

**Site Address: Otmoor Lodge, Horton Hill, Horton cum Studley**

**12/01000/F**

**Ward: Otmoor**

**District Councillor(s): Cllr Hallchurch**

**Case Officer: Tracey Morrissey**

**Recommendation: Refusal**

**Applicant: B A Property Management Ltd**

**Application Description:** Refurbishment and alteration to hotel bar and restaurant to form public house, with shop and change of use of existing hotel facilities to form 5 no. dwellings and construction of 4 detached dwellings, garages and access

**Committee Referral:** Previous schemes on this site determined by Committee

## **1. Site Description and Proposed Development**

- 1.1 This existing hotel site lies within the Oxford Green Belt and has considerable history as detailed later, which essentially granted outline consent in 2006 for a 20 bed hotel extension, the provision of a shop/Post Office and 4 dwellings.
- 1.2 Subsequent applications followed this consent, however the permission lapsed on 22<sup>nd</sup> December 2009 as not all follow-on Reserved Matters were submitted in time and also the applicant failed to complete a Legal Agreement that sought to ensure the provision of a shop within the hotel building. Furthermore there has been no lawful commencement of development on site. Consequently apart from this current application and 11/01720/F (see para 5.2 below), (which are undetermined), there is no valid planning consent relating to the site.
- 1.3 This current application which relates to a lawful hotel use, seeks consent to now to use part of the hotel building as a pub with a small shop, the change of use of another part of the hotel to form 3 no. dwellings comprising 1 no. x 2 bed, 1 no. x 3 bed and 1 no. x 4 bed and also the use of 4 no. 'Lodge Cottages' at the rear of the site to form 2 no. x 3 bed dwellings. The application also seeks consent for the construction of 4 no. detached dwellings comprising 3 no. x 5 bedroom dwellings and 1 no. x 4 bedroom dwelling with garages. All the residential units will have garden areas.

## **2. Application Publicity**

- 2.1 The application has been advertised by way of site notices. The final date for comment was 30th August 2012.

16 individual letters/emails of objection have been received. Full details are available electronically via the Council's website.

The material planning considerations raised as objections are as follows:

16 Letters of Objection have been received. The following points have been made:

- The developers have not explored every option with the local community that seeks to keep the lodge as a village amenity. There is considerable interest in developing a community scheme for this property. This will not be possible if proposal in its current form is approved.
- Interest from villagers in approaching the owner to purchase the pub, but this will be impossible if value is based on a residential building development. The

site should be valued as a pub/ restaurant business.

- Previous approval should not mean the whole of the land is 'previously developed'. As the additional bedroom accommodation to the dwelling has not been built (and there is no intention to build this) and this was the 'enabling development' for four dwellings, it seems incongruous that they should be a justification for a largely altered development.
- Large scale proposal – 9 dwellings
- High density development and over development
- Out of character with the surrounding area
- Owner has purely commercial ambitions. Questions raised as to the financial side of the proposals
- Proposed plans do not represent a benefit to the local community and as such the proposal is not a genuine case for enabling development.
- Proposal does not qualify as enabling development because the pub is not inherently unviable, the application will not secure the long term future of the pub, there has not been a proper assessment of the minimum enabling development required to achieve the stated intentions, there has been a lack of public consultation, and there is no evidence of support from the community, alternative options for ensuring viability have not been properly considered and there isn't adequate provision for a shop.
- Pub and hotel are currently shut. Applicant has stated he has no intention of reopening the hotel and would not therefore require the additional rooms previously approved.
- The case for enabling development has been lost as the applicant does not intend to build the hotel extension
- Applicant seeks to recover lost funds, but this is not the intention of enabling development.
- Loss of village services/ amenity to residential. Proposal to run a pub/ restaurant/ shop is time bound. Seems that this is an attempt to make the larger residential development acceptable to the community.
- No social housing proposed
- Additional parking required from 9 residential units, where there will be no where to park, in a busy part of the village and close to a bus stop. Danger to those waiting in the shelter.
- The Green roadway is small and unsuitable to serve the development, and will cause a hazard to children playing
- Will increase parking problems
- Definition of proposal as brownfield development is disingenuous. Green Belt development proposal and should be judged as such.
- Proposal will severely reduce the openness of the Green Belt.
- The proposed location for the dwelling has not been built on previously and so is not previously developed land.
- Construction of the 4 dwellings is inappropriate development. The construction of these would not constitute infilling. Approval would set a precedent for further development behind the existing housing frontage.
- The increase in openness argument is based on a comparison with the previous approval (but these have never been constructed), this is not considered logical
- Location of shop to the rear of the bar/ restaurant is impractical as it is unlikely elderly residents would walk through these areas to do their shopping.
- Location of small parking area for the bar/ shop/ restaurant is close to the corner of the road, which is of concern due to the speed of traffic descending Horton Hill. Potential impact to pedestrians
- Proposed dwellings are larger than previously proposed
- Sale of any of the house plots (if approved) should be linked to show how the funds would be re-invested.
- If any proposed houses are sold before any work occurs to the hotel, then there could be a delay between the work being carried out to the pub/ shop,

despite any S106 agreement.

- Applicant has only taken the minimum step of establishing some limited groundwork on site in order to keep the permission live.
- The shop is not a significant part of the proposal.
- The fact the pub and hotel have been closed indicates they were not making a profit. The smaller sized pub and no hotel will be offered to a tenant to build a thriving business. At the end of the short tenancy (5 years suggested), if a loss is still being experienced a further use may be sought – possible further residential? It is considered that this may be the case as the proposal does not demonstrate enthusiasm to make the pub a successful business.
- The manner in which the latest application has been structured could be interpreted as a plan to ensure that the shop/ pub fails as a prelude to converting the remaining part of the establishment to residential use.
- Success of enterprise questioned – parking at the front will be reduced and that provided to the rear of the proposed dwellings is not convenient and it is unrealistic to consider that this will be regularly used. Parking is more likely to occur in the spaces or on the roads around the site. Low level parking for pub suggests lack of enthusiasm by applicant.
- A public house will need more customers than just villagers to be successful. Lack of parking makes this difficult
- Planning statement makes little reference to the public house, but rather to the dwellings and their benefit to the village community. It is maintained that traffic movements would be lower and that this indicates the proposal represents sustainable development.
- Permitting the change of use of the main building to five residential buildings would reduce the options for future business operators to ensure the pub becomes viable. Any change of use should be considered in line with a scheme that assures the long term viability of a pub/ restaurant business.
- Overnight stay units are already being used for residential purposes contrary to planning conditions.
- Very small area shown to be left for the pub/ shop – would question how either business could be viable.
- Road forms pedestrian access to the play area. Additional traffic would be a danger
- Impact on the residential amenities of the dwellings on The Green by way of overshadowing, overbearing and loss of privacy
- Noise issues to existing neighbours.
- Proximity of the existing trees to the proposed dwellings may result in future pressure for their removal.
- Proposal is not sustainable development

Oxford Green Belt network make the following points:

- Present application offers little except residential development with a gesture in the way of a small pub facility.
- CDC considered previously that the benefit of the hotel; post office and shop to the village were 'exceptional circumstances' that outweighed the presumption against inappropriate development in the Green Belt. These exceptional circumstances cannot be said to apply in connection with the present application since the service component is so small and residual.
- Since house building is proposed on land that is currently undeveloped, the impact on the openness of the Green Belt will unquestionably be greater than it presently is.
- It is disingenuous to argue that the development would not increase the size of the built envelope since the argument is based on an extension to the hotel, which, though permitted, was never built and has not lapsed.

- Support arguments made in terms of the impact on neighbouring properties, the appearance of this part of the village and the Green.
- Application should be refused as inappropriate development and be harmful to the openness, appearance and amenities of the Green Belt.

### 3. Consultations

3.1 Horton cum Studley Parish Council objects to the proposal and have appointed a Planning Consultancy to object on their behalf, the following points are made:

- It is considered that permission for an alternative development does not remain extant. The 2010 application (10/01021/F) which has a resolution to grant permission cannot be determined, firstly because it seeks consent to vary a condition on a permission which has expired (07/02478/F) and secondly, the effect of the grant would be to extend the time for commencement of a development which is expressly forbidden by S.73 of the 1990 Town and Country Planning Act. View is that there is no extant permission for development at the site. Arguments relating to the improvement of the proposal compared to the extant permission cannot hold weight as there is no extant permission.
- Not all of the site can be classified as previously developed land in accordance with the definition provided at annex 2 of the NPPF.
- The partial or complete re-development of previously developed sites in the Green Belt is one of the permissible exceptions to inappropriate development in the Green Belt offered by the NPPF, however it is only excluded from the definition of inappropriate development where what is proposed would have no greater impact upon the openness of the Green Belt and the purpose of including land within it than the existing development.
- The application argues that the proposal will improve the openness of the Green Belt principally by reference to an expired planning permission. This is not the case as the proposal would significantly increase the footprint of development including extending development into open land with no building development and as a result reduce openness.
- Parish Council wishes to see the continuation of a local public house and shop, it is concerned that this will not be achieved by the phasing suggested in the D&A statement, that too much new development is proposed, that this is not justified as the minimum necessary and that overall there would be significant harm.
- Whilst in the past Officer's have considered that the benefits of providing the shop/ post office outweighed the normal presumption against Green Belt development, the public benefit arising from the current application is less tangible. Hotel bed spaces would be lost (contrary to the adopted Local Plan, which seeks to improve the provision of tourist accommodation in the District) and no evidence has been provided to indicate this is the minimum required to ensure the survival of a public house in the village. Unclear how the proposal ensures the continued viability of the public house or that the continued survival of a public house in the village could not be secured by the conversion of existing buildings alone. No analysis of how such a small floor space would be able to sustain a pub and shop. Appears that the applicant seeks to 'recover some of the significant losses' incurred, which cannot be a

proper feature of enabling development and cannot justify the harm, by reason of inappropriateness in the Green Belt or other harm.

- The proposal does not constitute infilling.
- Development proposes the erection of new houses on land currently devoid of built development, which is open and where part has a natural appearance. Land could not be defined as previously developed.
- Proposal would have an adverse impact upon the openness of the Green Belt and it would detract from the setting and appearance of the village and the award winning development at The Green.
- Dense form of development would result.
- Proposal would have an adverse impact upon the landscape character of the settlement.
- The proposal does not accord with the Council's SPG (Countryside Design Summary) which seeks that new development should emphasise the existing street form by limiting back land development whilst maintaining open land which is identified as being intrinsic to the village's character. The proposed dwellings would have ridges which are not surmounted by chimney stacks and are not aligned with The Green and would stand out as incongruous modern additions to the settlements built form.
- Due to the land levels and the height of the buildings together with the proximity of the units to the road, it is considered that the development would adversely affect the amenities of the houses on the western side of The Green resulting in an overbearing and dominant form of development. Close proximity of the dwellings to existing would also have an impact. As what is proposed is not considered to be enabling development, it should be considered under the policies of the adopted Local Plan and the proposal is considered to be contrary to policy.
- Concern also raised over the layout of the development which has resulted in a cramped development with poor standards of amenity likely to be enjoyed by occupiers of the houses due to inadequate gardens and access.
- No mention of need for affordable housing in line with the Council's requirements.
- Proposed development is poorly planned and laid out. Includes an access road of suburban character to serve 22 parking spaces and appears designed to serve further development.
- Rear area would be environmentally poor and unattractive, could result in disturbance to the occupiers of the dwellings and it is unrealistic to expect that visitors to the public house will use the proposed spaces at the rear of the site.
- Comments made in relation to the specific provision and location made for certain dwellings compared to that required by the Councils policies.
- Necessary to weigh the harm to openness and any other harm with any very special circumstances given. These appear to be to keep open and operate a pub (and possibly a shop) for a limited period whilst recovering losses made by the applicant and achieving sufficient funds to refurbish the pub. To do so, the applicant claims that 4 new detached houses open land and 5 other units

created out of the hotel accommodation is required. The financial information has not been seen, but this appears excessive and not justified by what appears to be offered as public benefits and not the minimum sufficient to achieve any such benefit.

### **Cherwell District Council consultees**

- 3.2 Planning Policy: Although this application comprises of proposals of previously approved schemes for the site, it is questioned whether 'exceptional circumstances' still exist for this application, given the reduced nature of the village/local facility element. Careful consideration will need to be given to whether the benefits outweigh inappropriate development within the green belt.
- 3.3 Arboricultural Officer: generally no arboricultural objections but would like to see House No 1 relocated further away from existing trees located outside of the site boundary.

### **Oxfordshire County Council consultees**

- 3.3 Highways raises the following concerns and requires further details:

- It is essential that the applicant confirm with OCC Land & Highway Records Team the extent of the highway maintainable at public expense along the front (north) of the site, to ensure that this proposal (including the proposed front gardens and parking areas) will not encroach upon highway land.
- Houses 7, 8 and 9 will have separate individual accesses to and parking from the main road. Front garden walls will be no higher than 600mm to ensure visibility splays can be achieved. For the avoidance of doubt, details of the proposed visibility splays onto the main road, and for the junction of The Green with the main road, must be submitted
- Access arrangements for proposed houses 1 and 2 are not clearly marked on plans, however vehicular access is likely to be a shared access from The Green.
- Parking  
House 1 – garage appears impractical to manoeuvre cars into and out of. This cannot be counted as a parking space. Two spaces are available on the driveway, which is acceptable.

House 4 – garage does not meet minimum internal dimensions of 3m x 6m for a single parking space (6m<sup>2</sup> for a double garage). Furthermore, the garage is located close to the junction of the rear access road and The Green, and the garage structure will likely obstruct internal visibility splays along the access road. Please revise.

All hard-standing parking spaces must be a minimum of 2.5m x 5m, and additional width/length is required where parking spaces abut boundary fences/ walls etc. All parking spaces shown on plans appear to be below standard minimum dimensions and must be revised.

Visitor parking is indicated on plans, however is perhaps unlikely to be used by short-stay visitors to houses as it will be more convenient for visitors to park on The Green or closer to the houses.

14 parking spaces will be available for pub users, including one disabled

space. It may be difficult in practice to separate pub/ visitor/ resident parking spaces. At busy times, the site may see higher levels of parking along the shared access road and The Green.

- Details required of proposed servicing/ delivery arrangements for the proposed public house.

3.4 Archaeologist advises that there are no Archaeological constraints relating to this development.

#### **4. Relevant National and Local Policy and Guidance**

##### 4.1 Development Plan Policy

###### Adopted Cherwell Local Plan (Saved Policies)

GB1:	Green Belts
H21:	Conversion of buildings within settlements
C7:	Landscape Conservation
C8:	Sporadic development in open countryside
C13:	Areas of high Landscape Value
C14:	Trees and landscaping
C28:	Layout, design and external appearance of new development
C30:	Design control and context compatibility
S28:	Small shops serving local need

###### South East Plan 2009

H4:	Type and size of new housing
H5:	Housing design and density
CC6:	Sustainable character
C4:	Landscape and countryside management
BE1:	Management for an urban renaissance
BE5:	Village Management
NRM5:	Conservation and environment biodiversity
T4:	Parking
CO2:	Economy
CO4:	Green Belts
SP5:	Green Belts

##### 4.2 Other Material Policy and Guidance

###### National Planning Policy Framework

###### Cherwell Local Plan – Proposed Submission Draft (May 2012)

The draft Local Plan is out for public consultation and although this plan does not have Development Plan status, it can be considered as a material planning consideration. The plan sets out the Council's strategy for the District to 2031. The policies listed below are considered to be material to this case and are not replicated by saved Development Plan policy:

BSC2: The effective and efficient use of land

ESD1: Mitigating and adapting to climate change  
ESD10: Protection and enhancement of biodiversity and the natural environment  
ESD13: Local landscape protection and enhancement  
ESD14: Oxford Green Belt  
ESD16: Character of the Built Environment

## Non-Statutory Cherwell Local Plan 2011

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:

GB1: Development in the Green Belt  
GB1a: Residential development in the Green Belt  
GB4: Reuse of buildings in the Green Belt  
S25: Small shops to serve local need  
S26: Loss of existing village service  
TR5: Road Safety  
TR11: Parking  
TR9: Cycle Parking  
D1: Urban design objectives  
D3: Local distinctiveness  
D5: Design of the public realm

## 5. Appraisal

### 5.1 The key issues for consideration in this application are:

- history
- policy context and principle of development
- design
- access arrangements and highway safety
- ecology

### History

### 5.2 The substantial site history is detailed in Annex 1 attached, which essentially finds that there is no extant permission on this site, as not all reserved matters were submitted in time (December 2009) and that crucially the necessary legal agreement was never completed and therefore the 06/01927/OUT consent expired and all subsequent applications, which were pursuant to or linked in some way to it, should not have been accepted by this authority. 07/02478/F gave consent for a stand-alone 4 houses scheme not secured by a Legal Agreement, but referred to the 06/01927/OUT in condition no. 7, but as that consent expired in December 2009, the 07/02478/F consent was worthless as of December 2009. The only outstanding applications are this current application and 11/01720/F for the COU of the bar/restaurant to form shop (which is to be determined under delegated power and recommended for approval).

### Policy context and principle of development

### 5.3 The purpose of the planning system is to contribute to the achievement of sustainable development and the NPPF defines this as having 3 dimensions: economic, social and environmental. Also at the heart of the NPPF is a presumption in favour of



sustainable development and in the context of this application would include building a strong and competitive community, requiring good design, delivering a wide choice of high quality homes, protecting Green Belt land and conserving and enhancing the natural environment.

- 5.4 The Oxford Green Belt washes over the village, as does the Area of High Landscape Value. The application site comprises the existing hotel buildings and part of the hotel car park and an adjoining field. Existing local plan policies GB1 (Adopted Cherwell Local Plan) and GB1 & GB1a (Non-Stat Cherwell Local Plan) aim to protect the open character of greenbelts; GB1a restricts residential development within them to either conversions or infilling within the built up limits; otherwise permission will only be permitted in very exceptional circumstances.
- 5.5 The proposal comprises a conversion element and new build element. The conversion part includes the reduction of local facility floorspace to create residential development. Policy S29 (Adopted Cherwell Local Plan) and S26 (Non-Stat Cherwell Local Plan) do not normally permit proposals that would result in the loss of a village service/facility, however it is recognised that it may not always be possible to resist a loss if services are proven to be no longer financially viable. Whilst the hotel (accommodation element) is not necessarily an essential village facility, the licenced bar element could be, and since it's closure 2 years ago the village has been without a licenced bar/pub facility and together with the loss of the village shop, the village has been without both essential facilities. The proposed use of part of the hotel as a pub/restaurant and shop, will therefore provide the village with these essential facilities once again.
- 5.6 As well as the conversion, the proposal is also for the construction of four houses, a form of development that represents inappropriate development in the Green Belt, the principle of which is considered to be contrary to Adopted Green Belt policy GB1, as it is restricted to infill development defined as the development of a small gap in an otherwise built-up frontage suitable for the erection of one or two dwellings. Whilst in 2006 the Council concluded that the proposal for a hotel extension and enabling dwellings outweighed Green Belt policy, it is now necessary to re-assess the situation in this light of the changed proposal.
- 5.7 According to the NPPF at Paragraph 87, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. NPPF Paragraph 88 states that in considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt and 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. A case for which has been forwarded by the applicant and will be discussed further, later in this report.
- 5.8 Paragraph 80 identifies that the Green Belt serves five purposes, the third purpose of including land in the Green Belt is to assist in the safeguarding of the countryside from encroachment.
- 5.9 NPPF paragraph 89 also considers the construction of new buildings as inappropriate in the Green Belt, but then sets out the exceptions. Therefore in order to consider this application further having regard to the NPPF, the main policy issues are:
- the effect of the proposed development on the Green Belt and the purposes of including land within it;
  - the effect of the development on the character and appearance of the area;
  - the presumption in favour of sustainable development contained in the

NPPF;

- whether the case for partial or complete redevelopment of a previously developed site in the Green Belt is accepted;
- whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

- 5.10 Paragraph 79 of the NPPF sets out the Government's approach to Green Belts and their importance and aim to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts being their openness and their permanence.
- 5.11 The area of land on which the 4 no. dwellings are to be sited, forms part of the hotel car park and overgrown field, the two sections are separated by a 1.8m high fence and the field appears to have been unmaintained for number of years, upon which is sited a large (unauthorised) container unit. Essentially apart from the unauthorised building and fence, the land is open but surrounded by mature trees along the east, west and southern boundaries. The Green residential development is to the west of the site.
- 5.12 Apart from the tarmac car park, the site where the 4 no. dwellings are to be constructed and the majority of the associated carparking area for the houses and pub/shop is to be located, is an undeveloped field, these elements of the proposal would undoubtedly cause significant harm to the openness of the Green Belt. The proposed dwellings, garages, gardens and fencing and general domestic paraphernalia, along with car parking for 22 vehicles with associated road, would introduce urban features onto a currently open site and due to the extent of those features would cause a degree of encroachment into the countryside, which would conflict with the purposes of the Green Belt designation. The significant harm to the openness of the Green Belt and the harm caused by the conflict with one of the purposes of including land in the Green Belt add to the substantial harm by reason of inappropriateness. The proposal therefore is contrary to South East Plan Policies SP5 and CO4 and Adopted Cherwell Local Plan Policy GB1 and guidance contained within the NPPF.
- 5.13 In respect to the character and appearance, whilst on the edge of the village, with the Green residential development to the west, the field element of the site is considered to be within the open countryside. The construction of housing, car parking and access road would introduce a suburban appearance which would be out of character with its countryside location and Area of High Landscape Value. Whilst there are substantial mature trees surrounding parts of the site, essentially the site would still be visible from part of the westerly boundary, and therefore the development would harm the character and appearance of the surrounding area and would conflict with Policy C4 of the South East Plan and Adopted Cherwell Local Plan Policies C7 and C8 which seeks to protect the character of the countryside and prevent sporadic development.
- 5.14 With respects to 'presumption in favour of sustainable development', the Council does not identify Horton Cum Studley as one of the more sustainable villages in the district. Paragraph 14 in the NPPF states that permission shouldn't be granted if specific policies indicate development should be restricted (footnote 9 lists examples of where development may be restricted, including within the Green Belt).
- 5.15 The applicant has put a case forward for the redevelopment of previously developed land; Annex 2 of the NPPF provides the definition as follows:

**“Previously developed land:** Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or has been occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill purposes where provision for restoration has been made through development control procedures; land in built-up areas such as private residential gardens, parks, recreation grounds and allotments; and land that was previously-developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape in the process of time”.

- 5.16 The partial, or complete, redevelopment of previously developed site in the Green Belt is one of the exceptions to inappropriate development in the Green Belt provided for by the NPPF, however it is only excluded from the definition of inappropriate development where what is proposed would have no greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development. The applicant’s case alleges that the previously developed status of the site is endorsed by the extant permission (06/01927/OUT). However as seen in the detailed history of the site, there is no extant permission on this site that includes residential development. The Council is aware that foundations have been laid for one of the residential units, however given that there was no permission to implement, the works undertaken in the field are indeed unauthorised. It is considered the previously developed status of the site is disputed and that the proposed development upon this site including extending development into open land would cause significant harm to the openness of the Green Belt, as housing is significantly different to a car park and field.

#### **Other considerations**

- 5.17 Taking into account the long and complex history, permission was granted previously for the extension of the hotel, with post office, shop and the construction of 4 houses. At the time, the application was considered favourably as enabling development, as the construction of the 4 houses would facilitate the extension of the hotel and promote the viability of the village facility. Therefore the scheme was approved under ‘exceptional circumstances’ whereby the benefits outweighed the presumption against inappropriate development within the Green Belt.
- 5.18 On the face of it the layout does not appear very dissimilar to the ones previously approved - however the proposed uses have changed i.e. the retention and extension of the hotel use is no longer being pursued here. The applicant states that the new dwellings are the same as the ones previously approved and the proposed conversions will be within the existing building envelope; and as such the impact will not change to what is already permitted and in fact will be less because the extension of the hotel is no longer part of the proposals.
- 5.19 Although the application shares similar elements to previous permitted schemes, there are significant changes to the proposed uses and therefore it raises the question whether it still demonstrates an ‘exceptional circumstance’. It is considered that the ‘enabling’ case previously put forward by the applicant has been significantly diminished and that the construction of 4 no. new houses on this latest scheme goes beyond the rationale previously accepted by Planning Committee. Essentially, the applicant could sell off the hotel conversion into 3 separate elements without the need to construct the 4 no. houses to enable the much smaller pub/shop element to be provided. For example, the ‘cottages’ could be converted as either 2 no. units or 4 no. 1 bedroom units, (which they are currently being used as); the 3 no. units within the hotel buildings also converted and then finally the pub/shop element with flat over. These 3 separate elements would comply with Green Belt policy as the buildings are already there and would not need to be modified to an unacceptable extent.

- 5.20 The applicant has also provided financial information relating to the hotel business and given the economic down turn and current market claims, states that there is no viable case for a hotel in this location on the scale previously approved. Furthermore he states that to ensure the retention of a village pub and shop and for it to be attractive to future tenants, it would be necessary to raise the finance to ensure its continued viability, which is where the 4 no. houses come into the equation. However, the financial information provided does not provide sufficient evidence to demonstrate why 4 no. houses are necessary to fund this element of the scheme, which in essence could actually be funded by the residential conversion of the hotel buildings.
- 5.21 Therefore it is concluded that there is no compelling case for enabling development on this site any longer, and seen as a whole it is considered that the totality of the harm to the Green Belt is not clearly outweighed by other considerations. Consequently the very special circumstances necessary to justify the development do not exist and the proposed development would be contrary to adopted Cherwell Local Plan policy GB1, South East Plan policies CO4 and SP5 and the NPPF.

### **Design**

- 5.22 The general thrust of national policy contained within the NPPF, seeks to secure *inter alia* high quality design and good standards of amenity for all existing and future occupiers of land and buildings. This is continued in regional policy, with one of the sustainable development priorities being to ensure the physical and natural environment of the South East is conserved and enhanced. Policy CC6 of the South East Plan 2009 requires decisions associated with the development and use of land to respect, and where appropriate enhance, the character and distinctiveness of settlements throughout the region.
- 5.23 Policy BE1 of the South East Plan 2009 sets out the Plan's approach to promoting and supporting imaginative and efficient design solutions in new development, and aims to increase public acceptance of new housing by making sure that it is of a high quality design that respects local context and confers a sense of place.
- 5.24 Policies C28 and C30 of the adopted Cherwell Local Plan relate to all new development and seeks to ensure that it is sympathetic to its context, and the nature, size and prominence of the development proposed, and are compatible with the appearance, character, layout and scale of existing dwellings in the locality and street scene in general.
- 5.25 Policy D1 of the Non-Statutory Cherwell Local Plan 2011 sets out the Council's urban design objectives which seek to ensure that development is compatible with the site's context in terms of its scale, density, massing, height and layout. Whilst Policy D3 seeks to ensure that development reflects or interprets the local distinctive character of the site and its context, by respecting traditional patterns of arrangement, plots and their buildings and spaces and retention and enhancement of existing open spaces and undeveloped gaps of local importance that contribute positively in visual terms to the public realm. The scale, proportion, massing and height of proposed development should be considered in relations to that of adjoining buildings.
- 5.26 In respect to the 3 no. dwelling conversion element of the scheme, only fenestration details are changing to the external appearance of the existing hotel building, internal arrangements to provide living accommodation generally accord with the space standards set out in the Councils Planning and Design Guidance on Sub Division of Buildings for Residential Use (Feb 2011). However, their garden spaces are very small (especially unit no. 8), which will never be quiet amenity space given the access road proximity. It is unclear how the existing arrangement of the 4 no. cottages at the

rear of the site is to be altered as this information was not provided but has been requested. These 4 no. cottages are currently 4 no. x 1 bedroom units, which are being occupied not in compliance with previous consent and restricting conditions. A separate enforcement case is being pursued for this unauthorised use.

- 5.27 Turning to the 4 no. detached houses, they comprise 3 no. x 5 bedroom units and 1 no. x 4 bedroom unit to be constructed from artificial stone walls with face brick quoins under a tiled roof. The heights of the dwellings are 9m (unit 4) and 10m (units 1, 2 and 3) and the accommodation is laid out over 3 floors, this is very tall when compared with the 4 no. cottages at 7m and the existing hotel building at 8.4m. Whilst the internal space standards meet the Council's guidance, it is considered that they are very top heavy with hardly any ground floor accommodation for a dwelling of this size for example there is only one reception room and a small study area and kitchen.
- 5.28 Notwithstanding the deficiency of the internal living space of the proposed houses, it is considered that the layout of the housing on the site, which is actually in open land, is also lacking in terms of amenity standards. Firstly they are arranged in such a way that provides very small gardens commensurate with the size of the family homes being created and they are also very close together with unit no. 4 having ground and first floor windows directly overlooking unit no. 3. Furthermore, with the access road running through the site close to the garden areas, this will never be quiet garden space and therefore standards of amenity provided are very poor.
- 5.29 One additional point which has been picked up by the Council's Arboricultural Officer relates to the proximity of the dwellings, specifically unit no. 1, with the trees on the outside boundary. This property would be better sited further away from the closest tree to ensure that some existing trees are maintained. However the tree is not worthy of protection and therefore whilst regrettable, it is considered that the development could not be reasonably refused on the impact on trees.
- 5.30 In conclusion, it is considered that the proposal in terms of design and standards of amenity runs contrary to and does not comply with the relevant development plan policies and NPPF.

#### **Access arrangements and highway safety**

- 5.31 Oxfordshire County Council as local highway authority raises a number of issues in respect to the proposed layout and use of the land. Whilst it is probable that some of the matters can be addressed, essentially there is concern that there is just too much development on site that either needs access to or parking and manoeuvring for and therefore possibly requires some redesigning which may have a further impact on other matters.
- 5.32 In respect to the pub and visitor carparking in the rear field area and notwithstanding the fact that it is considered inappropriate development in the Green Belt, essentially its location is divorced from the development it is to serve and to get to it via a long access road through the proposed development site, actually affects standards of amenity for the future occupiers of the site.
- 5.33 It is therefore considered that the access arrangement, parking provision and general layout of the site together with unknown key elements of the scheme such as the authorised use of the front of the site for parking/garden and how the pub/shop will actually be serviced, should all car parking spaces be full at times of deliveries etc, make this site unworkable as a residential scheme in the form proposed. The proposal therefore runs contrary to the NPPF and relevant development plan policies.

## Ecology

- 5.34 NPPF – Conserving and enhancing the natural environment 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)
- 5.35 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.
- 5.36 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”.
- 5.37 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;
- 5.38 Local planning authorities must also have regard 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”.
- 5.39 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.
- 5.40 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.
- 5.41 In respect to the application site, no Ecology survey has been undertaken to establish whether or not protected species will be affected by the proposed development of the site. Unfortunately the need for a survey was not picked up at validation stage as no

site constraints were identified, however upon inspection of the previous applications, it was found that in 2009 under 09/00937/OUT a protect species survey was requested but never submitted. The Ecologist at that time found that the presence or otherwise of Great Crested Newts and other reptiles should be established prior to the determination of the application. As no survey was submitted the application was also refused on the grounds that no protected species survey was submitted. It is considered that the issue has still not been properly addressed as part of this current application, and whilst only picked up late in the application process, it should not be ignored as the presence of protected species may require mitigation measures which could not be dealt with after determination.

- 5.42 Consequently it is considered that art.12(1) of the EC Habitats Directive has been duly taken into account and that prior to the granting of any consent on this site it should be established whether or not there are protected species on the site and that necessary mitigation measures have been factored into the proposed scheme. Without this information the proposal runs contrary to the NPPF and relevant development plan policies.

#### **Other matters**

- 5.43 It is acknowledged that the Parish Council and some local residents maintain that the proposed development will cause unacceptable loss of amenity to those neighbours facing onto part of the site that proposes the 4 no. houses, however given the presence of neighbours landscaping and the distance between these properties and those proposed would comply with the Council's informal guidance on separation distances and therefore, whilst their comments are noted in respect to overbearing etc, it is considered that this reasoning could not be sustained.

#### **Conclusion**

- 5.44 Taking the history of the site into account and the above assessment, it is considered that there are a number of factors which render this proposal unacceptable. Firstly in respect to the Green Belt issue, it is acknowledged that previous applications were considered acceptable in this location as enabling development, but as these were never implemented and could not be implementable because a legal agreement was never completed in time. The enabling case now put forward for a much smaller pub/shop facility and residential development comprising 9 no. dwellings, is not considered to be sufficiently compelling to set aside Green Belt Policy. Therefore the harm by reason of inappropriateness, and any other harm, is not clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.
- 5.45 In respect to other matters such as design, highway and ecology, it is considered that the overall design and layout of the site is unacceptable as it provides poor design that is not respectful of its context and the layout constitutes over-development of the site resulting in insufficient rear private garden space commensurate with dwellings of the size proposed and parking and access issues which potentially conflict with the day to day use of the site as a whole. The ecology matter could be overcome but without the submission of a survey it cannot be established whether the proposed development will have an impact on protected species or not.

**6. Recommendation**

**Refuse** for the reason(s) set out below:

1. The proposal constitutes inappropriate development within the Green Belt in that the use of the land for residential purposes with associated access road and car parking for residential and public house use, will not maintain the open and rural character of the Green Belt and will conflict with the purposes of including land within it. The very special circumstances advanced do not outweigh the harm caused to the Green Belt and the proposals are therefore contrary to the National Planning Policy Framework, Policy GB1 of the adopted Cherwell Local Plan and Policies GB1 and GB1a of the Non-Statutory Cherwell Local Plan 2011 and Policies CO4 and SP5 of the South East Plan 2009.
2. The proposed new build element of the development by virtue of its siting, design, layout, building height and scales are considered to be out of keeping with the local vernacular and would form a conspicuous and incongruous form of development to the detriment of the character and appearance of the locality and furthermore the development as a whole, fails to demonstrate an acceptable layout that provides sufficient amenity and parking space and delivery arrangements. Also in the absence of detailed floor plans for the 2 no. cottage development to the rear of the site, the Council is not able to assess the acceptability of this element to ensure standards of accommodation that will not compromise the health and well-being of future occupiers. The development is therefore contrary to the National Planning Policy Framework and Policies C4, CC6, H4, H5, T4 and BE5 of the South East Plan 2009 and Policies C7, C8, C28 and C30 of the adopted Cherwell Local Plan and Policies D1, D3 and D5 of the Non-Statutory Cherwell Local Plan 2011.
3. In the absence of an ecological survey, it has not been demonstrated that the proposed development would not cause potentially irreversible and significant harm and disturbance to vulnerable and sensitive flora (including trees) and fauna including protected species. The development is therefore considered contrary to the provisions of policies C2 of adopted Cherwell Local Plan, NRM5 of the South East Plan 2009 and the National Planning Policy Framework.