

Application No: 06/01346/F Ward: Cropredy

Date Valid: 06/07/06

Site Address: Oxhay Farm, Mollington Road, Cropredy, Oxfordshire

Applicant: Mr N Joyce C/o Berry Morris, 44 South Bar, Banbury, Oxon

Proposal: Replacement of existing dwelling and re-use of two small barns for further accommodation and garaging.

1. Site Description and Proposal

Oxhay Farm is a relatively small farm holding of some 26.14 ha (69.55 acres) which is located about 2 km to the west of the village of Cropredy and lies about 400 metres back from Oxhay Hill (Mollington Road). It consists of a series of small fields, a farmhouse and a number of outbuildings (located in the centre of the holding), and is served by a long access track from Oxhay Hill. The land slopes gently upwards in an east-west direction. The group of buildings sits comfortably in what may be regarded as a traditional agricultural landscape.

Oxhay Farm comprises the following: six tenanted fields totalling 26.141ha, one field of 2.017ha owned by the tenant, being a total of 28.158ha (69.55 acres), the two-bedroom farmhouse and a number of small barns, several of which are attached to the house. The house is centrally located within the farm and is accessed from Mollington Road (Oxhay Hill).

The ground floor of the farmhouse comprises an entrance porch and bathroom within a single-storey front extension, kitchen and living room. The first floor has two double bedrooms. Attached to the house is a relatively long range of outbuildings, for the most part used as feed storage and to accommodate livestock. When the site was visited in the autumn, part of one of the buildings was also in use as temporary domestic storage.

The application site comprises an area surrounding the existing house, barns and outbuildings and has a width of between 25 and 35 metres with a depth averaging around 28 metres. The site also includes the existing vehicular access up to the public highway. The remainder of the existing farm area is now in the separate ownership of a third party, with the exception of the field which the tenant farmer owns with a frontage onto Mollington Road.

The proposal is for the construction of a replacement dwelling on the site of the existing and for the conversion of two adjacent farm building wings to create a 5 bedroomed house. The replacement dwelling would be of traditional design. It could be slightly taller than the existing (0.8 metres). Access would continue to be gained via the existing access road. The dwelling is not proposed as the farmhouse for the adjacent land.

2. Application Publicity

The application was advertised by means of a site notice.

No third party representations were received.

3. Consultations

Cropredy Parish Council – No objections.

Oxfordshire County Highways – No objections subject to conditions.

Warwickshire County Council (WCC) (acting as the Council's original agricultural consultant) – The consultation response received in July 2007 concluded that there was a functional need for the existing tenants to have full means of access to the land and the farming business requires the existing farm building accommodation in full to support the agricultural activities occurring on site. Coupled with this is the need for the farmhouse to provide the actual accommodation for key workers of Oxhay Farm.

In a separate letter to the agricultural advisors of the farming tenants, copied to all parties, the WCC states that the current dwelling is of a size commensurate with the size of the holding and not the requirements of the individual. The proposed development is far more substantial than the current size of dwelling and would be disproportionate to the farming operations.

Without either the right of access, or the farmhouse, WCC considers that the agricultural business would not be viable and certainly would not be in a position to function in any form through the sole use of the Dutch barn alone. Therefore WCC recommends that the application is not viewed in a positive manner as the farming operation would have to cease without the accommodation area provided through the buildings and farmhouse.

WCC wrote to the tenants' adviser on 7th September 2007, copied to the parties involved, including the Council's representative. The letter confirmed the opinion that the viability of Oxhay Farm as a working unit would be questionable if the farmhouse was removed and not available to the existing tenants and future farming occupants.

A further letter from WCC dated 3rd October 2007 was sent to the agents for the applicant in response to representations made by the latter and was again copied to the parties. The purpose of the letter and supplementary report was to provide clarification for the reasons behind the "functional need" element of the earlier report. (The representations on behalf of the applicant included an assurance that the tenants would be given full access to the land and remaining building upon relinquishing the remainder). WCC's further conclusions in this letter are as follows:

In accordance with the tests contained within Annex A of PPS7, there is clearly an existing established functional need for a farm dwelling; that the need for accommodation relates to a full-time employee and one who is currently employed in agriculture and that the business is financially sound. The letter continues:

"In addition, due to the livestock enterprise being the core to the farming business, it is critical that there is someone on site to deal with any emergencies to ensure minimal mortality losses and loss of business.

Without the farm dwelling and associated buildings, the business would not be viable and certainly would not be in a position to function in any form through the use of the Dutch barn alone.

Finally, the proposed accommodation for Oxhay Farm put forward by the applicant would be against Rural Planning Policy as it would not be commensurate to the farm holding and would be a size too large for the farming operations presently occurring and planned for the future.”

WCC received further representations from the agents acting on behalf of the applicant including an addendum farm management report and a statement from the applicant’s solicitors. WCC were requested, on behalf of this Council, to confirm whether or not these representations had resulted in any changes to their (WCC’s) previously expressed views.

The officer of WCC who had been acting in the capacity of consultee had in the meantime left the County Council to set up her own consultancy. In the interests of continuity, her services were engaged by the District Council specifically to clarify her position with regard to the representations made on behalf of the applicant. In a report of 4 July 2008 she states that her conclusions in her revised report of October 2007 still remain applicable and there is therefore a need for a farm dwelling in order to maintain and allow for future development of agricultural operations at Oxhay Farm. The agent for the tenants who was copied in to the correspondence and has sent a written response on these to the Council.

In the light of continued criticism of the advice give by our original consultant, and after taking expert legal advice the Council has sought further guidance on the agricultural matters. This latest guidance is attached in its entirety at Annex A.

Monson Engineering (building consultancy appointed by the Council) - In summary, it is considered that the structure of the building is considered to be in reasonable condition generally. However, it is strongly recommended that damp proofing and a number of maintenance and improvement items be carried out. (See HDC&MD’s assessment below)

Representations were received on behalf of the tenants of Oxhay Farm prior to the original determination of the application and subsequently.

The representations on behalf of the tenants following re-consultation make the following key points:

- The responses to the notice served on the tenants is a material planning consideration, since the granting of planning permission for a non-agricultural (dwelling) creates circumstances whereby possession of the property may be sought by the landlord under the provisions of the Agricultural Holdings Act 1986.
- The existing dwelling is commensurate to the scale of agricultural activities run from the holding. Although in need of repair and improvements, it is capable of being refurbished and replacement is unnecessary.
- The replacement dwelling is substantially larger than the existing.
- The application is fundamentally flawed when considered against PPS7 and Policy H18 of the NSCLP.

- The granting of planning permission may result in the tenants being displaced from their home, but remaining agricultural tenants, in which case there would be a need for a replacement farmhouse. This would need to be located within the field owned by the Hills which fronts onto Mollington Road. There would also be a need for replacement farm buildings. The cumulative effects on the character of the countryside should therefore be considered.

4. Relevant Planning Policies

PPS7: “Sustainable Development in Rural Areas” sets out the Government’s policies for achieving its objectives for rural areas. In paragraph 9 (ii), local planning authorities are advised to strictly control new houses (including single dwellings) in the countryside and goes on in paragraph 10 to state that isolated houses in the countryside will require special justification for planning permission to be granted. Essential need for a worker to live permanently at or near the place of work could provide such special justification.

Saved Policies in the Oxfordshire Structure Plan 2016 (OSP) - Policy G2: Improving the quality and design of development. This is a general policy which states that all development should be of a scale and type appropriate to its surroundings and not cause harm to the character and amenities of the area.....Development which would have an unacceptable impact on the environment because of its nature, scale, location, or cumulative effects will not be permitted.

OSP – Policy G5: Development outside settlements advises that “all development should:

- a) be of a scale and type appropriate to the site and its surroundings, and not cause harm to the character and amenities of the area;
- b) incorporate a high quality of layout, design and landscaping; and
- c) be designed so as to reduce the need to travel and encourage the use of walking, cycling and public transport and telecommunications as alternatives to the car.

Development which would have an unacceptable impact on the environment because of its nature, scale, location or cumulative effects will not be permitted.”

OSP – Policy EN1: Landscape character states that “Local planning authorities will ensure that the proposals for development contribute to the protection, maintenance and, where possible, enhancement of Oxfordshire’s landscape character..... Development will be permitted only if it does not unacceptably damage the local landscape.”

Saved Policies in the Adopted Cherwell Local Plan (ACLP) 1996 Policy H17 - General Housing Policies. This states that the one-for-one replacement of an existing statutorily unfit or substandard dwelling will normally be permitted provided that

- the building is not a listed building capable of restoration or suitable for an appropriate alternative and beneficial use,
- in cases where the existing building lies outside the limits of an existing settlement, the use as a dwelling has not been abandoned and its proposed replacement is similar in scale and within the same cartilage

- the proposal meets the requirements of other policies in the plan.

The supporting justification, in paragraph 2.75, makes it clear that the protection of the character of the countryside will be a primary objective in all cases, and proposals for substantially larger and more conspicuous dwellings in the landscape will be resisted.

Policy H18 – New dwellings in the Countryside states that planning permission will only be granted for the construction of new dwellings beyond the built-up limits of settlements other than those identified under Policy H1 when

- (i) it is essential for agriculture or other existing undertakings, or
- (ii) the proposal meets the criteria set out in Policy H6 (relates to small-scale low cost housing) and
- (iii) the proposal would not conflict with other policies in this plan

Paragraph 2.76 of the ACLP advises that the intension of this policy is to ensure that the countryside is protected from sporadic development whilst, at the same time, recognising the legitimate needs of agriculture and forestry.

Policy H19 – Conversion of buildings in the Countryside. Generally supports the appropriate conversion of rural buildings.

1996 Policy C7 Landscape Conservation. This states that development will not normally be permitted if it would cause harm to the topography and character of the landscape.

The Non-Statutory Cherwell Local Plan 2011(NSCLP) – Approved as interim policy for development control purposes December 2004 - Policy H18. This relates specifically to replacement dwellings, as with the corresponding Policy H17 of the ACLP. It states that proposals for the one-for-one replacement of an existing statutorily unfit or substandard dwelling will be permitted providedits proposed replacement is similar in size and scale to the existing building and is situated within the same curtilage....

The reasoned justification in paragraph 3.148 is further strengthened compared with the adopted plan with the explicit sentence “The policy does not apply to dwellings which are not unfit or substandard”.

Policy H19 – New Dwellings in the Countryside – states that planning permission for new dwellings in the countryside will only be given when it is essential for agriculture or other undertakings in accordance with Policy H20 (Agricultural Workers Dwellings) or meets the criteria set out in Policy H8 (Affordable Housing).

Policy H22 - Conversion of Rural Buildings. This aims to encourage the conversion of traditional farm buildings whose usefulness has been replaced by modern farming methods. It seeks to prioritise employment re-use over residential conversion.

Policy EN34 – Landscape Character. Proposals will not be permitted if they would cause undue intrusion into the open countryside or otherwise harm the landscape.

The policies of the NSCLP are approved as interim policy. The contents of the Plan are up to date as of December 2004 and although they do not have development plan status, they are an important material consideration in the determination of this application.

5. Background to this Report

The application was previously considered under delegated powers (2006) and granted planning permission subject to conditions.

However, that decision was challenged in the High Court on behalf of the farm tenants on the following grounds:

- (a) The Council had failed to properly interpret and apply Policy H18 of the Cherwell Local Plan Revised Deposit Draft (September 2002) (approved as interim policy by the Council on 13 December 2004) which permits replacement dwellings when the existing dwelling is statutorily unfit or substandard and where the replacement is "similar in size and scale." The reason for granting the permission referred, *inter alia*, to the proposal being in accordance with Policy H18 even though the replacement dwelling has five bedrooms as opposed to the current dwelling's two and had a floor area three times more extensive than the current house.
- (b) The Council failed to acknowledge that the personal circumstances of the Applicants (Claimants) were material considerations.
- (c) The Council's report did not consider the impact of the need for further agricultural buildings that would be required.

On 5th April 2007, the High Court (Queen's Bench Division) issued an Order quashing the planning permission with no order as to costs. The Claimant and the Council agreed to the Order on these terms. This had the effect of the application being required to be re-considered, taking into account all material considerations, including those identified above which formed the basis of the High Court challenge.

At the outset, it needs to be made clear that the application is not for a replacement farmhouse and the proposed dwelling is intended for private occupation by the applicant, not by the present tenant with the remainder of the holding remaining as tenanted agricultural land and not therefore forming part of the application. The occupation of the existing farmhouse is not subject to a planning condition limiting occupation to a person or persons employed in agriculture or the dependants thereof, Oxhay Farm having existed since long before the advent of the Planning system.

A report on this application appeared on the Committee agenda for 7 August 2008 but was the subject to criticism by the solicitors acting for the applicants. I attach as Annex B the email received on 6 August 2008. In the light of that communication the Committee were advised to defer consideration of the application. Since that time further advice has been received.

6. HDC&MD's Assessment

This report sets out the assessment of the proposal in the context of the foregoing High Court Order. However, because the Council consented to the Order to quash the decision, based on legal advice, there was therefore no reasoned judgement. Expert legal advice to the Local Planning Authority was that the report on which the decision to grant planning permission was based was seriously flawed. It is accepted that all three grounds of challenge address material considerations and should now therefore together with all other material considerations be given consideration in reaching a recommendation on this application.

The proposal remains as previously considered in 2006, but additional consultations have been carried out with Warwickshire County Council as agricultural consultants to this Council, Monson Engineering who were commissioned to undertake an independent assessment of the condition of the existing farmhouse, and now with Reading Agricultural consultants. In re-considering the application, the previous officer reports remains as public documents.

The present report has been undertaken with regard to the grounds of the High Court challenge, to the consultation responses and to the representations received, both prior to the original consideration of the application and subsequently.

Because of the background to this application, the opportunity has been given to all interested parties to make comment upon consultee responses and further representations received.

The applicant has engaged the services of solicitors who have made detailed submissions in respect of what they consider to be material considerations. These are stated to be: 1. The planning history and in particular the original application, assessment and the decision thereto. 2. The condition of the property and related to this, whether it is unfit and/or substandard and the costs previously incurred and likely to be incurred in the future. 3. The existing tenancy. 4. The report undertaken by Warwickshire County Council with particular reference to the viability of the holding. 5. The scale of the proposed development.

These submissions will be considered in the assessment of the application. Before continuing with the assessment, the matter of the significance of the previous Council decision on this application requires addressing. The point is made on behalf the applicant that the validity or otherwise of the planning permission (which was quashed through a consent order) was never challenged. The quashed planning permission must therefore be material and carry weight, as should the original officer's report.

However, the Council, in agreeing to the consent order, acknowledged that the decision to grant permission, informed by the officer's report, was flawed. The case did not proceed to a hearing because of this, thereby saving the Council considerable cost. This has also meant that there is no detailed judgement and none of the three grounds of legal challenge have been subject to independent consideration. The planning permission has been quashed and this was not opposed by the applicant. The effect of this is that the application falls to be determined afresh.

The key issues in the consideration of the application (and having regard to the consent order to quash the grant of planning permission) and hence, in relation to the relevant local plan policies,

- whether the building is statutorily unfit or substandard and if so, whether satisfactory improvement works can be achieved to bring the dwelling to a reasonable standard
- whether the proposed dwelling is of a similar size and scale to the existing house
- Is there an essential need for the proposed dwelling (test against Policy H18 of the adopted local plan)
- how far the granting of planning permission would impact on the operation of Oxhay Farm and hence whether there would be a need for a replacement farmhouse.
- the personal circumstances of the tenant and his family.

Building Condition - When the application was submitted in July 2006, the basis for the proposal was set out in a supporting letter from the agents acting for the applicant. This stated that the existing farmhouse is in extremely poor condition and that attempts to rectify this have involved considerable sums to no effect. The letter states that it is seen as a false economy to retain a building which continually needs funding to keep it in reasonable order. This contention is supported by a building survey report accompanying the application. The report was commissioned "in order to ascertain what measures will be required to bring the building up to modern standards and in to a habitable state." The report concludes that extensive works are required in order to bring the property up to modern habitable standards complying with the latest Building Regulations and the extent of work necessary for compliance cannot be justified.

In response to this, the tenants commissioned a surveyor to report on the condition of the farmhouse. In summary, this considers that the property has considerable potential but some general repair and expenditure is required to improve the property to modern acceptable standards. The estimated cost of these repairs is between £8,000 and £10,000.

The original officer assessment came down in favour of demolition of the farmhouse, based on a judgement that the dwelling would need very extensive works to bring it to the higher modern standards of heating and insulation. There was an awareness that the Council had been involved in protracted proceedings with the applicant and tenant from as long ago as 1992, when the Council found the farmhouse to be "unfit" according to the legislation then prevailing, in response to complaints by the tenants. Various works have been undertaken, but these have not always proved successful and have often been the source of dispute between landlord and tenant as to what was the most appropriate work to be carried out. The Council continued to be actively involved until 1997 when it last carried out an inspection. After this the Council considered it was appropriate for outstanding matters to be being pursued through the tenancy. In 1999 of a Notice of Repair under the Agricultural Holdings Act 1986 on the owner. Although no further inspections were carried out , there remained correspondence on the Council's file until 2004

However, housing legislation has evolved since the initial involvement of the Council's Housing Department and the term "unfit" no longer applies. There is no longer a simple statutory minimum "fitness standard". The Housing Act 2004 has instead introduced a hazard rating system. Under this system, a dwelling should be able to supply the basic needs for the everyday life of the range of households who could normally be expected to live in a dwelling of that size and type. The dwelling should not contain any deficiency that might give rise to a hazard which interferes with, or puts at risk, the health or safety, or even the lives, of the occupants. Council officers use numbers to represent the likelihood of an occurrence as a result of a hazard and to represent the possible spread of harm. In this way a score is produced to reflect the inspecting officer's judgement as to the severity of a hazard. Only the highest scores justify demolition and there are various types of lesser enforcement action.

In the context of the current application, there are further surveys to consider. In July 2007, the applicant instructed a further condition survey "to assess the various shortcomings and lack of compliance with the current Building Regulations which are suitable yardsticks to assess whether or not (the property) can be described as sub-standard." The report found problems relating to the roof, walls, floors, windows, heating, wiring and energy efficiency. The building is stated to be sub-standard, due mainly to the method of its original construction and works subsequently carried out to attempt to mitigate the problems encountered by that method of construction.

In the light of this conflicting evidence the Council commissioned an independent condition report from Monson Engineering Ltd (see Consultations/representations above). This was completed in September 2007 and concludes that the structure of the building is considered to be in reasonable condition generally except for damp in the walls which should be treated. There are items of maintenance which should be carried out to reduce heat losses from the building and improvements made to the method of heating. The conclusion is that "The building is not statutorily unfit or substandard at present..."

Following the receipt of this independent assessment undertaken on behalf of the Council the applicant commissioned a response. This maintains that the extreme levels of dampness affecting lower walls, the lack of a proper heating system, lack of insulation in the roof and on the walls, old electrics, poor bathroom arrangement and kitchen requiring substantial alteration mean that repairs are not economically viable.

In December 2007, Monson made further observations, in particular with regard to the damp walls of the property. There is agreement with the conclusions of the applicant's consultants relating to the render and its effect on dampness and also with comments made concerning rising damp. It is concluded however that the majority of the damp issues could be cured if suitable solutions were to be applied. The works, if they had originally been carried out correctly, should not have cost an unreasonable amount in relation to the improvements achieved.

Monson consider that the quality of the work carried out at the property is not of a high standard and in the case of rendering, may have been counter-productive. Whilst the amount of money spent on the property over the years is considerable, it may not have been spent wisely.

From the evidence available, it is recognised that the house requires general modernisation notably in heating, insulation and damp-proofing. However, the same can be said of many such older dwellings and under a different set of circumstances, appropriate work might otherwise already have been carried out satisfactorily. From the evidence of the reports commissioned by the tenants and by the Council, the dwelling is capable of being brought up to a reasonable standard. The Council does not accept that Building Regulations are an appropriate measure of the fitness of the building because it is likely that only the most recently constructed houses will comply with them. The site visit undertaken on behalf of the Council revealed that the dwelling possesses some character, derived from its age and setting and would benefit in terms of comfort and convenience from appropriate and selective maintenance and improvements.

There is clearly a difference in approach between the surveyors as to condition of the property and the steps required to be taken. Monson's advice is that some maintenance and repair is required, rather than to the more costly and comprehensive works advocated on behalf of the applicant.

Scale of Proposed Dwelling – Consequently the HDCMD does not believe that the applicant can rely upon Policy H17 of the adopted Cherwell Local Plan. Notwithstanding the above discussion, the condition of the building is not necessarily pivotal, since even if it were to be considered to be substandard, the Council still has to look beyond this within Policy H17 of the ALP and Policies H18 and H19 of the NSCLP and to assess if the proposed replacement is similar in size and scale to the existing dwelling.

The previous officer report did not consider the proposal in relation to ALP Policies H17 and H18 and did not address the issue of size and scale. Nor did it consider NSLP Policy H19.

No existing floor plans, other than those of the older barns and an outline of the farmhouse are provided with the application, but the floor area of the farmhouse can be estimated from the outline of the building shown on plan and is approximately 102m². That of the proposed dwelling is in the region of 250m², an increase almost of 2^{1/2} times.

The accommodation of the existing farmhouse has been described earlier (2 bedrooms, kitchen, living room, bathroom).

The proposed dwelling would involve the demolition of the existing farmhouse and its replacement on a similar footprint at two storeys. The accommodation would comprise: ground floor - sitting room, study, hall, w.c. and porch; first floor - two bedrooms, bathroom and galleried landing at first floor. A family room, kitchen/breakfast room, store and utility would be formed from the larger part of the existing free-standing pens, connected to the remainder of the house by a glazed link. Additional accommodation is proposed by converting the existing attached barns into a dining area, three bedrooms and two bathrooms. More than half the accommodation would therefore be formed from the existing farm buildings. The present tenant has no need for such extensive accommodation and the previous service of notice to quit, together with the subdivision of ownership, clearly demonstrates that the proposal is not for a replacement farmhouse, but is intended as a private house with no agricultural connections.

The applicant has made the latter clear at all times. Since the replacement dwelling (new-build plus conversion) would be so much larger than the existing dwelling, it can be considered to be in conflict with ALP Policy H17 in that it is not sufficiently similar in scale to be a one-for-one replacement. It also conflicts with ALP Policy H18 in that it is a new dwelling which is not justified by any of the criteria in the policy. The same comments apply to Policies 18 and H19 of the NSCLP.

Assessment against Policy H18 of the adopted Cherwell Local Plan – Given the above conclusion, that the new dwelling cannot be classified as a replacement, it must therefore be assessed against Policy H18 of the adopted Local Plan. As noted elsewhere the applicants are specific in not putting the case that this is essential to agriculture or its occupation is intended to be unrelated to the use of the adjacent land. The proposal is therefore contrary to Policy H18 (and H19 of the NSCLP). Neither can it be classified as being a conversion (albeit that some of the new accommodation is created in that way) and therefore cannot benefit from the permissive policy elements of Policy H19 of the adopted Local Plan.

Impact of the granting of planning permission upon the operation of Oxhay Farm and the Personal Circumstances of the Tenants - The personal circumstances of the tenants were referred to as a material consideration in the Judicial Review claim. It is accepted that personal circumstances are capable of being a material planning consideration. In particular, the result of granting planning permission for the proposed dwelling would be to deprive the farm of buildings which are considered by the tenants as essential to the operation of the business. The inclusion of the access from the highway within the application site could also mean the loss of access rights to the tenant but this is denied by the applicants. The granting of planning permission may lead to a repeat of the service of notice to quit, as occurred when planning permission was granted last September. It is understood that the quashing of the decision led to the withdrawal of the notice. It has been made clear on behalf of the applicant that the tenancy on the remainder of the land comprising the farm would remain.

In Annex A it will be seen that Reading Agricultural Consultants (acting for the Council) have carefully weighed the comments received from our previous consultants and from agents acting for both the applicant (Mr Ewence) and the tenants (Mr Frampton). On page 6 of that Annex it will be seen that they form the view that:

- the proposed dwelling would not be related to the needs of the current agricultural tenants in any form;
- the brick farm buildings are not essential to the continuation of the existing farming operations;
- there is no certainty that the dwelling would be severed from the farmholding – as this is a matter ultimately for the Lands Tribunal;
- the existing farming enterprise is unlikely to require additional agricultural buildings;

- any replacement dwelling for the agricultural enterprise would depend on the needs scale and nature of the agricultural enterprise at the time of an application (and it is noted earlier in the text that it would be possible to continue the existing farm enterprise whilst (living off-site).
- The impact of any future development on the character of the landscape cannot be assessed until they are proposed.

The HDCMD considers that this recent assessment has carefully and fully assessed the issues and commends this advice to the Committee. As a consequence the recommendation below does not contain the previously advanced refusal reason related to operation of the farming enterprise or the possible impact of any future buildings upon the character of the landscape.

The personal circumstances of the tenants were not discussed in the previous delegated report, other than to refer to the representations made on behalf of the tenants. From the latter it appeared at that time that the proposed dwelling was for occupation by the tenant, although concern was expressed that it would be too large for the tenants' needs. However, the threat to the tenancy was also recognised by the tenants' professional advisers. The Agricultural Holdings Act 1986 gives agricultural tenants security of tenure by limiting the circumstances in which a landlord can recover possession. These circumstances are prescribed by the Act itself. One such circumstance is contained under Case B of Schedule 3 of the Act which enables a landlord to serve a Notice to Quit where it is ".....given on the ground that the land is required for a use, other than for agriculture, for which permission has been granted on an application made under the enactments relating to town and country planning." Thus a landlord may seek to recover possession from a sitting tenant through the granting of planning permission for a use of the land unconnected with agriculture. This is what occurred following the original granting of planning permission in September 2006. However, the High Court Order which quashed the permission rendered the Notice to Quit ineffective.

I attach as Annex C a letter from the tenants agent expressing their concerns about the impact of the granting of planning permission upon the agricultural tenancy. In the light of the most recent agricultural advice it would appear that farming operations could continue from a remote dwelling and without the need for further agricultural buildings.

7. Conclusion

The current proposal is for a new dwelling in the countryside to replace an existing smaller farmhouse. It is not required in connection with agriculture and is of much greater floor area than the existing dwelling. The existing dwelling is in need of investment to rectify a number of deficiencies due to its age and maintenance. However, an independent assessment considers that the property can be brought up to reasonable standards. and demolition is not therefore necessary or justified.

Although much of the proposed additional floorspace is intended to be formed by the conversion of existing farm buildings, this is still contrary to policy in terms of the comparative sizes of the current and proposed dwellings.

The essential need for a worker to live permanently at or near the place of work which could provide the special justification identified in PPS7 does not apply in the present case, since the proposed dwelling would have no agricultural connection. Similarly, ALP Policy H18 and NSLP Policy H19 states that new dwellings in the countryside will only be permitted when essential for agriculture or other existing undertakings. However, the proposed development is for residential occupation which is unconnected with the farm holding.

Members will be aware that a decision to refuse planning permission is subject to a right of appeal to the Planning Inspectorate, unlike an approval where the remedy may be through the judicial review process. In the present case, it is concluded that the proposed development is contrary to a number of planning policies. The recommended reasons for refusal are sound, clear-cut and related to the relevant planning policies and can be defended at appeal.

8. Recommendation

1. The existing dwelling is not regarded as being either statutorily unfit or substandard and is capable of being improved in terms of thermal insulation and resistance to damp without incurring excessive cost. Furthermore the proposed development would result in the replacement of the existing farmhouse by a dwelling having an overall floor area approximately two and a half times greater than the existing. The development would therefore be contrary to the provisions of Policy H17 of the Adopted Cherwell Local Plan 1996 and Policy H18 of the Non Statutory Cherwell Local Plan 2004.
2. The erection of an isolated new house in the countryside without any site-specific justification, such as being essential for the proper functioning of a viable agricultural holding, is contrary to the provisions of Planning Policy Statement 7 (PPS7): Sustainable Development in Rural Areas, to Policy H18 of the Cherwell Local Plan and to Policy H19 of the Non Statutory Cherwell Local Plan 2004.

Case Officer: Robert Duxbury **Direct Dial:** 01295 221821