

Case Officer: Bob Neville

Recommendation: Refusal

Applicant: Mr & Mrs Broom

Proposal: Conversion of existing stone/brick barns to 1 no dwelling and conversion of existing steel pole barn to 1 no dwelling. Associated works including landscaping and new access

Expiry Date: 2 March 2020

Extension of Time:

1. APPLICATION SITE AND LOCALITY

- 1.1. The application relates to a farm located within the village of Sibford Gower on the edge of the historic village core. The site sits on a crossroads within the village with the site bounded by Pound Lane to the west and Main Street to the south. The site benefits from an existing gated access of Pound Lane. The site comprises of a range of stone/brick barns, some smaller outbuildings, a steel pole barn and an area of land associated with the residential curtilage of the farmhouse (including disused swimming pool), now separated off from the farm site. The site sits adjacent residential properties within the village and land levels rise to the north opening out onto open countryside.
- 1.2. In terms of site constraints, the site sits within the Sibford Gower Conservation Area and the stone barns which sit adjacent the highways are identified as non-designated heritage assets. There are a number of grade II listed buildings within the vicinity of the site, within Carters Yard and Gowers Close sitting opposite the site south of Main Street. There are records of protected and notable species being present with the vicinity of the site, including Swifts nesting at the site. The site is partially within a buffer zone surrounding an area of potentially contaminated land and within an area known to be affected by Radon Gas and naturally occurring elevated levels of Arsenic, as seen across much of the district.

2. DESCRIPTION OF PROPOSED DEVELOPMENT

- 2.1. The application seeks planning permission for the redevelopment of the farm site to provide two new residential dwellings with associated accesses and parking. Specifically it is proposed to convert existing stone/brick barns to form 1 no 6-bed dwelling and to erect a further 4-bed dwelling on the site of the existing steel pole barn. The proposals also include associated works including landscaping the subdivision of the existing farmyard and a new access created off Main Street, through the demolition of an existing section of wall with new continuous roofline over.
- 2.2. The applicants have put forward the proposed dwelling in place of the existing pole barn as a conversion. However, given the nature of the existing structure and extent of the work proposed to the steel pole barn structure, this element of the proposals would in practice amount to a new build and has been assessed as such.
- 2.3. At a late stage in the application revised plans were received from the applicants in response to officers advising that the scheme was unacceptable and that the application was to be recommended for refusal. The proposed revisions were considered a significant amendment to the proposed scheme with revised access arrangements and with a revised application site boundary. However, given the

extent of the changes and the fact that they did not address one of officers' principal concerns with the application, it was not considered appropriate to accept such amendments in the context of the application and the plans were therefore rejected, with the applicant advised to resubmit a fresh application if they wish the Council to consider such a revised scheme.

- 2.4. Unfortunately the application has gone beyond its original target, in part to allow the applicants to have time to consider their options in light of a potential refusal. No extension of time for the determination period has been agreed with the agent.

3. RELEVANT PLANNING HISTORY

- 3.1. The following planning history is considered relevant to the current proposal:

Application: CHN.CA.49/94	Application Permitted	4 March 1994
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Proposed demolition of existing dilapidated building

Application: 96/01093/F	Application Permitted	19 August 1996
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Below ground swimming pool in existing garden. Permitted.

Application: 96/00904/F	Application Permitted	4 October 1996
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Replace existing outbuildings for housing of livestock and storage. Permitted

Application: 96/01167/CAC	Application Permitted	4 October 1996
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Demolish and replace existing outbuildings for housing of livestock and storage.

4. PRE-APPLICATION DISCUSSIONS

- 4.1. The following pre-application discussions have taken place with regard to this proposal.

Application: 19/00138/PREAPP	Detailed Pre-App response sent	17 June 2019
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Conversion of stone barns to a single dwelling. Replacement of steel pole barn with a second dwelling. Proposals include landscaping and highway access provisions.

- 4.2. Applicant advised that whilst there was potential support for the principle of redevelopment of the site to provide additional dwelling units, in terms of the general sustainability of the location of the site, there were significant concerns with regards to scheme as submitted in terms of scale, design, residential amenity and highway safety; particularly in relation to the proposed new-build element and its impacts on the character and appearance of the historic farmyard and surrounding conservation area, and the proposed new access onto Main Street; and as a result very unlikely

that a planning application based on the submitted scheme would be considered favourably. Applicants also advised of ecological issues at the site and the need for appropriate assessment going forward. Report issued 17/06/2019.

5. RESPONSE TO PUBLICITY

- 5.1. This application has been publicised by way of a site notice displayed near the site, by advertisement in the local newspaper, and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records. The final date for comments was **10 February 2020**, although comments received after this date and before finalising this report have also been taken into account.
- 5.2. 20no letters of objection and 6no of support have been received during the application. The comments raised by third parties are summarised as follows:

Objection:

- Highway safety:
 - Dangerous access with poor visibility onto a narrow, congested street (exacerbated at peak school drop off/collection times), which would conflict with the crossroads/junction and compromise pedestrian safety, including children walking to nearby school.
 - On-street parking would impact on visibility at the proposed access.
 - Increased demand for on-street parking.
 - New access unnecessary.
- Principle of 'converting' the predominately open sided steel portal framed building to a residential dwelling out of keeping with the surroundings and not sympathetic to the context of the surrounding conservation area; design also inappropriate.
- Detrimental impact on the street-scene through loss of historic wall
- Proposals are for large houses. Villages suffer from not having enough small houses in order to have a variety of villagers and help younger people stay and move to villages.

Support:

- Sympathetic redevelopment of the historic site within the village welcomed and would prevent further dilapidation of the site.
- The conversion of the steel barn and surrounding landscaping would help tidy up the interior of the site and improve the farm setting generally and thereby enhance the backdrop to the stone barns.
- The conversion to residential would provide much needed housing within the village centre and a viable long-term use which would help to ensure the preservation of the buildings for future generations.
- Car parking generated by the development proposal is catered for off-street.

General comment:

- Proposed roof materials should be appropriate and not result in noise nuisance at times of heavy rainfall

- 5.3. The comments received can be viewed in full on the Council's website, via the online Planning Register.

6. RESPONSE TO CONSULTATION

- 6.1. Below is a summary of the consultation responses received at the time of writing this report. Responses are available to view in full on the Council's website, via the online Planning Register.

PARISH/TOWN COUNCIL AND NEIGHBOURHOOD FORUMS

- 6.2. SIBFORD GOWER PARISH COUNCIL: **Strongly objects**. Commenting: '*The material considerations identified have a very negative impact on the community and the character of this important conservation area location, and will significantly and demonstrably outweigh their perceived benefits*'. Further detailed comments in relation to:

- Issues relating to the separation of the farmhouse from the site and historic significance;
- The proposed new access onto Main Street;
- Highway safety issues;
- The potential for the utilisation of the existing access to serve the proposed development
- Construction traffic management and safety

STATUTORY CONSULTEES

- 6.3. LOCAL HIGHWAY AUTHORITY (LHA): **No objections subject to conditions** in relation to vision splay protection and parking provision being implemented and retained.

NON-STATUTORY CONSULTEES

- 6.4. ARCHAEOLOGY: **No objections**.
- 6.5. BUILDING CONTROL: **No objections**. Development would require a building regulations application.
- 6.6. CONSERVATION: No formal comments received, however has verbally confirmed an **objection** to the application considering that the proposed new build replacing the pole barn to be inappropriate in the context of the site and surrounding conservation area.
- 6.7. ECOLOGY: **No objections**, subject to a number of conditions addressing the lack of information within the submission.
- 6.8. ENVIRONMENTAL HEALTH: **No objections** subject to conditions in relation to assessment of potential land contamination and the need for Electrical Vehicle (EV) charging points to be included.

7. RELEVANT PLANNING POLICY AND GUIDANCE

- 7.1. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 7.2. The Cherwell Local Plan 2011-2031 - Part 1 was formally adopted by Cherwell District Council on 20th July 2015 and provides the strategic planning policy framework for the District to 2031. The Local Plan 2011-2031 – Part 1 replaced a number of the 'saved' policies of the adopted Cherwell Local Plan 1996 though many of its policies are retained and remain part of the development plan. The relevant planning policies of Cherwell District's statutory Development Plan are set out below:

CHERWELL LOCAL PLAN 2011 - 2031 PART 1 (CLP 2031)

- PSD1: Presumption in Favour of Sustainable Development
- SLE4: Improved Transport and Connections
- Villages 1: Village Categorisation
- ESD 1: Mitigating and Adapting to Climate Change
- ESD 3: Sustainable Construction
- ESD 7: Sustainable Drainage Systems (SuDS)
- ESD10: Protection and Enhancement of Biodiversity and the Natural Environment
- ESD 13: Local Landscape Protection and Enhancement
- ESD 15: The Character of the built and historic environment

CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- C23: Retention of features contributing to character or appearance of a conservation area
- C28: Layout, design and external appearance of new development
- C30: Design of new residential development
- H21: Conversion of buildings within settlements
- ENV1: Development likely to cause detrimental levels of pollution
- ENV12: Development on contaminated land

7.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Sibford Ferris, Sibford Gower and Burdrop Conservation Area Appraisal 2012 (CAA)
- Cherwell Residential Design Guide (2018) (CRDG)
- Cherwell Council Home Extensions and Alterations Design Guide (2007)

8. APPRAISAL

8.1. The key issues for consideration in this case are:

- Principle of development
- Design, and impact on the character of the area; including the impact on Heritage Assets
- Residential amenity
- Highway safety
- Ecology and Biodiversity

Principle of development:

- 8.1. The NPPF's key objective is to support the achievement of sustainable development through the planning system; recognising the need to secure gains in the overarching objectives (economic, social and environmental). In respect of new residential development there is a requirement for the provision of new housing of

the right type in the right location at the right time, and that development should also contribute to protecting and enhancing our natural, built and historic environment, as well as fostering a well-designed and safe built environment (Para. 8). These aims are echoed within the policies of the CLP 2031 which looks to support sustainable development.

- 8.2. Policy PSD1 contained within the CLP 2031 echoes the NPPF's requirements for 'sustainable development' and that planning applications that accord with the policies in the Local Plan (or other part of the statutory Development Plan) will be approved without delay unless material considerations indicate otherwise.
- 8.3. The NPPF does not change the statutory status of the development plan as the starting point for decision making. Proposed development that conflicts with the Local Plan should be refused unless other material considerations indicate otherwise (Para. 12).
- 8.4. Cherwell District Council can demonstrate a 4.6-year supply of deliverable housing sites (i.e. less than the 5-year supply required in the NPPF). Notwithstanding this, the Written Ministerial Statement of 12th September 2018 provides for a temporary change to housing land supply policies as they apply in Oxfordshire. Until the adoption of the Joint Statutory Spatial Plan, the Oxfordshire Authorities are required to demonstrate a 3-year supply of deliverable housing sites (as well as meeting their requirements in respect of the Housing Delivery Test). As such, policies for determining the application are only to be considered out of date (in accordance with paragraph 11d – footnote 7 of the NPPF) where a 3-year supply of deliverable sites cannot be demonstrated. A 3-year supply can be demonstrated in this case and so the presumption in favour of sustainable development, as advised by the NPPF, will need to be applied in this context.
- 8.5. Policy Villages 1 of the CLP 2031 provides a framework for housing growth in the rural areas of the district and groups villages into three separate categories (A, B and C). Sibford Gower is recognised as a Category A village, considered to be one of the most sustainable villages within the district given its services and facilities. Within category A villages new residential development will be considered for the conversion of non-residential buildings, infilling and minor development within the built-up area of the settlement.
- 8.6. Saved Policy H21 of the CLP 1996 further indicates policy support for the conversion of suitable buildings to residential use within settlements, subject to the conversion not being detrimental to the special character and interest of a building of architectural and historic significance; and further that in all instances proposals will be subject to the other policies in the Development Plan.
- 8.7. As noted above the site is located within a Category A settlement, where new residential development within the built form of the village will be acceptable in principle.
- 8.8. The existing stone/brick-built barns are considered capable of conversion and in this respect the principle of their conversion is acceptable under the provisions of saved Policy H21 of the CLP 1996, seen as an appropriate conversion and re-use of existing buildings within the built-up limits of the village.
- 8.9. The new build element of the proposals could be considered minor development within the built-up limits of the village. The supporting text to Policy Villages 1 (Para. 262) sets out the criteria for considering whether proposals would constitute acceptable minor development and in the context of this application this would include:
 - the size of the village and the level of service provision
 - the site's context within the existing built environment

- whether it is in keeping with the character and form of the village
- 8.10. The new build element of the proposals is considered acceptable in terms of the general sustainability of the location of the site, that is, in terms of accessibility and access to services and community facilities.
- 8.11. However, there are significant concerns in relation to the siting, scale and design of the proposed dwelling, the impact on the character and appearance of the site and surrounding historic built environment discussed further below, that result in the proposals being considered unacceptable in principle.

Design, and impact on the character of the area; including the impact on Heritage Assets:

- 8.12. The Government attaches great importance to the design of the built environment within the NPPF. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people. These aims are also echoed within Policy ESD15 of the CLP 2031 which looks to promote and support development of a high standard which contributes positively to an area's character and identity by creating or reinforcing local distinctiveness.
- 8.13. Saved Policy C28 of the CLP 1996 states that control will be exercised over all new development to ensure that standards of layout, design and external appearance are sympathetic to the character of the context of that development. Further, saved Policy C30 of CLP1996 states control will be exercised to ensure that all new housing development is compatible with the appearance, character, layout, scale and density of existing dwellings in the vicinity.
- 8.14. Policy ESD 13 of the CLP states that development will be expected to respect and enhance local landscape character, securing appropriate mitigation where damage to local landscape character cannot be avoided. Further that development that causes harm or visual intrusion into the open countryside would not be supported.
- 8.15. Whilst the site does not contain any listed buildings it is within the Sibford Ferris, Sibford Gower and Burdrop Conservation Area, which was designated as such in 1985, and is considered to be of local importance and significance contributing to the edge of village setting and surrounding conservation area. Conservation areas are designated by the Council under Section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990; with the aim being to manage new development within such areas to ensure that the character or appearance of the Conservation Area, and the special architectural or historic interest which it may possess, is preserved and where possible enhanced.
- 8.16. Further, Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) states that: *'in carrying out its functions as the Local Planning Authority in respect of development in a conservation area: special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area'*. The emphasis being on ensuring that the historic and architectural significance of the Heritage Asset is not harmed. Therefore, significant weight must be given to these matters in the assessment of any such planning application.
- 8.17. The general settlement pattern and character of Sibford Gower is described within the Sibfords and Burdrop Conservation Area Appraisal (CAA). The stone barns within the site, and the contribution they make to the surrounding area, and in particular the street-scene, are noted within the Sibfords and Burdrop Conservation Area Appraisal (CAA); the buildings are considered non-designated heritage assets. The CAA notes the character of the immediate area of the site particularly referencing the contribution of the barns and boundaries at Mawles Farm, stating: *'The crossroads is very tightly defined with a strong building line to the north west and Mawles Farm/ Carters Yard abutting the highway'*.

- 8.18. The site is in a highly prominent location, sitting on the crossroads of the village and, within the Conservation Area and boundaries of Mawles Farm, contains significant features which positively contribute to the overall character and appearance of the conservation area and street-scene setting. Whilst there has been further development since the original appraisal document was produced, it is considered that the general character of the village has been retained in this location, and this is reflected in the latest CAA document produced in 2012.
- 8.19. The proposals include the removal of approximately an 8m section of the ~2.7m high boundary wall along Main Street. Whilst it appears that the wall did not originally form part of the adjacent barn, it is a historic feature which has formed part of the character of the street-scene in this location, and along with properties to the north gives a strong sense of enclosure along Main Street. The removal of this section of wall would cause significant and demonstrable harm to the character of the street-scene, affecting not only the character of the site, but also the wider setting of this part of the Conservation Area and the setting of adjacent grade II listed buildings.
- 8.20. Saved Policy C23 states *'that there will be a presumption in favour of retaining buildings, walls, trees or other features which make a positive contribution to the character or appearance of a conservation area'*. As demonstrated in the late submission of revised plans there is an alternative solution for a new access to serve the development that would not require the loss of the section of boundary wall along Main Street and as such in officers consider the loss of the wall is not justified given the impact that it would have on the character and appearance of the site and wider setting.
- 8.21. Notwithstanding the above, the general principle of the conversion of the stone barns is supported on the basis that it would secure a long-term use for the buildings. In respect of the barn conversion the proposals include minimal intervention to the external fabric of the building on the outward facing elevations on the site and subject to appropriate materials and construction would not result in any significant detrimental impacts on the character of the area.
- 8.22. The proposed new build element is based on the scale and form of the existing pole barn and whilst described by the applicants as a conversion would require such significant works that it would constitute development tantamount to new build.
- 8.23. The scale, form and appearance of the existing pole barn structure was considered acceptable as a functional structure supporting and ancillary to the operational needs of the working farm. Aside from that it is considered there is no architectural merit to the structure, being somewhat incongruous in appearance in the context of the rest of the site. It is a more modern, transient addition and not part of the more historic context of the working farm. Whilst the form of the existing structure was and is considered acceptable for its functional purposes i.e. for agricultural use, and that specific use justified a structure of its scale, form and siting, it is considered that the same justification does not exist for a permanent building of the same scale, form and siting.
- 8.24. The proposals employ a somewhat contemporary approach to the new build element, utilising natural stone and timber cladding for the external walls under a standing seam metal roof. The design, including numerous large openings, and choice materials would be in stark contrast to the proposed more traditional stone barns, and would not integrate well with the rest of site or reflect or reinforce its character. Further it is considered that the proposed building would be overly dominant in comparison to the smaller stone barns and would significantly change the character and hierarchy of the buildings within the site.
- 8.25. Overall the scheme is considered to cause significant and demonstrable harm to the character and appearance of site as a non-designated heritage asset and its setting

within the surrounding conservation area, and further to the setting of adjacent grade II listed buildings; this level of harm is considered 'less than substantial'.

- 8.26. The NPPF (Para. 196) states that: *Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.* Further at Para. 197: *The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.*
- 8.27. In undertaking this balancing exercise officers consider that there are clearly benefits in providing additional housing and bringing the buildings back into an active reuse. However, in this instance it is considered that these benefits would not outweigh the environmental harm identified above and that the proposals are therefore unacceptable in this regard.

Residential amenity:

- 8.28. Paragraph 127 of the NPPF advises that planning should always seek to secure high quality design *that 'create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience'*. Further at Para. 180 of the need that planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development.
- 8.29. Policy C30 of the CLP 1996 requires that a development must provide standards of amenity and privacy acceptable to the Local Planning Authority. These provisions are echoed in Policy ESD15 of the CLP 2031 which states that: *'new development proposals should consider amenity of both existing and future development, including matters of privacy, outlook, natural lighting, ventilation and indoor and outdoor space'*.
- 8.30. The proposals would provide two units of residential accommodation, which also includes external private amenity space. The proposals would provide for a good standard of living for any potential future occupants and could be considered acceptable in this regard.
- 8.31. Neither the existing barns to be converted or the new build element would introduce any significant opportunities for the direct over-looking of neighbouring properties and further that the scale of the built form would not significantly increase the proposals are unlikely to result in any loss of light or outlook from the current situation. Given the context of the site, the nature of the development and its relationship with surrounding properties it is considered that the proposed development would not result in any significant detrimental impacts on the amenity of neighbouring residential properties and are therefore considered acceptable in this regard.

Highway safety:

- 8.32. The NPPF (Para. 108) advises that in assessing specific applications for development, it should be ensured that:
- *appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;*

- *safe and suitable access to the site can be achieved for all users; and*
 - *any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.*
- 8.33. Both Policies ESD15 and SLE4 of the CLP 2031 reflect the provisions and aims of the NPPF. Policy ESD15 of the CLP 2031 states that: *“New development proposals should be designed to deliver high quality safe, attractive, durable and healthy places to live and work. Development of all scales should be designed to improve the quality and appearance of an area and the way it functions”*; whilst Policy SLE4 states that: *“All development where reasonable to do so, should facilitate the use of sustainable modes of transport (and) development which is not suitable for the roads that serve the development and which have a severe traffic impact will not be supported”*.
- 8.34. The LHA has assessed the proposals and raises no objections subject to conditions ensuring the maintenance of vision splays at the access onto Pound Lane and that the parking layout shown on the submitted plans is implemented and maintained going forward.
- 8.35. The majority of third party objections and in part those from the Parish Council relate to the safety of the proposed new access onto Main Street this being a narrow road which is very busy and subject to significant on-street parking particularly at peak times during school drop off/collection times. The LHA has reviewed these concerns and maintains its position as to the overall acceptability of the scheme in terms of highway safety.
- 8.36. The proposals would utilise an existing access off Pound Lane and also create a new access of Main Street. Subject to the vision splays being maintained on the access off Pound Lane, this access is considered appropriate by LHA in terms of its geometry and visibility.
- 8.37. The proposed new access off Main Street again has been assessed by the LHA and is considered acceptable in terms of its geometry and visibility. The proposed new access would reduce the available space for on-street parking with the removal of approximately 8m of wall between the gable end of the existing barn and the adjacent the dwelling’s cable end. The LHA advises that whilst 8m of wall is proposed to be removed, the actual access proposed is approximately half the width, and that the remaining gaps therefore provide vehicles egressing inter-visibility for pedestrians who may be on the footway.
- 8.38. In respect of the congestion experienced at school pick up and drop off times, this only occurs approximately around the times the school opens and closes for students, as such this is a relatively short period of time during the average school day. Further, schools do not operate every day of the year. Thus it would be unreasonable to object to this proposal only on the grounds of an impact (if any) the development would have on the drop off and collection of children to the school.
- 8.39. The proposals are considered to provide an appropriate level of on-site parking provision for the level of accommodation proposed.
- 8.40. Comment is also made by objectors with regards to the loss of the parking for the existing farmhouse. Officers acknowledge this is a material consideration. The proposals would result in the development of the site over which the occupiers of the farmhouse have historically gained access to off-road parking, and the proposals do not provide for off-road parking for the farmhouse. That said, (1) the farmhouse has already been separated off from the wider farm site and at the time of the application was in the process of being sold, (2) there is no condition on any existing planning permission requiring the provision of off-road parking for the farmhouse i.e. this separation has been undertaken without the need for planning permission and does

not form part of the current application, and (3) the proposed layout leaves open the possibility that the farmhouse could be re-provided with off-road parking in the future.

- 8.41. Whilst officers note the concerns of both the local residents and the Parish Council in terms of potential impacts on highway safety, pedestrians and vehicles alike, in light of the above and noting the LHA raises no objection, and subject to conditions, officers would conclude that the proposals are acceptable in highway safety terms.
- 8.42. In light of the lack of any objection from the LHA it is considered that a reason to refuse the application on highway safety grounds could not be sustained should such be later appealed.
- 8.43. It is considered that notwithstanding the objections raised above that the LHA's requirements could be secured by appropriate conditions, were the Council minded to approve the application, to ensure that the proposals would be acceptable in terms of highway safety.

Ecology and Biodiversity:

- 8.44. The Conservation of Habitats and Species Regulations 2017 consolidate the Conservation of Habitats and Species Regulations 2010 with subsequent amendments. The Regulations transpose European Council Directive 92/43/EEC, on the conservation of natural habitats and of wild fauna and flora (EC Habitats Directive), into national law. They also transpose elements of the EU Wild Birds Directive in England and Wales. The Regulations provide for the designation and protection of 'European sites', the protection of 'European protected species', and the adaptation of planning and other controls for the protection of European Sites.
- 8.45. Under the Regulations, competent authorities i.e. any Minister, government department, public body, or person holding public office, have a general duty, in the exercise of any of their functions, to have regard to the EC Habitats Directive and Wild Birds Directive.
- 8.46. The Regulations provide for the control of potentially damaging operations, whereby consent from the country agency may only be granted once it has been shown through appropriate assessment that the proposed operation will not adversely affect the integrity of the site. In instances where damage could occur, the appropriate Minister may, if necessary, make special nature conservation orders, prohibiting any person from carrying out the operation. However, an operation may proceed where it is or forms part of a plan or project with no alternative solutions, which must be carried out for reasons of overriding public interest.
- 8.47. The Regulations make it an offence (subject to exceptions) to deliberately capture, kill, disturb, or trade in the animals listed in Schedule 2, or pick, collect, cut, uproot, destroy, or trade in the plants listed in Schedule 4. However, these actions can be made lawful through the granting of licenses by the appropriate authorities by meeting the requirements of the 3 strict legal derogation tests:
 1. Is the development needed to preserve public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment?
 2. That there is no satisfactory alternative.
 3. That the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.
- 8.48. The Regulations require competent authorities to consider or review planning permission, applied for or granted, affecting a European site, and, subject to certain exceptions, restrict or revoke permission where the integrity of the site would be

adversely affected. Equivalent consideration and review provisions are made with respects to highways and roads, electricity, pipelines, transport and works, and environmental controls (including discharge consents under water pollution legislation).

- 8.49. Paragraph 170 of the NPPF states that planning decisions should contribute to and enhance the natural and local environment by (amongst others): a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils; and d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.
- 8.50. Paragraph 175 states that when determining planning applications, local planning authorities (LPAs) should apply the following principles: a) if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused; d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.
- 8.51. Paragraph 180 of the NPPF states that planning decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should (amongst others) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.
- 8.52. Policy ESD10 of the CLP 2031 lists measures to ensure the protection and enhancement of biodiversity and the natural environment, including a requirement for relevant habitat and species surveys and associated reports to accompany planning applications which may affect a site, habitat or species of known ecological value.
- 8.53. These policies are both supported by national policy in the NPPF and also, under Regulation 43 of Conservation of Habitats & Species Regulations 2017, it is a criminal offence to damage or destroy a breeding site or resting place, unless a licence is in place.
- 8.54. The Planning Practice Guidance dated 2014 post-dates the previous Government Circular on Biodiversity and Geological Conservation (ODPM Circular 06/2005), although this remains extant. The PPG states that LPAs should only require ecological surveys where clearly justified, for example if there is a reasonable likelihood of a protected species being present and affected by development. Assessments should be proportionate to the nature and scale of development proposed and the likely impact on biodiversity.
- 8.55. Natural England (NE)'s Standing Advice states that an LPA only needs to ask an applicant to carry out a survey if it's likely that protected species are:
 - present on or near the proposed site, such as protected bats at a proposed barn conversion affected by the development
- 8.56. The Standing Advice sets out habitats that may have the potential for protected species, and in this regard the site is in a rural location, with unmanaged grassland and mature natural boundary hedgerow and trees, and therefore has the potential to be suitable habitat for bats, breeding birds, badgers and reptiles.
- 8.57. In order for the LPA to discharge its legal duty under the Conservation of Habitats and Species Regulations 2017 when considering a planning application where EPS are likely or found to be present at the site or surrounding area, LPAs must firstly

assess whether an offence under the Regulations is likely to be committed. If so, the LPA should then consider whether NE would be likely to grant a licence for the development. In so doing the authority has to consider itself whether the development meets the 3 derogation tests listed above.

- 8.58. In respect of planning applications and the Council discharging of its legal duties, case law has shown that if it is clear/ very likely that NE will not grant a licence then the Council should refuse planning permission; if it is likely or unclear whether NE will grant the licence then the Council may grant planning permission.
- 8.59. The application is supported by a detailed Preliminary Ecological Appraisal (PEA) prepared by Ridgeway Ecology. The PEA identified that a Barbastelle bat was roosting within the L-shaped barn at the site and it is possible that bats may be roosting within other identified potential bat roosting features. The report also notes a badger sett (probably a main sett) in the north-east part of the site; swallows nesting at the site; the presence of large number of smooth newts in the swimming pool; a fox hole at the northern end of the steel-framed barn; further that reptiles and nesting birds other than swallows may be present within the site boundary.
- 8.60. The report recommends further survey work is for badgers and bats and acknowledges that a European Protected Species licence will be required to destroy the identified bat roost and a "licence to interfere with a badger sett for the purpose of development" must be obtained to permit the permanent closure of the badger sett. The report further sets out that replacement roost sites will be required for bats, an artificial sett will be required for badgers and nesting sites for swallows must be provided. In addition, the report identifies precautionary and mitigation measures.
- 8.61. The Council's Ecologist (CE) has assessed the submitted PEA report and whilst raised no objections, notes that a significant amount of further information including surveys and a development licence will need to be in place prior to any works commencing on site.
- 8.62. There are a number of protected species on site including Barbastelle bats which are classed as rare. Further bat surveys are required on site to confirm the status of the roost and check for other bat roosts or species. These surveys have not yet been done and whilst the suggested level of mitigation that is shown to be accommodatable on site is likely to be sufficient to obtain a licence, further mitigation may be required depending on the outcome of the additional surveys.
- 8.63. The CE advises the mitigation and best practice outlined in the PEA for reptiles, amphibians and other mammals be adhered to, this could be as part of a CEMP for biodiversity, but this again requires further information in identifying an additional waterbody to take any displaced amphibians. The CE further notes that ecological mitigation plan is generally fine and covers mitigation for swallows which were found on site – but again further details on enhancements are needed.
- 8.64. Whilst the CE advises that it should be possible to achieve mitigation on site and provide an acceptable level of enhancement, the development of the site necessitates relatively complicated mitigation and licences for badgers and bats. Officers consider that without knowing the extent of any potential impacts on protected species and their habitats the necessary mitigation is uncertain and therefore the Council cannot fulfil its statutory duty with regards to protected species and their habitats.
- 8.65. The CE also considers that the submitted information is also insufficient in terms of its detail as to proposed enhancements to demonstrate that the proposed development would provide a net gain in Biodiversity opportunities at the site rather than just mitigating loss that would be caused by the proposed development. Proposals require a full landscaping/planting scheme, to include the proposed pond, to be produced to also include the measures noted on the ecological mitigation plan but also integrated enhancements such as swift bricks.

8.66. It is considered that there is insufficient information to enable the LPA to appropriately and fully assess the impact on protected species and their habitats and to conclude that protected species would not be unacceptably harmed or any such harm mitigated against by the proposed development, and further that proposals would provide for a nett gain in biodiversity at the site; contrary to the provisions and aims of Policy ESD10 of the CLP 2031 and Government guidance within the NPPF in respect of Conserving and enhancing the natural environment.

Other Matters:

8.67. The application is supported by a Preliminary Investigation Report prepared by Ian Farmer Associates which identified a number of potential contamination risks associated with the previous site use and possible 'Made Ground' and recommends that some further work be carried out, particularly to confirm the presence, nature or extent of any contamination that may be present. The Council's Environmental Protection Team has assessed the detail of the submitted report and whilst not objecting to the application recommends planning conditions to require further contaminated land assessment and to secure appropriate mitigation if the Council were minded to approve the application.

9. PLANNING BALANCE AND CONCLUSION

9.1. The NPPF states that the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 8 requires that the three dimensions to sustainable development (economic, social and environmental) are not undertaken in isolation, but are sought jointly and simultaneously.

9.2. The decision maker needs to undertake a balancing exercise to examine whether any adverse impacts of a development would be outweighed by the benefits such that, notwithstanding the harm, it could be considered sustainable development within the meaning given in the NPPF. In carrying out the balancing exercise it is, therefore, necessary to take into account policies in the development plan as well as those in the NPPF. It is also necessary to recognise that Section 38 of the Act continues to require decisions to be made in accordance with the development plan and the NPPF highlights the importance of the plan led system as a whole.

9.3. As set out in this report, whilst the proposals are considered acceptable in terms of highway safety, it is considered that by virtue of their siting, scale and design, and further resultant loss of an important boundary wall feature, the proposals would represent an inappropriate form of development which would cause harm to the character and appearance of the local area and the significance of adjacent heritage assets through change to their setting, and would fail to preserve the character and appearance of the Conservation Area. Further that it has not been demonstrated that the proposals can be considered acceptable in terms of ecology and biodiversity.

9.4. The proposals would make a contribution to the District's housing supply, to which weight should be given, though this contribution would be minor, and some short-term economic benefits, though given the proposal would result in two additional dwellings the weight to be given to this benefit is limited.

9.5. Overall it is considered that the proposal's benefits would be significantly and demonstrably outweighed by the identified harm to the character of the area and the historic built environment as identified above.

9.6. The proposals are therefore considered contrary to the above-mentioned policies and as such the application is therefore recommended for refusal for the reasons set out below.

10. RECOMMENDATION

That permission is refused, for the following reasons:

1. By virtue of its siting, scale, design and materials, the proposed development, in particular the proposed new dwelling on the site of the existing pole barn, would fail to sustain or contribute positively to the site's character, or reinforce local distinctiveness by respecting the special architectural or historic interest of the site as a non-designated heritage asset, and would also result in harm to the character and appearance of the Sibford Gower Conservation Area. This harm, which would be *less than substantial*, significantly and demonstrably outweighs the proposal's benefits. The proposed development is therefore contrary to the provisions and aims of saved Policies C23, C28 and C30 of the Cherwell Local Plan 1996, Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1, and Government guidance, with regards to 'Conserving and enhancing the historic environment' and 'Requiring good design', expressed within the National Planning Policy Framework.
2. The proposal would result in the loss of a significant section of boundary wall feature, which is an important feature within the Sibford Gower Conservation Area and which positively contributes to the setting of adjacent listed buildings, and as such should be retained. The proposal would thereby fail to preserve or enhance the character or appearance of the Sibford Gower Conservation Area, and would result in harm to the significance of the listed buildings of Carters Yard and Gowers Close through change to their setting. The harm to these heritage assets, which would be *less than substantial*, would not be outweighed by any public benefits. The proposals are therefore contrary to the provisions and aims of Saved Policies C23 and C28 of the Cherwell Local Plan 1996, Policy ESD 15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance on conserving and enhancing the historic environment expressed in the National Planning Policy Framework.
3. By virtue of a lack of appropriate ecological information within the application the applicants have failed to demonstrate that the proposals would not detrimentally impact on protected species and their habitat, to conclude that protected species would not be unacceptably harmed by the proposed development. Further, that it has not been demonstrated that proposals would provide a nett gain in biodiversity at the site. The proposals are therefore contrary to the provisions and aims of Policy ESD10 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework in respect of Conserving and enhancing the natural environment.

Case Officer: Bob Neville

DATE: 25/03/2020

Checked By: Nathanael Stock

DATE: 03.04.2020
