erection of an office building and seven residential dwellings

## 1. Site Description and Proposal

- 1.1 The application site, often still referred to as the B-Line Business Centre (the former occupier), is located in close proximity to the junction of Lince Lane (A4095) and Station Road (B4027). The access to the site is taken from Station Road and is shared with Station House and a marina development situated alongside the Oxford Canal on the valley floor. Roughly rectangular in shape and cut into a hillside, the site currently contains a mixture of portable buildings and former agricultural buildings that have been converted for business use. Aside from Station House which is to the west, the only other residential properties in close proximity are Hill Top Cottage and Stone Quarry House which are to the south and overlook the business units.
- 1.2 The site is located just outside the Oxford Green Belt - the B4027 forms the northern boundary of the Green Belt in this part of the district. Although the Environment Agency had previously contended that B-Line was in flood zone 2 - given its elevated position in respect of the canal, however, they have now amended their records. Whether the land lies within the small loose knit hamlet of Enslow is debatable. Enslow only has a handful of residential properties, the majority of the built-form being made up of industrial/business units located in close proximity to the canal.
- 1.3 The proposal seeks to demolish the existing buildings and replace them with an office building near the entrance to the site, and 7 new dwellings overlooking the valley floor. Two of the houses have been identified as affordable. The application is in outline form, and all matters other than access have been reserved for future consideration. The two semi-detached affordable houses would have three bedrooms and the remaining properties would be detached four-six bedroom dwellings, some of which would have integral garages. The office building would provide 158 square metres of floor space and has been allocated eight demarcated parking spaces. As part of the development the access is to be improved and a new footpath linking the site to the Rock of Gibraltar public house would be constructed along Station Road.
- 1.4 Some members may recall that there is extant outline planning permission on this site (09/00647/OUT) for replacement B1 office/industrial units. The two buildings approved have a combined footprint of 1,620 square metres. An application submitted last year for 11 new dwellings and a B1 building (10/00187/OUT) was

withdrawn prior to being heard at Committee. It was recommended for refusal on five grounds: the principle; an absence of a satisfactory legal undertaking; loss of an employment site; an inadequate design and access statement; and the omission of an ecology survey from the application documents. Earlier this year an application for five dwellings (11/00367/OUT) was refused under delegated powers for two reasons: the principle; and the loss of an employment site.

## 2. Application Publicity

- 2.1 The application has been advertised by way of press notice and site notice. The final date for comment was the 12<sup>th</sup> August 2011. No correspondence has been received as a result of this consultation process at the time of writing this report.

## 3. Consultations

- 3.1 Bletchington Parish Council has raised no objections
- 3.2 The Head of Planning and Affordable Housing Policy has made the following comments:

*The site is an existing employment site, located at Enslow, adjacent but outside the green belt boundary. The loose-knit form of Enslow means that whether the site lies within or outside its built-up limits will require detailed consideration.*

*The site has been subject of previous redevelopment proposals in the past. Most recently, an application was refused for the demolition of existing employment buildings and erection of five detached dwellings.*

*This current application is for the demolition of employment buildings and erection of 1,700ft of Class B1 development and the erection of 7 dwellings (including 2 affordable). The application form states there will be a loss of 55 sqm of employment floorspace, although the supporting planning statement suggests an equivalent number of jobs will be sustained.*

*The main issues to consider are:*

- . the loss of an existing rural employment land*
- . whether the employment generating development (redevelopment) is acceptable*
- . Whether the site is a suitable location for residential development*

### **Protection of Rural Employment**

*PPS4 states (EC12.1c) that LPAs should take account of the impact on the supply of employment sites and premises and the economic, social and environmental sustainability of the area when considering planning applications involving the loss of economic activity.*

*The South East Plan requires LPAs to address the economic needs of rural communities (policies RE3, BE5) and saved policy EMP4 seeks to encourage economic activity in the rural areas (para' 3.50).*

*EMP 5 in the Non-Statutory Cherwell Local Plan (NSCLP) 2011 seeks the protection of existing employment sites in rural areas. Redevelopment of an existing employment site within or adjoining a village to a non-employment re-use will not be permitted unless (i) it can be demonstrated that there would be substantial planning benefit or (ii) the applicant can demonstrate that every reasonable attempt has been made to secure suitable employment re-use.*

*The Council's Employment Land Review (2006) recommends that all premises and land currently in B class use should remain allocated and be protected for employment generating activity. Monitoring information in the AMR does not demonstrate that there is surplus (or shortage) of employment land in rural areas.*

*The proposed development would lead to some loss of employment space/potential for this rural area. A case is not being made that employment use of the site is no longer viable. Whether there would be substantial and demonstrable planning benefit as a result of the proposal requires detailed consideration. This should include whether the suggested financial contribution to the construction of a permitted village hall/ school is necessary to make the proposed development acceptable and whether it is fairly and reasonably related in scale and kind. Consideration should also be given to whether the proposed development in itself would result in 'planning benefit' as it is intended in the policy.*

*As the proposal is proposing some employment generating development, Policy EMP4 (for employment generating, including redevelopment) in the Adopted and NSCLP will also need consideration. The proposed layout shows the position of the new employment building to be located near the entrance of the site (rather than further to the rear, as the existing buildings are) therefore you should give consideration as to whether the proposal can be carried out without 'undue detriment to residential amenity, the highway network, village character, the appearance and character of the landscape and the environment generally'.*

***Suitable location for residential development***

*Enslow is a category 3 village in both the saved policies of the adopted local plan and in the Non-Statutory Plan. Policies H15 and H17 respectively restrict development within such villages to conversions and new dwellings essential for agricultural undertakings. The proposed scheme is neither, and therefore does not comply with these policies. The village category implies it is a remote location with a general lack of services and facilities, inaccessible by public transport and generally an unsustainable location for residential development.*

*As a 'regulation 25' consultation document, the Council's Draft Core Strategy carries little weight. However, it sets out proposed directions of growth for the district having regard to available evidence. I am of the view the proposed development would be contrary to the emerging approach on housing distribution.*

*The housing supply proposed is less than 10 dwellings and therefore I do not consider it to be a case where the district's housing land supply is significant.*

*However the beneficial provision of 2 affordable homes which would be erected for a scheme of 7 dwellings is noted.*

***Efficient use of land***

*You should also consider whether the proposed units represent an efficient use of land.*

***Conclusion***

*In conclusion detailed consideration will need to be given as to whether the loss of some employment generating floorspace and the disadvantages of locating 7 dwellings in a relatively unsustainable location, would be outweighed by the benefits of the proposal or other material considerations.*

- 3.3 OCC Highways Department had not commented at the time of writing this report.
- 3.4 The Urban Design Officer had not commented at the time of writing this report.
- 3.5 The Landscape Officer is concerned about whether the levels have been clearly thought through particularly in relation to the proposed office building. She also questions the acceptability of removing trees from the site.
- 3.6 The Ecology Officer has no objections subject to condition
- 3.7 The Environmental Protection Officer had not commented at the time of writing this report.
- 3.8 The Arboricultural Officer has no objections at this stage of the application process.
- 3.9 OCC Drainage Officer has no objections at this stage of the application process.
- 3.10 London Oxford Airport has no objections providing that any cranes required to carry out the works comply with the recognised practice for safe use.

## **4. Relevant Planning Policies**

- 4.1 PPS1: Delivering Sustainable Development  
PPS3: Housing  
PPS4: Planning for Sustainable Economic Growth  
PPS7: Sustainable Development in Rural Areas  
PPS9: Biodiversity and Geological Conservation  
PPG13: Transport  
PPS23 Planning and Pollution Control
- 4.2 Policies BE1, BE5, CO3, RE3 and T4 of the South East Plan 2009
- 4.3 Saved Policies ENV12, H5, H15, C2, C4, C27 and C28 and C30 of the adopted Cherwell Local Plan
- 4.4 Policies H1a, H1b, H7, H17, D1, D3, EMP5, OA1, TR4, EN25, R8, R9 and R10A of the Non-Statutory Cherwell Local Plan 2011

## 5. Appraisal

### **The principle of the development**

- 5.1 In the absence of a saved policy in the adopted Cherwell Local Plan (CLP) the Council's position, as regards the protection of existing rural employment sites, is best articulated in Policy EMP5 of the Non-Statutory Cherwell Local Plan 2011 (NSCLP). This policy states that the loss of employment land in or adjacent to villages will only be countenanced if there is a *substantial and demonstrable planning benefit* or the applicant has made reasonable efforts to find an alternative employment re-use.
- 5.2 Until very recently part of the site was occupied (Colourful Coffins) for business purposes. The Head of Planning Policy also confirms that the most recent review of employment land in the district recommended that all existing B class employment land should be protected. More recent monitoring information revealed that there is neither a surplus nor a deficit of such land within the district. The applicant has therefore acknowledged that they are reliant on demonstrating that they comply with the former of these two criteria. As the existing buildings are relatively well screened from the public domain, the removal of what are admittedly unappealing structures could not be said to represent a compelling planning gain. It is although worth remembering that there is an extant permission for replacement business units already in place (09/00647/OUT).
- 5.3 The argument put forward to justify the loss of the employment site is therefore focused on the following purported planning gains: the provision of much need housing including affordable housing; a new employment generating activity; and a provision of funds to a community project (via a unilateral undertaking).
- 5.4 For planning purposes Enslow, a sparsely populated settlement with limited facilities, is identified as a category 3 settlement (Policy H15 of the CLP) which groups together the smallest villages and hamlets in the District. Policy H15 of the CLP limits increases to the housing stock in such settlements to conversions and agricultural worker dwellings. The proposed development therefore runs contrary to this policy and indeed emerging policy which takes it lead from PPS3. This Government guidance promotes development in sustainable locations '*which offer a good range of community facilities*'. Furthermore, even if the development did comply with policy, the Council would require that at least two of the properties were made affordable anyway. The provision of affordable housing can therefore not be considered to represent a *planning benefit*.
- 5.5 Whilst the proposed development does incorporate some new office space, this is still a relatively token amount when compared with the aforementioned 2009 scheme which had approval for over ten times the amount of floor space (1,620m<sup>2</sup> compared with 158m<sup>2</sup>). This extant permission also makes the argument about the removal of the unsightly redundant structures which currently occupy the site.
- 5.6 The final are perhaps only possible *substantial and demonstrable planning benefit* is the £250,000 offered to help with the construction of a new village hall and possible new school in the nearby village of Bletchingdon (planning permissions 10/01712/F and 07/02608/F refer). It is noteworthy that whilst within the parish of Bletchingdon, the applicant is offering support to a community scheme outside Enslow. This is

perhaps not surprising given that Enslow does not have a population large enough to support facilities such as a school or a village hall.

- 5.7 Whilst the funding of a community project does represent a planning gain, it should not be the principle justification for circumventing a fundamental planning policy objection. By accepting this as a rationale it would be effectively countenance the sale of permissions. The size of the contribution appears somewhat arbitrary and is not driven by the scale of the development or the impact of the proposals upon village facilities
- 5.8 It could be argued by the applicant that this is a one off, in that proposals for new village halls and schools come forward on a very infrequent basis. However, there are other community led schemes, of perhaps equal planning merit, e.g. affordable housing sites, which are considered on a more regular basis. It is therefore not inconceivable that large landowners will seek to make a donation of land in return for a permission elsewhere which would otherwise be contrary to policy. To some extent this approach is heralded by the draft National Planning Policy Framework and the Localism Bill in which local communities may in the future be able to plan for the facilities and housing growth they consider appropriate. However that will have to have been planned in a rational way, with a more collaborative local community involvement.
- 5.9 Although not identified specifically as a planning benefit, the applicant is also running a sustainability argument, contending that the proposed development, when compared with the extant 2009 permission, will reduce the number of traffic movements to and from site by approximately 70%.
- 5.10 Whilst not disputing these findings, it is worth noting that all the figures are hypothetical and that no assessment is made of the current potential. However, even taken at face value, this argument is fundamentally flawed as by accepting reduction in traffic movements, in isolation, a precedent would be set whereby a large proportion of rural employment sites within the District could be legitimately identified for a similar change of use. Enslow has a disproportionate number of businesses when compared to the handful of residential properties.
- 5.11 This traffic argument has only really been successfully employed previously, where there has been an obvious benefit to a neighbouring community. An example of which would be taking heavy goods traffic away from narrow village roads - paragraph 4.81 of the NSCLP refers. Business activity from this site has/would have a limited impact on a small proportion of local population.
- 5.12 In support of the application reference is made to the potential precedent set by the Ingelby Farm development (05/00535/OUT) which is on the opposite side of Lince Lane. In that case Members gave approval for the replacement of a kennelling facility with seven live-work units. Since approving this scheme control over the 'work' element has been relaxed by planning permissions 07/01242/F and 08/01239/F (granted on appeal). Although in theory there are sustainability related benefits to be derived from the live-work concept, in reality ensuring that residents/developers share and adhere to this vision has proven to be very difficult.

Notwithstanding the merits of live-work units, and the Ingelby Farm development in particular, the SDPHE notes that the proposed dwellings do not conform to the definition of live-work units. The Ingelby Farm approval is therefore considered to have little bearing on this current application.

### **Highway safety**

- 5.13 Although the Local Highways Authority had not commented on the application at the time of writing, they have not previously objected to recent schemes to redevelop the site. As there have been no changes to the immediate environment in the intervening time it is unlikely that a different conclusion will be reached.

### **Design**

- 5.14 Although design and layout are a reserved matter, the applicant has attempted to address criticisms levelled at the 2010 application by providing a comprehensive analysis of the local built vernacular and also submitting various cross sections and views in to the site. The Urban Design Officer had not commented at the time of writing this report.

### **Protected species**

- 5.15 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.”
- 5.16 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.”
- 5.17 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;
- 5.18 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”.
- 5.19 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.

5.20 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?

5.21 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. 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]*

5.22 **NB: Natural England will not consider a licence application until planning permission has been granted on a site, therefore if a criminal offence is likely to be committed; it is in the applicant's interest to deal with the 3 derogation tests at the planning application stage.**

5.23 In respect to the application site, an ecology survey was undertaken by James Johnston Ecology dated 8 September 2010 which concluded that the site had



'between negligible and low nature conservation value. The report concluded that there were no bats currently roosting on site, but recommended that a precautionary bat survey be undertaken. The Council's Ecologist confirmed the findings of the report and that the emergence survey could be dealt with at the reserved matters stage.

- 5.24 Consequently it is considered that art.12(1) of the EC Habitats Directive has been duly considered in that the welfare of any protected species found to be present at the site and surrounding land will continue and be safeguarded notwithstanding the proposed development. The proposal therefore accords with PPS9 and Policy C2 and C4 of the adopted CLP.

#### **S106 agreement**

- 5.25 Notwithstanding the unilateral undertaking to make a donation to the construction of the village hall in Bletchington, no negotiations have been entered into in respect of a S106 Agreement. As this development compromises more than six dwellings such an agreement is a pre-requisite of any approval. Arrangements with regards to the affordable housing would be necessary and contributions would be expected for open space/play space; off-site playing pitches; off-site indoor sports facilities; education facilities; library facilities; and transport measures. The application should not be approved in its absence.

#### **Conclusion**

- 5.26 This proposal is not considered to be acceptable in principle, for the reasons set out above, the SDPHE concludes that this proposal is contrary to Policies H5, H15, R12, and C28 of the adopted Cherwell Local Plan and Policies H1a, H1b, H7, H17, D1, D3, EN25, EMP5, OA1, TR4, R8, R9 and R10A of the Non-Statutory Cherwell Local Plan 2011.

## **6. Recommendation**

### **Refusal**

- 1. Enslow is a Category 3 settlement as defined in the adopted Cherwell Local Plan. Policy H15 of the adopted Cherwell Local Plan states that within such settlements new residential development will be restricted to the conversion of non-residential buildings or where an essential need for agriculture, or other existing undertaking, can be established. It is the opinion of the Local Planning Authority that the proposal does not accord with these provisions and that it would be unsympathetic to its rural context, contrary to Government guidance contained within PPS3: Housing and Policies H15 and C28 of the adopted Cherwell Local Plan.**
- 2. The proposal will result in the loss of a significant proportion of an employment site which can continue to make an important contribution to the economic development of the area. As a lack of need has not been established or no substantial and demonstrable planning benefit has been demonstrated, the proposal is contrary to Government advice contained within Policy EC12 of PPS4: Planning for Sustainable Economic Growth, Policy RE3 of the South**

**East Plan 2009 and Policy EMP5 of the Non-Statutory Cherwell Local Plan 2011.**

- 3. In the absence of a satisfactory unilateral undertaking or any other form of Section 106 legal agreement, other than the proposed contribution to Bletchington Parish Council, the Local Planning Authority is not convinced that the infrastructure directly required to service or serve the proposed development, including affordable housing, open space/play space, off-site playing pitches, off-site indoor sports facilities, education facilities, library facilities and transport measures will be provided. This would be contrary to Policy CC7 of the South East Plan 2009, Policies H5 and R12 of the adopted Cherwell Local Plan and Policies OA1, H7, TR4, R8, R9 and R10A of the Non-Statutory Cherwell Local Plan 2011.**

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