

The Dell, 4 Ingelby Paddocks, Enslow 12/01328/F

Ward: Kirtlington

District Councillor: Cllr Holland

Case Officer: Tracey Morrissey

Recommendation: Refusal

Applicant: Mr and Mrs Lucas

Application Description: Removal of conditions 11 of 08/01239/F and 12 and 14 of 07/01242/F and 13 06/00762/F

Committee Referral: Previous schemes on this site determined by Committee

1. Site Description and Proposed Development

- 1.1 This application relates to the live/work development of 7 units at this site of the edge of Enslow, close to the junction of the A4095 from Kirtlington and the B4027 from Bletchington. The site is within the open countryside and just outside the Oxford Green Belt, with the B-road forming the boundary.
- 1.2 This development was granted consent by Planning Committee in its present form in 2006 under 06/02334/F following the granting of outline consent 05/00535/OUT, by Planning Committee (contrary to officer recommendation), which established the principle of the live/work development on this former kennels site.
- 1.3 The planning permission was subject to four conditions which restricted the occupancy of the units so that they would remain as a live/work development. These conditions and their subsequent amendments were considered reasonable and necessary as the provision of living and working space within a single unit was considered to be a sustainable form of development since it would restrict the need to commute to the work place. Also the development would provide live/work units to a range of sizes which could be re-cycled into the local housing market where dwellings of the size proposed are rarely available due to the adopted policies of restraint.
- 1.4 Consent is sought for the removal of the four conditions which restrict the occupancy of the development. The conditions to be removed read as follows:
- 1.5 *Condition no. 11 of 08/1239/F*
The residential floorspace of the live/work unit shall not be occupied other than by a person solely or mainly employed, or last employed in the business occupying the business floorspace of that unit, a widow or widower of such a person, or any resident dependents. (NO REASON PROVIDED ON APPEAL)
- 1.6 *Condition no. 12 of 07/01242/F*
The work space element hereby permitted shall not be the main place of employment for more than two full time equivalent workers whose sole or main residence is outside its related residential unit

REASON: To ensure that satisfactory provision is made for the parking of vehicles on site and clear of the highway and also to reduce the amount of traffic generation to accord with sustainable development and transport

considerations in accordance with Policies T1, T2 and T8 of the Oxfordshire Structure Plan 2016 and Policy TR5 of the adopted Cherwell Local Plan

- 1.7 *Condition no. 13 of 06/00762/F*
The floorspace of each live/work unit set aside for commercial purposes shall be in accordance with the details included with this application and shall only be used for such purposes and shall not be incorporated into the residential space at any time.

REASON : This consent is only granted in view of the special circumstances of this particular proposal which are sufficient to justify overriding the normal planning policy considerations which would normally lead to a refusal of planning consent, in accordance with Policy H18 of the adopted Cherwell Plan

- 1.8 *Condition no. 14 of 07/01242/F*
The use of the work space of each unit on the development shall be limited to uses within Class B1 of the Town and Country Planning (Use Classes) Order 1987 (as amended).

REASON: In order to maintain the character of the area and safeguard the amenities of the occupants of the adjoining premises in accordance with Policy G2 of the Oxfordshire Structure Plan 2016

2. Application Publicity

- 2.1 The application has been advertised by way of neighbour letter and site notice. The final date for comment was the 5th November 2012. No correspondence has been received as a result of this consultation process.

3. Consultations

- 3.1 **Bletchington Parish Council:** No comments received

Oxfordshire County Council Consultees

- 3.2 **Highways Liaison Officer:** No objections raised. The removal of condition application appears to seek to remove the restriction on the existing live/work units, and permit the site to have full residential use. It would therefore appear that this specific application (12/01328/F) has no highway impact.

I do acknowledge that the site is not accessible by footways, public transport etc, and hence is not an ideal location for new development without the provision of supporting sustainable travel infrastructure. However the units *are* existing, and if their use reverts to purely residential (rather than residential and commercial) this may mean that trips to the site will decrease.

4. Relevant National and Local Policy and Guidance

4.1 Development Plan Policy

Adopted Cherwell Local Plan (Saved Policies)
EMP4: Employment generating development
H18: New dwellings in the countryside

South East Plan 2009
RE3: Employment and land provision

CC1: Sustainable development
CC6: Sustainable character
H4: Housing type and size
H5: Housing design

4.2 Other Material Policy and Guidance

National Planning Policy Framework

Cherwell Local Plan - Proposed Submission (August 2012)

The Local Plan (August 2012) has recently completed the period of public consultation. 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:

SLE1: Employment development
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:

EMP4: Employment generating development
EMP5: Protection of existing employment sites
H19: New dwellings in the countryside

5. Appraisal

5.1 The key issues for consideration in this application are:

- Relevant Planning History
- Live/work concept
- Applicant's case for removal of the conditions
- Principle reasoning why the conditions are still necessary and relevant

Relevant Planning History

5.2 The site has considerable history as detailed below, but Members will see that on four separate occasions applications have been submitted to vary and remove the restrictive conditions subject to this current application. The conditions detailed in paragraphs 1.3 – 1.6 are those currently in force.

Application no.	Description	Decision	Decision Date
08/01298/F	Application to vary condition no 11 and 14 and removal of condition no. 12 of permission 06/00762/F	Withdrawn	11/08/2008
08/01239/F	Application to remove and amend condition no 11 of permission 07/01242/F	Refused Allowed on appeal	11/08/2008 26/01/2009
08/00442/F	Change of use from paddock to form enlarged domestic gardens for plots 1 - 4 and 6 - 7 inclusive.	Permitted	07/05/2008
08/00250/F	Application under section 73 of the act to vary conditions no. 13 of permission 06/00762/F, to enable provision of a third bedroom to plot nos. 4 and 5	Refused	29/04/2008
07/01791/F	Demolish existing farmhouse. Erect 2 storey dwelling and detached garage	Permitted	06/11/2007
07/01242/F	Application to vary conditions nos. 11 and 14 and removal of condition no. 12 of permission 06/00762/F	Permitted	05/10/2007
06/02337/F	Demolition of existing dwelling and construction of replacement dwelling	Withdrawn	01/03/2007
06/02334/F	Demolition of kennels workshop. Erection of replacement building as office/studio ancillary to farmhouse and covered walk-way. Change of use of area of kennels workshop to office accommodation ancillary to domestic dwelling	Permitted	06/03/2007
06/00762/F	Demolition of kennels. Construction of 7 no. new dwellings each with integral B1 office/craft unit and construction of new access (as amended by drawings received 31.08.06). NB : Siting and size of development changed from the outline consent and therefore application was considered as a full rather than reserved matters	Permitted	27/03/2007
05/00535/OUT	OUTLINE: Demolition of kennels. Construction of 7 no. new dwellings each with integral B1 Office/craft unit on kennel site and part of adjacent paddock land. Extension of existing farmhouse, and conversion of existing workshop to B1/craft unit and domestic garage. Construction of new access, as permitted by permission 03/00586/F, and access drive in amended position (as amended by drgs 03/03.26 Rev A received 21.07.05 and 03/03.28 received 11.07.05). Original consent	Permitted	05/12/2005
03/00586/F	Change of use of land and demolition of existing kennels and construction of new kennels, cattery and ancillary building. Re-siting and construction of new access to highway (as amended by revised access plans received 23.05.03 and revised elevations received 19.05.03 and as amplified by additional plans received 15 May 2003).	Permitted	30/05/2003

Live/work concept

- 5.3 The concept of live/work was quite new to this authority when Members granted an outline consent in September 2006, however, it is gaining in popularity in other parts of the country, especially so in urban areas. The benefit of live/work is the contribution to a more environmentally sustainable way of life, however it should be noted that live/work is different from 'home working' which usually comprises a residential unit with ancillary and often temporary or informal work areas. Live/work is a distinctive and formal division of residential and workspace floorspace within the same unit.
- 5.4 It is worth noting that officers raised concern back in 2006 over a form of development, which seemed to provide large family homes, thus in favour of the residential aspect of the unit more than the work unit, which then raised a suspicion that the live/work scheme could be used as a backdoor route to avoid the otherwise strictly controlled regime which prevents residential development in the open countryside.
- 5.5 Five years on and following their occupation, it is evident from the applicant's submission, that the business element of this live/work development is totally overshadowed by the residential element, with the emphasis on family homes rather than business use. Also when Members approved the development in 2006 there was no requirement for the developer to provide any footpath links to the other built development in Enslow, therefore the site is not only totally divorced from Enslow but there is no safe footway residents can walk along to catch the bus or go to the pub. This is particularly a problem with the children catching the bus to school as the bus will not pick up/drop off from the entrance to the houses.

Applicant's case for removal of the conditions

- 5.6 The applicants have submitted a substantial document to support their application which includes the following items:
- Marketing details/reports from Estate Agents together with letters from the agents advising in their opinion why the properties have not sold and why no interest.
 - Evidence of sale prices of houses in nearby villages – approx £250K more than those currently on the market for at Ingleby Paddocks but of a similar size and type (4 bed house sold in Kirtlington for £995K – 3 bed house still unsold at Ingleby Paddocks on market for £675K)
 - Mortgage rejection letters and reasons why no re-mortgage would be forthcoming.
 - Current bus timetable - earliest bus 09.33, then at 2 hour intervals with last bus at 14.17 back to Rock of Gibraltar
 - Correspondence with OCC regarding school transport that will not collect from the entrance to the site and arrangements via a taxi service to and from school
 - Map showing location of Rock of Gibraltar and site off A4095 (50mph) and no footpaths

- Letter to CDC regarding lack of signage warning of development entrance
- Letter of support from another resident advising of similar problems faced, ie mortgage availability, inability to sell property, business practicality and lack of infrastructure. This property is and has been on the market since 2010.

5.7 In addition to the above the applicant has advised of the following reasons why the live/work concept at Ingleby Paddocks does not work and how this has had a detrimental impact on their family life and working life and how they are struggling to co-exist on a site that was designed for just this form of living and working:

- 1) place unjustifiable burdens on us as a business and as a family and are therefore unreasonable;
- 2) the conditions are so onerous that they put severe limitations on our freedom as owners to dispose of our property or finance the property;
- 3) the conditions are not effective as they are difficult to enforce
- 4) removal of the conditions would not be harmful to the character appearance of the rural landscape as no changes to the external appearance of the building would be required;
- 5) the work element of the live/work arrangement is not sustainable
- 6) consider that the planning conditions referred to in this application therefore compromise their rights under Article 8 of the Human Rights Act 1998.

5.8 Notwithstanding the above, it is considered that the full facts of the applicant's case are put before Members to ensure that a complete picture of how in reality the live/work scheme is operating, before this current application is determined.

5.9 Mrs Lucas is a chartered accountant and has been running her accountancy practice from the property since purchasing it in October 2007, she lives there with her husband and three sons aged 15, 12 and 7. Mr and Mrs Lucas bought this property fully embracing the idea of 'live/work'. However the nature of the build and its location together with the change in the economic and financial climate over the past 5 years, have led them to believe that live/work in this development is not sustainable. They feel completely trapped at this present time. Due to the planning conditions, Mrs Lucas cannot grow her business, and they cannot get finance and cannot sell the property.

5.10 Mrs Lucas advises that the nature of the site and the size of the units have attracted families with children. There are in fact now 10 young children living on the site. This has caused tension within households and between occupiers as the mix of children and business has not worked. The development itself is a relatively safe environment for children to play outside but this is not conducive with people trying to run a B1 business. The noise from children playing outside is often intrusive, disturbing and therefore unprofessional from a business aspect. Children are asked to restrain their normal childhood behaviours (laughing, squeeling, shouting, crying etc) to

comply with the businesses working from the site. This is an infringement of children's rights and causes problems within and between families. In addition, visitors to the site do not expect to see young children playing outside and safety of the children from approaching vehicles is compromised.

- 5.11 There is no infrastructure to support a business environment. There is no regular bus service and there are no pavements leading from the development for travel by foot or cycle. When they purchased the property in 2007, the development was not complete. They expected paths and public transport to follow, but this has not materialised. In the recent Planning Application No 11/01146/OUT for the outline permission to demolish the existing bungalow and disused cattery buildings at the nearby 'By Ingleby' site, it is noted that the Planning Officer makes a comparison with Ingleby Paddocks which is described as 'being in the open countryside, in a remote location with a general lack of services and facilities, inaccessible by public transport'.
- 5.12 The main office space is situated on the first floor. Mrs Lucas runs her business from the first floor which is not accessible for disabled clients; therefore any business conducted with disabled clients has to be carried out in the residential area which is accessible. Their children tend to use the business areas outside office times for doing homework, playing music and computer work.
- 5.13 The office space is integral to the house and although there is a separate entrance for business use, in practice and because of the layout of the property, the business entrance is also used as the main entrance to the residential part of the house. There is free access between residential and business areas and family and business personnel are able to freely move between both. The business area is therefore very integral to the residential area. The soundproofing is very much that of a residential property and it is very easy and also very unprofessional to hear noise from the residential area in the business area and visa versa. Mr Lucas started to use some of the upstairs office space in March 2009 for his own business. However by May 2009 he had to find alternative office premises because it was impossible for him to carry out his normal office duties due to the noise and interruption from our own children and our neighbours' children.
- 5.14 The heating and lighting are controlled by one system that is located in the utility area. There is no separation of utilities. This means the heating of the business area continues even when the business area is not in use i.e. evenings and weekends and visa versa, during office hours the whole property has to be heated in order to heat the business area. This is not only costly but also environmentally unacceptable.
- 5.15 The fact is there are no regular public transport links to this site. All visits to and from the site have to be by motor vehicle. There is no transport infrastructure to support a working or living environment. There was no requirement on the developer to provide pavements to or from the site and the Local Transport Department, have not provided for any pavements.
- 5.16 Mrs Lucas has tried to expand her business by recruiting school and university leavers to become trainee accountants, (which is the normal method of expansion), but they are unable to get to the site by public transport and the site is too remote to travel by foot or cycle. This evidence shows that this site is not supported by the infrastructure and as she is unable

to recruit trainees to expand her business, it is no longer viable for her to run the accountancy practice from these premises. She needs to expand to survive and cannot do it here.

- 5.17 Transport considerations for this site are not just about the work element. The residential element as already stated is in practice more than 80% of the property and is a family home. The nearest school bus stop for Marlborough school, Woodstock (the catchment school for this site) is the Rock of Gibraltar public house. Mrs Lucas has asked for the school bus to stop outside the development but have been told it is too dangerous for a bus to stop! There are no pavements between the Rock of Gibraltar and Ingleby Paddocks and it is very unsafe for adults let alone children to walk as the roads are very busy and very fast. The school initially arranged for her eldest son to be collected from home by taxi but this led to all sorts of problems (taxis not turning up, turning up late, her son being teased at school and called names like 'Taxi Boy' to name but a few). She therefore has no option but to take her three sons to and from school by car.
- 5.18 It has not been possible to re-cycle any of the units 'back into the market' as the properties cannot be sold. The applicant's property has been marketed with two agents at a very reasonable price which reflects the commercial element, since October 2011. The property has been actively marketed in all local property papers and on the national and international property web sites. Despite this extensive marketing only 3 viewings have occurred in 11 months and no serious interest has been forthcoming. Feedback from estate agents is that there is regular and multiple initial interest in the property but there is no follow through which they attribute to the Planning conditions referred to in this application. Recently, properties in nearby Kirtlington of a similar size but 100% residential have been quickly sold at prices 25% greater than those at Ingleby Paddocks.
- 5.19 In addition to the onerous planning conditions, lack of interest is attributed to the difficulty in obtaining finance in the current economic climate. As mentioned previously, due to the business element of the property, most lenders will not consider a residential mortgage. Commercial lenders apply such varying and restrictive conditions, that it almost now impossible to find a lender. The applicant's have recently contacted a number of major mortgage lenders (as recommended by live/work web sites) and have found that none are prepared to advance loans on the property because of the commercial element. Commercial loans are extremely hard to find in the present economic climate and commercial lenders are unwilling to lend over a normal mortgage term. Providers of commercial finance expect a commercial liability to be met by the profits of the business occupying the premises within a period of 10-15 years. This is not reasonable when considering more than 75% of the value of the property is residential. A commercial lender will not take into account a spouse's income as the spouse has no involvement in the business. A combination of residential mortgage and commercial mortgage for the two different elements cannot be obtained because their property is under residential title deed. This makes it almost impossible for prospective purchasers to obtain finance to purchase the property and also places Mrs & Mrs Lucas in an impossible financial trap.
- 5.20 The applicant's consider that Condition 11 places unjustifiable burdens on them as a business and as a family. In addition this condition is now so onerous that it puts severe limitations on their freedom as owners to dispose of their property or finance the property. They consider that this is in direct

conflict with the advice given in Circular 11/95 paragraphs 14, 35 and 36 and is unreasonable.

- 5.21 The applicant's also consider that condition 12 also fails the test of reasonableness. It not only attempts to restrict the number of people that may be employed in the business, it also attempts to restrict commuting by car and therefore the number of clients that may visit the site.
- 5.22 The reason for this condition relates to car parking. The conventional approach is to require the provision of spaces commensurate with floor space. The applicant's understanding is that there are no circumstances that would justify the local planning authority endeavouring to restrict the number of persons who may be employed in a business. They argue that the number of persons employed in a business has no relevance to planning and is in direct conflict with the advice in paragraph 20 of Circular 11/95. Also cited is the *Newbury* tests, whereby the Courts have held that for a condition to be valid it must be imposed for a "planning" purpose and not any ulterior purpose, and that it should not be so unreasonable that no reasonable planning authority could have imposed and is therefore *ultra vires*. The applicant's contend that this condition is unlawful.
- 5.23 In addition they consider that this condition is only enforceable with constant and permanent surveillance, since vehicles of all visitors, be it employees, clients, friends or family to the business or any of the other 6 properties, are required to park in the common parking area. It would be impossible for any enforcement officer to determine which vehicle was associated with which property without constant surveillance. The cost of such enforcement would not be in the public interest.
- 5.24 The applicant's consider that Condition 13 was imposed to justify the special circumstances of the proposal and to control the occupancy of the properties. It is not clear exactly why the special circumstances were considered to be justified at that time, since the main thrust of policy H18 of the Cherwell Local Plan (1996) seems to support the construction of new dwellings beyond the built-up limits of settlements only where they are essential for agricultural or other existing undertakings (which was not the case on this site) and other policy requirements are satisfied. Similarly, saved Policy EMP4 supported proposal for employment generating developments in rural areas only in specific circumstances which did not seem to apply in this case. The application was not supported by the Planning Officer (as confirmed in the Recommendation to the South Area Planning Committee dated 4 October 2007).
- 5.25 Furthermore the applicant considers that it is totally unreasonable that rooms integral to the main residential areas cannot be used outside business hours. This would not happen in other business premises where the owner would have more freedom to use their property as they chose.
- 5.26 Mrs Lucas has found that the integral design of the property means that clients become unwittingly involved in the domestic side and she often feels uncomfortable when clients visit the premises and comment about the children and her home as this feels unprofessional.
- 5.27 Consequently the applicant's consider condition 13 only to be enforceable with constant and permanent internal inspection. As you can already see, certain areas of the residential area are used for business use at different

times and visa versa certain areas of the business area are used for residential use both during normal working hours and outside normal working hours.

- 5.28 In respect to Condition 14, this was imposed in order to maintain the character of the area and safeguard the amenities of the occupants of the adjoining premises. It is considered that the removal of this condition to enable use of the workspace areas for living accommodation would not give rise to any change to the character of the area nor the amenities of the occupants of the adjoining premises. Indeed it is considered that full residential use of the building would have much less of an impact on amenity than the B1 use approved under the original application. Accordingly, the removal of condition 14 is considered to be acceptable.
- 5.29 The applicant's ask the LPA to give consideration to the Communities and Local Government Consultation Paper April 2011 'Relaxation of Planning Rules for change of use from commercial to residential' which sought to obtain views on the Government's proposals to amend the Town and Country planning (General permitted Development) Order 1995 to grant development rights to change of use from commercial to residential use i.e. to allow such changes without the need for planning applications. They understand that The Minister of State for Decentralisation and Cities, Greg Clark has now unveiled firm proposals following this consultation.
- 5.30 The key proposal of this consultation was to introduce permitted development rights to allow changes of use from B1 to C3 to happen freely without the need for planning applications where no changes to the exterior of an existing building is required. Clearly the Government believes there is a strong case for such changes to be made and to allow permitted development rights to be tailored to local circumstances. Although this is to encourage the more efficient use of brown field land and bring disused buildings into housing stock, the general principles do seem to give support to this case.
- 5.31 In conclusion the applicant's purchased 4 Ingleby Paddocks 5 years ago fully embracing the live/work concept. Due to the changes in the economic climate and the general unsustainability of the site, they are now trapped by the planning conditions which mean they cannot continue to live and work in the property but cannot sell and move on either. They believe that Condition 11 should be removed as it is now unreasonable and not sustainable. That they have demonstrated that they have made all reasonable efforts to sell their property and re-cycle it into the market. It places unjustifiable burdens on them as a business and as a family. In the current economic climate, it is in direct conflict with the advice given in Circular 11/95 paragraphs 14, 34, 35 and 36 and is in breach of their rights under Article 8 of the Human Rights Act 1998.
- 5.32 Condition 12 should be removed as it is not relevant to planning, is unreasonable and unenforceable and in direct conflict with Circular 11/95 paragraph 14, 20, 26 and 27
- 5.33 Condition 13 should be removed as it is unenforceable and in direct conflict with Circular 11/95 paragraphs 26 and 27.
- 5.34 Condition 14 should be removed as it's removal would not result in any detrimental impact on the amenity of the locality or that of local residents or on highway safety.

Principle reasoning why the conditions are still necessary and relevant

- 5.35 This current application seeks to remove the four restrictive conditions on the grounds that they fail the test of validity for the imposition of planning conditions as set out in Circular 11/95 "The use of Conditions in Planning Permission". This Circular advises that as a matter of policy, conditions should only be imposed where they satisfy all of the six tests:
1. necessary;
 2. relevant to planning;
 3. relevant to the development to be permitted;
 4. enforceable
 5. precise; and
 6. reasonable in all other respects
- 5.36 The rationale of the original and amended conditions is still considered to be reasonable and necessary in order to control these units; however, the exact wording of the conditions has been challenged over the last few years and when condition no. 11 was further examined at the 08/01239/F appeal, the Inspector found that part of the condition (11b) was unlawful and was in direct conflict with the advice in paragraph 20 of Circular 11/95 that conditions affecting land ownership would be *ultra vires*, given that the ownership of land has no relevance to planning. Whilst the Inspector allowed the appeal, she substituted a new clause 11 based on model conditions in Circular 11/95 relating to staff accommodation and agricultural dwellings (as detailed in paragraph 1.3).
- 5.37 The Inspector noted in paragraph 8 of the Appeal that the original permission had been granted as an exception to the normal policies of restraint for two reasons. Firstly, the provision of living and working space within a single unit was considered to be a sustainable form of development since it would restrict the need to commute to the work place. Secondly the proposal would provide live/work units to a range of sizes which could be re-cycled into the local housing market where dwellings of the size proposed are rarely available due to the adopted policies of restraint.
- 5.38 In reaching her conclusion, the Inspector states in paragraph 19 of the Appeal that:
- 'the new condition could result in the business floorspace being unoccupied until such times as new occupiers are found for the whole of the live/work unit. However condition 12 on application 06/00762/F prevents the business floor space being incorporated into the residential accommodation. In the event of the business use ceasing, the restrictions imposed by these conditions would be an incentive for the occupiers of the residential accommodation to move elsewhere, were they able to sell the property. In addition, the live/work units are subject to business rates and purchasers would probably require a commercial mortgage. This would be a financial disincentive to occupying the residential floorspace but leaving the business floorspace vacant. The restrictive conditions combined with financial considerations I have identified would result in the live/work units being re-cycled into the local market within a reasonable period'*
- 5.39 Whilst the Inspector found that the original Condition no. 11 to be unreasonable, she referred to the other restrictive conditions that would prevent the live/work unit becoming totally residential. Those other restrictive conditions were never challenged at appeal. It should be emphasised that the

property is not just a home it is a place of work and in normal business terms, should unfortunate circumstances occur, businesses do cease and the necessary arrangements have to be made. The fact that the development was built as family homes was accepted by the Council as it was considered that this would provide a flexible living and working arrangement should the occupiers have a family. That said, the case put forward by the applicants clearly sets out that whilst unfortunate circumstances occur, they find themselves trapped despite their attempts to move on. Also, whilst built as family homes, the applicant has found that the fact that children are on the site does not always work in a professional working environment, clearly on any housing estate children play and people do work from home, but from their experience the applicant's have found that children and employment in the same working space has a very real and negative impact on the business.

5.40 This is a very finely balanced case and whilst the applicant's and her one neighbour's circumstances are appreciated, at the time of writing no other letters have been received from their other 5 neighbours and it may be the case that they are perfectly happy and have no problem with the situation. However, as the red line of the application submission is around the whole development, Members are being asked to consider removing the restricting conditions for the entire development.

5.41 It may be the case that if Members are minded to approve this application, it could be just applied to the applicant's property, no. 4 The Dell and her neighbour no. 5 Hawthorn House and as such time the other neighbour's circumstances equate to that of the applicant's a further application could be made and duly considered. This is the usual approach taken when applications are made to change the use of business premises to residential under EMP5 of the Non-Statutory Cherwell Local Plan 2011, which is echoed in Policy SLE 1 of the Proposed Submission Local Plan (August) 2012. These policies read as follows:

EMP5 Protection of Existing Employment Sites (Non-Statutory Cherwell Local Plan 2011)

THE CHANGE OF USE OR REDEVELOPMENT OF AN EXISTING EMPLOYMENT SITE WITHIN OR ADJOINING A VILLAGE TO A NON-EMPLOYMENT USE WILL NOT BE PERMITTED UNLESS:

(i) THERE WOULD BE SUBSTANTIAL AND DEMONSTRABLE PLANNING BENEFIT; OR

(ii) THE APPLICANT DEMONSTRATES THAT EVERY REASONABLE ATTEMPT HAS BEEN MADE TO SECURE SUITABLE EMPLOYMENT RE-USE.

The following explanatory text is also considered relevant to this case:

4.79 In recent years, a number of employment sites in the rural areas have been redeveloped for non-employment uses, primarily housing. Whilst such redevelopment can add to the rural housing stock, it results in a loss of local employment opportunities.

4.80 This policy seeks to give some protection to existing employment sites, in recognition of Government objectives to promote "living and

working communities”, offering a range of housing and employment opportunities and making villages more sustainable.

- 4.81 Clause (i) of the policy recognises that on occasions there may be planning benefit in allowing the redevelopment of an employment site for a non-employment use. For example, the surrounding road network may be unsuitable for the level or type of traffic generated, or likely to be generated, by employment use of a site. In some instances employment use may not be considered compatible with adjacent residential use, and redevelopment to residential may be considered more appropriate in order to protect residential amenity. However, where this is not the case, the Council will expect a planning application to be accompanied by evidence to demonstrate that every reasonable attempt has been made to secure suitable re-use for employment purposes. This should normally include evidence from the applicant that the property or business has been advertised for sale or for rent for not less than 12 months.

Policy SLE 1: Employment Development (Proposed Submission Local Plan August 2012)

Where an applicant wishes to change the use of an employment site proposals will be considered with regard to the following criteria:

- Whether the location and/or nature of the present employment activity has an unacceptable adverse impact upon adjacent residential uses
- Whether the applicant can demonstrate that an employment use should not be retained
- Whether the applicant can demonstrate that there are valid reasons why the use of a site for the existing or another employment use is not economically viable
- Whether there are other planning objectives that would outweigh the value of retaining the site in an employment use and where the applicant can demonstrate that the proposal would not have the effect of limiting the level of provision and quality of land available for employment in accordance with policies in the Local Plan.

- 5.42 As stated before this is a finely balanced case and as demonstrated by the applicant's submission, whilst businesses can operate from the site, the conditions restrict future growth, there is conflict with family life and also the ability to refinance the development or indeed actually sell the property so that it can be recycled into the market. Furthermore, the occupants are dependant on their car, having no footpath from the site to the nearest public transport stop or pub which renders pedestrians at harm from oncoming traffic.

- 5.43 With regards to the Human Rights Act. Article 8 states that everyone has the right to respect for his private and family, his home and his correspondence. This right is not absolute and a public authority can interfere with this right provided it is proportionate and necessary. The Council in this case consider it is necessary. Also, a business does not enjoy this right so it only applies to the "live" part of these units.

6. Conclusion

- 6.1 This development was only permitted in this location due to it being a unique live/work development that was intended to reduce traffic generation by co-locating residential and commercial elements, and that the site was not considered to be remote, being close to the established centres of population at Bletchington and Kirtlington. Removing the conditions would make it a standard residential development in the open countryside, which would not be acceptable in this location and contrary to the Policy EMP4 and H18 of the adopted Cherwell Local Plan and EMP5 and H19 of the Non-Statutory Cherwell Local Plan 2011 and SLE 1 of the Proposed Submission Local Plan (August 2012) and Government guidance contained in the National Planning Policy Framework.

7. RECOMMENDATION

That the application be refused for the following reason:

1. The Council's determination of the whole live/work complex was considered on the basis of that it provided a concept of a sustainable form of development that restricted the need to commute to the workplace and provided a varied size of unit available at the site, which in turn would be re-cycled back into the market to continue to make such rare units available in the district. In the Council's opinion, by removing the conditions in question, the principle of the live/work development would be eroded and the Council would be unable to control its occupancy and furthermore, would result in a form of development that is tantamount to large houses in the open countryside rather than an employment site with related residential use and contrary to Policies EMP4 and H18 of the adopted Cherwell Local Plan and Policy EMP5 and H19 of the Non-Statutory Cherwell Local Plan 2011 and SLE 1 of the Proposed Submission Local Plan (August 2012) and Government guidance contained in the National Planning Policy Framework.