

Application 09/00952/F	No:	Ward: Cropredy	Date 08.02.2010	Valid:
Applicant:	Mr N Joyce			
Site Address:	Oxhay Farm Oxhay Hill Cropredy Banbury Oxon OX17 1DR			

Proposal: Demolition of existing dwelling and construction of new dwelling on a similar footprint, together with alterations to existing barns to provide additional accommodation and garaging. Re-surfacing of existing access. Erection of stable building.

1. Site Description and Proposal

- 1.1 Oxhay Farm is located approximately 2km to the west of the village of Cropredy and lies about 400m back from Oxhay Hill (also known as Mollington Road). The farm itself is modest in size and occupies some 26.14 ha (69.55 acres). It comprises a series of small fields; a farmhouse with an attached brick built barn currently housing sheep, a couple of small outbuildings to the rear and another couple of outbuildings to the front of the farmhouse. The farm is accessed via a long access track from Oxhay Hill downhill into the farm area
- 1.2 The farmhouse is constructed with rendered walls and a slate roof. 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. The outbuilding attached to the house is constructed from brick and when the site was visited this outbuilding was used to house sheep with newly born lambs.
- 1.3 The application site includes the access track to the farmhouse from Oxhay Hill, the existing farmhouse, attached barn, larger barn to the rear of the farmhouse and then seeks the removal of the lean-to attached to the barn at the rear of the farmhouse and the outbuilding to the front of the farmhouse. The red line extends some approximate 5m out from the end of the outbuilding into the adjacent field and includes all the land within the farm yard to the rear of the farmhouse.
- 1.4 The application seeks consent to demolish the existing building and to construct a new building, together with alterations to existing barns to provide additional accommodation and garaging, re-surfacing of the existing access and the erection of a stable building. The new building would sit upon the footprint of the farmhouse and the attached barn to create a four bedroom house, with vehicle parking and storage areas to the rear and a stable block in the north east corner of the former farmyard.
- 1.5 The application was originally registered in July 2009 however remained

undetermined until this time due to delays with providing an adequate bat survey for the site. The bat survey has now been submitted and the application has consequently been brought forward for determination at this committee.

2. Application Publicity

- 2.1 The application was advertised by means of a site notice attached to the entrance gate of the farm access on Oxhay Hill (Mollington Road).
- 2.2 Detailed responses have been received from the agent acting on behalf of the farm tenant. These comments form a separate section in the report that follows.

3. Consultations

- 3.1 Cropredy Parish Council – Make no objections to the application as they state that they have no planning grounds to do so, but do want to make sure that the District Council are aware that the property is subject to an agricultural tenancy and that the tenants have rented the farm for some 30 years.
- 3.2 Councillor Atack as Ward Member has commented on the application. He states that his interest mainly relates to the material consideration of the agricultural tenancy and on the basis of the current application being approved, the tenancy would be broken and leave the tenants homeless and without their farming livelihood. He suggests that the Council should look at seeking specialist advice on the legal situation regarding this issue and any potential costs that could fall to the Council particularly in light of the previous decision on this site.
- 3.3 Oxfordshire County Council Highways Officer – No objections subject to planning conditions
- 3.4 Monson Engineering (building consultancy appointed by the Council) – were consulted on the application in March 2010. They produced a detailed report and concluded that “The structure of the building is in reasonable condition generally except for damp in the walls which should be treated. There are items of maintenance described (in the report) that should be carried out such as repair of the render, re-bedding the ridge tiles and repair damaged windows. It is recommended that some work be carried out as described to reduce the heat losses from the building and improve the method of heating.”
- 3.5 The applicants have also had a Structural Survey done as part of the application. This document was also sent to Monsons for comment and the summary of this report was “it remains our opinion that the building has had minimal maintenance for many years and that works could be carried out to improve the building for a moderate sum to make it as good as many other solid masonry wall dwellings in the area. This may not be up to the standard of a new building but would be a

reasonable quality that would compare with many other dwellings that are considered adequate for modern living”

- 3.6 Natural England – Recommended that a further bat survey was carried out as the one submitted recommended additional surveys to be done (comments received 08 March 2010).
- 3.7 A further survey was submitted on 27 July 2011. The Council’s Ecologist has assessed this report and considers it to be acceptable subject to some additional information regarding locations of mitigation measures. These can be covered by condition.

4. Relevant Planning Policies

- 4.1 PPS 1 – Delivering Sustainable Development. Requires that “Planning Authorities should plan positively for the achievement of high quality and inclusive design for all development, including individual buildings, public and private spaces and wider area development schemes. Good design should contribute positively to making places better for people. (paragraph 34).
- 4.2 PPS 3 – Housing. Sets out the policies governing housing delivery and development.
- 4.3 PPS 7 – Sustainable Development in Rural Areas. This PPS sets out the Government’s policies for achieving its objectives for rural areas and provides specific requirements for new dwellings in the countryside.
- 4.4 PPS 9 – Biodiversity and Geological Conservation. This PPS sets out planning policies on protection of biodiversity and geological conservation through the planning system.
- 4.5 The South East Plan
Policy BE1: This policy refers to providing significant improvements to the built environment through good development choices
Policy H5: Housing design and density. This policy seeks to install measures which provide for raising the quality of new housing allowing for future changes in the accommodation needs
Policy CC6: This policy seeks to promote decisions which create sustainable and distinctive communities
Policy RE3: This policy requires regard being had to strategic and local business needs
Policy C4: This policy relates specifically to the landscape and countryside and particularly with regard to protecting and enhancing the diversity and distinctiveness of the region’s landscape.

4.6 Saved Policies in the Adopted Cherwell Local Plan 1996 (ADCLP)

H17: General housing policies allowing the replacement on a one-for-one basis of an existing statutorily unfit or substandard dwelling providing:

- (i) the existing building is not a Listed Building capable of restoration or suitable for an appropriate alternative and beneficial use
- (ii) in cases where the existing building lies outside the limits of an existing settlement, the use of the building as a dwelling has not been abandoned or extinguished and its proposed replacement is similar in scale and within the same cartilage
- (iii) the proposal meets the requirements of the other policies in the plan

H18: Refers to new dwellings in the countryside and states that planning permission will only be granted for a new dwelling outside the built-up limits of settlements when:

- (i) it is essential for agriculture or other existing undertakings, or
- (ii) the proposal meets the criteria set out in Policy H6; and
- (iii) the proposal would not conflict with other policies in the plan

H19: Refers to the conversion of buildings in the countryside but only allows for the conversion of suitable buildings where:

- (i) the building can be converted without major rebuilding or extension and without inappropriate alteration to its form and character
- (ii) the proposal would not cause significant harm to the character of the countryside or the immediate setting of the building
- (iii) the proposal would not harm the special character and interest of a building of architectural or historic significance;
- (iv) the proposal meets the requirements of other policies in the plan

C7: This policy controls development in areas of the countryside where it causes demonstrable harm to the topography and character of the landscape

C13: This policy relates to the protection of Areas of High Landscape Value. This is particularly appropriate in this case as the development is located within such an area.

4.7 The Non-Statutory Cherwell Local Plan 2011 – Approved for Development Control Purposes December 2004 (NSCLP)

H18: Refers to replacement dwellings as with Policy H17 in the ADCLP.

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”.

H19: Refers to new dwellings in the countryside similarly to the ADCLP plan policies and 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 Dwelling) or meets the criteria set out in Policy H8 (Affordable Housing)

H22: Refers to the 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.

EN34: Relates to landscape character – specifically 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. Appraisal

5.1 Background

This site has a complex planning history. A similar planning application (ref 06/01346/F was made in June 2006 for the replacement of the existing dwelling and re-use of two small barns for further accommodation and garaging. That application was approved under delegated powers on 01 September 2006.

5.2 This decision was then challenged in the High Court on behalf of the tenant farmers on the grounds that the Council:

- (i) had failed to properly interpret and apply Policy H18 of the Non-Statutory Cherwell Local Plan for replacement dwellings;
- (ii) had failed to acknowledge that the personal circumstances of the tenants were material considerations; and
- (iii) 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 permission with no order as to costs and requiring the application to be reconsidered. The application then started again with a reassessment of all material planning considerations including those dealt with in the Order.

The Council sought legal advice with regard to the decision made in the High Court and that advice concluded that the report on which the decision to grant planning permission was based on had been seriously flawed. This then resulted in a new round of consultations and as no decision had effectively been made on the application, these consultations formed the basis for a final recommendation on the application.

The application was considered by Planning Committee in December 2008 and a refusal of planning permission was issued on 12 December 2008. The reasons for refusal were as follows:

1. The existing dwelling is not regarded as being 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 on 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 it 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.

5.3 The applicants appealed against the refusal of planning permission. At the same time they also resubmitted the planning application for a broadly similar proposal but omitted the inclusion of one of the two single barns (which previously formed part of the original application for conversion) and also included reports relating to the structural integrity of the building (this application). Subsequently the applicants withdrew the appeal.

5.4 This application is therefore for the determination of the revised scheme. Due to the lapse of time from submission of the new scheme (July 2009) to determination (December 2011) and the fact that further additional information had been received between these dates, it was considered prudent to re-consult third parties. This report includes the most up to date information on the proposal received.

5.5 The main issues associated with this application (and having regard to the consent order to quash the grant of planning permission) are considered to be as follows:

1. Building condition
2. Scale and design of the current proposal
3. Personal circumstances of the existing tenants and the impact of granting permission upon the operation of Oxhay Farm
4. Determining an essential need for agriculture
5. Results of the bat survey on site

Building Condition

5.6 When the original application was submitted in 2006, a covering letter submitted with the application (dated 4th July 2006) stated that “The house is in extremely poor condition and over the year the landlords have had to repeatedly spend considerable sums of money attempting to put matters right.” The letter also concludes that it would be a false economy to continue spending money on the house to bring it up to an appropriate standard for living. The application was also accompanied by a Building Survey Report provided by Philip J Cooper. This report supported the explanation made in the accompanying letter and concluded “extensive works are required in order to bring the property up to modern habitable standards complying with the latest Building Regulations”.

- 5.7 In determining the current application, the same report was submitted to evidence the claim that the applicants cannot continually keep putting money into the buildings upkeep. In addition, the applicants also submitted a report dated 28 May 2009 by R & E Pierson Architectural Design Partnership which provided more up to date information regarding the state of the existing dwelling and evidenced this through two trial holes which were dug; one on the north side and one on the south side of the building to demonstrate the lack of foundations.
- 5.8 Further information has also been submitted from Imley Construction dated 5th June 2009 which discusses how that company has carried out various works on the property since 2006 and they also reach the conclusion that in terms of viability, the applicant will incur substantial cost to continually repair the house and considers instead that the house should be demolished and rebuilt to current standards.
- 5.9 In the previous application, the tenants put forward their own submission to report on the condition of the farmhouse. In summary that report concluded that the property had considerable potential but some general repair and expenditure would be required to improve the property to modern standards. This report estimated costs to be between £8,000 and £10,000 (in 2006).
- 5.10 The officer assessment of the previous application (subject to the order to quash) relied heavily on the cost implications associated with the amount of work that would have been needed to modernise the dwelling. In addition, information was also cited from other Council Departments which had been involved with the property over time and at that time, despite work being carried out the dwelling was considered to be statutorily “unfit”. However it is important to note that housing legislation has evolved since the initial involvement of the Council’s Housing Department and the term “unfit” is no longer used.
- 5.11 Given the differing conclusions that the reports have generated and the uncertainty over whether the dwelling is substandard or not, the Council commissioned Monson Engineering Ltd to assess the dwelling and advise what the best course of action would be in their opinion. Two reports were provided by Monsons; one relating to the previous submission dated 11 September 2007 and the most recent report dated 30 March 2010. Both reports, in their summary conclude the same thing in that the structure is in reasonable condition but that maintenance would be beneficial to the building as would and improvement in the method of heating.
- 5.12 Monsons have also been asked to comment on the report by R & E Pierson commissioned by the applicant. In doing so, they conclude by stating “It remains our opinion that the building has had minimal maintenance for many years and that works could be carried out to improve the dwelling for a moderate sum to make it as good as many solid masonry wall dwellings in the area.”
- 5.13 Taking all the reports in together, it is agreed that the house would benefit from general maintenance, notably in heating, insulation and damp proofing. However it

is also recognised that this could be said for a number of other dwellings in situations elsewhere. The advice that the Council's Consultants has provided is very clear in that whilst there is work needed to be done to the property to improve it, it does not automatically follow that the best solution to the problem is to demolish the building and rebuild a more modern dwelling in its place.

- 5.14 Policy H17 of the adopted Cherwell Local Plan is very clear in its requirement that permission will only be given for replacement dwellings that are statutorily unfit or substandard (where the proposal also accords with other policies in the plan). The conclusions drawn from all reports do seem to follow a similar line in that the current dwelling is damp and needs extensive maintenance works albeit there is still some disagreement over the financial cost associated with the work balanced against the cost of rebuilding. However there is no doubt that the demolition and replacement of the building does not accord with planning policy. Furthermore, advice in PPS 7 (para 10) states: *"Isolated new houses in the countryside will require special justification for planning permission to be granted"*. No such justification exists in this case as the dwelling has not yet been deemed beyond repair.

PPS 7 goes on to state: *"Very occasionally the exceptional quality and innovative nature of the design of a proposed, isolated new house may provide this special justification for granting planning permission. Such a design should be truly outstanding and ground-breaking, for example, in its use of materials, methods of construction or its contribution to protecting and enhancing the environment, so helping to raise standards of design more generally in rural areas. The value of such a building will be found in its reflection of the highest standards in contemporary architecture, the significant enhancement of its immediate setting and its sensitivity to the defining characteristics of the local area"*. The proposed new dwelling is not considered to be of any particular architectural speciality and does not use any special materials therefore it should not be viewed as anything other than a dwelling within the open countryside without any appropriate justification.

- 5.15 The issues associated with the building condition are not necessarily fundamental to the determination of this application as in light of the requirements of Policy H14, the proposal must meet with other policy requirements such as Policies H18 which looks at the principal of the development as being a new dwelling in the countryside.

- 5.16 Clearly the proposal does not comply with Policy H18 which deals with new dwellings in the countryside where it states:

"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"

The applicants have refused to agree to the imposition of an agricultural occupancy condition to make sure that any new dwelling is directly related to the agricultural business it is associated with. This therefore implies that the new dwelling is not essential for agricultural or other existing undertakings making it impossible to comply with Policy H18.

In this instance the proposal is not considered to comply with the requirements of PPS 7 or Policy H18 of the Adopted Cherwell Local Plan in that the policy states that new dwellings in the countryside will only be permitted when there is an essential need for agriculture or other existing undertakings.

Scale of Proposed Dwelling

- 5.16 The previous planning application proposed a replacement dwelling which was considered to be significantly larger than the existing dwelling and consequently this application was contrary to the requirements of Policies H17 of the adopted Cherwell Local Plan and H18 of the Non-Statutory Local Plan. Subsequently the previous report (subject to the consent order for quashing the decision) failed to discuss the issue of size and scale.
- 5.17 The previous proposal sought consent to not only demolish and rebuild the existing farmhouse, but also converting all the existing barns (those at the rear and attached to the house) into a dining area, three bedrooms and two bathrooms. As the replacement dwelling (new build plus conversion) was seen to be so much larger than the current existing building, it was considered to be conflicting with the requirements of Adopted Local Plan Policy H17 in that it was not sufficiently similar in scale to be considered a one-for-one replacement
- 5.18 The application currently before Members has been altered and essentially removes the need for conversion of the buildings at the rear of the dwelling for accommodation however it is proposed that these be used as a mixture of open storage and parking. As the built form of these buildings is not changing (they are retained as open hovels) and the footprint remains the same, there is no objection to this element of the scheme.
- 5.19 With the loss of the accommodation created from the conversion of these barns, the remaining barns which are attached to the existing dwelling are to now form a utility room, kitchen/breakfast room, dressing area and bedroom at ground floor with rooflights.
- 5.20 This reduction in size is considered to be significant and more in keeping with the size of the agricultural holding. As the footprint is staying mostly the same, albeit a small porch is proposed on the front elevation, these aspects associated with the previous application do appear to have been overcome to some extent. It is noted that the new dwelling house is larger than that of the existing dwelling.
- 5.21 The proposal seeks to alter the design of the dwelling by rebuilding the house with an additional roof height of approximately 1m. The roof will also include two dormers (front and rear). This will allow for an additional bedroom and bathroom to be provided at first floor level.
- 5.22 On balance, the proposal is still considered to be a large dwelling within the open countryside. However with the reduction in scale since the previous application was

refused it is not considered to be large enough to justify (and sustain) a recommendation of refusal on these grounds.

Personal circumstances of the existing tenants and the impact of granting permission upon the operation of Oxhay Farm

- 5.23 The personal circumstances of the existing tenants were referred to as a material consideration in the Judicial Review claim. It is therefore accepted that personal circumstances are capable of being a material planning consideration.
- 5.24 The issue with this application is that by granting planning permission for a significantly larger dwelling than is on site at the moment and also converting the existing barns to living accommodation, this is essentially depriving the farm business of its buildings and also providing a building which is of the size that the tenants do not need nor could afford to run.
- 5.25 The matter of the future for the tenants has been addressed with the applicant's agents. A letter was received and this stated that "*Regarding the personal circumstances of Messrs Hill, I can confirm that Mr. J C Hill and his son Mr. T F Hill, are joint tenants of Oxhay Farm. They have a secure tenancy under the terms of a written Agricultural Tenancy Agreement dated 1 January 1982. The tenants are protected by the Agricultural Act legislation and in particular the Agricultural Holdings Act 1986. Messrs Hill have security of tenure. This has always been and continues to be the case.*"
- 5.26 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 Notice to Quit where it is ".....given on the ground that the land is required for use, other than agriculture, for which permission has been granted on an application made under the enactments relating to town and country planning." Therefore, an applicant may seek to recover possession from a sitting tenant through the granting of planning permission for the use of the land unconnected with agriculture. This happened following the granting of the original planning permission however this was ineffective when the High Court Order quashed the planning permission.
- 5.27 The tenant's agent (Framptons) has provided detailed comments regarding the application. They make the following comments with regard to the personal circumstances of the tenant "*The proposal is fundamentally not a replacement of an existing agricultural worker's dwelling – but is intended to be an attempt to secure consent for a dwelling unrelated to agriculture. The landlord intends to rely upon a grant of planning permission as a ground for seeking vacant possession – dispossessing the subsisting tenant from the existing dwelling. In the absence of a second dwelling to provide on-farm accommodation for the agricultural business will be threatened without the 24 hour presence of the 'farmer'.* They go on to state that "*if your Authority is minded to grant planning permission for this development it is considered that it should be considered as being a replacement farmhouse for the agricultural tenants and thereby be subject to the imposition of the model*

agricultural workers occupancy condition.”

- 5.28 Given the age of the property and the fact that the dwelling itself pre-dates the introduction of the planning system there are no conditions on the building to tie it to agricultural use. However, it is now considered that a condition tying the property to agricultural use is appropriate in this situation to not only comply with Planning Policy but also to provide some security to the existing tenants occupying the dwelling. This matter was raised with the applicant's agent and it has been confirmed that the applicant would not be willing to have such a condition tied to the consent.

Results of the bat survey on the site

- 5.29 The application has been held in abeyance for a significant period of time to await the results of a bat survey on the site. A common pipistrelle bat and possibly a brown long-eared bat were recorded emerging from the barn adjoining the farmhouse and as all bats and their roosts are protected under Schedule 5 of the Wildlife and Countryside Act 1981 (as amended) and by the Conservation of Habitats and Species Regulations 2010 a bat report providing information from a survey and suggesting appropriate mitigation measures needed to be provided.
- 5.30 As the proposed development will result in the loss of a common pipistrelle roost and a possible brown long-eared roost as well as the potential for bats to use the existing barns for hibernations (although no evidence of this was located) it is important that suitable mitigation methods to protect the species long term are put into place.
- 5.31 The mitigation strategy proposed is as follows:
- A suitable void will be crated within the stonework near the top of the gable end of the stables and south gable end of the open hovels/covered pens
 - Three Schwegler 1FFH bat boxes will be placed in suitable trees near the buildings at least 3m from the ground, with Schwegler 1B bird boxes next to them to discourage birds from using the bat boxes
 - Demolition will avoid the hibernation period from the end of October to mid March
 - A pre-demolition check will be made by a licensed bat consultant prior to demolition/stripping. The licensed bat consultant will attend as the roof of buildings 2 and 3 (open hovels/covered pens and stables) is stripped to check for bats as the roof felt is removed by hand
- 5.32 The Council's Ecology Officer has checked the report and considers it to be sufficient in depth and scope, and also considers that the mitigation suggested is appropriate. She has suggested a number of items which can be dealt with as planning conditions. In addition the Ecologist has been asked to assess the comments received by the tenant's agents and her comments follow.
- 5.33 In their submission, the tenant's agents have raised concern with regard to the loss of the bat roosts. They consider that the proposal is in conflict with Article 16 of EC

Habitats Directive. The EU Habitats Directive (92/43/EEC) provides protection for habitats and species of European importance. It includes prohibitions against capturing, killing or disturbance and against the damage and destruction of a breeding site or resting place of such protected species.

Article 16 of the Directive provides for the derogation from these prohibitions for specified reasons and providing certain criteria are met (ie that licences to contravene protected species legislation can only be issued under certain strict criteria).

- 5.34 The EU Habitats Directive is implemented in the UK through the Conservation of Habitats and Species Regulations 2010 (“Habs Regs”). (The 2010 version consolidates all the amendments that were made to the original 1994 Habs Regs).
- 5.35 Natural England is the licensing authority for the purposes of this legislation. For planning purposes (because not all the criteria in Article 16 are relevant to planning), the criteria under which a licence to can be issued by Natural England to enable development to take place are known as the 'three tests'. These requirements are set out under Regulation 53 of the Habs Regs and are:
- 1. Regulation 53(2)(e):** a licence can only be granted for the purposes of 'preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment'.
 - 2. Regulation 53(9)(a):** the appropriate authority shall not grant a licence unless they are satisfied 'that there is no satisfactory alternative'.
 - 3. Regulation 53(9)(b):** the appropriate authority shall not grant a licence unless they are satisfied 'that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range'.
- 5.36 Regulation 9(5) of the Habs Regs 2010 states that a competent authority (including a planning authority) must, in the exercise of their functions, have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions. The Woolley ruling in 2009 confirmed that local planning authorities must apply the same three tests as Natural England when deciding whether to grant planning permission where protected species offences may be committed if planning permission is granted. This is the ruling which the tenants agent has also referred to in their submission.
- 5.37 The 2011 bat survey report by ecoconsult assesses the status of the bat roosts on site as being of low conservation significance. It also states that the predicted scale of impact on bats of the proposed development is negligible at a County level (before mitigation) and that if their proposed mitigation strategy is followed the development would not be detrimental to the maintenance of the species concerned at a favourable conservation status. I am confident that this is the case and that

Natural England would be satisfied in this regard. Therefore the planning authority has considered Regulation 53(9)(b).

- 5.38 As stated in the bat survey report, the applicant must be able to demonstrate that Regulations 53(2)(e) and 53(9)(a) can also be satisfied - ie that there is no other satisfactory alternative and that there is a reason of overriding social or economic nature for permitting the development.
- 5.39 The letter from the tenants agent also considers why Regulations 53(9)(a) and 53(2)(e) cannot be satisfied - because there is an alternative to demolishing the building and because there is no overriding reason of social or economic interest.
- 5.40 With regard to this comment, Natural England have published guidance to planning authorities on considering the 'three tests'. The following is taken from Natural England Guidance Note: European protected Species and the Planning Process - Natural England's Application of the 'Three tests' to Licence Applications. This document can be found on their website.

One of the statements in this document is that 'Natural England applies the tests on a proportionate basis; thus the justification required increases with the severity of the impact on the species or population concerned'.

It also acknowledges that there will always be alternatives to a proposal, and that again a proportionate approach is adopted in considering the feasibility of alternative solutions relative to the degree of likely impact.

- 5.41 In this situation where the proposed development would result in the loss of two roosts for very small numbers of our most common bat species, and where mitigation can easily be provided, the justification can be at a low level.
- 5.42 Our Ecologist has assessed the comments and on the basis of the comments made above suggests the following:
1. That the applicant is asked to provide information as to how Regulation 53(2)(e) and Regulation 53(9)(a) can be satisfied, before permission is considered, if they have not already done so.
 2. If planning permission is granted, that the following Condition is attached to any permission:
'Development is to proceed in accordance with the bat and bird mitigation strategy given in the July 2011 Oxhay Farm bat survey report by ecoconsult'.
- 5.43 With regard to the erection of the stable building, this is not considered to be of concern. The site is sufficiently large enough to accommodate the stables. It is a building which is not out of keeping with the rural area within which the property sits and on balance it is a fairly innocuous building which is not considered to adversely

impact upon the open countryside. There is no objection to this element of the scheme.

Conclusion

- 5.44 The current proposal is for a new dwelling in the countryside to replace the existing dwelling which is smaller in size. The existing dwelling is in need of investment to rectify a number of deficiencies within the property due to its age and maintenance however there is still some disagreement as to whether it is financially viable to carry out works to the building or whether the cost of demolition and rebuild is a more feasible option.
- 5.45 In terms of scale, the proposal has been reduced and is now based upon the rebuilding of the farmhouse with the conversion of the attached barns. A stable block is proposed to the rear of the buildings.
- 5.46 Taking all of the considerations into account the current proposal still remains a new dwelling in the countryside without any justification for its need. The proposal is not considered to be essential for the purposes of agriculture which is further emphasised by the unwillingness of the applicant to consider an agricultural occupancy condition. There is no argument between the applicant or the Council as to the fact that the existing dwelling is in need of repair and this has been accepted by the Council's engineering advisors however in the absence of any justification for the demolition of the building and also doubt over the future of the agricultural tenancy on the site, the application is recommended for refusal.

6. Recommendation

Refusal

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. 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 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 (PPS 7): Sustainable Development in Rural Areas, to Policy H18 of the Adopted Cherwell Local Plan 1996 and to Policy H19 of the Non Statutory Cherwell Local Plan 2004.

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