

<b>Application</b> <b>10/01923/OBL</b>	<b>No:</b>	<b>Ward: Wroxton</b>	<b>Date Valid: 12/01/11</b>
<b>Applicant:</b>	Mr and Mrs M Walters, Butchers Meadow, Balscote, OX15 6EX		
<b>Site Address:</b>	Butchers Meadow, Balscote, Ox15 6EX		

**Proposal:** Application to rescind S106 agreements dated the 10th August 2001 and 12th June 2007 and to replace them with a new S106 agreement to ensure the dwelling and any future workshop development on the site are not disposed of separately.

## 1. Site Description and Proposal

- 1.1 The application site known as Butchers Meadow is located within an open countryside location approximately a kilometer south of the village of Balscote. Vehicle access to the site is gained to the north east of the site serving the proposed business use and the existing dwelling on the site.
- 1.2 The site has had a range of previous commercial uses spanning back to the 1960's, including haulage and storage but all evidence of these previous uses has now been cleared from the site. The site of the proposed business units is a level site currently made up of some areas of poor hardstanding and rough grassland left from previous storage and distribution uses on the site. The level of the site rises to the north and west. The site is enclosed to the east and south by dense hedge planting and to the north east by a roadside hedge. The site is defined by post and rail fencing to the north west.
- 1.3 The site also accommodates a dwelling and associated garage which are located to the north of the application site on higher ground. The dwelling is unlawfully occupied in breach of an occupancy condition seeking occupation by people associated with the business uses on the site. An application to seek to remove this condition is currently being considered by the Local Planning Authority.
- 1.4 Site constraints include being situated within an Area of High Landscape Value, sited on a classified road, within the Northern Valleys Conservation Target Area, being on potentially contaminated land (due previous uses on the site) and furthermore the application was support by a phase one habitat survey. The site does not lie within a Conservation Area and there are no listed buildings on or within close proximity of the site. The occupation of the dwelling is also in breach of clause 10(d) of the legal agreement dated 10<sup>th</sup> August 2001.
- 1.5 **Relevant Planning History**  
The workshop development on the site has been previously approved under 98/01386/F and 06/01090/F which both had associated S106 agreements attached the details of which are set out below.  
The dwelling on the site was approved under application number 99/01347/F subject to a term within the legal agreement associated with the application

98/01386/F for Workshop units to ensure that the dwelling was occupied only by any person or persons solely or mainly employed or last employed or mainly employed in the commercial operations carried out within the workshops to be erected on the land (ref. 98/01386/f and 06/01090/F which expired in June 2010).

1.5 This application seeks to rectify the breach of clause 10(d) of the 2001 legal agreement cause by the occupation of the dwelling by Mr and Mrs Walters. This application seeks to rescind previous S106 agreements associated with the site know as Butchers Meadow. The two agreements dated the 10<sup>th</sup> August 2001 and the 12<sup>th</sup> June 2007 contain the following terms:

- control the occupation of the dwelling known as Butchers Meadow, to persons only solely or mainly employed or last solely or mainly employed in the commercial operations carried out on the land adjacent to the said dwelling
- that the owner will not occupy the workshops to be comprises in the workshop development or brought into use until; (i) all previous commercial activities, (ii) all buildings, materials, plant machinery and vehicles have been removed from the site, (iii) the land restored to agriculture, (iv) all buildings, prefab units, mobile homes, plant, machinery and vehicles be removed;
- that the owner shall not after the cessation of the said commercial activities on the land recommence or cause to permit to be recommenced any commercial activities on the land.
- That the owner will not sell, lease or occupy or cause or permit to be sold, leased or occupied (i) the dwelling or any part of the unit of accommodation separate from the workshops or existing commercial operations (ii) the workshops or the existing commercial operations as the case may be separate from the dwelling.

The new S106 agreement which is to replace those rescinded above contains the following owners obligations:

- That in the event of the commencement of The Workshop Development not to dispose of the freehold of the Workshop Development separately from the remainder of the freehold of the land.

## **2. Application Publicity**

2.1 The application was advertised by way of a site notice, press notice and neighbour notification letters. The final date for comment was the 17 February 2011.

2.2 No letters of representation have been received.

## **3. Consultations**

3.1 **Wroxton Parish Council** – no objections

3.2 **CDC Head of Legal Services** – Comments raised concern about the fact that the first draft agreement did not rescind the previous agreements on the site and the owners may remain in breach of terms of previous agreements if they continued to occupy the dwelling with association to commercial uses on the site. It was advised that previous 2001 and 2007 agreement be rescinded and replaced by a new

agreement.

Comments awaited on draft agreement received on the 25<sup>th</sup> March 2011.

## **4. Relevant Planning Policies**

- 4.1 South East Plan  
CC7 – Infrastructure and implementation
- 4.2 Adopted Cherwell Local Plan  
Policy EMP4 – Employment generating development in the rural areas  
Policy TR7 – Development affecting traffic on minor roads  
Policy C7 – Landscape conservation  
Policy C9 – Scale of development compatible with a rural location  
Policy C13 – Area of high landscape value  
Policy C28 – Layout, design and external appearance of new development
- 4.3 Non Statutory Cherwell Local Plan  
Policy EN34 – Conserve and enhance the character and appearance of the landscape
- 4.4 National planning policy  
PPS1 – Delivering Sustainable Development

## **5. Appraisal**

- 5.1 The dwelling is occupied by Mr and Mrs M Walters who are currently occupying the dwelling in breach of clause 10(d) of the legal agreement dated the 10<sup>th</sup> August 2001, due to the fact that there is no longer any commercial use on the adjacent land and no workshop development has come forward. The site was cleared of all its previous commercial uses approximately 4 years ago and the dwelling has therefore been occupied by Mr and Mrs Walters since then and for this four year period in breach of the legal agreement.
- 5.2 It is my view that due to there being no existing commercial uses on the site and with no workshop development having come forward, much of the previous S106 agreement clauses are out of date. The site has been cleared off all previous uses which meets certain clauses of the agreement however it means that clause 10(d) is impossible to comply with within the current circumstances as no workshop development has come forward. The dwelling has been occupied for 4 years in an unrestricted way without detrimental harm to the visual amenities of the area, highway safety and no harm to neighbouring properties.
- 5.3 The new agreement seeks to ensure that in the event of the commencement of the workshop development the owners shall not dispose of the freehold of the workshop development separately from the remainder of the freehold of the land. The new agreement is required to protect the amenity of occupiers of the adjacent dwelling. If the workshop development was to come forward and there was no restriction on the disposal of the dwelling and the workshop freehold then unrelated occupiers of the dwelling could be adversely affected by the workshop uses and this could lead to future problems with adverse impact on unrelated occupiers from noise and

disturbance.

## **6. Recommendation**

- (1) to rescind legal agreements dated the 10<sup>th</sup> August 2001 and 12<sup>th</sup> June 2007**
- (2) replace them with a new agreement with the following owners obligations:  
That in the event of the commencement of The Workshop Development not to dispose of the freehold of the Workshop Development separately from the remainder of the freehold of the land.**

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