

Our Ref 4427
Your Ref 06/01346/F

14 November 2008

For the attention of Sue Christie

Cherwell District Council
Customer Service & Resources
Bodicote House
Bodicote
Banbury
Oxfordshire
OX15 4AA

Dear Ms Christie

Oxhay Farm, Mollington Road, Cropredy

Thank you for your letter of 9 October in relation to the application by Mr Joyce, the owner of the farmhouse, farm buildings and access at Oxhay Farm, to replace the existing dwelling and reuse two barns for further accommodation and garaging

I have read all the enclosures to your letter and those subsequently received on 7 November which comprise

- i) the draft Report to Committee prepared by the Tyler-Parkes Partnership,
- ii) reports by Charlotte Cox (then the Warwickshire County Land Agent) dated 18 July 2007 and 3 October 2007,
- iii) a report prepared on behalf of the applicant by Mike Ewence of Roy Gasson & Associates, dated September 2007, and addendum dated October 2007,
- iv) a report prepared on behalf of the applicant by Pritpal Singh-Swarn of Wright Hassall LLP, dated November 2007, including at Appendix 3, the Agricultural Tenancy Agreement dated 1 January 1982, and at Appendix 4, a letter from Needham & James LLP dated 27 September 2007,
- v) a letter on behalf of the tenant farmers from Humberts to the District Council, dated 1 June 2007,
- vi) a letter on behalf of the tenant farmers from Framptons to the District Council dated 1 June 2007,
- vii) the Consent Order of 5 April 2007 made pursuant to Judicial Review by the tenant farmers, Mr John Hill and Mr Tristan Hill,
- viii) relevant Local Plan policies

I have also seen a copy of the original permission for an identical application issued on 1 September 2006 and the accompanying Officer's Report of 31 August 2006. This decision was challenged in the High Court on behalf of the tenant farmers on the grounds that the Council

- i) had failed to properly to interpret and apply Policy H18 of the Non Statutory Cherwell Local Plan 2004 for replacement dwellings,

- ii) had failed to acknowledge that the personal circumstances of the claimants were material considerations, and
- iii) did not consider the impact of the need for further agricultural buildings that would be required

The High Court issued an Order quashing the permission and requiring the application to be reconsidered

A draft Report to Committee has been prepared by the Tyler-Parkes Partnership, recommending refusal for three reasons. You have asked for my opinion on whether the second reason for refusal is well-founded, particularly in the light of the doubt that has been cast by the applicant's advisors on the advice received from Charlotte Cox

This proposed reason for refusal states

"The proposed development would involve the incorporation of existing farm buildings into the proposed residential accommodation, resulting in a dwelling greatly in excess of the needs of the current agricultural tenants and the agricultural holding and in the loss of buildings which are essential to the continuation of the current agricultural operations. With the severance of the proposed dwelling from the farm holding, there could be a requirement for the construction of replacement agricultural buildings and replacement residential accommodation which would result in a proliferation of buildings, likely to be detrimental to the character of the landscape in the vicinity of the site. This would be contrary to the provisions of Policy G2 of the Oxfordshire Structure Plan 2016, to Policy C7 of the Adopted Cherwell Local Plan 1996 and Policy EN34 of the Non Statutory Cherwell Local Plan 2004."

For the sake of completeness, proposed reason for refusal no. 1 is that the proposal would be contrary to H17 of the adopted Local Plan 1996 and H18 of the Non Statutory Local Plan 2004 as the replacement would have a floor area two and half times greater than the existing dwelling, and the existing dwelling is not regarded as unfit or substandard

Proposed reason for refusal no. 3 is that the proposal would be contrary to PPS7, and to policies H18 and H19 of the Non Statutory Local Plan 2004 as there is no site-specific justification for the erection of an isolated new house in the countryside

As instructed, I concentrate my comments on the second proposed reason for refusal which relies heavily on the advice received from Charlotte Cox

Before examining this in further detail, however, I set out below the policies relied on in the proposed reason for refusal

Policy G2 of the Oxfordshire Structure Plan 2016 is entitled 'Improving the quality and design of development' and states 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."

Policy C7 of the adopted Local Plan 1996 is entitled 'Landscape Conservation' and states that

"Development will not normally be permitted if it would cause demonstrable harm to the topography and character of the landscape."

Policy EN34 of the Non Statutory Local Plan 2004 is entitled 'Landscape Character' and states

"The Council will seek to conserve and enhance the character and appearance of the landscape through the control of development. Proposals will not be permitted if they would

- (i) cause undue visual intrusion into the open countryside,*
- (ii) cause undue harm to important natural landscape features and topography,*
- (iii) be inconsistent with local character,*
- (iv) harm the setting of settlements, buildings, structures or other landmark features,*
- (v) harm the historic value of the landscape "*

It seems to me that the key phrase within the second reason for refusal is "with the severance of the proposed dwelling from the farm holding, there could be a requirement for the construction of replacement agricultural buildings and replacement residential accommodation". There is, of course, no application currently before the Council for replacement farm buildings or a replacement farm house. In such circumstances, it is difficult to see how any harm on the landscape and open countryside can be assessed.

Both reports from Charlotte Cox explain that the basis of them is "to investigate whether or not the unit is viable without the farm buildings and dwelling". As I have not seen her instructions, I am not clear of the policy context in which she was asked to comment on the future viability of the farm holding should this application be approved.

Whilst Government policy is to encourage a sustainable, diverse and adaptable agricultural sector (see, for example, the fourth objective in the introduction to PPS7 and the Defra website which explains that it is the Government's policy to secure an environment in which a competitive and sustainable agricultural industry with a strong market focus can flourish), there is no policy at national or local level to maintain viable farm holdings per se.

In addition to one of the four key objectives mentioned above, PPS7 encourages local planning authorities to support development that delivers diverse and sustainable farming enterprises (paragraph 16 (i)). Paragraph 27 recognises the important and varied roles of agriculture, including the maintenance and management of the countryside and valued landscapes, and encourages local planning authorities to support development proposals that enable farming and farmers to

- "(i) become more competitive, sustainable and environmentally friendly,*
- (ii) adapt to new and changing markets,*
- (iii) comply with changing legislation and associated guidance,*
- (iv) diversify into new agricultural opportunities (e.g. renewable energy crops), or*
- (v) broaden their operations to 'add value' to their primary produce "*

However, the only reference in PPS7 to viable farm units is found in paragraph 8 of Annex A. This states that

"New permanent accommodation cannot be justified on agricultural grounds unless the farming enterprise is economically viable. A financial test is necessary for this purpose, and to provide evidence of the size of dwelling which the unit can sustain "

This guidance clearly refers only to proposals for new permanent agricultural dwellings. There is no policy at any level to protect the viability of existing farm holdings, primarily I suspect because all the forces that determine the viability of agricultural units (such as market conditions, agricultural legislation and personal decisions taken by individual farmers) lie outside the control of the planning system.

Irrespective of this policy vacuum - but for sake of completeness to assist your deliberations - I agree with Charlotte Cox from my reading of the papers that the holding would not be 'viable' without the house and buildings. I assume from her discussion and application of the tests in Annex A to PPS 7 that Charlotte Cox is using the word 'viable' primarily in its financial sense, equating it with the test of financial soundness applied to applications for new agricultural dwellings in paragraph 3 of Annex A.

However, there has been no evidence brought forward which indicates that the holding is currently financially viable and that this application would lead to a change in that status. I note that Mike Ewence requested a copy of the farm's accounts from the tenants' agents but these do not appear to have been provided to any party in this matter. In their place, Mike Ewence has estimated the likely profit or loss from the unit using standard farm management data. These show losses of about £8,500 at low stocking levels and £4,800 at average stocking levels (the latter should be increased to a loss of £5,400 as Mike Ewence has misquoted the average gross margin). Even using more up-to-date figures available since the report was compiled, standard data still show that an enterprise on this scale would be expected to be loss-making. The evidence available therefore suggests that the farm is probably not financially viable now in the sense used by Charlotte Cox in her report.

However, in fairness to Charlotte Cox, whilst she does not define her understanding of the word 'viable', she does discuss issues other than just financial by considering the future availability of access to the land, and the future availability of farm buildings and a dwelling. In a broad land use context, it must be the case that the farm is currently *operationally* viable in the sense that it has carried out agricultural operations on the land to acceptable standards (for otherwise I would have expected the landlord to have served a notice to quit on the grounds of bad husbandry) for nearly 27 years.

This application would not affect any of the farm access issues raised by Charlotte Cox in the first three paragraphs of her section 7.

The application would however remove the three traditional brick buildings from farm use. Charlotte Cox indicates that these provide livestock accommodation, fodder storage, implement storage and a workshop. However, Mike Ewence describes one of the buildings as "*full of household artefacts*" with no sign of recent use by any livestock, with the other two occupied by two Shetland ponies and by a sick ewe and some orphan lambs.

Whichever description is correct, the farm would be left with a single modern Dutch barn which extends to five bays and a floor area of 300m² (and a volume of 3,000m³). Charlotte Cox indicates that this building would be inadequate on its own "*as the Hills are currently utilising to maximum capacity a larger floor area*". This is disputed by Mike Ewence's description of the traditional buildings and his indication that the Dutch barn was not used to full capacity at the time of his site visit in September 2007 (after a hay crop had been taken).

Neither party sets out a calculation of the building requirements for the existing enterprise. Standard farm management data (The Agricultural Budgeting and Costing Book, 67th edition, November 2008) indicates that large ewes and lambs need between 1.4 to 1.9m² of floor space (excluding internal feed passages). A flock of 120 ewes, if all lambed in one batch, would therefore require between 168 and 228m².

The other main use for the barn would be to store hay (machinery would be expected to be moved outside during the lambing season) on the assumption of 1kg/ewe/day, a flock of 120 ewes is likely to require 22 t of hay over a six-month period, or about 900 25kg bales. At 6-7m³/t, these will require up to 150m³ of storage or about 40m² if stacked to about 4m. During the peak lambing time, the existing Dutch barn should therefore be sufficient for the current needs of the enterprise.

It follows that a significant expansion of the flock or the introduction of additional livestock enterprises would be likely to give rise to a need for additional buildings, although there may be other options available (such as lambing in more than one batch or using straw bales for shelter) to reduce this need and cost.

The potential loss of the farmhouse is clearly a material consideration as it is the sole residence of the tenants. The loss would also undoubtedly disadvantage the farm enterprise as it is without question preferable to manage any livestock enterprise from on- rather than off-site in order to meet the welfare requirements of those animals. However, it would not be essential to live on site in order to manage a flock of 120 ewes, I am aware of many substantially larger flocks that have been successfully managed for many years without the provision of on-site accommodation for the shepherd, including a very well-established one of 1,400 ewes just along the road from our offices.

Therefore, given the evidence that the existing enterprise would have unhindered access to the land and remaining building, that the building is of sufficient size for the existing enterprise, and that it would not be essential to live on site to manage a flock of this size, I cannot agree with Charlotte Cox's conclusion that the business would not be able to function "*in any form*" just with the use of the land and the Dutch barn.

I also have difficulty in understanding why Charlotte Cox has been asked to consider a proposal for a new agricultural dwelling in the terms of Annex A to PPS7 and Policy H20 of the Non Statutory Local Plan 2011 when the application is for a replacement house in the countryside unrelated to agriculture and as such should be considered against Policy H18.

Charlotte Cox's application of the tests in Annex A to PPS7 - which are concerned solely with applications for new agricultural dwellings - to an existing agricultural business supported by an existing dwelling seems to me without foundation. There is no indication anywhere to suggest that these tests should be used to determine whether a dwelling should remain associated with an agricultural enterprise and, for all dwellings that were built before the introduction of the planning system (such as this one), there is no obligation to keep them available for agricultural workers.

In Charlotte Cox's view, the tests in paragraph 3 of Annex A are met but I fail to understand the relevance of these tests to this particular application. Again for the sake of completeness and your information, I agree with Mike Ewence that a functional need has not been demonstrated, the labour required to manage a unit of this size with this number of stock has been considerably overstated and that no evidence has been brought forward to demonstrate the financial soundness of the enterprise.

There is though a danger that this approach pre-appraises an application for a new agricultural dwelling on the land owned by Messrs Hill which has not been submitted and may never be submitted. In my view, it does not immediately follow that an application for a new agricultural dwelling on the Hills' land would be submitted if this application is granted permission.

It is certainly the case that the granting of permission would provide the opportunity for the landlord to serve a notice to quit where there would not otherwise be that opportunity and, given the landlord's previous actions, it is a reasonable assumption that this notice would be served. It is also a reasonable assumption that this notice will be challenged by the tenants. However, thereafter, it is unknown.

- i) if the notice would be upheld by the Agricultural Lands Tribunal,
- ii) if upheld, if the tenants would wish to continue farming the land or whether they would seek compensation for the loss of the tenancy,
- iii) if they would wish to farm the holding in an identical manner to present,
- iv) if the enterprise existing at that time (which may or may not be the same scale and nature to that presently existing) would require on-site accommodation or whether any supervisory needs could be met by other existing accommodation in the area,
- v) if the tenants would apply for permission for an agricultural dwelling on their own land and if that permission would be granted.

In my view, the proposed reason for refusal no 2 is not well-founded To dissect it

- i) the proposed dwelling would not be related to the needs of the current agricultural tenants in any form, let alone in excess of their needs,
- ii) the evidence suggests that the brick buildings are not essential to the continuation of the current agricultural operations,
- iii) there is no certainty that the dwelling would be severed from the remainder of the farm holding in terms of occupation as this would be a matter for the Agricultural Lands Tribunal,
- iv) the existing enterprise is unlikely to require additional agricultural buildings,
- v) any replacement residential accommodation will depend on the needs, scale and nature of the agricultural enterprise existing at the time of any application,
- vi) the impact of any future developments on the character of the landscape cannot be assessed before they are proposed

I hope these comments and observations are helpful

Yours sincerely

Alastair Field