

Former B-Line Business Centre, Station Road, Enslow

12/00643/OUT

Ward: Kirtlington

District Councillor: Cllr Holland

Case Officer: Paul Ihringer

Recommendation: Refusal

Applicant: Minns Estates

Application Description: Erection of B1 office development and 10 dwellings and associated access

Committee Referral: Major/Departure from Policy

1. Site Description and Proposed Development

- 1.1 The application site, often still referred to as the B-Line Business Centre (a 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, which are in a poor state of repair, and replace them with an office building near the entrance to the site, and 10 new dwellings overlooking the valley floor. Three of the houses would be affordable units. The application is in outline form, and all matters other than access have been reserved for future consideration. The indicative plan shows an office building which would provide 170 square metres of floor space and has been allocated six demarcated parking spaces. The applicant is proposing to improve the access on to the main road and provide a new footpath linking the site to the rest of the hamlet.
- 1.4 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. This permission will expire on the 14th August 2012.

- 1.5 An application submitted two years ago 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. Last 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. The most recent application on this site, 11/01071/OUT, for an office building and seven dwellings was refused on the same grounds as the earlier 2011 application and also for the reason that the proposal was not supported by an appropriate unilateral undertaking.

2. Application Publicity

- 2.1 The application has been advertised by way of site notice and press notice. The final date for comment was the 15th June 2012. No correspondence has been received as a result of this consultation process.

3. Consultations

- 3.1 **Bletchington Parish Council:** No objections

Cherwell District Council Consultees

- 3.2 **Planning Policy Officer:** "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 the subject of a number of planning applications in recent years. Most recently, on 9 September 2011, planning permission was refused for an application (11/01071/OUT) for the demolition of employment buildings and the erection of 1,700 sq.ft (158 sq.m) of Class B1 development, 7 dwellings and associated access.

"The reasons for refusal included: Enslow's status as a Category 3 settlement where development is restricted to the conversion of non-residential buildings or where an essential need for agriculture, or other existing undertaking, can be established; that the proposal would have been unsympathetic to its rural context; that the proposal would have resulted in the loss of a significant proportion of an employment site; and, that it had not been demonstrated that there was a lack of need for the employment site nor that there would be substantial and demonstrable planning benefit arising from the proposal.

"In terms of planning policy, the main changes in circumstances for the current application are the publication of the NPPF, the approval of the Proposed Submission Local Plan by the Executive on 28 May 2012 (subject to minor changes), the increase in the number of dwellings proposed to 10, the addition of slightly more B1 office floorspace, and the marketing of the site with the benefit of an extant planning permission for use of the site for some 1,620 sq. of

B1 employment use. The district's housing land supply position is also now material.

"In the context of the NPPF, the district has not yet returned to a five-year land supply position and a detailed assessment will need to be made as to whether the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits. The loss of most of the site for non-employment uses should be considered a significant adverse impact and an assessment should be made as to whether the marketing of the site constitutes every reasonable attempt to secure suitable employment re-use (policy EMP5 of the Non-Statutory Local Plan) and whether there are valid reasons why the use of the site for employment use is not economically viable (policy SLE1 of the Proposed Submission Local Plan as approved).

"Notwithstanding this, the suitability of the site for residential development needs to be considered. Enslow is a category 3 hamlet in both the adopted (saved) Local Plan and the Non-Statutory Local Plan where new development within built-up limits is limited to conversions under village categorisation policies. It remains in a similar 'C' category in the Proposed Submission Local Plan. The proposal is not compatible with village categorisation policies and there are no housing allocations or proposed housing allocations for Enslow. The hamlet has a small population, a lack of services and facilities and is in a generally remote location.

"The grant of permission for a 'live-work' scheme nearby does not in my view make this a sustainable location in which to respond to the district's current 5 year land supply situation. The potential availability and suitability of sites in more sustainable locations as evidenced by site allocation issues and options papers reinforces this view.

"There is therefore a policy objection to this application."

3.3 **Strategic Housing Officer:** "Whilst there is high need for affordable housing in the parish of Bletchingdon we do not think this site is in a suitable location for the provision of affordable housing. We would therefore be seeking an off site contribution by way of a commuted sum equal to the onsite provision of 3 and half units (consisting of 2 and 3 bed houses). We would seek as far as possible to provide the housing that this could deliver within the immediate locality."

3.4 **Environmental Protection Officer:** No objections subject to condition

3.5 **Landscape Officer:** No comments received at the time of writing

3.6 **Arboricultural Officer:** No objections subject to condition

3.7 **Ecology Officer:** No objections subject to condition

Oxfordshire County Council Consultees

3.8 **Highways Liaison Officer:** No comments received at the time of writing

3.9 **Drainage Officer:** No objections subject to condition

Other Consultees

3.10 **London Oxford Airport:** No objections subject to condition

3.11 **Environment Agency:** No objections subject to condition

4. Relevant National and Local Policy and Guidance

4.1 Development Plan Policy

Adopted Cherwell Local Plan (CLP) - Saved Policies

H5: Affordable housing

H15: Residential development in category 3 settlements

C2: Development affecting protected species

C13: Area of High Landscape Value

C27: Development in villages to respect historic settlement pattern

C28: Layout, design and external appearance of new development

C30: Design of new residential development

C33: Protection of important gaps of undeveloped land

ENV12: Contaminated land

TR1: Transportation funding

South East Plan 2009 (SEP)

CC1: Sustainable development

CC4: Sustainable design and construction

H4: Type and size of new housing

T4: Parking

RE3: Employment and land provision

NRM4: Sustainable flood risk management

NRM5: Conservation and improvement of biodiversity

BE1: Management for an urban renaissance

BE5: Village management

4.2 Other Material Policy and Guidance

National Planning Policy Framework (NPPF)

Non-Statutory Cherwell Local Plan 2011 (NSCLP)

In December 2004 the Council resolved that all work to proceed towards the statutory adoption of a draft Cherwell Local Plan 2011 be discontinued. However, on 13 December 2004 the Council approved the Non-Statutory Cherwell Local Plan 2011 as interim planning policy for development control purposes. Therefore this plan does not have Development Plan status, but it can be considered as a material planning consideration. The policies listed below are considered to be material to this case and are not replicated by saved Development Plan policy:

EMP5: The change of use or redevelopment of an existing employment site within or adjoining a village to a non-employment use

5. Appraisal

5.1 The key issues for consideration in this application are:

- Principle of the development
- Loss of an employment generating site
- Design and layout
- Highway safety and parking
- Ecology

The principle of the development

5.2 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. This status is confirmed in both the Non-Statutory Cherwell Local Plan 2011 (NSCLP) and the emerging Local Plan. Both the Strategic Housing Officer and the Planning Policy Officer emphasise the unsuitability of this location for housing, arguing that new residential development should be focused in larger more sustainable locations.

5.3 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.

5.4 Notwithstanding the merits of live-work units, and the Ingelby Farm development in particular, 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.

5.5 Based on the assessment above, the proposed development is therefore not considered to accord with Policy H15 of the CLP.

Loss of an employment generating site

5.6 In the absence of a saved policy in the adopted CLP, the Council's position, as regards the protection of existing rural employment sites, is best articulated in Policy EMP5 of the 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 *every reasonable attempt* to find an alternative employment re-use.

- 5.7 Taking the later of these two criteria first, the applicant argues that they have established that there is no demand for the existing or indeed the replacement units approved under as 09/00647/OUT. Whether just putting them on the market constitutes *every reasonable attempt* is however questionable. When inspecting the site, there was no evidence of any remedial repairs having been made to the buildings, indeed the weeds growing up beside the buildings have been left unchecked. Potential occupiers would undoubtedly be put off by the lack of care shown, particularly if their business required business clients to visit the site.
- 5.8 As for the extant permission (which lapses on the 14 August 2012), how many potential occupiers are going to commit to renting or buying a site where not only have the units not been built, but the reserved matters have yet to be resolved? Further, in the absence of any data, officers cannot be sure how competitively priced the existing and the proposed business units have been. Officers are therefore unconvinced that *every reasonable attempt* has been made to find an alternative employment use.
- 5.9 Turning to the *substantial and demonstrable planning benefit*, it the applicant's contention that they are so significant that they would not only justify the loss of the employment site, but would also out weight the policy objection relating to new housing.
- 5.10 The first point made is that the new housing would meet a local housing need and provide an element of affordable housing. Whilst the Council does have a shortfall in its 5 years housing land supply it does not follow that every application for new housing should be considered favourably. Indeed Paragraph 55 of the NPPF begins "*To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities.*" As already stated Enslow is not considered to be a sustainable location given its limited size and lack of facilities. Furthermore the affordable housing element is a requirement for development of this type and should not be considered to constitute a planning benefit.
- 5.11 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 61%. 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. It should be restated that Enslow has a disproportionate number of businesses given its size.
- 5.12 This traffic argument has only 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 the local population.
- 5.13 It should also be noted that the sustainability argument is further weakened if, as the applicant argues, there is no market for the units anyway. If were to be

accepted that there is no market for business units on the site, the proposed development will have adverse sustainability credentials.

- 5.14 Another benefit of residential over commercial development identified by the applicant is the New Homes Bonus. However as with the sustainability argument if you afford such a consideration much weight, you would jeopardise other business sites in the District.
- 5.15 The next point made by the applicant is that the proposed scheme will provide an employment-generating development which will be superior to the existing units. Whilst this is undeniable, the extant outline permission will provide for even more (almost ten times as much) good quality B1/B2 space.
- 5.16 Much store is set in the applicant's planning statement of a proposed contribution, by way of a S106 agreement, to help subsidise a new school in Bletchingdon. The same proposed financial commitment was made in respect of 11/01071/OUT. Although Members were not swayed by the offer and refused this earlier application, the Committee did express some sympathy. As a result, officers were asked to examine ways in which the Council could help to bridge the funding gap which prevented the school project moving forward.
- 5.17 Although the applicant was involved in the initial discussions, representatives of the Council, school and Parish Council resolved to approach the Duchy of Cornwall who own the land (northern edge of Bletchingdon) on which it is proposed to build the school. The Duchy was invited to help in devising a scheme incorporating the school, a new village hall, affordable housing and if an interested party could be found, a shop. An agreed number of market houses, based on a viability study, will help fund the building of the school and allow the Duchy to make a reasonable return on their investment.
- 5.18 The idea was warmly received by the Duchy and a working group referred to as the *Bletchingdon Project* was formed. Aside from the aforementioned stakeholders, officers from the Education Department at the County Council and a local housing association have been involved in on-going negotiations. There is an expectation that an outline application could be submitted in the early autumn following positive discussions, and a favourable response from the local community to the principle of the scheme.
- 5.19 It would be unwise to prejudge the likely reaction of the Planning Committee because, as with the application currently under consideration, the *Bletchingdon Project* would represent a departure from policy. However, if either of the schemes is to be supported there are clear advantages with the *Bletchingdon Project*, in terms of community involvement, sustainability, and greater financial probity. It should also be pointed out that the school would not have additional resources if both schemes were approved as the *Bletchingdon Project* would have to be scaled back to reflect the additional revenue stream. In all probability, therefore, the school project would not benefit financially from the approval of this application.
- 5.20 Another consequence of accepting the contribution is that it would set a precedent whereby other landowners in the area make a similar offers which may, in all equity, be more difficult to resist. For example, the agent representing the owners of a nearby cattery stated that her clients would have

been willing to make a similar contribution if it meant that a previously refused scheme for five houses (11/01146/OUT) would be treated more favourably, if resubmitted.

- 5.21 Notwithstanding the above, late on in the application process the applicant agreed to make a financial contribution based on the SPD and containing no reference to the school. Although a figure has yet to be finalised it is likely to be in the order of just over £178,000. Such a concession, whilst negating one of their identified planning benefits, does however mean that one of the previous reasons for refusal has, in principle, been successfully addressed.
- 5.22 One final planning benefit attributed to the scheme is a proposed footpath running alongside the B4027 linking the site to the rest of the hamlet. Whilst this would indeed represent an improvement to highway safety, a similar footpath was incorporated in to a scheme to redevelop the nearby marina (planning permission 02/02064/F refers). Notwithstanding the date of this approval, the owners of the marina recently submitted a discharge of condition application (12/00098/DISC) to allow them to construct the footpath in the near future.
- 5.23 Based on the above, it is concluded that not only has the applicant not presented a compelling case which would outweigh the strong policy objection based on non-compliance with Policy H15 of the CLP, but officers have also concluded that the applicant has not successfully overcome either of the requirements contained within Policy EMP5 of the NSCLP.

Design and layout

- 5.24 The Council's former Urban Design Officer, who has been working for the Council on a freelance basis until her replacement has taken up the position, provided informal comments. She noted that many of the criticisms of earlier schemes had been taken on board; but as all matters other than the access and reserved, ultimate judgement of the design should be saved for a reserved matters application.

Highway safety and parking

- 5.25 Although the local Highways Officer had not sent any observations at the time of writing, it is reasonable to conclude, given their previous comments, that it is unlikely that an objection to the scheme will be raised. The development is therefore considered to comply with Government guidance contained within the NPPF.

Ecology

- 5.26 *Conserving and enhancing the natural environment* a sub-section of the NPPF requires that "the planning system should contribute to and enhance the natural and local environment by minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government's commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures" (para 109).
- 5.27 Paragraphs 192 and 193 further add that "The right information is crucial to good decision-taking, particularly where formal assessments are required (such as Habitats Regulations Assessment) and that Local Planning Authorities should publish a list of their information requirements for applications, which

should be proportionate to the nature and scale of development proposals. Local planning authorities should only request supporting information that is relevant, necessary and material to the application in question". One of these requirements is the submission of appropriate protected species surveys which shall 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. 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. This is a requirement under Policy EN23 of the Non-Statutory Cherwell Local Plan 2011.

5.28 Paragraph 18 states that "When determining planning applications, local planning authorities should aim to conserve and enhance biodiversity by applying the following principles:

- If significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused"

5.29 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."

5.30 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;

5.31 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".

5.32 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.

5.33 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?

5.34 Therefore where planning permission is required and protected species are likely to be found to be present at the site or surrounding area, Regulation 53 of the Conservation of Habitats and Species 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.

5.35 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]

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.

5.36 In respect to the application site, an initial bat survey was undertaken by James Johnson Ecology in September 2010 and the report submitted with the application, which found that there was no evidence of bats roosting in the buildings although there were droppings found on the site. Notwithstanding the fact that the bat survey is out-of-date, the Council's Ecologist is satisfied that there is little prospect that bats would have inhabited the buildings in the

interim. She is therefore only recommending a condition regarding the timing of the removal of trees and scrub.

- 5.37 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 the National Planning Policy Framework and Policies C2 and C4 of the adopted Cherwell Local Plan.

Conclusion

- 5.38 This proposal is not considered to be acceptable in principle, for the reasons set out above, officers concludes that this proposal is contrary to Policy RE3 of the South East Plan 2009, Policy H15, of the adopted Cherwell Local Plan and Policy EMP5 of the Non-Statutory Cherwell Local Plan 2011 and Government Guidance contained within the National Planning Policy Framework.

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 Policy H15 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.
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 clearly established or no substantial and demonstrable planning benefit has been established, the proposal is contrary to Policy RE3 of the South East Plan 2009, Policy EMP5 of the Non-Statutory Cherwell Local Plan 2011 and Government guidance contained within the National Planning Policy Framework.