

Application No: 10/00187/OUT	Ward: Bletchington	Date Valid: 10/02/10
Applicant:	Minns Estates Ltd	
Site Address:	B-Line Business Centre, Station Road, Enslow	

Proposal: Demolition of existing buildings, erection of an office building and eleven residential dwellings

1. Site Description and Proposal

- 1.1 The site is located in close proximity to the junction of Lince Lane (A4095) and Station Road (B4027), an access is taken from the latter. Roughly rectangular in shape and cut into a hillside, the site currently contains a mixture of portable buildings and former agricultural buildings that have been converted for business use. To the west lies a residential property known as Station House and overlooking the site, to the east, is Hill Top Cottage. Beyond the site to the north, on the valley floor, is the Oxford Canal (there is a marina directly below the application site). The site falls within a Flood Zone (2) and is located just outside the Oxford Green Belt - the B4027 forming the northern boundary of the Oxford Green Belt in this vicinity.
- 1.2 The proposal seeks to demolish the existing buildings and replace them with an office building, near the entrance to the site, and 11 new dwellings, two of which could be affordable. The application is in outline form with only the layout and access being assessed at this stage. All other matters have been reserved for future consideration. The two semi-detached affordable housing units would have three bedrooms and would be positioned next to the office building. The remaining properties would be detached four bedroom units, each with a double garage. The office building would provide 213 square metres of floorspace. As part of the development the access is to be improved and a new footpath linking the site to the Rock of Gibraltar public house would be constructed along Station Road. It is worth noting that the site layout as shown on the Highway Works Plan (0929 003) does not show the finalised version of the scheme.
- 1.3 Members may recall that there is extant outline planning permission on this site (09/00647/OUT) for replacement B1 office/industrial units. The two buildings have a combined footprint of 1620 square metres.

2. Application Publicity

- 2.1 The application has been advertised by way of press notice and neighbour letter. The final date for comment was the 2nd April 2010. No correspondence has been received as a result of this consultation process.

3. Consultations

- 3.1 Bletchington Parish Council does not object to the scheme but is concerned about the visibility in respect of the vehicular access on to the A4095.

3.2 The Head of Planning Policy has provided the following comments:

The application site comprises a mixture of portable and former agricultural buildings used for business purposes. An application (09/00647/OUT) for the demolition of the existing buildings and their replacement with new office/industrial buildings was permitted on 14 August 2009.

The current proposal for is for eleven dwellings, nine of which would be market homes with 4 or more bedrooms. Two 3 bedroom homes are proposed as affordable housing (18%). The applicant states that offices would be provided over garages to provide “..an opportunity for residents to work from home...”.

The site lies at Enslow, immediately north of the Green Belt, to the west of Bletchingdon, south-west of Kirtlington and north of Shipton-on-Cherwell.

I consider the main policy issues to be:

- i. whether there would be unacceptable loss of rural employment
- ii. the district's current housing land supply position
- iii. whether the site is in a suitable location for residential development
- iv. whether the proposal represents an acceptable mix of housing.

i. Loss of rural employment

PPS4 states (EC12.1b) that LPAs should support small-scale economic development where it provides the most sustainable option in villages, or other locations, that are remote from local service centres, recognising that a site may be an acceptable location for development even though it may not be readily accessible by public transport. It also states (EC12.1c) that LPAs should take account of the impact on the supply of employment sites and premises and the economic, social and environmental sustainability of the area when considering planning applications involving the loss of economic activity.

The South East Plan requires LPAs to address the economic needs of rural communities (policies RE3, BE5) and saved policy EMP4 seeks to encourage economic activity in the rural areas (para' 3.50).

Policy EMP5 of the Non-Statutory Cherwell Local Plan 2011 states that the change of use or redevelopment of an existing employment site within or adjoining a village to a non-employment use will not be permitted unless: i) there would be substantial and demonstrable planning benefit; or demonstration that every reasonable attempt has been made to secure employment re-use (normally advertised for sale or for rent for not less than 12 months).

The Council's Employment Land Review (2006) recommends that all premises and land currently in B class use should remain allocated and be protected for employment generating activity. Monitoring information in the AMR does not demonstrate that there is surplus (or shortage) of employment land in rural areas.

There is insufficient information in the application to determine the extent of the loss of existing employment space that would result from the proposed development.

However, the recent approval of a scheme (09/00647/OUT) for the replacement of the existing buildings with new office/industrial buildings (1620 sq. m of floorspace) indicates the potential of the site. The office building proposed in the current application would only provide 213 sq. m of floorspace. It is therefore considered that predominantly residential redevelopment of the site would lead to a significant loss of employment space/potential for this rural area. I do not consider the proposal for office space over garages to be sufficient compensation for this loss as it is likely that such use in would be incidental to the enjoyment of the dwellinghouses. Planning permission is not being sought for separate B1 office use.

I am not aware of any evidence that employment use of the site is no longer viable and that serious attempts have been made to market the site. Whether there would be substantial and demonstrable planning benefit as a result of the proposal requires detailed consideration.

ii. the district's current housing land supply position

The district's housing land supply position is material for this proposal for 11 dwellings.

Planning Policy Statement 3 (PPS3) requires a flexible supply of land for housing by, amongst other things, maintaining a five-year rolling supply of deliverable (available, suitable and achievable) housing land. LPAs are required to monitor the supply of deliverable sites on an annual basis, linked to the Annual Monitoring Report review process.

The Council's 2008 Annual Monitoring Report (AMR) noted that the district had a 5.3 year rolling supply for the period 2009-2014. The 2009 AMR shows that for the same period the district now has a 4 year supply rising to 4.5 years for 2010-2015 and 5.1 for 2011-2016.

PPS3 requires scenario and contingency planning to identify different delivery options, in the event that actual housing delivery does not occur at the rate expected. Policies and proposed management actions are expected to reflect the degree to which actual performance varies from expected performance, as indicated in housing and previously developed land trajectories. Where actual performance, compared with the trajectories, is within acceptable ranges (for example within 10-20 per cent), and future performance is still expected to achieve the rates set out in the trajectories, PPS3 states that there may be no need for specific management actions at that time and that LPAs will wish to continue to monitor and review performance closely and consider the need to update the five year supply, of deliverable sites where appropriate.

In accordance with PPS3, the district's rolling supply of deliverable housing land takes no account of unidentified, small site windfalls. Planning permission does exist for some additional 500 homes which if 90% implemented would be more than enough to boost rolling supply over 5 years in 2010/11. However, small, unidentified windfalls cannot be considered until they are recorded as complete. New LDF sites will also emerge over the next couple of years, boosting both near and long-term supply. Once such sites are considered to be available, suitable and achievable as defined by PPS3 they could be considered as part of the rolling supply of deliverable sites.

At the present time, however, it is considered that there is a need to increase the supply of housing that will be delivered over the period 2010/11 to 2014/15 so that the rolling supply of deliverable land increases back towards 5 years for the year 2010/11. Performance over the next two years is expected to be low with an estimated 369 dwellings in 09/10 and 181 in 10/11.

In these circumstances, the Planning Committee recently resolved to grant permission for a scheme of 61 dwellings on land south of Milton Road, Bloxham (09/01811/F) which has the effect of increasing the supply of deliverable sites in 2010/11 from 4.5 to 4.6 years.

PPS3 states that where LPAs cannot demonstrate an up-to-date five-year supply of deliverable sites, they should consider favourably planning applications for housing, having regard to the policies in PPS3 including the following considerations:

- achieving high quality housing
- ensuring developments achieve a good mix of housing reflecting the accommodation requirements of specific groups, in particular, families and older people;
- the suitability of a site for housing, including its environmental sustainability;
- using land effectively and efficiently;
- ensuring the proposed development is in line with planning for housing objectives;
- reflecting the need and demand for housing in, and the spatial vision for, the area and does not undermine wider policy objectives.

In the context of the district's housing supply position, this application needs to be carefully considered to see whether or not it meets PPS3 criteria as well as other policy considerations including the South East Plan, the saved policies of the adopted Cherwell Local Plan 1996 and the Non-Statutory Cherwell Local Plan 2011. I deal below with the issue of whether this is a suitable site for residential development.

iii. whether the site is in a suitable location for residential development

Enslow is a category 3 village in both the saved policies of the adopted local plan and in the Non-Statutory Plan. Policies H15 and H17 respectively restrict development within such villages to conversions within settlements (and for rural undertakings) and in the case of the Non-Statutory Plan every reasonable attempt to secure suitable employment re-use would be expected. I am unclear as to whether the site lies within or outside the built-up limits of Enslow, but in either case continued employment re-use should be considered in the first instance.

Notwithstanding this, Enslow is a category 3 hamlet at which significant further residential growth is not envisaged. Its size, remote location and general lack of services and facilities mean that it is considered to be an unsuitable location for a development of 11 dwellings. The grant of permission for a 'live-work' scheme nearby does not in my view make this a sustainable location in which to respond to the district's current five year land supply position. The potential availability and suitability of sites in more sustainable locations as evidenced by LDF issues and

options papers reinforced this view.

As a 'regulation 25' consultation document, the Council's Draft Core Strategy carries little weight. However, it sets out proposed directions of growth for the district having regard to available evidence. I am of the view this proposed development would be contrary to the emerging approach on housing distribution.

If the proposed development were to be considered favourably, it must be clearly demonstrated that the site is deliverable (available, suitable and achievable) and capable of being recorded as complete by the end of the next 5 year rolling period i.e. by 31 March 2015. Completions after this date would have no effect on increase the rolling supply for 2010/11 from 4.6 years. Sufficient certainty is needed to enable the site to be added to the district's rolling supply of deliverable housing land upon the grant of any planning permission.

iv. whether the proposal represents an acceptable mix of housing.

Insufficient affordable housing is proposed to meet the Non-Statutory Plan's requirement of 30%. It is also considered that the size and type of the private housing proposed is not consistent with PPS3 objectives for achieving a satisfactory mix of housing.

In conclusion, subject to there being no overriding substantial and demonstrable planning benefit arising from the proposal, there is a clear policy objection, notwithstanding the district's current housing land supply position and consideration of other detailed matters such as flooding and the impact on the adjoining Green Belt.

3.3 The Council's Design and Conservation Team Leader provided the following comments:

The site is effectively a shelf on the steep valley side that drops from the A4095 to the Cherwell valley floor. It is surrounded by woodland scrub vegetation and thicker woodland to the north east. The mooring basin on the Oxford Canal below the site is currently developing into a more commercial operation. This is a busy stretch of canal and the canal tow path is a popular amenity route.

The application is in outline with access and layout for approval at this stage and a layout is submitted. Although the DAS claims that the designs are in character with the nearby villages it is lacking in a proper visual and character analysis of the context, including neighbouring villages. Had an analysis of the context been undertaken it could have informed the design. The Design and Access Statement is inadequate in this respect.

The proposal is inappropriate in the following respects:

Layout: A layout is submitted as part of the application but the DAS gives no design rationale other than a brief statement at paragraph 7.2. This is entirely inadequate. Paragraph 86 of Circular 01/06 states *that the DAS should explain and justify the proposed layout in terms of the relationship between buildings and public and private spaces within and around the site.....* Paragraph 97 of the DAS states that an assessment of the site's immediate and wider context will be required. Had this

been undertaken it would have revealed that traditional village streets in the locality are generally composed of a mixture of dimensions of building footprint, of terraces and detached properties, of a variety of locations on plot, often at the back of the highway, and of walls, open spaces and vegetation. This proposal indicates a cul de sac with an office building at the entrance and large detached houses and double garages with rooms over placed along it. The positioning of the properties does not relate well to the road, producing a discordant street scene. The properties do not relate to each other to create a cohesive or attractive street elevation. Each one sits independently in its plot. Each has a double garage and 2 car spaces in front. This creates a very suburban character reminiscent of 1980s development. In most cases the building footprint covers over half the area of the plot. This is a dense proposal for such a rural area and its layout is atypical of the character of nearby settlements. I cannot recommend approval of this layout.

Scale: Paragraph 7.3 entitled Scale of the DAS gives no information on scale stating that scale will be addressed by the RM application. However, paragraph 7.9 entitled Design and Use of Materials states that the heights vary from 1.5 storey garages to 2 and 2.5 storey houses. The scale of the building footprint is given in the layout and house types including elevations are also submitted, which reveal dormer bungalow style detached dwellings, so there is some inconsistency in statements here. In fact, notwithstanding that this is an outline application, Circular 01/06 states that *the application should still indicate the parameters for the upper and lower limits of the height, width and length of each building proposed to establish a 3D building envelope within which the detailed design of the buildings will be constructed*. The application does not comply with Circular 01/06 in this respect. Nevertheless from the information that is provided we can see that what is proposed is not in sympathy with the established character of neighbouring villages which are made up of a variety of scale of buildings from tiny vernacular cottages to grander villas, producing an interesting and varied roofline. The proposed scale of the properties is fairly consistent and likely to be rather overbearing given the spacing of them. The application is therefore inconstant, does not comply with Circular 01/06 and what is proposed is not acceptable.

Appearance: Paragraph 7.8 of the DAS claims that the intended style of building will pick up on the local village character of Tackley, Kirtlington and Bletchington ... but will also take some influence from the canal side location and the industrial stone buildings in Enslow. It does not go on to explain how this design rationale is expressed in relation to the proposal nor is this evident from the elevations submitted. Paragraph 95 of Circular 01/06 requires DAS to explain and justify the principles behind the intended appearance and explain how these will inform the final design. Traditional village properties are generally wide fronted, narrow span with additions to the rear, with ridge lines following the road alignment. Here each property has a deep plan and a projecting gable facing the road, with plot 1 and plot 9 being entirely wide gable fronted dwellings. This is partly an attempt to break up the bulk of the large building footprint but creates fussy massing, quite contrary to the simplicity of traditional forms. The DAS is lacking in this respect and the information about the proposed appearance is not appropriate.

Landscaping: Paragraph 92 of Circular 01/06 states that at outline stage the DAS should explain and justify the principles that will inform any future landscaping scheme. The DAS gives no information about landscaping. Given the location of the site in an elevated position above the Cherwell Valley I would have expected to

see significant analysis of the visibility of the development from a number of sensitive vantage points, together with an analysis of the surrounding species to establish the principles that have informed the layout and that would inform the landscape treatment of the site. For example there is no explanation or justification as to whether the development will be seen and whether a development form which looked out over the Cherwell valley would have been appropriate etc. The DAs is lacking in this respect.

Therefore I conclude that the DAS is inadequate and that the submitted layout is unacceptable.

- 3.4 The Strategic Housing Officer does not regard the site as suitable for affordable housing due to its unsustainable location.
- 3.5 The Head of Building Control and Engineering Services has no objections in principle. There are no foul or surface water sewers in the vicinity of the site. Therefore a private sewage treatment system will have to be installed. Surface water disposal to be by a sustainable urban drainage system for which a commuted sum will be required.
- 3.6 The Environmental Protection Officer had not commented at the time of writing this report.
- 3.7 The OCC Highways Authority has raised no objections subject to condition.
- 3.8 The Crime Prevention Design Advisor has no objections at this stage.
- 3.9 Thames Water has no objections to the scheme.
- 3.10 Natural England has objected to the scheme. The removal of the existing buildings and the orchard require the submission of a bat survey. A bat survey did not accompany this application. In respect of the impact on the nearby SSSI, Natural England has no objection to the proposed scheme.
- 3.11 The Environment Agency has no objections subject to condition.

4. Relevant Planning Policies

- 4.1 PPS1: Delivering Sustainable Development
PPS3: Housing
PPS4: Planning for Sustainable Economic Growth
PPS7: Sustainable Development in Rural Areas
PPS9: Biodiversity and Geological Conservation
PPG13: Transport
PPS23 Planning and Pollution Control
PPS25: Development and Flood Risk
- 4.2 Policies BE1, CC7, CO3, CO4, BE5, RE3 and T4 of the South East Plan 2009
- 4.3 Saved Policies ENV12, H5, H15, C2, C27 and C28 and C30 of the adopted Cherwell Local Plan

- 4.4 Policies H1a, H1b, H7, H17, D1, D3, EMP5, OA1, TR4, EN25, R8, R9 and R10A of the Non-Statutory Cherwell Local Plan 2011

5. Appraisal

- 5.1 This outline application seeks approval for the principle of the development and for access and layout. The following issues are therefore under consideration:

- Principle of the development
- Site layout and adequacy of the design and access statement
- Highway issues
- Landscape/Green Belt impact
- Protected species
- S106 legal agreement

5.2 **Principle of the development**

The comments submitted by the Head of Planning Policy, above, provide a detailed appraisal of the policy position. The key conclusion to be drawn from the report are that the loss of a rural employment site would be contrary to Policy EMP5 of the Non-Statutory Cherwell Local Plan unless it can be demonstrated that there is a substantial and demonstrable planning benefit or that every reasonable attempt has been made to secure an employment re-use. The proposal whilst having an employment element is considered to be a predominantly residential development.

- 5.3 As regards the caveats to Policy EMP5, no evidence has been provided to establish that the site is no longer viable for an employment use. As for a *substantial and demonstrable planning benefit*, the applicant, amongst other things, argues that the proposed scheme would meet a shortfall in the supply of housing within the District. Whilst there is a deficit in the short term housing supply (2010/11 - 2014/15), proposals which seek to address this imbalance have to be assessed against the following criteria set out in PPS3:

- achieving high quality housing
- ensuring developments achieve a good mix of housing reflecting the accommodation requirements of specific groups, in particular, families and older people;
- the suitability of a site for housing, including its environmental sustainability;
- using land effectively and efficiently;
- ensuring the proposed development is in line with planning for housing objectives;
- reflecting the need and demand for housing in, and the spatial vision for, the area and does not undermine wider policy objectives.

- 5.4 In respect of the site's suitability for housing, even if it is accepted that the site falls within the settlement boundary, as Enslow is a category 3 settlement (Policy H15 of the adopted Cherwell Local Plan) the proposed scheme would run contrary to this policy. Development within category 3 settlements is limited to conversions. As the Head of Planning Policy observes 'Its size, remote location and general lack of services and facilities means that it is considered to be an unsuitable location for a development of 11 dwellings.

- 5.5 As regards the second criterion identified in PPS3, this proposal fails to achieve a satisfactory mix of housing. In respect of the affordable housing element the Non-Statutory Local Plan requires that 30% of the housing is affordable. The applicant is only proposing that two of the eleven properties are affordable, which only equates to 18% of the total. As the remaining properties are all large and detached it could also not be argued that the scheme provides the variety of house types to meet the Government goal of promoting mixed communities, set out in PPS3.
- 5.6 The applicant sets much store in the potential benefits of the proposed change of use as a mitigating justification. A supporting environmental report demonstrates that this current proposal would result in a reduction in energy consumption (approx. 39%) and a reduction in CO₂ emissions (approx. 39%) when compared to the B1 development approved on this site last year. Whilst not disputing these findings, it is worth noting that all the figures are hypothetical and that no assessment is made of the existing use. The methodology is therefore debateable as mitigation strategies could be incorporated into the design of the approved business units to further reduce their environmental impact. There is also limited analysis of other environmental consequences, e.g. the impact of the housing on local wildlife habitat (development will affect the whole rather than part of the site as is the case with the extant B1 permission); loss of trees; and whether the business units would consume less/more water than the proposed dwellings and office.
- 5.7 Even if it is accepted that the proposed scheme has environmental advantages over the extant outline permission, it is not considered that this would, on its own, constitute a demonstrable planning benefit as set out in EMP5 of the Non-Statutory Cherwell Local Plan 2011. Further, by accepting this argument, a precedent would be set whereby a large proportion of rural employment sites within the District would be inevitably identified for a similar change of use.
- 5.8 In support of their application reference is made to the potential precedent set by the Ingelby Farm development (05/00535/OUT) which is on the opposite side of Lince Lane. In this case Members gave approval for the replacement of a kennelling facility with seven live-work units. Since approving this scheme control over the 'work' element has been relaxed by planning permissions 07/01242/F and 08/01239/F (granted on appeal). Although in theory there are sustainability benefits to be derived from the live-work concept, in reality ensuring that residents/developers share and adhere to this vision has proven to be very difficult.

The *Development Control Practice* website observes the following in respect of the live-work model (para. 10.5):

"The concept was first adopted by planners in the London Borough of Tower Hamlets in the late 1980s and taken on by other neighbouring authorities, often being seen as a way to aid the regeneration of run down areas. However, some developers subsequently saw it as a way to circumvent planning policies relating to land use allocations which led to planning authorities treating the proposals in a far more circumspect and sceptical manner. Some authorities have gone as far as to change their approach to the matter; an example being the revocation in October 2004 by Hackney L.B. of its supplementary planning guidance after research found that those that had been formed produced few jobs and contributed little to regeneration."

- 5.9 Notwithstanding the merits of live-work units and indeed the Ingelby Farm development in particular, the HDC&MD concurs with the Head of Planning Policy's assessment that the proposed dwellings do not conform to the definition of live-work units. The space above the garages has been identified as a place of work, but as no separate B1 office use is being sought, this space is in effect no different to rest of the residential accommodation. The Ingelby Farm approval is therefore considered to have little bearing on this current application.
- 5.10 **Site layout**
The quality of the housing is another consideration outlined in the aforementioned paragraph of PPS3. As is evidenced in her report above, The Council's Design and Conservation Team Leader is dismissive of the proposed design/layout as well as the supporting Design and Access Statement. In summary, she concludes that the positioning of the properties do not relate well to each other, with the parking and garaging giving the development a '*very suburban character reminiscent of 1980s development*'. She goes on to criticise both the scale and appearance of the proposed dwellings which it is concluded are '*not in sympathy with established character of the neighbouring villages*'. Based on this assessment the scheme runs contrary to Policies C27 and C28 of the adopted Cherwell Local Plan.
- 5.11 To accommodate plots 7 and 8 the buildings and gardens will either occupy much more elevated positions in respect of the adjacent properties or, as is more likely, a significant engineering operation will have to be undertaken to remove the large amount of earth located in this corner of the site. In order to allay the concerns of the Highway Authority a supporting wall, which could be upwards of 8 metres in height, would have to be erected, to a strict specification, so that Lince Lane would remain structurally sound. As these engineering works are not mentioned in the design and access statement it has to be inferred, however unlikely, that the applicant intends to take the former of these two options, and calls into question the ability to build eleven houses in the layout proposed.
- 5.12 **Highway issues**
Despite the concerns of Bletchingdon Parish Council, the Local Highways Authority has no objections to the access on to Station Road. Aside from the fact that the access is to be improved, the Highways Officer notes that the proposal will result in a reduction in the number of movements to and from site - these movements will also not include heavy goods traffic associated with a B1 use. Subject to a few modifications and further clarification on a couple of points the Highways Officer is happy with the site layout.
- 5.13 The Highways Officer considers that '*the location of the site is unsustainable as future residents would have few alternatives to car use*'. He does however acknowledge that, in mitigation, the proposal would result in fewer movements than the recently approved B1 scheme. He also highlights other potential benefits in respect of the proposed footpath along Station Road and the opportunity for working from home. Whilst the footpath will provide a link to the bus stop, the number 25 bus only passes through the settlement on an infrequent basis during the day.
- 5.14 **Landscape/Green Belt issues**
Despite its proximity to the northern boundary of the Green Belt, the HDC&MD is satisfied that the development's landscape impact will be limited as it will, in all probability, not be visible from any vantage point within the Green Belt.

- 5.15 As regard views from the north, the Design and Conservation Team Leader is concerned that little consideration appears to have been given as to how the development will be viewed from outside the site. She comments as follows:
- “Given the location of the site in an elevated position above the Cherwell Valley I would have expected to see significant analysis of the visibility of the development from a number of sensitive vantage points, together with an analysis of the surrounding species to establish the principles that have informed the layout and that would inform the landscape treatment of the site. For example there is no explanation or justification as to whether the development will be seen and whether a development form which looked out over the Cherwell valley would have been appropriate etc. The DAS is lacking in this respect.”
- 5.16 Although outside the Green Belt, the site is located within in an area of High Landscape Value (saved Policy C13 of the adopted Cherwell Local Plan). The HDC&MD agrees with the Design and Conservation Officer that a detailed critique should have been included in the design and access statement outlining and justifying the landscape implications for the proposed development.
- 5.17 **Protected species**
PPS9 places a duty upon Local Planning Authorities to ensure that, where appropriate, a protected species survey be undertaken prior to determination of a planning application. The presence of a protected species is a material consideration when a planning authority is considering a development proposal. PPS9 states that “It is essential that the presence or otherwise of a protected species, and the extent to that they may be affected by the proposed development is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.”
- 5.18 Local Planning Authorities must also have regard to the requirements of the EC Habitats Directive when determining a planning application, as prescribed by Regulation 3(4) of the Conservation (Natural Habitats etc) Regulations 1994 (as amended). Under article 12(1) of the EC Habitats Directive, Member States requires that a system of strict protection of animal species be established to prohibit the deterioration or destruction of their breeding sites or resting places. The result is that there is in practice two linked systems of regulation. Firstly, under regulation 39(1)(d) it is a criminal offence to damage or destroy a breeding site or resting place but under reg.44 this does not apply if a licence has been granted for such operations and Natural England being that licensing authority. Secondly, where planning permission is required reg.3(4) provides that local planning authorities must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions and also the derogation requirements might be met.
- 5.19 Paragraph 98 of Circular 06/05 states that Local Planning Authorities should consult Natural England before granting planning permission and the views of Natural England would clearly have to be given substantial weight. The Circular at paragraph 121 affords protection to specific species of animals listed in Schedule 5 (see Table 2, Annex A of this Circular) under Part I of the Wildlife and Countryside Act 1981 (as amended).

- 5.20 Natural England has advised that the proposal, as presented, has the potential to affect species as protected in the aforementioned European and UK Legislation. In particular, concern is expressed in respect of the impact the proposed demolition of the existing buildings and the removal of existing trees will have on local bat populations.
- 5.21 The applicant has failed to provide an ecology report in support of their proposal. The ecology report which was submitted in respect of the approved business redevelopment (09/00647/OUT) could not be taken into consideration, even if it were included as part of the current application. This is because, although no evidence of bats populating the area was found, these findings, which were specific to the 2009 application, are now out-of-date (the report was prepared in December 2007).
- 5.22 **S106 agreement**
No negotiations have been entered into in respect of a S106 Agreement. As this development compromises more than six dwellings such an agreement is a pre-requisite of any approval. Not a definitive list, contributions which would be expected for affordable housing, open space/play space, off-site playing pitches, off-site indoor sports facilities, education facilities, library facilities and transport measures. The application should not be approved in its absence.
- 5.23 **Conclusion**
Not considered to be acceptable in principle, for the reasons set out above, this scheme also has a number of deficiencies in respect of design and layout. The Design and Access statement is also found wanting as it does not properly address some of the key issues relating to this site. The HDC&MD therefore concludes that this proposal is contrary to Policies H5, H15, R12, C2, C27 and C28 of the adopted Cherwell Local Plan and Policies H1a, H1b, H7, H17, D1, D3, EN25, EMP5, OA1, TR4, R8, R9 and R10A of the Non-Statutory Cherwell Local Plan 2011.

6. Recommendation

Refusal

1. Enslow is a Category 3 village as defined in the adopted Cherwell Local Plan. Policy H15 states that within such settlements new residential development will be restricted to the conversion of non-residential buildings or new dwellings where an essential need for agriculture, or other existing undertaking, can be established. It is the opinion of the Local Planning Authority that the proposal does not accord with these provisions and that it would be unsympathetic to its rural context, contrary to Policies H15 and C28 of the adopted Cherwell Local Plan and Policy H17 of the Non-Statutory Cherwell Local Plan 2011.
2. In the absence of a satisfactory unilateral undertaking or any other form of Section 106 legal agreement the Local Planning Authority is not convinced that the infrastructure directly required to service or serve the proposed development, including affordable housing, open space/play space, off-site

playing pitches, off-site indoor sports facilities, education facilities, library facilities and transport measures will be provided. This would be contrary to Policy CC7 of the South East Plan 2009, Policies H5 and R12 of the adopted Cherwell Local Plan and Policies OA1, H7, TR4, R8, R9 and R10A of the Non-Statutory Cherwell Local Plan 2011.

3. The proposal will result in the loss of an employment site which can continue to make an important contribution to the economic development of the area. The proposal is therefore contrary to Government advice contained within PPS4: Planning for Sustainable Economic Growth and Policy EMP5 of the Non-Statutory Cherwell Local Plan 2011.
4. The submitted design and access statement is not considered adequate as it does not explain or justify the proposed site layout or appearance of the buildings, or provide information on landscape impact or how levels on the site will be addressed. Furthermore the proposed site layout, which is considered to be very suburban in appearance, is not sympathetic to the character of the area as it does not respect traditional settlement patterns. The development is therefore contrary to Policies C27 and C28 of the adopted Cherwell Local Plan and Policies D1 and D3 of the Non-Statutory Cherwell Local Plan 2011.
5. In the absence of an ecological survey, it has not been demonstrated that the proposed development would not cause potentially irreversible and significant harm and disturbance to vulnerable and sensitive flora (including trees) and fauna, including protected species. The development is therefore considered contrary to Government advice contained within PPS9: Biodiversity and Geological Conservation and Policy C2 of the adopted Local Plan and Policy EN25 of the Non-Statutory Cherwell Local Plan 2011.

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