

# ANNEX B

## Bob Duxbury

**From** Planning  
**Sent** 07 August 2008 08:44  
**To** Bob Duxbury  
**Cc** Carolyn Mangnall  
**Subject** FW: 06/01346/F Cropredy - Oxhay Farm Mollington Road Cropredy Oxfordshire - Update  
**Importance** High  
**Attachments** Oxhay farm final doc, mike ewence report pdf

**From:** Pritpal Singh-Swarn [mailto:Pritpal.Singh-Swarn@wrightthassall.co.uk]  
**Sent:** 06 August 2008 19:52  
**To:** Planning  
**Subject:** 06/01346/F Cropredy - Oxhay Farm Mollington Road Cropredy Oxfordshire - Update  
**Importance:** High

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<<Oxhay farm final doc>> <<mike ewence report pdf>>

06/07/06 Replacement of existing dwelling and re-use of two small barns for

Local Sites

**Please place before members of the planning committee scheduled for the 7th August 4 pm.**

The production of

The site in connection with the above planning application scheduled to be heard by the Planning committee on the 7th August 2008 4pm

The purpose of this update, is to be viewed in two respects,

(1) provide expert evidence prepared by Mike Ewence, which appears not have been considered by the LPA in its assessment of this application, and

(2) the nature of the report presented to the planning committee does not appear to reflect a fair and balanced view or show evidence of a reasonable assessment of the case put on behalf of the applicant. It would further appear that members have not been presented with all the information the LPA has had in its possession, to allow members to make a fair and fully informed balanced decision on this application

The contents of this email and attachments are not further submissions but an update and clarification of the applicant's position. It is the writer's view that this has been necessary because the report before members does not appear to have fully reflected the case of the applicant

Further Recommendations

This email is copied to the Chair and Vice-Chair of the planning committee with the following recommendations,

- (i) the planning committee defer the consideration of this application to properly consider the attached submissions (of which the applicant considers are vital as part of the decision making process and that members have the very basics i.e. expert evidence and also a true analysis of the applicant's case), to enable a proper debate, and
- (ii) the planning committee to carry out a site visit and obtain a visual perception of the property in question

Reasons for Refusal

Members should note by way of update the following observations, which the applicant believes are not fairly reflective in the officer's report

In respect of reason for refusal 2 loss of buildings which are essential to the continuation of the current agricultural operations There has never been any evidence to come to this conclusion The applicant has engaged his own expert, who is highly regarded in the farming community and has never been able to conclude any support for the second reason for refusal

Members may be aware there is a history to this matter and that in part is set out in the planning officer's report Members are referred to the factual observations of the previous planning officer who dealt with the initial planning application,

Contrast to previous case officer's findings (i.e. **"not suitable for modern farming techniques"**)

Members should note it is wrong in planning law to assume there could be a requirement for a construction of a replacement accommodation and buildings There is no such application before members and there is no evidence submitted that there would be a proliferation of buildings (as alleged by the planning officer) It is not relevant to consider the impact of the need for further agricultural buildings that would be required (in the absence of any evidence), the planning authority appear to be clearly pre-empting the tenant to make a submission for new agricultural and residential buildings This should not form to be a reason for refusal

Member should note, the planning officer has it would appear provided only one side of the application of PPS7 (reference to which the applicant believes is flawed in any event) This is not an application or the justification to support a farming operation The established use of the land is in my view established residential and agricultural, with no farming ties or restrictions The land is therefore **not** exclusively agricultural

There is no change of use of the established residential aspect Emphasis on policy PPS7 is wrong, this is **NOT** a new house creating a new use Reference and application to PPS7 is both misleading and misconstrued and members are invited to take further expert advice on this point and are also invited to take into account the expert evidence submitted by Mike Ewence

Members are referred to the original assessment of this planning application and that assessment, there was never any mention of or reference to the Structural Plan or any policies contained within

reference to Structure plan is largely irrelevant, in context of this application. Reference to the Local Plan will reflect the legal position (section 31 of the Town and Country Planning Act 1990). This application should be viewed as an application for replacement of a one for one residential property incorporating some barns which were described by the original planning officer (appears to be supported by a senior planning officer or a line manager), as

**" ..only worthy of very low key uses. ....The buildings are simple and falling into disrepair, as such are not likely to be suitable for more modern farming techniques"**

#### Local Challenge

Members must be clear that merits or otherwise of the Judicial Review were not tested and it was agreed between the parties to remit the planning application back for reconsideration.

Members are invited to consider the submissions attached to this email.

In terms of the high court challenge there is differing legal views of whether the original planning officer's initial assessment was flawed on all accounts. As indicated this was never challenged or tested. The applicant or its legal advisors have never seen the expert legal advice to which this planning officer's report refers. However, members cannot simply ignore the previous findings by the original planning officer, these are material considerations and supported by case law.

Members must also note that the original assessment on the 31/08/06 by the planning officer and subsequently supported by the senior planning officer, were both of the view that,

" as such the dwelling can only be considered as a dwelling in the open country site in terms of relating it to planning policy. In this respect there is no assumption that the replacement dwelling must be commensurate with the size of the agricultural holding"

**Members therefore need to ask the question what is so fundamentally different now than when the original planning officer assessed the application (which was also supported by the planning officer's line manager or a senior planner), two years ago, in the absence of any change of policy or circumstances.**

#### Policy H19

Reference has been made to Policy H19. Members should be clear this application is not for a new dwelling in the countryside. This is a replacement for a one for one, including some barns. The facts are quite clear and this policy is irrelevant.

#### Expert Agricultural Evidence

Members are referred to the expert evidence of Mike Ewence, regarding viability and functional need. This report appears to be sidestepped and not mentioned in the body of the report prepared on behalf of WCC. It is very important that members have sight of this report because it casts doubt on the evidence presented by the Council's expert. Put very simply, there is no evidence to substantiate the findings of the Council's expert. Members are therefore invited to also consider the attached report and question the basis upon which WCC has submitted its report. Members need to ask where is the evidence to substantiate the claim of viability and functional relationship. Certainly no accounts have been viewed, farming stock is questionable. Very strong evidence is required as set out in

PPs, The writer has set out reference to case law supporting the position and also Inspectorate decisions on appeal

Members need this evidence before a properly informed decision can be made

The planning officers appeared to have confused the whole issue with residential use and the farm holding. It is a fact that there is no agricultural tie. It is also a fact that the residential use and the farming element predates planning legislation. It is a fact this planning application is for a stand alone dwelling and the farming operation is separate and will continue.

#### Statutorily Unfit/Substandard

In terms of the condition of the property members must be aware the findings by the Council's own Environmental Health Dept, who throughout the history of the department's involvement, has considered the property substandard and not statutorily unfit. Even by the new ratings under the Housing Act 2004, a property could be unfit if it is not free from dampness. It appears the report is perhaps not providing members with all the necessary information that is set out in the Housing Act 2004. Members are invited to ask for further clarification on the relevant parts of the Housing Act before any decision is made on this application. Members are also invited to consider the assessment and application of the Hazardous Rating System under the 2004 in the attached assessment by the writer.

#### Material

Members are also invited to look at all the money that has been spent on the property hitherto. It is a material consideration and a very important one for members to understand that the applicant cannot simply carry on continuing to repair what its own Environmental Health dept considered unfit. A site visit is therefore imperative and members are urged not to make any decision without first making a site visit.

The report does not give members the vital information and supporting evidence to show how cases have been decided by other LPAs and by Inspectors on appeal. As indicated above there is a lack of evidence in the report commissioned through WCC, which flies in the face of all planning decisions on appeal in respect of larger farm holdings. Members must defer to look at this evidence before making an decision.

To conclude, the report is confusing in parts, appears not to properly apply the applicant's case and also has misinterpreted policy and not provided members with all the evidence/information for what is considered to be vital which members would need to consider, when making an informed decision.

Members are respectfully asked to endorse the above recommendations to give correct effect to the consideration of this application.

Regards

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