

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

14/01153/F

Ward: Otmoor

District Councillor(s): Cllr Hallchurch

Case Officer: Tracey Morrissey

Recommendation: Refusal

Applicant: B A Property Management Ltd

Application Description: Change of use from C1 into 4no. dwellings (C3)

Committee Referral: Previous schemes on this site determined by Committee

Committee Date: 19.02.15

1. Site Description and Proposed Development

- 1.1 This existing hotel site lies within the Oxford Green Belt and has considerable history as detailed in the attached Annex 1, which essentially granted outline consent in 2006 for a 20 bed hotel extension, the provision of a shop/Post Office and 4 dwellings. Subsequent applications followed this consent, however the permission lapsed on 22nd 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. The Council maintains that there is no valid planning consent relating to the site a matter which the applicant contests.
- 1.2 In terms of site constraints, the site is within the Green Belt and an AHLV. There are legally protected species in close proximity and is within a BAP habitat, there are no other notable site constraints.
- 1.3 This application seeks consent to change the use of the hotel building into 4 no. dwellings comprising:
- 1 no. 2 bedroom unit
 - 1 no. 3 bedroom unit
 - 2 no. 4 bedroom units

Each property will have a rear garden and parking provision to the front of the site.

2. Application Publicity

- 2.1 The application has been advertised by way of a site notice and neighbour letters. The final date for comment on this application was 28th August 2014. 3 letters have been received raising the following objections:
- Horton-cum-Studley does need a pub or hotel for civic amenity, and because a pub or hotel is important to support tourism in our beautiful area of the country.
 - The applicant claims that the Otmoor Lodge is unviable. Horton-cum-Studley recently published the results of our Village Plan survey. The village response to the questionnaire was tremendous, with a 75% of households returning their questionnaire. In response to the question "Do you think that Horton-cum-Studley would benefit from having a pub in the village?" 242 people replied "Yes", whilst 27 people replied "No". To allow a change of use to that building would be a great loss to

our village and surrounding area, and we now have the evidence to see that the vast majority of villagers feel the same.

- The Village Plan Questionnaire Results show that there is substantial potential local support for a pub. There are also scores of cyclists passing through our village each Saturday and Sunday, because we're on the very popular Otmoor cycling circuit. If the Otmoor Lodge were open, it would be the only place to find refreshment in a 6 mile stretch of that circuit, and I feel sure that an innovative operator would soon find the business there quite healthy. There is also space both inside and outside for quite an excellent gastro / destination pub, and with close access to the excellent village playground, a family-focused pub would bring in customers from the village and nearby Oxford.
- With a little imagination and flare, and crucially a fair lease, the Otmoor Lodge could be the thriving heart of the community that Horton-cum-Studley is crying out for. The applicant will of course attempt to show that the business is inevitably doomed, because that serves his business interests (it would take many decades for a pub to make as much profit as a conversion to domestic use), but the planning system should serve the long-term needs of the community – not the profits of an individual applicant.
- If the applicant does submit a viability report, the village (via our Parish Council) should be given time to conduct a CAMRA viability report in response, to ensure that a fair assessment may be reached by reviewing both reports.
- It is disappointing that the occupation of the Lodge Cottages has been allowed to continue in spite of the absence of planning permission. This should not be taken as a reason for approval of the application.
- Errors in the submission which includes existing flat not a house, no indication of hotel rooms lost, access road position from The Green imposes an unsuitable and dangerous vehicle movement area onto The Green.
- Concerns about the manipulation of the vehicular access to the rear and the inadequacy of proposed parking arrangements.
- Kemp and Kemp are advertising the property as a Grade 2 listed building public house with hotel accommodation. Otmoor Lodge is not listed and the advertising campaign and this is totally at odds with the planning statement accompanying this application which states that Otmoor Lodge is primarily and lawfully a hotel with no legal status for the public house. Could this confusion be the reason why the sale of the property has been unsuccessful?
- If confined to the north of the rear fence line, the conversion would not impact adversely on the Green Belt but major concerns that with the applicants history of attempted development on and to the rear of the site future proposals could still be made to build houses behind this line.

2.2 A letter in support of the application addresses issues raised in the Council's Viability expert's assessment of the Viability Report and is appended to this report as Annex 2.

3. Consultations

3.1 Horton Cum Studley Parish Council wishes to object to this application via a Planning Consultant (JPPC) on the following grounds and raises the following comments:

- The planning history of this site is relevant

- Viability of the business is a factor but no viability report has been seen and therefore no robust assessment of the continued viability (or otherwise) can be made.
- Accept applicant's comments in respect of the licensed bar and that if this was a standalone use it would benefit from PD rights.
- If no essential village service is to be lost as a result of the proposal (as is asserted) it remains the objective of the Council to promote tourism in the district through Policies T1 of the ACLP and SLE3 of the SLP. The loss of existing hotel bedspaces appears to be contrary to the Council's objectives.

Cherwell District Council Consultees

- 3.2 **Public Protection** - Land contamination may be an issue depending on any former potentially polluting activities that may have been undertaken from the site or even possible elevated levels of natural occurring contamination such as arsenic.

No information has been provided with respect to any risk assessment in this respect and so we would therefore make no adverse comment subject to imposition of appropriate safeguarding conditions regarding the need for a risk assessment for contaminated land .

Oxfordshire County Council Consultees

- 3.3 **Highways** – There is an issue with use of the land to the front of the hotel which has not been resolved. No comments received on the parking provision or highway safety aspect.
- 3.4 **Archaeology** – The proposals outlined would not appear to have an invasive impact upon any known archaeological sites or features. As such there are no archaeological constraints to this scheme.

Other Consultees

- 3.5 **Thames Water** – No objection

4. Relevant National and Local Policy and Guidance

- 4.1 Development Plan Policy

Adopted Cherwell Local Plan (Saved Policies) (ACLP)

- GB1: Green Belts
- H5: Affordable housing
- H21: Conversion of buildings within settlements
- C7: Landscape Conservation
- C13: Areas of high Landscape Value
- C28: Layout, design and external appearance of new development
- C30: Design control and context compatibility
- S29: Loss of existing village facilities
- T1: Provision or improved facilities for tourists

Other Material Policy and Guidance

National Planning Policy Framework
 Planning Practice Guidance

Submission Cherwell Local Plan – October (SLP)

Submission Local Plan (October 2014) (SLP) has been through public consultation and was submitted to the Secretary of State for examination in January 2014, with the examination beginning in June 2014. The Examination was suspended by the Inspector to allow further work to be undertaken by the Council to propose modifications to the plan in light of the higher level of housing need identified through the Oxfordshire Strategic Housing Market Assessment (SHMA), which is an objective assessment of need. Proposed modifications (August 2014) to meet the Objectively Assessed Need were subject to public consultation, from 22nd August to 3rd October 2014. Although this plan does not have Development Plan status, it can be considered as a material planning consideration. The examination reconvened and closed in December 2014. The Inspector's report is due in Spring 2015.

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 Policies:

BSC2: The effective and efficient use of land
BSC3: Affordable housing
ESD13: Local landscape protection and enhancement
ESD14: Oxford Green Belt
ESD16: Character of the Built Environment
SLE1: Employment development – change of use of employment site
SLE3: Support for new or improved tourist facilities in sustainable locations
PSD1: Presumption in favour of sustainable development

Non-Statutory Cherwell Local Plan 2011 (NSCLP)

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

GB1: Development in the Green Belt
GB1a: Residential development in the Green Belt
GB4: Reuse of buildings in the Green Belt
S26: Loss of existing village service
EMP5: Protection of existing employment sites
H22: Conversion of rural buildings
TR5: Road Safety
TR11: Parking
D1: Urban design objectives
D3: Local distinctiveness
D5: Design of the public realm
T1: Provision of new or improved tourism facilities

5. Appraisal

5.1 The key issues for consideration in this application are:

- History
- Policy context and principle of development
- Asset of Community Value
- Highway safety
- Neighbour Impact

- Affordable Housing
- 5 yr HLS

History

5.2 This site is subject to considerable complex history which is appended to this report and this relates to the whole site.

Policy context and principle of development

Green Belt

- 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 an existing hotel building, car park and an adjoining field. Existing local plan policies GB1 (Adopted Cherwell Local Plan) and GB1 & GB1a (NSCLP) 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 NPPF Paragraph 79 sets out the Governments 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.
- 5.6 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.
- 5.7 Further at Paragraph 87, “inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances”.
- 5.8 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.
- 5.9 The Framework further considers that certain other forms of development are also not inappropriate in Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt. One of these includes

the re-use of buildings provided that the buildings are of permanent and substantial construction.

- 5.10 The proposal seeks to change the use of the hotel building to provide 4 no. dwellings, other than the removal of a small single storey section of the building and some minor opening changes there is no actual material change to the size or appearance of the building.
- 5.11 The actual change of use of the buildings would not therefore have an impact on the openness of the Green Belt. Policy H21 of the ACLP allows conversion of suitable buildings to dwellings within the settlement and GB1 seeks to ensure the openness of the Green Belt is not harmed by inappropriate development. Policy GB4 of the NSCLP echoes ACLP GB1 and permits proposal for the re-use of a building or buildings providing that it would not have a materially greater impact than the present use on the openness of the Green Belt and the purposes of including land in it.
- 5.12 When assessing the proposal against Green Belt policy contained within the NPPF and the adopted Cherwell Local Plan it is considered that the proposal complies with the guidance and ultimately the scheme does not affect the openness of the Green Belt and as such is considered to be appropriate development.
- 5.13 It is acknowledged that this site would not normally be an acceptable location for new residential dwellings due to its poor sustainability credentials. However the fact that this application is a change of use rather than a new build weighs in favour of the proposal in the planning balance.

Principle of change of use

- 5.14 Of further consideration however in the planning balance is the loss of the hotel business and the loss of the 'village pub/Licenced bar' facility that the building provides. The premises is a Hotel use C1, the licenced bar is an ancillary component of that hotel use.
- 5.15 The importance of village services and amenities is set out in Policy S29 of the ACLP. This policy states that "*Proposals that will involve the loss of existing village services which serve the basic needs of the local community will not normally be permitted*". The supporting text to the policy sets out that in adopting that policy the Council "*recognises the importance of village services, particularly the local shop and pub, to the local community and will seek to resist the loss of such facilities whenever possible. However, it is also recognised that it will be difficult to resist the loss of such facilities when they are proven to be no longer financially viable in the long term*".
- 5.16 One of the core planning principles contained within the NPPF states that both plan making and decision taking should take account of and support local strategies to improve health, social and cultural wellbeing for all, and deliver sufficient community and cultural facilities and services to meet local needs.
- 5.17 Paragraph 28 of the NPPF also states that planning policies should support economic growth in rural areas and promote the retention and development of local services and community facilities in villages, such as local shops, meeting places, sports venues, cultural buildings, public houses and places of worship.
- 5.18 With specific regard to housing proposals the NPPF, in paragraph 49, further advises that 'Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.' To achieve sustainable development, the NPPF sets out the economic, social and environmental roles of planning including

contributing to building a strong, responsive and competitive economy; supporting strong, vibrant and healthy communities; and contributing to protecting and enhancing our natural, built and historic environment (para 7).

- 5.19 The Submission Local Plan also seeks to promote a good quality of life for villages and rural areas through protecting, maintaining and improving local services, wherever possible (para C205 refers).
- 5.20 Otmoor Lodge and its associated 'licensed bar' has been closed since 2010 on the basis that it was no longer viable to continue as a going concern. Planning applications have since been sought to 'enable' the continuation of the business and essentially the 'village pub' facility for the community, through the construction of new build dwellings on the remaining land. The previous application making this case has not been accepted by this Council due to lack of a robust viability assessment and therefore the premises remain closed and the applicant continues to secure some form of alternative development on the site.
- 5.21 Members will be aware that notwithstanding that matter, in December 2014, Planning Committee approved the retrospective change of use of 4 separate units of accommodation under 14/00430/F that were associated with the hotel use. Essentially it was considered that the loss of those units would not, in principle, potentially impact on the viability of the hotel business, as a business case previously put forward required the construction of 4 detached dwellings to ensure its viability and the continued success of its associated bar area, for the community.
- 5.22 As set out in the policy context above, the issue of viability is an important element in assessing the acceptability or otherwise of an application of this sort. The policies require that the application must clearly demonstrate the lack of viability of a business in order for an application to succeed. Demonstrating viability requires an assessment of the trade at present, the trade potential, competition, sales and advice.
- 5.23 As part of this current application and another submitted shortly after, (14/01180/F which is also with Members to determine as part of this Committee agenda) the applicants have provided a concise Viability Report which has brought together all previous reports and assessments to make the case for the loss of the hotel business and its associated bar facility.
- 5.24 The Council has undertaken its own critique of that viability report using an external Valuation and Viability expert, John Keane of Thomas E Teague. John Keane was asked to advise on the viability of the "public house" element of the property as a stand alone unit.
- 5.25 The assessment focuses on the hotel as a business premises and the range of accommodation it provides which includes a main bar, bar servery, function/meeting room, smaller meeting room, former catering kitchen, toilets, office and stores on the ground floor with a draught beer cellar in the part basement and letting accommodation arranged over the first floor comprising three double, three twin and one single room. The first floor also contains a four bedroom flat.
- 5.26 The facts and opinions established from the assessment are (which makes reference to the other application (14/01180/F) awaiting determination on this Committee Agenda):
- *"The Otmoor Lodge has not traded since 2010 but before then was trading at a loss. This is likely to be the result of higher than average establishment costs, because of the large premises and its turnover would be insufficient to sustain it.*
 - *The sales mix is estimated as being 40% wet, 40% food and 20% accommodation.*

- **Assessing Trade:**

- a) Population - The Otmoor Lodge as a pub by itself could not be sustained by the 450 population of Horton cum Studley and therefore trade would need to come from a catchment area in the eastern half of Oxford and Bicester being about a 20 minute drive.
- b) Visitor potential – As proposed under application 14/01180/F, the Otmoor Lodge would retain its current frontage and the garden would be re-allocated for pub use as a trade beer garden. Following the proposed redevelopment of the site the building would be somewhat hemmed in by housing. It is not a “chocolate box” pub in open countryside nor does the village have a tourist attraction to make it stand out from the surrounding villages.
- c) Competition – There are 11 pubs within 5 km and a further 9 within 8.5 km. The Tally Ho at Arncott also part of the applicants company is a 26 bedroom hotel and was not considered to be competition in the usual sense
- d) Multiple use – The village does not have local facilities other than the school, church and Millennium Hall. As proposed under application 14/01180/F it is indicated that a section of the bar area is to be allocated for shop facilities. Whilst of benefit to the village as a whole as proposed it would interfere with the operation of the pub and its inclusion may not be properly thought through. The village is too small to support a stand alone shop and it would be unlikely to generate sufficient additional trade to have a significant impact on viability.
- e) Flexibility of site – The pub as proposed would occupy a fully developed site with no further scope for development.
- f) Parking - The proposed parking arrangements are for six off-road parking spaces to the front of the premises and a further eleven spaces to the rear. Not convinced that this is a particularly workable arrangement as occupants and guests of houses 1-4 and the existing cottages would be likely to use the spaces designated for the pub, or alternatively pub customers would use the spaces allocated for the houses. Either way the parking arrangements are not ideal but as a countervailing benefit the proposals do not ignore the need to provide at least some off-road parking for motor borne trade.
- g) The sale - Since The Otmoor Lodge closed, three attempts have been made to sell it - the first in 2011, the second in 2012/13 and the third has been ongoing since early 2014.
 - I. Not surprised at the lack of interest in the property as a development opportunity. The market was still poor following the post 2008 economic crisis and in anything but the most buoyant of markets it is difficult to imagine anyone wanting to build an extra 20 letting bedrooms in a small village such as Horton-Cum-Studley – even with the four houses to help fund it.
 - II. All three marketing exercises are flawed in that the asking prices reflect a business that is trading and generating significant profits rather than one that has been closed for several years. The property is not a listed building (Applicant’s agent advised of this error in Sept 2014 but still appears on website today). None of the agents are specialist licensed property agents or valuers, although CBA are business transfer agents

and do deal with pubs and consequently marketing has not necessarily been directed at the right segment of the market. Despite that I have little confidence that a buyer could be found readily for the property as currently configured even if the asking price were to be significantly reduced. In its current form the property is focused on conference and function trade and it would be a brave purchaser to take on such a property and invest a significant sum to re-configure and re-furnish/re-equip it so that it would be capable of servicing a more traditional trade.

III. An alternative proposed by Kemp and Kemp is for the pub as reconfigured to be operated by the applicants, let on the open market at a market rent or offered to the community at a peppercorn rent. Do not consider that to be a bad fall-back position providing the rent is fixed at such a level as to make the proposition attractive to the market.

IV. Selling the re-configured pub on a freehold basis has not been put forward as an option by the applicant but is always there in the background. Were the pub to be marketed as such I would recommend that it be traded for at least six months first to allow the business to establish itself and, subject to that caveat, I would anticipate a marketing price of something in the order of £300,000 and an expectation that a deal would be struck at approximately £250,000 - £270,000. This price would reflect the lack of remaining development potential.

h) The market - It is fair to say that the trade has experienced massive change over the last 20 years or so. This has culminated in the last few years in the worst trading conditions in living memory although there are signs that the sector is now over the worst. Factors such as weakened brewery ties, slump in wet pub sales, economic downturn and lack of disposable income have influenced the pub trade. The introduction of the smoking ban on 1st July 2007 which has had a significant detrimental impact on wet-led community pubs in particular and the smoking ban have resulted in reduced gaming machine income. The result of all of this is that the number of pubs closing has been extraordinarily high. Those pubs that survive are likely to be better placed to capitalise on the upturn in the economy and the fall in barrelage is off-set to some extent by these closures. All of this has gone hand-in-hand with the pub companies - and, to a lesser extent the breweries – rationalising their estates by disposing of non-core pubs at the bottom end.

i) Fair Maintainable Trade (FMT) - The CAMRA test is a useful checklist of what needs to be considered but at the heart of viability is the concept of Fair Maintainable Trade (FMT). FMT is an assessment of the trade that could be generated by a Reasonably Efficient Operator (REO) from which is derived a Fair Maintainable Operating Profit (FMOP). The FMOP is the amount left after paying for the cost of goods and operating expenses and out of which the operator pays for rent or mortgage payments and receives his own remuneration. FMT is derived from a number of sources including wet sales, food sales, gaming machines, pool tables, room hire etc.

I. A full assessment of the FMT is provided drawing on comparable pubs in the surrounding area, the proposed turnover of the proposed pub, the potential for the operation of the pub by the applicant, let at an open market rent or offering it to the community at a peppercorn rent and expenditure associated with refurbishment and running costs. the conclusion drawn is that:

- II. *The open market rent suggested by the applicant would not be supported by my assessment of FMOP and a lesser rent would be more appropriate, subject to rent concessions in the first year at least whilst trade is building. The balance from the FMOP would be less than the ideal but the difference is not great and I do not think it would dissuade an operator.*
- III. *I am not convinced that offering the pub to the local community at a peppercorn rent is a particularly viable solution. There are instances of village communities buying their local pub but those are cases where the freehold interest is bought by the community and not a lease. Even at a peppercorn rent there are operational matters that would need to be dealt with and taking on a lease without the underlying security offered by the freehold would be a heavy commitment.*
- IV. *If the applicant were to run the pub himself, the financial result would be similar to that of a tenant running the pub in that instead of the tenant paying rent to the landlord, the landlord, as operator, would pay a manager's wages instead. Taking into account the benefit of the manager's accommodation this would be a similar sum to the rent and would leave the owner's remuneration comparable to a tenant's.*
- V. *I do not consider the estimated cost of alterations to be a relevant factor in this case because it has already been built in to the financial viability assessment of the overall scheme. To factor it in to the financial viability of the pub as a stand alone unit would be double counting and therefore inappropriate. Likewise, I consider the cost of re-equipping the kitchen and possibly refurbishing the pub in a more traditional style to be costs that the applicant would need to absorb as part of the larger scheme and I do not consider it necessary to allow for those elements in this assessment.*
- VI. *For completeness, were the re-modelled pub to be sold on a freehold basis the cost of finance to a purchaser would need to be taken into account. It is still problematic to raise finance for a pub and loans are typically limited to 50-60% of value at an interest rate of approximately 5% with a 15 year term. Assuming a purchase price of £270,000 and a 60% LTV ratio the annual cost of servicing the financial commitment would be £15,660.*
- VII. *Setting that against the FMOP would give a surplus of which, in my opinion, would be an adequate return.*

- **Conclusion**

The Otmoor Lodge as proposed would be a viable business but I think it unlikely that a competent operator would be willing to take on this property as it is currently laid out and configured. Taking into account the somewhat historic sales history the business supports an achievable FMT excluding letting and functions income and after allowing for rent/finance costs and owners' remuneration the pub is capable of making a slight surplus. Whilst the marketing exercise to date is flawed, it is unlikely that a buyer would have been found in any event".

5.27 The viability assessment finds that as a going concern the hotel is an unviable business but the establishment of a 'village pub' could be a viable proposition, however, not as proposed by the configuration in the second application 14/01180/F. The size of the pub could be made larger by losing House no. 5 in the conversion. It is therefore possible to make provision for such a facility within the hotel building and the

cou to a public house is accepted and together with the 2 no. house conversion as part of this scheme, it complies with the provision of the adopted and emerging Local Plan and Framework.

- 5.28 Of further significance to this issue is a recent appeal decision relating to the 'Bishops Blaize', (12/00678/F) in which the applicants attempted to secure planning permission for a change of use of the vacant public house to C3 residential. The Inspector surmised that:

"I highlight a notable difference between LP Policy (S) 29 and the much more recent Framework. The explanatory text to the former recognises that it will be difficult to resist the loss of village services 'when they are proven to be no longer financially viable in the long term'. Paragraph 70 of the Framework, however, does not mention proving viability, financial or otherwise." (para 10)

The Inspector concludes by stating:

"LP Policy (S) 29 anticipates long term viability being assessed in financial terms, but that must now be tempered by policy guidance in the Framework which promotes retention of rural facilities, including pubs, and seeks to guard against their unnecessary loss. Taking account of all the aspects of viability explored above, I find insufficient grounds to conclude the pub would not be viable in the long term and thus insufficient justification to allow the loss of this valued facility." (para 26)

- 5.29 It is considered that based on the viability report provided by the applicant and the marketing exercises undertaken and the assessment of those by the Council's Viability expert it is possible that given the right scheme Horton cum Studley could have a 'pub' facility in the village.

- 5.30 There are other factors which are material to the consideration of the application. The applicant has advised that:

- During the course of earlier applications it was suggested that the conversion of the hotel could amount to the loss of the essential village facility. While the hotel accommodation was not considered to be an essential village facility it was stated that the licenced bar could be.
- It is important to note that the hotel has been closed for 4 years and has confirmed that there is no prospect of it re-opening. It therefore follows that in practical terms the proposal will not amount to the loss of an important village facility – it has already gone and there is no onus or requirement to open the premises and operate it.
- To consider the licenced bar an essential village facility is to ignore the fact that the lawful use of the property is as a hotel (use class C1)
- The hotel has a lawful use with the licenced bar being ancillary and incidental to the primary function and could not become a standalone (use class C4) without planning permission.
- Should the LPA take the view that the licenced bar comprised a standalone A4 use it must be appreciated that permitted change provisions allow for the cou of an A4 use class to either A1 (shop), A2 (financial and professional services) or A3 (restaurants and cafes). This fallback position means that at any point the cou of the public house without the benefit of planning permission and bypass the requirements of Policy S29 of the ACLP and the requirement to preserve the building as an essential village facility, even if they were deemed to apply.

- The recent Government amendments to the GPDO provide greater scope in the flexibility of the use of the building enabling a B1 use class. The premises could also be either a boarding or guest house without the use of a bar.
- It is therefore wrong to consider the licenced bar an essential village facility and in this context there is no conflict with the requirements of Policy S29.

5.31 The applicant has actively marketed the property for the last 3.5 yrs without any suitable purchasers. The scope of the sale has varied and to some extent has not included the entire site or the correct particulars, which has possibly resulted in the property not being sold. John Keane's assessment of this matter has been provided, however, it is noted that:

- The four 1 no. bedroom 'cottages' were never included in the sale on a freehold basis despite them only gaining planning consent for their unauthorised use in December 2014; the applicant has been renting each property since 2012 as separate units from the hotel.
- Kemp and Kemp's website identifies the property as a Grade II listed building boasting a Public House and Hotel accommodation. The price was on application and was being marketed as a going concern rather than a closed hotel. The Otmoor Lodge is not a listed building and is not a public house and this combined with the status and price may have dissuaded interest.
- As proposed the size of the potential standalone public house that is subject to application 14/01180/F is smaller than would be considered ideal and that space would be compromised by the shop and users of the shop maybe dissuaded by going into licensed premises for various reasons.
- The Village Plan undertaken suggests that the majority of the villagers would support a village pub and/or shop if one was provided.
- The Otmoor Lodge closed in 2010 and was running at a loss. It is assumed that visitors were few and far between and the conference/wedding facility it provided was not used frequently. Unfortunately the few Tripadvisor's reviews were not particularly encouraging, blaming poor management for a poor service.
- The applicant's fallback position is noted however this is similar to that of The Bell Inn at Hook Norton which closed as a public house and opened as a photo copying shop, however The Bell was not the only pub in the village.
- Kemp & Kemp state in their letter dated 6th Feb 2015 attached as Annex 2 to this report, that "there is not a competent operator in the market willing to take on the hotel as it is currently laid out and configured". That is not strictly true as what was said in John Keane's assessment was *that "I had "little confidence that a buyer could be found readily...even if the asking price were to be significantly reduced"*. What I also said was that the marketing exercise was flawed because the asking price was based on a business that was still trading and generating significant profits rather than one that had been closed for several years. It is still considered that finding a buyer would not be easy but if the property were to be marketed by a specialist firm of agents and for a realistic price - and that would be less than half the current asking price - then it is possible that someone might be prepared to take it on.

Asset of Community Value

- 5.32 The Parish Council sought to list The Otmoor Lodge as an Asset of Community Value (ACV) however the applicant contested the nomination on two grounds:

The first ground stated is that The Otmoor Lodge is not a commercially viable business. Commercial viability of a particular use is not a factor which can be taken into account when determining whether a nominated property should be listed as an Asset of Community Value.

The second ground stated is that the nominated property is a residence (as defined by Schedule 1 of the Assets of Community Value (England) Regulations 2012, and therefore may not be listed.

- 5.33 Section 88(2)(a) of the Localism Act provides that a building or land is of community value if "*there is a time in the recent past when an actual use of the building or other land that was not an ancillary use furthered the social wellbeing or interests of the local community...*" According to the regulations (paragraph 2(b)(iii)), a building used in whole or in part as a hotel is a residence, and therefore may not be listed as an Asset of Community Value.

- 5.34 The nominated property has, in the recent past, operated, in part, as a public house. This was a use that furthered the social wellbeing or interests of the local community. However, the public house was a bar / restaurant within a hotel. Floorplans of the nominated property show that the majority of the nominated property was used for hotel /residential purposes, with public house as an ancillary use.

- 5.35 The Council determined that The Otmoor Lodge is a residence (as defined by Schedule 1 of the Assets of Community Value (England) Regulations 2012), and therefore may not be listed as an Asset of Community Value.

Highway Impact

- 5.36 Parking provision for 8 vehicles would be to the front of the properties. OCC has raised an issue with this parking provision on the basis that it constitutes highway land and therefore there is a dispute on this matter. The applicant has advised that evidence can be provided by way of statutory declarations to rebut the presumption of the extent of the highway as alleged by the Highway Authority. This evidence stems back to over 40 years and that the land (now alleged to be part of the public highway) is in a private capacity and in conjunction with, a public house pre 1975 too. The evidence will show that the land in question has always been maintained privately by the applicant and his predecessors. This matter is ongoing.

Neighbour Impact

- 5.37 Given the relationship of the buildings to the neighbouring properties and the nature of the use of neighbouring buildings it is not considered that the proposals will cause harm to the residential amenities. The proposal is unlikely to result in any overlooking or loss of privacy. It is considered that the proposal complies with Policy C30 of the adopted Cherwell Local Plan.

Affordable Housing

- 5.38 Policy H5 of the ACLP deals with affordable housing requirements and Policy BSC3 of the SLP and the Planning Obligations SPD seeks to secure 35% of new housing as affordable housing on site in villages, where residential development is 3 units or more. A financial contribution in lieu of onsite provision is sought in exceptional circumstances.
- 5.39 In this case because the development is proposing 4 units there is a 35% affordable housing requirement equating to the provision of 1 unit. Notwithstanding the Council's

affordable housing policy There was a significant change in government guidance contained within the revision to the Planning Practice Guidance. The revision is detailed as follows:

Planning obligations

Are there any circumstances where infrastructure contributions through planning obligations should not be sought from developers?

There are specific circumstances where contributions for affordable housing and tariff style planning obligations (section 106 planning obligations) should not be sought from small scale and self-build development.

- contributions should not be sought from developments of 10-units or less, and which have a maximum combined gross floorspace of no more than 1000sqm*
- in designated rural areas, local planning authorities may choose to apply a lower threshold of 5-units or less. No affordable housing or tariff-style contributions should then be sought from these developments. In addition, in a rural area where the lower 5-unit or less threshold is applied, affordable housing and tariff style contributions should be sought from developments of between 6 and 10-units in the form of cash payments which are commuted until after completion of units within the development. This applies to rural areas described under section 157(1) of the Housing Act 1985, which includes National Parks and Areas of Outstanding Natural Beauty.*
- affordable housing and tariff-style contributions should not be sought from any development consisting only of the construction of a residential annex or extension to an existing home.”*

5.40 The implications of this new piece of Government guidance means that in this particular case and all other similar sites in villages, the Council is no longer able to seek affordable housing on sites that propose 3 -10 residential units, as we have most latterly being doing. Consequently, whilst extremely unfortunate, especially in villages where affordable housing is most needed, the Council has no option but to accept the Government's stance on planning obligations and not seek the offsite affordable housing contribution on this site.

5 year Housing Land Supply

5.41 In terms of the Housing Land Supply, the Council is unable to demonstrate a 5 year supply of housing land. However, in relation to this case, I consider that the contribution made by the proposal towards the housing shortfall in the District would be negligible, and the effect of the development on the undersupply would be so marginal as to not outweigh the harm by way of loss of a local facility.

5.42 In this case the Framework does not support development that would result in adverse impacts which would significantly and demonstrably outweigh the benefits.

Engagement

5.43 With regard to the duty set out in paragraphs 186 and 187 of the Framework, discussions on this site have been continuing for almost 2 years. It is considered that the duty to be positive and proactive has been discharged through dialogue with the applicant and agents to establish the extent of the application submission and gather additional supporting information.

Conclusion

- 5.44 Notwithstanding the Council's Housing Land Supply position as stated above, the proposal would give rise to conflict with a number of policies in the ACLP, NSCLP and SLP. Paragraph 14 of the Framework makes it clear that there is a presumption in favour of sustainable development and that permission should be granted unless any adverse impact of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. It does not however indicate that an absence of a five year land supply means that planning permission for housing should automatically be granted. There remains a need to undertake a balancing exercise to examine any adverse impacts of a development that would significantly and demonstrably outweigh the benefits of it and also the harm that would be caused by a particular scheme in order to see whether it can be justified. In carrying out the balancing exercise it is, therefore, necessary to take into account policies in the development plan as well as those in the Framework. It is also necessary to recognise that Section 38 of the Act continues to require decisions to be made in accordance with the development plan and the Framework highlights the importance of the plan led system as a whole.
- 5.45 The Framework places a strong emphasis on the social role of planning in delivering sustainable development through the provision of and (by logical extension) the protection of community facilities. This is made explicit in Section 3 ('Supporting a prosperous rural economy') where the National Planning Policy Framework sets out the conformity of saved policy S29 (and therefore its continued weight), stating that "plans should... promote the retention... of local services and community facilities in villages, such as... public houses" (paragraph 28). The weight of saved policy S29 is further reinforced in Section 8 ('Promoting healthy communities'), where decision makers are encouraged to take decisions which "plan positively for the...community facilities" (paragraph 70) and to "guard against the unnecessary loss of valued facilities and services" (paragraph 70).
- 5.46 It is clear therefore that central government policy is supportive of, and recognises the importance of the retention of community facilities. On balance whilst the proposal complies with Green Belt policy it would result in the only community facility, albeit the licensed bar of the hotel being lost in the village. The only shop in the village closed years ago and through the hotel premises it is possible to retain a community facility that the village need and from the results of the village plan would actually use. This is not an easy decision as it has been demonstrated that the hotel as a business is no longer viable but it may be possible to have a public house in the village through the change of use of part of the building and that public house to provide a small turnover. By granting consent for the cou of the hotel to 4 houses would effectively lose any chance of that ever happening.
- 5.47 It is considered that notwithstanding the applicant's confirmation that he has no intention of reopening the hotel, it is possible that through further negotiation on the provision of a public house, a much needed facility could be made available to the village. The negligible benefit that the 4 market houses provides does not outweigh the harm to the village through the loss of this last facility to serve the community.

6. Recommendation

Refuse for the following reason:

The proposal would result in the loss of a village facility and where a reduced scheme could maintain a viable public house within the village. Based on the information to support the proposal the applicant has failed to demonstrate viability of the facility in the long term. As such, the loss of the facility as proposed would lead to an unacceptable impact on the local community and would therefore be

contrary to Policy S29 of the adopted Cherwell Local Plan 1996, paragraphs C.205 and C.206 of the Submission Cherwell Local Plan 2014 and Government Guidance contained within the National Planning Policy Framework.

Statement of Engagement

In accordance with the Town and Country Planning (Development Management Procedure) (England) (Amendment No 2) Order 2012 and paragraphs 186 and 187 of the National Planning Policy Framework (March 2012), this decision has been taken by the Council having worked with the applicant/agent in a positive and proactive way as the decision has been made in an efficient and timely way through dialogue with the applicant and agents to establish the extent of the application submission and gather additional supporting information.

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