

20th August 2021

Planning Department
Sent via Email

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Dear Sirs,

Prior Approval Notification: Proposed Change of Use of an agricultural barn to a single dwelling-house (Use Class C3) at Crockwell House Farm, Manor Road, Great Bourton.

This letter accompanies an application for Prior Approval for the change of use of an agricultural barn to one dwelling house (C3 use) at the above site address in accordance with Class Q of Part 3, Schedule 2 of the Town and country Planning (General Permitted Development) (England) Order (2015) (GDPO), and as amended in the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2018.

This application seeks permission under Part 3 (Class Q) of the GPDO 2015 (as amended) for (a) the change of use from agricultural building to residential dwelling (Class C3) and (b) building operations reasonably necessary to convert the said building to the said use.

The following documents accompany this application:

- Duly Completed Application form
- Site Location Plan
- Existing Site Plan
- Proposed Site Plan
- Floor Plans and Elevations produced by Blake Architects
- Proposed floorplans and elevations produced by Blake Architects
- Design and Access Statement produced by Blake Architects
- Visual Perspectives produced by Blake Architects
- Structural Survey produced by AB Design Solutions Ltd
- Structural Survey Addendum by AB Design Solutions Ltd
- Statement of Truth

Site and Surroundings

The appeal site is located at the northern edge of Great Bourton, and forms part of a former Crockwell House Farm.

Great Bourton is identified as a 'Satellite Village' within the Cherwell District. Great Bourton is approximately 3.3 miles north of Banbury. The wider site comprises an area of approximately 3.4 hectares of land formerly associated with Crockwell farm and is located to the north of the village, at the outer limit of the village at the end of Manor Road.

The wider site is occupied by a number of dilapidated farm buildings and barns, some of which are curtilage listed by association with Grade II listed Crockwell House (Historic England Ref.: 1215873). The farmhouse and its associated gardens (located to the west of the House) do not form part of the application site. However, due to its proximity to the application site, some of the farmyard buildings are considered to be curtilage listed by association. The application building, however, was built in 1990s and as such Section 1(5)(b) of the Planning (Listed Buildings and Conservation Areas) Act 1990 does not apply to the application building, or any building on wider site which was erected after 1st July 1948. As such, the application building is not, and cannot be considered to be, a listed building (or a curtilage listed building by association).

The site does not form part of any statutory or non-statutory designated areas and is not located within a Conservation Area. There are no Tree Preservation Orders ("TPOs") on site or in its vicinity.

The site is located in Flood Zone 1 – an area with low probability of fluvial, pluvial and surface water flooding.

The site is accessed through a single improved access point from Manor Road. The details relating to the improved access were formally discharged and implemented under 20/01523/DISC. Further planning history details are covered within this letter.

Application Building

The application site consists of a modern steel framed barn which is located on the edge of the Crockwell House Farm boundary. The historic maps indicate that this structure replaced two smaller barns in the same location and that this was done within the period of time between 1989 and 2003, as the maps from 2003 show the existing structure.

The application building is surrounded by an open agricultural field to the north and east. There is a lean-to structure attached to the application building, which is made of telegraph poles and corrugated steel sheeting. The south facing lean to was removed this year and the wooden structure is to be demolished.

The barn itself is generally enclosed with one of the bays remaining open for access as seen in Figures 1. The roof consists of corrugated sheeting. The side walls are clad in corrugated sheeting or timber cladding to various degrees of coverage as seen in Figure 2. The building has a flat concrete floor, and lower portion of walls are made of concrete

blockwork. The upper portion of the walls, and the roof covering are formed of cladding materials. The building also benefits from secure footings.

In recent times, and as part of the general upkeep of the building, the applicant has removed the lean-to on the southern elevation. The paraphernalia within the main barn and the northern lean-to indicates that it was used for agricultural purposes and for storage of forage. This was recognised under 20/01902/Q56 who identified "*parts of the building did appear to be used for storage of agricultural equipment, being a number of animal feeders*". However, as part of this refused application, concern was raised over the ad-hoc storage of a motor vehicle. A Statement of Truth¹ accompanies this application to alleviate these concerns. The Statement of Truth was prepared by the occupier of Crockwell Farmhouse who has been living there since 1966. The occupier of Crockwell Farmhouse is also the owner of the vehicle that was stored at the time of the Council's sit visit. The owner confirms that the "vehicle has occasionally been stationed within the barn to protect it from the elements". The owner also states that "It is my belief that, from this date to now, the Farmyard and the subject Barn has not been in any form of use from the last known operational date which I believe to be June 2013". That said, the onus of proof required by the applicant has been provided as part of this application to address the concerns raised by the Council.

The barn is relatively well contained with a post and rail fencing running along the northern eastern boundaries, offering a degree of separation from the agricultural fields to the north and east.

¹ See Appendix 1



Figure 1 – Existing Southern Elevation of Application Building



Figure 2 – Existing Western Elevation of Application Building



Figure 3 – Fencing on site (north)



Figure 4 – Fencing on site (west)

Photos above, and supporting technical reports, show that the farmyard has recently benefited from maintenance.

The Structural Survey submitted alongside the prior notification application demonstrates that:

- Floor and steel frame are free from structural defect;
- The roof covering is free from defect;
- The purlins are satisfactory to support the roof covering without strengthening;
- Solid concrete foundations with no other foundations expected;
- Some corrugated sheeting is loose or missing, but majority is present and defect free;
- Floors have been constructed with appropriate movement joints and are structurally sound;
- The load path from the structure is the same as the existing;
- The first floor increases the strength to be to carry the additional load and beneficially improves the stiffness of the building without the requirement for additional strengthening of the portal columns;
- New openings where there are existing large openings or damaged blockwork;

- New openings for windows and doors are predominantly made in areas where they will not impact the existing structure as these are sympathetically where there are large openings, and there is no structure to impact upon; All existing primary steelwork to remain, without requirement for strengthening;
- Nearly all existing secondary steelwork members to remain, over 85 percent;
- Existing ground floor to remain, with a small area requiring repair;
- New first floor structure fitted to existing columns;
- New wall panels constructed in similar way to existing spanning between columns;
- Load path of building similar to existing, keeping the character of the building; and
- Steel frame has a light corrosion only and is free from structural defect.

The Structural report confirmed that the building is capable of being fully enclosed with no need of further strengthening.

Planning History

The building itself has the following planning history:

- LPA Ref.: 20/01902/Q56 – Change of use to existing farm buildings into a single residential dwelling (use class C3) – Refused by decision notice dated 16th July 2020.

This application building is also the subject of a live appeal against the following reasons for refusal.:

1. Insufficient information has been submitted to demonstrate that the building relates to an agricultural holding, thus not in compliance with criteria (a), (b), (d) and (g) of Class Q.1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
2. Evidence available to the Local Planning Authority shows that the site was in all likelihood being used for purposes other than agricultural on the 20th of March 2013 and therefore the building has not been used solely for agricultural purposes for the period required under part Q.1(a) of Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

The Appellant’s case against Reason for Refusal 1 is summarised below:

- The Council has dismissed the application based on criterion (i) only. The Officer’s report, namely para 8.5, states that: *“As noted above, in view of observations on site and information contained within previous application submissions and in the absence of any evidence to the contrary, Officers consider that the building was not used for agricultural purposes on 20th March 2013 and, together with the assessment made in para 8.2 of this report fails to meet criterion (a) of Q.1.”*
- No assessment of use is made by the Council in respect of the criterion (ii) of Q.1 (a).

The second reason for refusal relates to the use of the building itself. It is alleged that the building was used for purposes other than agricultural on the 20th of March 2013, thus not being used solely for agricultural purposes as required under part Q.1(a). The Appellant’s case against Reason for Refusal 2 is summarised below:

- Case officer referred to a single motor vehicle being stored within the barn. It was also suggested that other paraphernalia suggested that this vehicle was being restored.
- This vehicle was parked in the barn on the day of the site visit; however, it is not considered that a parked vehicle then results in a material change of use of the entire building.

- No commercial activity relating to a repair of motor vehicle ever took place on site.
- No other vehicles are stored or parked within the site on a regular basis.
- Parking and some one-off maintenance to a single vehicle would be of real significance in planning terms to amount to a material change of use of the entire building. As such, the Appellant view is that the disqualification in paragraph Q.1 is not engaged in respect of the use of the building as any non-agricultural use was, as a matter of fact and degree, de minimis.

The wider site has the following planning history:

- LPA Ref.: 16/00609/OUT – Proposed residential development of 3no. dwellings – Permitted by decision notice dated 11th July 2016; and
- LPA Ref.: 19/00250/OUT – Outline Residential development of 3no. dwellings (Re-submission of approved application 16/00609/OUT) – Permitted by decision notice dated 5th April 2019; and
- LPA Ref.: 20/01523/DISC – Discharge of pre-commencement conditions no. 5 and 6 of an outline planning permission 19/00250/OUT – Permitted by decision notice dated 6th August 2020; and
- LPA Ref.: 20/01726/REM - Reserved Matters Application (Phase 1) & Listed Building Consent – Conversion of a former agricultural barn - details reserved by condition 1 of the outline planning permission 19/00250/OUT – Permitted by decision notice dated 21st October 2020.

Proposed Development

This proposal is for the conversion of a steel framed barn to a single five-bedroom dwelling.

Full details relating to the design, scale, appearance and access to the proposed dwelling are contained within the Design Statement prepared by Blake Architects.

Visually the barn is structurally stable and robust and adequately capable of conversion into a residential dwelling, without the need for structural strengthening or rehabilitation. The design approach has been taken to make as little change to the existing building as possible to retain its agricultural style whilst allowing for modern living. The existing steel structure is being exposed and painted black.

The application building is proposed to be converted by keeping the vast majority of structural fabric and adding to this with new elements such as the proposed first floor structure. The development comprises an open plan kitchen diner, a snug, a two-car garage, boot room and home office. In addition, there is a second storey mezzanine proposed which includes four-bedrooms and three-toilets. Two of which being en suites bath or shower rooms. It should be noted that all rooms provide adequate natural light through the inclusion of windows and glazed screens behind the hit and miss cladding on the north, south and east elevations, as shown on the accompanying plans.

The windows and openings have been installed to ensure sufficient light is provided in each of the habitable rooms, with focus on framing views over the open countryside. In order to maintain an agricultural feel, there are hit and miss timber cladding in front of a number of window glazing. The horizontal cladding will be left to wear naturally grey, and the roof is proposed to be in corrugated metal.

The entrance to the dwelling has been glazed and set back by 3 metres to allow for an impressive sense of arrival, whilst also maintaining the agricultural bay-like opening.

Relevant Legislation

Development not permitted:

Schedule 2, Part 3, Class Q of the Town and Country (General Permitted Development) Order 2015 allows for the change of use of a building and any land within its curtilage from a use as an agricultural building, to a use falling within Class C3 (dwelling house) under a prior notification process.

This also extends to building operations reasonably necessary to convert the building. There are a series of requirements that must be met in order for a change of use to fall within Class Q. A prior notification is required to confirm the proposal falls within the relevant legislative requirements. These are set out at Class Q 1 and table 1 below;

'Q. 1 Development is not permitted by Class Q if—

Table 1 Restrictions	Assessment
<p>a) the site was not used solely for an agricultural use as part of an established agricultural unit—</p> <ul style="list-style-type: none"> i. <i>on 20th March 2013, or</i> ii. <i>in the case of a building which was in use before that date but was not in use on that date, when it was last in use, or</i> iii. <i>in the case of a site which was brought into use after 20th March 2013, for a period of at least 10 years before the date development under Class Q begins;</i> 	<p>In 2019, the site as a whole was marketed for sale through an open tender. The sales brochure² shows that a significant amount of agricultural land initially formed part of the site. However, a separate buyer was found for the agricultural fields. The remaining part, including all of the former farmyard buildings, was purchased by the Appellant. For avoidance of doubt, the brochure illustrates the land under the previous owner and the extent of the established agricultural operation comprising of 46.28 acres with further land being available by a separate negotiation.</p> <p>Paragraph X defines 'agricultural building' to mean a building (excluding a dwellinghouses) used for agricultural and which is so used for the purposes of trade and business. The term 'agricultural use' refers to such uses. It is therefore clear that agricultural use has a more restrictive meaning in the context of an application under Class Q.</p> <p>The timeline presented in the Statement of Truth indicates that the farm was used for dairy farming between 1966 and 1971 and sheep farming between 1971 and 2013. The barn was used for breeding and grazing, as a commercial venture.</p> <p>The owner of the Farmhouse believes that the Farm was last in use in June 2013. This also corresponds with the available arial images presented below.</p> <p>Therefore, the application building complies with Class Q a) i as it was used solely for an agricultural use as part of an established agricultural unit on 20th March 2013.</p>

² See Appendix 2

Notwithstanding the above, and for avoidance of doubt, the Statement of Truth also addresses the concern raised by the Council. The owner clarifies that the vehicle present at the time of the site visit has been occasionally stored to protect the vehicle from the weather. This occasional use would not retire the existing agricultural use and is in our view de minimis.

The Statement of Truth does correspond to the available aerial photography illustrated below. It's therefore our view that the building, and the site was in use solely for agriculture on 20th March 2013.

The aerial images below illustrate the gradual decay of the farm from 2006 to 2021.

The image below demonstrates that the farm was still operational in 2006 as the majority of the buildings have roofs and evidence of agricultural activities and livestock is also visible.



Arial image from December 2006 (Source: Google Earth Pro)

The following images display the gradual decline in the condition of some of the older buildings on the wider site. The tracks and access to the wider field indicate that the fields are still in use here.



Arial image from June 2009 (Source: Google Earth Pro)



Arial image from April 2017 (Source: Google Earth Pro)

As per the images above, the building was clearly used in association with the Crockwell Farm to house livestock and corresponds with the Statement of Truth.

To alleviate previous concerns, in April 1976, the appellants' appeals were heard by an inspector³, who stated his conclusions beginning in paragraph 59 of his report with a passage, which Talbot J cited with implied approval (of a relevant case), as follows:

- "the offering of five cars for sale for a period of about one month in a building with a floor space of about 20,000 square feet amounted to no more than a token use of the appeal premises as a shop for the

³ See Appendix 3

sale of motor vehicles, so minimal as to be of no planning significance. Articles 8 [of] and [Class] III (b) (v) of Schedule I [to] the [Town and Country Planning] General Development Order 1973 [refer] to a change of use of premises from "use as a shop" and not from a permitted use of premises which have not actually been brought into use. There was therefore no effective use of the new building on the appeal site until the appellant's use of it as a discount store, which constituted a material change of use from a non-use, involving development for which specific planning permission was required; The Inspector went on to recommend that, if it was decided that development requiring planning permission was involved, planning permission should not be granted. The Secretary of State accepted his recommendation, upheld the relevant enforcement notice and refused planning permission".

The court was not concerned with consideration of a notional token use which could be exercised without the need for further permission, as would be the case here. The barn was used to store a neighbour's car on occasions. When considering the court judgement above, this token use and occasional storage of the neighbours vehicle would not retire the existing agricultural use.

The following arial shot from April 2021 shows site conditions following the implementation of 20/01523/DISC and the associated construction machinery used to implement the driveway.



Arial image from 2021 (Source: Google Earth Pro)

	<p>The arial images presented above and the Statement of Truth make up the evidence required to demonstrate that the farmyard and the building have been used solely for agricultural on 20th March 2013, with a last known date of June 2013 and has not entered any alternative use since that date.</p>
<p>b) <i>in the case of—</i></p> <p>i. <i>a larger dwellinghouses, within an established agricultural unit—</i></p> <p>(aa)the cumulative number of separate larger dwellinghouses developed under Class Q exceeds 3; or</p> <p>(bb) <i>the cumulative floor space of the existing building or buildings changing use to a larger dwelling house or dwellinghouses under Class Q exceeds 465 square metres;</i></p> <p>(ba) <i>the floor space of any dwellinghouse developed under Class Q having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order exceeds 465 square metres;]</i></p>	<p>The application building has an existing floorspace of 357m², the proposal does not extend beyond this existing floorspace.</p> <p>GF - 241.646m² (including double garage). FF – 115.313m² (excluding void).</p> <p>The proposal is for a single dwelling house which is under the threshold of 465m².</p>
<p>c) <i>in the case of—</i></p> <p>i. <i>a smaller dwellinghouse, within an established agricultural unit—</i></p> <p>(aa)the cumulative number of separate smaller dwellinghouses developed under Class Q exceeds 5; or</p> <p>(bb) <i>the floor space of any one separate smaller dwellinghouse having a use falling within Class</i></p>	<p>No smaller dwellinghouses are proposed on site.</p>

<p><i>C3 (dwellinghouses) of the Schedule to the Use Classes Order exceeds 100 square metres;</i></p>	
<p>d) <i>the development under Class Q (together with any previous development under Class Q) within an established agricultural unit would result in either or both of the following—</i></p> <ul style="list-style-type: none"> i. <i>a larger dwellinghouse or larger dwellinghouses having more than 465 square metres of floor space having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order;</i> ii. <i>the cumulative number of separate dwellinghouses having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order exceeding 5;</i> 	<p>The proposal is for a single dwelling house with 357m². The proposal would result in a single dwelling house falling within the threshold of a larger dwelling house, which is below the identified threshold of 465m².</p>
<p>e) <i>the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained;</i></p>	<p>There is no agricultural tenancy for the proposed site. The site is owned by a SME developer.</p>
<p>f) <i>less than 1 year before the date development begins—</i></p> <ul style="list-style-type: none"> i. <i>an agricultural tenancy over the site has been terminated, and</i> ii. <i>the termination was for the purpose of carrying out development under Class Q, unless both the landlord and the tenant have agreed in writing that the site is no longer required for agricultural use;</i> 	<p>N/A</p>
<p>g) <i>development under Class A(a) or Class B(a) of Part 6 of this Schedule (agricultural buildings and operations) has been carried out on the established agricultural unit—</i></p> <ul style="list-style-type: none"> i. <i>since 20th March 2013; or</i> 	<p>No development has been carried out under Class A(a) or Class B(a), and therefore this criterion is not applicable.</p>

<p>ii. <i>where development under Class Q begins after 20th March 2023, during the period which is 10 years before the date development under Class Q begins;</i></p>	
<p>h) <i>the development would result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point;</i></p>	<p>The proposed development will not exceed the existing external dimensions of the existing building. The entire proposed development will set within the existing footprint with the addition of a first floor.</p>
<p>i) <i>the development under Class Q(b) would consist of building operations other than—</i></p> <ul style="list-style-type: none"> i. <i>the installation or replacement of—</i> <ul style="list-style-type: none"> <i>(aa) windows, doors, roofs, or exterior walls, or</i> <i>(bb) water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwelling house; and</i> ii. <i>partial demolition to the extent reasonably necessary to carry out building operations allowed by paragraph Q.1(i)(i);</i> 	<p>The proposal is supported by Structural Survey which demonstrates that the application building is in serviceable condition with only some minor repairs required. The building is noted to be defect free, and no structural defects have been identified.</p> <p>The Survey concludes that the building is capable of being a fully enclosed building with no need for any strengthening. The load path from roof to ground can be kept the same as in its current form. All of the structural fabric can be retained, and thus making this permanent and substantial agricultural structure suitable for conversion to an alternative use.</p> <p>The existing asbestos sheeting and cladding are to be replaced throughout, and insulation will be inserted internally in both the roof and walls. This will assure that the development will not result in the external dimensions of the building to extend beyond the external dimensions of the existing building.</p> <p>Externally the conversion would require the inclusion of windows and doors however they would be in keeping and complementary of the agricultural character.</p> <p>The internal walls as part of the development proposal are not generally considered development (as noted within the Planning Practice Guidance [PPG]). There will be no demolition for any part of the building, the entire structure will remain in situ and will not require wholesale strengthening. The Structural engineer confirms that the scheme proposed is sympathetic to the existing structure, which is a permanent and substantial structure, that requires no strengthening.</p>

	<p>In respect of the above, the PPG highlights the following:</p> <p><i>“The right assumes that the agricultural building is capable of functioning as a dwelling. The right permits building operations which are reasonably necessary to convert the building, which may include those which would affect the external appearance of the building and would otherwise require planning permission. This includes the installation or replacement of windows, doors, roofs, exterior walls, water, drainage, electricity, gas or other services to the extent reasonably necessary for the building to function as a dwelling house; and partial demolition to the extent reasonably necessary to carry out these building operations. It is not the intention of the permitted development right to allow rebuilding work which would go beyond what is reasonably necessary for the conversion of the building to residential use. Therefore, it is only where the existing building is already suitable for conversion to residential use that the building would be considered to have the permitted development right.</i></p> <p><i>For a discussion of the difference between conversions and rebuilding, see for instance the case of Hibbitt and another v Secretary of State for Communities and Local Government (1) and Rushcliffe Borough Council (2) [2016] EWHC 2853 (Admin).</i></p> <p><i>Internal works are not generally development. For the building to function as a dwelling it may be appropriate to undertake internal structural works, including to allow for a floor, the insertion of a mezzanine or upper floors within the overall residential floor space permitted, or internal walls, which are not prohibited by Class Q.”</i></p> <p>As the site is structurally sound the building would be able to reasonably function as a residential dwelling with relatively small changes and no demolition is required.</p> <p>Please see accompanying Structural Report for further information.</p>
<p>j) <i>the site is on article 2(3) land;</i></p>	<p>The site is not located on article 2(3) land.</p>
<p>k) <i>the site is, or forms part of—</i></p> <ul style="list-style-type: none"> i. <i>a site of special scientific interest;</i> ii. <i>a safety hazard area;</i> iii. <i>a military explosives storage area;</i> 	<p>The site is not, and does not form part of, a SSSI, a safety hazard area or a military explosives storage area.</p>

<p>l) <i>the site is, or contains, a scheduled monument; or</i></p>	<p>The site is not, nor does it contain, a scheduled monument.</p>
<p>m) <i>the building is a listed building.</i></p>	<p>The building is not a listed building.</p>

Conditions

In addition to meeting all the above, there are also a series of conditions which apply to Class Q, which are set out in detail at Class Q.2 (1) and table 2.

This section of the legislation states that:

“Q.2-(1) where the development proposed is development under Class(a) together with development under Class Q(b), development is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to-

<p>Table 2 Restrictions</p>	<p>Assessment</p>
<p>a) <i>Transport and highways impact of the development,</i></p>	<p>The existing access from Manor Road serves development permitted by an outline planning permission LPA Ref.: 19/00250/OUT. Condition 5 attached to this outline planning permission demands full details of improvements to the means of access between the land and the highway (including position, layout, construction, drainage and vision splays) to be submitted to, and approved in writing by the Local Planning Authority. The relevant details were approved by the Council in August 2020 and a majority of this work has been complete. The private drive has recently been gravelled with a permeable paving option to provide surface water drainage.</p> <p>A similar conclusion relating to the access was presented within the Officer’s Report relevant to 20/01726/REM, the officer reported that that the development would provide a suitable access which would not cause harm to the safety of the highway network. The Officer’s Report are appended to this statement as Appendix 4.</p> <p>Overall, the existing private access can be utilised without any changes to serve the residential unit, and as such that</p>

	<p>access is considered safe and suitable for a residential dwellings, having no adverse impact upon the local highway network. Therefore, it would be unreasonable to conclude that the residential use will result in any material highways or transportation issues, given the existing use on site and the traffic generation associated with an agricultural building. The change of use will not require any alteration to the local highway network and any traffic generation will not compromise highway safety.</p> <p>There is good opportunity to achieve adequate parking provision on site and within the application building. The proposals include two vehicle parking spaces that are integrated within the application building’s southern elevation.</p> <p>During the consultation period of Planning Application 20/01902/Q56 there was no objections⁴ raised by the Local Highway Authority.</p> <p>As such, the proposal does not conflict with the criterion a) of Class Q of the GPDO in terms of transport and highways impact.</p>
<p>b) <i>Noise impacts of the development,</i></p>	<p>The building does not lie within close proximity to any significant noise generating sources. The nearest dwelling is the Grade II listed Crockwell Farmhouse which is located to the south-east of the site. Historically, the Farmhouse formed part of the wider Crockwell Farm site, this is in different ownership to the applicant. There are also a cluster of agricultural buildings and residential buildings within the farmstead.</p> <p>The outline permission LPA Ref.: 19/00250/OUT establishes a principle of residential development for 3no dwellings on land which sits between the steel framed barn and Manor</p>

⁴ Appendix 5

	<p>Road. As such, the proposed change of use from agricultural to residential use will not have a significant harmful impact on the existing residents of Crockwell Farmhouse or the future occupiers of the development site in respect of noise.</p> <p>Within the Officer’s report it was concluded that there are no particular noise concerns in relation to this location. The Environmental Health Officer did comment suggesting that conditions can be attached relating to noise insulation.</p> <p>The proposed therefore does not conflict with criterion b) of Class Q.2 of the GPDO.</p>
<p>c) Contamination risks on the site,</p>	<p>The site is not subject to any contamination and has not been used for the storage of fuel, or any hazardous substances or materials and it has not been occupied by any hazardous processes.</p> <p>The application building contains timber cladding and a sheet roof. Works of maintenance were carried out in 2021 to remove the asbestos and the pre-existing lean to.</p> <p>No other sources of contamination have been identified on site within the application site. This is due to the fact the barn has a solid concrete floor slab which is free from significant defects according to the Structural Survey. As such, the risk of contamination on site from the previous agricultural activities is negligible.</p>
<p>d) Flooding risks on the site,</p>	<p>According to Environmental Agency Flood Mapping, the site is located in Flood Zone 1 – an area with low probability of fluvial, pluvial and surface water flooding.</p> <p>As such we do not consider flooding to be an issue for the proposed development. Consequently, the scheme does not conflict with Class Q of the GPDO in terms of flooding risks on site.</p>
<p>e) Whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a use falling within</p>	<p>In respect of whether a location is suitable, Criterion e) of paragraph Q.2 requires Location Planning Authorities to consider whether the location or siting of the building makes</p>

<p><i>Class C3 (dwellinghouses) of the Schedule to the Use Classes Order,</i></p>	<p>it otherwise impractical or undesirable for the building to change from agricultural to residential use.</p> <p>The terms ‘impractical’ or ‘undesirable’ are not defined in the regulations. It has been confirmed that the Local Planning Authorities do apply a reasonable ordinary dictionary meaning in making any judgement. Planning Practice Guidance makes it clear that the location of the agricultural building in a location, where the LPA would not normally grant planning permission for a new dwelling, is not a sufficient reason for refusing prior approval.</p> <p>The location of the building whose use would change may be undesirable if it is adjacent to other uses such as intensive poultry farming buildings, silage storage or buildings with dangerous machines or chemicals. As previously noted, the wider site benefits from an outline planning permission for 3no dwellings. As such, the existing steel framed barn will be surrounded by residential dwellings and their gardens. It cannot therefore be said that the proposed use would be ‘incompatible’ in this location. The conversion of the steel framed barn into residential accommodation will not have a negative impact on either existing or future neighbouring uses. Consequently, the future occupiers won’t be negatively affected by surrounding land uses.</p> <p>The application building is separated from the rear gardens of the residential properties to the south and screened by native hedging. The curtilage is contained with post and rail fencing and a gated entrance.</p> <p>The red line area submitted is immediately beside the application building and is closely associated with the building and service the purpose of the residential development.</p>
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	<p>In this context, the building is suitable for the change of use proposed, and its siting and location do not make it otherwise impractical or undesirable to be changed into a residential dwelling. This view was also supported the Officer’s Report issued under 20/01902/Q56.</p>
<p>f) <i>The design or external appearance of the building; and</i></p>	<p>The application site consists of a modern steel framed barn which has timber cladding on the southern elevation and corrugated sheeting on the eastern, western and northern elevations.</p> <p>The northern elevation is a lean-to that was added onto the original barn before 2006, as indicated on the aerial images presented above.</p> <p>As illustrated within the accompanying plans, the external appearance includes a number of doors and windows alongside some other additions to allow the building to operate as a dwelling house within the existing footprint. A first floor is also proposed to accommodate four bedrooms and three lavatories.</p> <p>The pallet of architectural materials is reminiscent of an agricultural barn and glazing has been covered by high and miss timber cladding to ensure any impact is minimised. The horizontal cladding will be left to weather naturally grey to ensure that the development is in keeping with the agricultural character of the wider surrounding area.</p>
<p>g) <i>The provision of adequate natural light in all habitable rooms of the dwellinghouses and the provisions of Paragraph W (prior approval) of this Part apply in relation to that application.</i></p>	<p>Windows, openings and internal formation of partition walls allow for adequate natural light in all habitable rooms.</p>

In light of the above, there are no grounds to refuse the proposed change of use against the matters outlined in Class Q.2.

Summary

The information set out above, and in the accompanying documents and plans, demonstrates that the proposed change of use accords with the requirements of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).

Conclusion

As set out in Class Q (a) of the GDPO, a change of use from agricultural to residential (C3) use can be granted subject to the acceptability of the number of criteria, including transport and highways, contamination, noise and flooding risks on site, and general compatibility of uses. It has been demonstrated throughout how the proposal addresses all of the relevant criteria.

For avoidance of doubt, a Statement of Truth also accompanies this application, setting out the historic use of the farmyard and the application building. This was acquired by Applicant following a meeting with the owner and occupier of Crockwell Farmhouse who has lived on site for 55 years.

The accompanying proposed plans, technical drawings and a structural survey all help to demonstrate that the building and the proposals are suitable for the application building to be suitable and capably converted for residential development without the need for substantial re-building or additions.

In accordance with the provisions set out in Class Q necessary to grant Prior Approval, the property is not located on Article 2(3) land. The application does not relate to a Scheduled Monument and does not form any part of safety hazard area.

It is therefore respectfully requested that the Prior Approval is granted.

Yours sincerely



Grant Baylis MSc (Hons)
Planner
For Ridge and Partners LLP

Enclosures:

Design and Access Statement
Proposed Floor Plans and Elevations
Statement of Truth
Site Location Plan
Site Plan
Structural Report

APPENDIX 1

STATEMENT OF TRUTH

Statutory Declaration Form A

I, John Willier of Crockwell Farmhouse state as follows:

- 1 I make this statement from my own knowledge. I am the owner of Crockwell Farmhouse and have been residing here since 1966. I have knowledge of the Farmyard activity up to the date of this statement.
- 2 On 29th September 2020 the Farmyard Land is currently registered at HM Land Registry under Title Number ON314211 which includes the subject Barn. The land was transferred to the current owners, Crockwell Farm LLP on 22nd November 2019. A copy of transfer is annexed to this statement at Appendix 1. The Transfer was a transfer of part from a larger title, registered at HM Land Registry with title number ON314211. The sales brochure is annexed to this statement at Appendix 2. The Farmyard is shown edged blue and the subject Barn in red on the plan (**Plan 1**) annexed at Appendix 3 of this statement.
- 3 The part of the Barn that is shown outlined in red on Plan 2 (Barn) has the benefit of permitted development rights set out in Schedule 2, Part 3, Class Q of the Town and Country (General Permitted Development) Order 2015. This allows for the change of use of a building and any land within its curtilage from a use as an agricultural building, to a use falling within Class C3 (dwelling house) under a prior notification process, annexed at Appendix 4 of this statement.
- 4 I understand that the requirement under this act states that '*Q. 1 Development is not permitted by Class Q if the site was not used solely for an agricultural use as part of an established agricultural unit on 20th March 2013, or in the case of a building which was in use before that date but was not in use on that date, when it was last in use, or in the case of a site which was brought into use after 20th March 2013, for a period of at least 10 years before the date development under Class Q begins;*

Timeline

- 5 The Farmyard operated continuously as part a functioning farm from 1966 to 2013 but following the death of the owner at that time ceased any meaningful farming activity other than the occasional topping of grassland. Historically the agricultural use consisted of dairy farming (1966-1971) and sheep farming (1971-2013) and the barn in question was used variously for agricultural storage and livestock activity continuously from its date of construction to the date on which farming activity ceased.
- 6 It is my belief that, from this date to now, the Farmyard and the subject Barn not been in any form of use from the last known operational date which I believe to be June 2013.

7 Ownership

- 1966 – 1971 Thomas Arthur Phipps
- 1971 – 2019 Gerald Lawrence Dexter Prestidge
- 2019 – Present Crockwell Farm LLP

8 It is apparent that Cherwell District Council have concern over the use of the subject Barn and have referred to a stationary vehicle within this barn. I am also the owner of the subject vehicle and can confirm the vehicle has occasionally been stationed within the barn to protect it from the elements.

9 I believe that the facts and matters contained in this statement are true.

Signature (of person making this statement): J. Willier 6/8/21

Print full name: JOHN CHRISTOPHER HARVEY WILLIER,

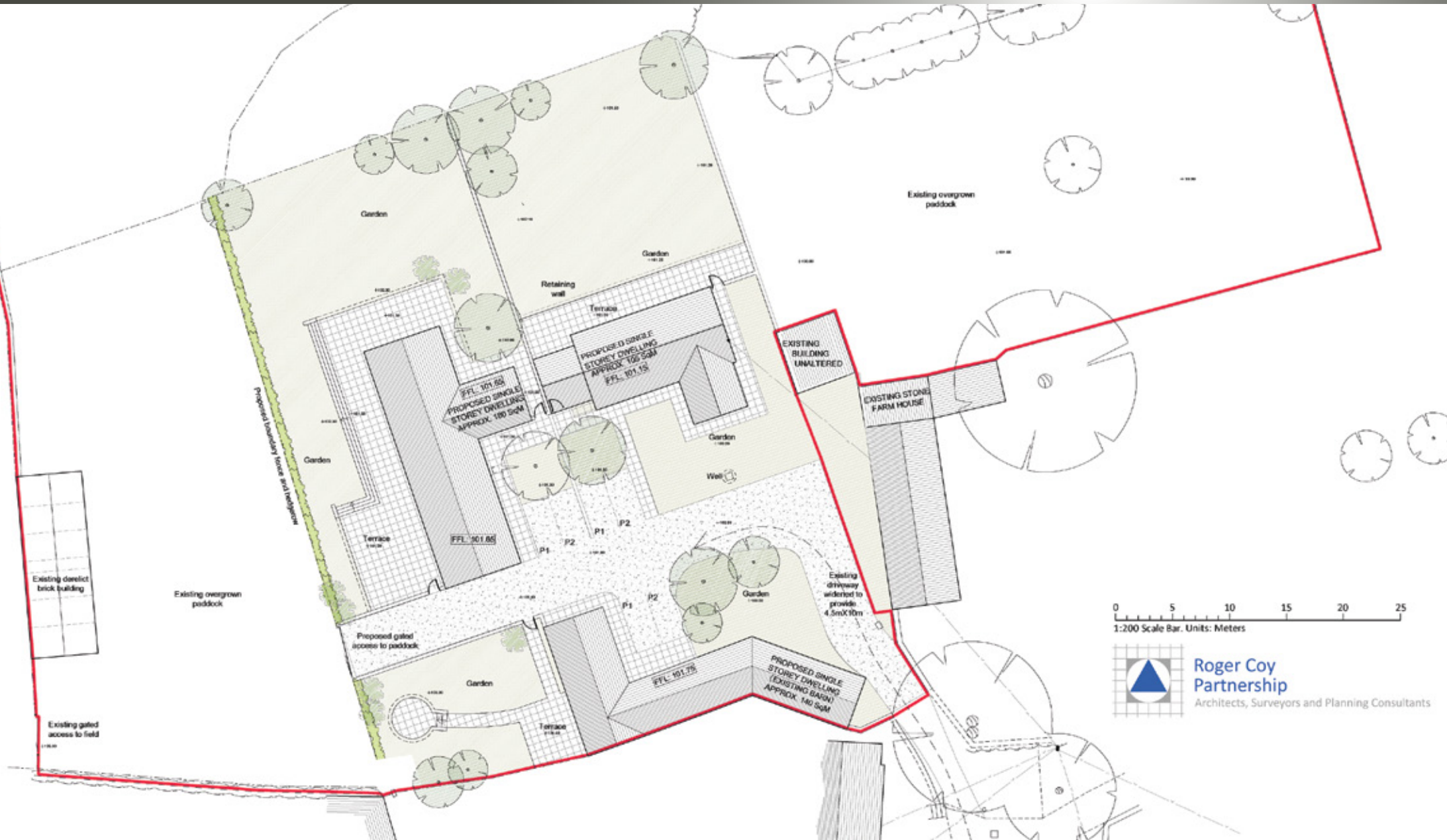
Signature (witness) ~~W. #~~ K. Wyatt.

Print full name: K. WYATT

Date: 6-8-2021

APPENDIX 2

Sales Brochure



DEVELOPMENT SITE AND LAND, Great Bourton, Banbury, Oxfordshire

CROCKWELL FARM

GREAT BOURTON, BANBURY, OXFORDSHIRE, OX17 1QT

Conversion and Development Site with Land

- Outline Planning Permission
- 18.73 Hectares (46.28 Acres)
- Productive Pasture Land

DEVELOPMENT SITE

The traditional barns currently have outline planning permission granted in July 2016. The planning permission allows for the conversion and redevelopment of traditional barns into 3 dwellings.

The permission allows for the conversion of the barn to the South of the site into a single dwelling. The permission also allows for demolition of other farm buildings and the replacement of these buildings with two single storey dwellings. These dwellings would be in a courtyard layout around the former farmhouse. The dwellings to be 3 and 4 bedroom properties.

LOCATION

The site is situated to the northern edge of the village of Great Bourton. The nearest postcode is OX17 1QT. Great Bourton is approximately 3.3 miles to the north of the town of Banbury and approximately 14 miles south of the town of Southam.

DESCRIPTION

The land comprises 18.73 ha (46.28 ac) of productive Grade 2 pasture and backs onto several residential properties on the southern border. It is stock proof fenced all around the boundary.

TENURE & POSSESSION

Freehold with Vacant Possession upon completion.

SERVICES

Mains water is connected to the land.

AUTHORITY

Cherwell District Council – 01295 227001

WAYLEAVES, EASEMENTS AND RIGHTS OF WAY

The land is sold subject to all existing rights, including rights of way, whether public or private, light, support, drainage, water, gas and electricity supplies and mineral rights, easements, quasi-easements and wayleaves whether or not in these particulars.

There is a public footpath that travels in an east to west direction over the land.

DEVELOPMENT CLAWBACK

The land will be sold subject to a development clawback provision such that should planning consent for residential or commercial development be granted then 30% of the enhanced value will be paid to the vendors upon either implementation or disposal. The Development Clawback Provision will run for a 30 year period from the point of sale.

VIEWING

Strictly by appointment with the vendors agents, Brown & Co, Castle Link, 33 North Bar Street, Banbury, OX16 0TH.

Contact - Tom Birks, 01295 273555

PLANS

The plans included with these particulars are for identification purposes only and shall not form part of any contract For Sale.

PLANNING REFERENCE NUMBER

16/00609/OUT

BASIC PAYMENT SCHEME

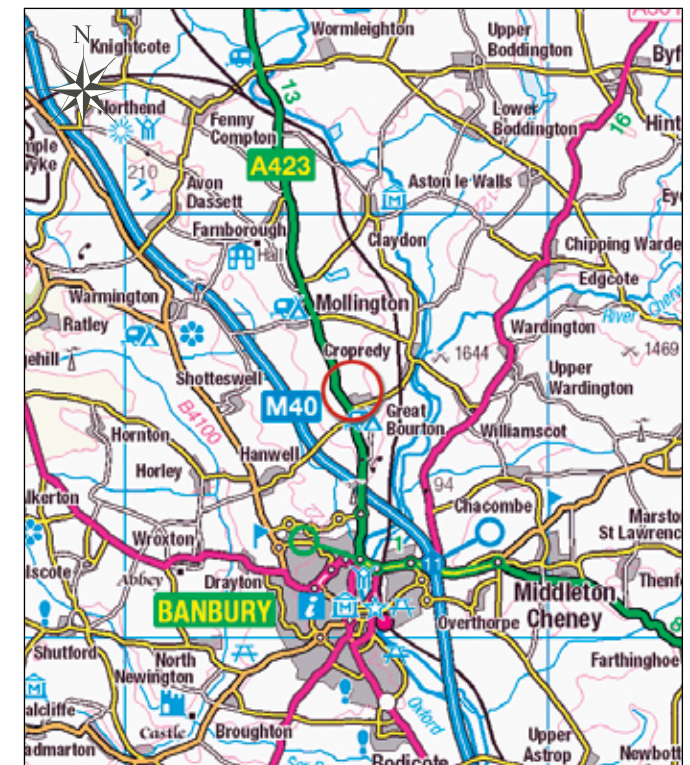
The relevant number of Basic Payment Entitlements will be included in the sale.

METHOD OF SALE

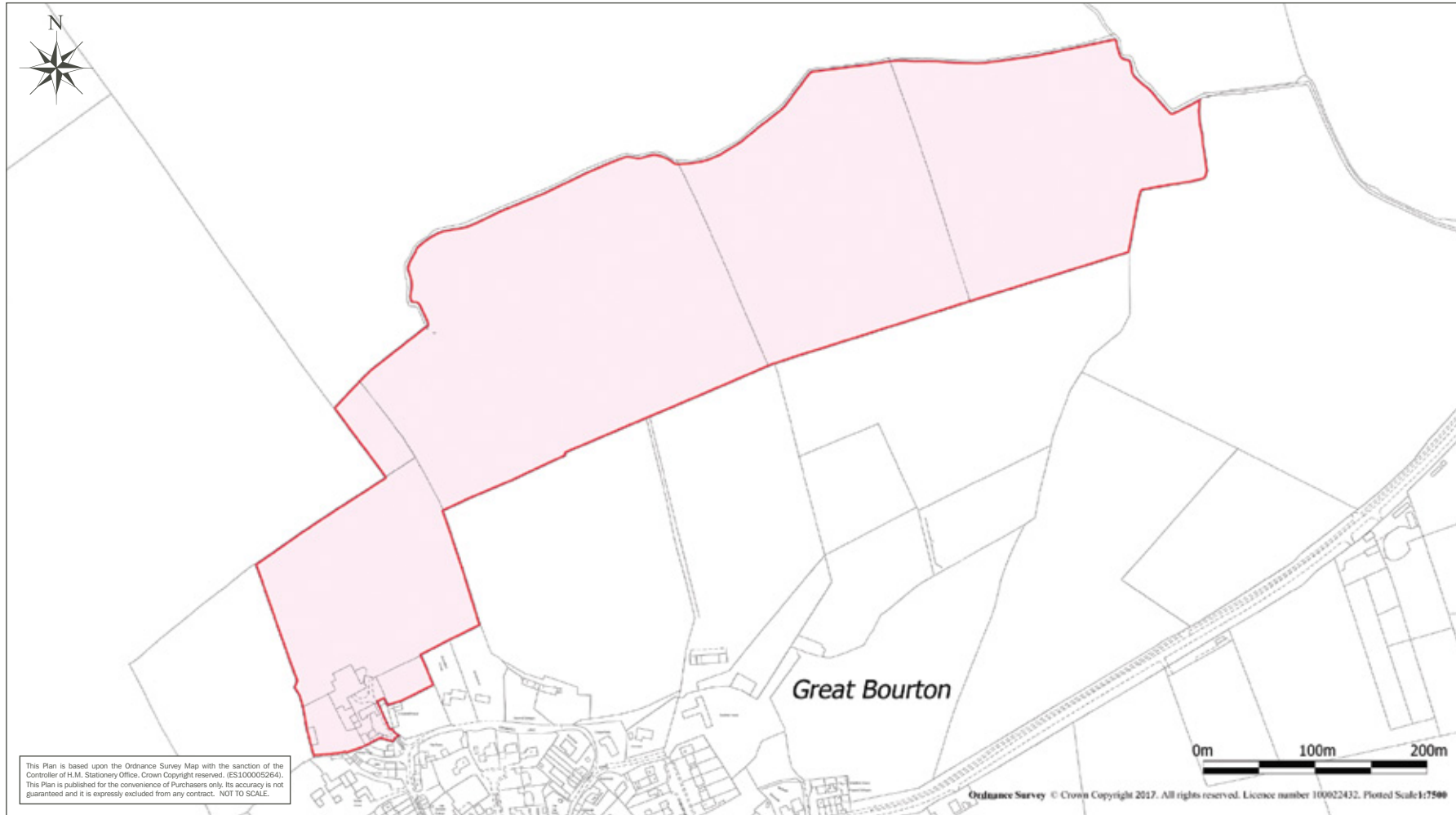
The property is offered For Sale by Private Treaty. These particulars are Subject to Contract. The vendor may consider splitting the site if appropriate bids are forthcoming.

Further land is available by separate negotiation.

LOCATION PLAN







IMPORTANT NOTICES Brown & Co for themselves and for the Vendors or Lessors of this Property give notice that: 1. These particulars are intended to give a fair and accurate general outline only for the guidance of intending Purchasers or Lessees and they do not constitute an offer or contract or any part of an offer or contract. 2. All descriptions, dimensions, references to condition and other items in these Particulars are given as a guide only and no responsibility is assumed by Brown & Co for the accuracy of individual items. Intending Purchasers or Lessees should not rely on them as statements or representations of fact and should satisfy themselves as to the correctness of each item by inspection or by making independent enquiries. In particular, dimensions of land, rooms or buildings should be checked. Metric/imperial conversions are approximate only. 3. Intending Purchasers or Lessees should make their own independent enquiries regarding use or past use of the property, necessary permissions for use and occupation, potential uses and any others matters affecting the property prior to purchase. 4. Brown & Co, and any person in its employ, does not have the authority, whether in these Particulars, during negotiations or otherwise, to make or give any representation or warranty relation to this property. No responsibility is taken by Brown & Co for any error, omission of mis-statement in these particulars. 5. No responsibility can be accepted for any costs or expenses incurred by intending Purchasers or Lessees in inspecting the property, making further enquiries or submitting offers for the Property. Any person inspecting the property does so entirely at their own risk. 6. All prices are quoted subject to contract and exclusive of VAT, except where otherwise stated. 7. In the case of agricultural property, intending purchasers should make their own independent enquiries with the RPA as to Single Payment Scheme eligibility of any land being sold or leased. 8. Brown & Co is the trading name of Brown & Co – Property and Business Consultants LLP. Registered Office: Granta Hall, Finkin Street, Grantham, Lincolnshire NG31 6QZ. Registered in England and Wales. Registration Number OC302092. 9. These Particulars were prepared in March 2017.

APPENDIX 3

High Court Judgement

Neutral Citation Number: [2016] EWHC 209 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9 February 2016

Before :

HIS HONOUR JUDGE SYCAMORE
(Sitting as a Judge of the High Court)

Between :

(1) GEOFFREY RICHARD NOQUET
(2) JACQUELINE EILEEN NOQUET

Claimants

- and -

(1) SECRETARY OF STATE FOR
COMMUNITIES AND LOCAL GOVERNMENT
(2) CHERWELL DISTRICT COUNCIL

Defendants

Mr Jack Parker (instructed by Duncan Lewis) for the Claimants
Mr Hugh Flanagan (instructed by Government Legal Department) for the 1st Defendant
Mr John Hunter (instructed by Cherwell District Council) for the 2nd Defendant

Hearing date: 27 January 2016

Judgment

HIS HONOUR JUDGE SYCAMORE:

1. This is an application by the claimants Geoffrey Noquet and Jacqueline Noquet under section 288 Town and Country Planning Act 1990 (“The 1990 Act”) by which they seek a quashing of the decision of the First Defendant’s Planning Inspector (“The Inspector”) of 27 August 2015 (“DL”) by which he dismissed the second claimant’s appeal under section 195 of the 1990 Act against the failure of the second defendant to give notice within the prescribed period of it’s decision on her application under section 192 of the 1990 Act for a Certificate of Lawful Use (“CLU”) in respect of the property known as Bishops End, Burdrop, Banbury OX15 5RQ (“The Property”).
2. The use in respect of which the CLU was sought for was a change in use from class A4 (Drinking Establishments) to A1 (Retail) pursuant to Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (“the GPDO”). The factual background is not in dispute. Essentially there is one issue in this application, namely whether the Inspector was wrong in law to reject the second claimant’s appeal on the grounds that the property was not being used nor had it last been used for A4 purposes at the time that the application for the CLU was made.
3. It is helpful to recite the relevant facts as found by the Inspector in the decision letter, which recorded that the use for which CLU was sought was for a change of use from A4 use to a A1 use.

The factual background can be found at paragraphs 2-10 of the decision letter:

- “2 Bishops End was a public house when it was acquired by the appellant in February 2006.
- 3 In March 2007 Bishops End closed for business as a public house. I understand that it may have briefly re-opened and then closed sometime in August/September 2013.
- 4 In February 2012 an Enforcement Notice was issued relating to the unauthorised change of use of Bishops End from a public house to a residential dwelling-house. The appeal against the Enforcement Notice was dismissed in October 2012. The requirement of the Enforcement Notice was to cease using Bishops End as a residential dwelling-house except for residential occupation ancillary to the use of Bishops End as a public house.
- 5 In February 2013 an A1 use of part of Bishops End commenced. The A1 use related of part of the ground floor at Bishops End for the sale of wood burning stoves and fireplace accessories. This use finished in July 2014. Through that period the appellant and her

husband lived at Bishops End. They left Bishops End in mid-August 2014.

- 6 Also in July 2014 the Council granted planning permission for part of Bishops End (an attached barn) to be used as holiday accommodation. I understand that the conversion works have been carried out but as at the date of my site visit the use had not commenced.
- 7 The application for the CLU states that Bishops End, “is a vacant public house (A4) and we seek to formalise the proposed change of use to A1 as allowed under the class uses Act. The current use (A4) is lawful by virtue of 57/4 of the 1990 Act.”

4. As I have already indicated, the Inspector rejected the second claimant’s appeal on the grounds that the property was not being used nor had it been last been used for A4 purposes at the time that the second claimant made her application for the CLU. At paragraph 8 of the decision letter the Inspector said:

“8 I do not agree with the appellant that Bishops End was a vacant A4 use at the time the CLU application was made – its last use was a mixed use of A1 (sale of wood burning stoves etc) and a residential use. That mixed use was unauthorised.”

And at paragraph 15:

“15 In my assessment those permitted development rights can only be exercised if Bishops End is in use or last used as an A4 use. In other words the appellant cannot begin to rely on the Class A Provisions until Bishops End is being, or was last used, as a public house. That is not the case here. Bishops End was vacant at the date of the application and its last use is explained in paragraph 8 above. Accordingly, the Class A Provisions do not apply in this case.”

5. I now turn to the relevant law.

Sections 55/57 and 192 of the 1990 Act provide as follows:

“55. – Meaning of “development” and “new development”.

(1) Subject to the following provisions of this section, in this Act, except where the context otherwise requires, “development”, means the carrying out of building, engineering, mining or other operations in, on, over or

under land, or the making of any material change in the use of any buildings or other land.

57. – Planning permission required for development.

(1) Subject to the following provisions of this section, planning permission is required for the carrying out of any development of land....

...

(4) Where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which (in accordance with the provisions of this Part of this Act) it could lawfully have been used if that development had not been carried out.

192. – Certificate of lawfulness of proposed use or development.

(1) If any person wishes to ascertain whether –

(a) any proposed use of buildings or other land; or

(b) any operations proposed to be carried out in, on, over or under land,

would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.

(2) If, on an application under this section, the local planning authority are provided with information satisfying them that the use of operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

(3) A certificate under this section shall –

(a) specify the land to which it relates;

(b) describe the use or operations in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);

(c) give the reasons for determining the use or operations to be lawful; and

(d) specify the date of the application for the certificate.

(4) The lawfulness of any use or operations for which a certificate is in force under this section shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness.”

The GPDO in force at the relevant time provided as follows (I observe that in the decision letter the Inspector made reference to the GPDO 2015. All parties agreed that this was in error but that it made no difference as the impact was identical to the GPDO 1995):

“3. – Permitted development

(1) Subject to the provisions of this Order and regulations 60 to 63 of the Conservation (Natural Habitats, &c.) Regulations 1994 (general development orders), planning permission is hereby granted for the classes of development described as permitted development in Schedule 2.

(2) Any permission granted by paragraph (1) is subject to any relevant exception, limitation or condition specified in Schedule 2.

....

(5) The permissions granted by Schedule 2 shall not apply if –

in the case of permission granted in connection with an existing building ,the building operations involved in the construction of that building are unlawful;

in the case of permission granted in connection with an existing use, that use is unlawful.

Schedule 2

Part 3

Permitted development

Development consisting of a change of use of a building to a use falling within Class A1 (shops) of the Schedule to the Use Classes Order from a use falling within Class A3 (restaurants and cafes), A4 (drinking establishments) or A5 (hot food takeaways) of the Schedule).”

There is no challenge to the factual findings of the Inspector. As he observed at paragraph 8 of the decision letter, the last use of the land was a mixed use of A1 (sale of wood burning stoves etc) and residential use. That mixed use was unauthorised. In essence the claimant's case is that the rights under Part 3 operated so as to grant planning permission for change of use from A4 to A1 as the claimants were entitled to resume the A4 use of the property by virtue of section 57 (4) of the 1990 Act.

6. The Inspector dealt with this in the following way:

“12 Section 57(4) of the 1990 Act explains that where an Enforcement Notice has been issued in respect of any development of land, planning permission is not required for the use of that land for the purposes for which it could lawfully have been used if that unauthorised development had not been carried out.

13 Accordingly, this statutory provision would allow the appellant to revert the use of Bishops End to its former use as a public house.

14 The appellant asserts that she is entitled to change the use of the relevant part of Bishops End from its lawful A4 use to an A1 use by virtue of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO). Part 3, Class A of Schedule 2 of the GPDO (the Class A Provisions) permits development consisting of a change of use of a building from a use falling within Class A4 (drinking establishment) to a use falling within Class A1 (shops).”

7. Two authorities were referred to by the parties in the course of submissions. The claimant accepted that on a superficial reading of those authorities they appear to prohibit any consideration of wider lawful use of land in the absence of any evidence of actual use. The claimants' case was that as the premises had previously been used as a public house the provisions of section 57 (4) of the 1990 Act applied.

The claimants sought to distinguish the authorities from the present case.

The first authority was that of Secretary of State for Transport v Waltham Forest LBC [2002] EWCA Civ 330. That case was concerned with an application under section 192 of the 1990 Act for a certificate of lawfulness of proposed use or development. What is clear from the ratio that case is that what has to be compared is the present use and the proposed use and not whether or not it would be lawful to carry out the proposed use if another notional use was carried out first. That is the case even if that notional use of itself would not require planning permission.

Schiemann LJ at paragraph 17 and 18 said this:

“17. It is clear that the word lawful in section 192 means lawful in the context of the planning legislation. What either does not require planning permission or has planning permission (either under the GPDO or because of an express planning permission) is lawful. Therefore in the context of an application for a section 192 certificate what has to be decided is whether a planning permission which has not been granted is needed for the making of the proposed change of use. It is clear that, in a case such as the present, what has to be compared, in deciding whether a proposed change of use is a material change of use, is the present use and the proposed use. The crucial question is what factors are in principle relevant in deciding whether a change of use is a material change of use. Assume that (1) under the planning legislation no further permissions are needed to move from the existing use to a notional use permitted under the planning legislation and (2) that a change from the notional use to the proposed use is not a material change. Does this have as a consequence that the change from the existing use to the proposed use cannot be material? The Inspector held that the answer to this question was in the affirmative. We disagree.

18. We agree with the Judge. Like him we consider that the fact (1) that no further permissions are needed to move from the existing use to the notional use and (2) that no further permissions are needed to move from the notional use to the use applied for is potentially relevant to the question whether planning permission should be granted for the use applied for. However, like him we agree that the interposition of a notionally permitted use between the existing use and the use applied for is a complication not relevant to the exercise under section 192.”

In Kwik Save Discount Group Ltd v Secretary of State for Wales (1981) 42 P&CR 166 a case which was concerned with the predecessor to the GPDO 1995 the court held that it was not sufficient to rely on a permitted use of premises which had not actually been brought into use and that the actual use had to be more than de minimis.

Stephenson LJ at page 177 said this:

“ In April 1976, the appellants’ appeals (only one of which is relevant) were heard by an inspector, who stated his conclusions beginning in paragraph 59 of his report with a passage, which Talbot J, giving the first judgment in the Divisional Court, cited with implied approval, as follows:

.... i) the offering of five cars for sale for a period of about one month in a building with a floor space of about 20,000 square feet amounted to no more than a token use of the appeal premises as a shop for the sale of motor vehicles, so minimal as to be of no planning significance. Articles 8 [of] and [Class] III (b) (v) of Schedule I [to] the [Town and Country Planning] General Development Order 1973 [refer] to a change of use of premises from “use as a shop” and not from a permitted use of premises which have not actually been brought into use. There was therefore no effective use of the new building on the appeal site until the appellants’ use of it as a discount store, which constituted a material change of use from a non-use, involving development for which specific planning permission was required;

The Inspector went on to recommend that, if it was decided that development requiring planning permission was involved, planning permission should not be granted. The Secretary of State accepted his recommendation, upheld the relevant enforcement notice and refused planning permission.”

And at page 179:

“ What is the answer to these submissions? In my judgment, the very fact that a device was resorted to by the appellants makes me suspect the use to which it is said the land was put. The Inspector and the Secretary of State found that it was *de minimis* on the facts. I would not disagree with that view, and in my judgment if the use is *de minimis* use it is not a use within the Order”

8. The essence of the Inspector’s reasoning for rejecting the second claimant’s appeal is clearly set out in the decision letter in particular at paragraph 15. The finding of fact at paragraph 8 of the decision letter that the last use was a mixed use of A1 and residential use was undisputed by the parties. At paragraph 15 the Inspector explained clearly that as the property was neither in use nor last used for A4 purposes when the application was made the rights under part 3 Class A were not engaged.
9. A careful reading of Class A of part 3 to Schedule 2 of the GPDO makes it clear that the granting of permission in those circumstances is expressly limited to “*a change of use of a building to a use falling within Class A (shops) from a use falling within Class A4*”. The point is a simple one. The Inspector determined that change of use of the claimants’ land would not fall within this permitted development right as it was a change of use to A1 use from mixed A1/C3 use.
10. As I have indicated, the claimants’ case was essentially, as set out at paragraph 4 of the claimants’ skeleton argument, that the proposed change did benefit from the necessary grant of permission because:

- 1) The property was as a matter of fact previously in use as a public house and
 - 2) The resumption of that public house use does not require planning permission by the operation of 57(4) of the 1990 Act. The claimant sought to argue that neither of the authorities referred to supported the Inspector's conclusion that article 3 did not operate to grant planning permission in these circumstances.
11. In my judgment that submission is inconsistent both with the scheme of the legislation and contrary to the two authorities to which I have made reference. Article 3 (5) of the GPDO is concerned with the grant of permission for changes from "*existing use*" not from potential alternative uses. It is informative to note that in the interpretation section of the GPDO at Article 1(2) "existing" is defined as follows:

“ “existing”, in relation to any building or any plant or machinery or any use, means (except in the definition of “original”) existing immediately before the carrying out, in relation to that building, plant, machinery or use, of development described in this order;”.

In *Waltham Forest* it was made clear that what has to be compared is the present use and the proposed use. The court was not concerned with consideration of a notional use which could be exercised without the need for further permission, as would be the case here should the claimants revert to use of the property as a public house for which no planning permission would be required. That is not relevant to a section 192 exercise although it is relevant to an application for planning permission. The absence of a permitted development right would not preclude the claimants from applying for planning permission.

12. In my judgment the Inspector was correct to refuse to grant a certificate of lawfulness and he clearly explained his reasons for doing so properly concluding that the fact that there had been actual A4 use in the past was irrelevant to the question that he was concerned with in relation to permitted development rights. His conclusion that the second claimant could not rely on the Class A provisions until Bishops End was being or was last used as a public house was the correct conclusion against the undisputed factual history. The A4 use was not an existing use. It was an historic use. In those circumstances I dismiss the claimants' application.

APPENDIX 4

Delegated Officer Report_2001726REM

Case Officer: Matthew Chadwick

Recommendation: Approve

Applicant: Mr Roger Yates

Proposal: Reserved matters to 19/00250/OUT - Phase 1 of the outline permission - approval of reserved matters for conversion of the curtilage listed barn.

Expiry Date: 25 August 2020

Extension of Time: 21 October 2020

1. APPLICATION SITE AND LOCALITY

- 1.1. The site is located to the north of the village of Great Bourton, at the outer limit of the village at the end of Manor Road. The site is currently occupied by a number of dilapidated farmyard buildings and barns. The buildings would previously have been used as part of a working farm in relation to Crockwell House to the east; however, the farm is no longer a working enterprise.
- 1.2. The site is located in close proximity to a Grade II Listed Building, Crockwell House, and the existing farmyard buildings are considered curtilage listed by association. Public Footpath 138/4/20 runs close to the southwest corner of the site and the site is in an area of Potentially Contaminated Land, most likely owing to the sites former use as a farmyard.

2. DESCRIPTION OF PROPOSED DEVELOPMENT

- 2.1. Approval of reserved matters is sought in relation to the outline consent ref. 19/00250/OUT for the conversion of the existing barn to a single dwelling. This forms part of the outline scheme which also related to the buildings in the north of the site. In the Planning Statement, the applicant has indicated that a reserved matters application for the buildings in the north of the site will be submitted in the future.
- 2.2. The reserved matters are the access, appearance, landscaping, layout and scale of the dwelling. The dwelling would be single storey in scale and would be constructed from brick walls with a corrugated metal roof. The dwelling would have four bedrooms. Two parking spaces would be provided to the west of the dwelling and a garden area would be provided to the front (north) of the dwelling.
- 2.3. The design has been amended during the course of the application to remove a protruding element to the north of the dwelling and to rectify errors in the plans.
- 2.4. This application is submitted alongside a listed building application (20/01730/LB).

3. RELEVANT PLANNING HISTORY

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

<u>Application Ref.</u>	<u>Proposal</u>	<u>Decision</u>
16/00609/OUT	Proposed residential development of 3 no.	Application

	dwelling	Permitted
19/00250/OUT	OUTLINE - Residential development of 3no dwellings (Re-submission of approved application 16/00609/OUT)	Application Permitted

4. PRE-APPLICATION DISCUSSIONS

- 4.1. No pre-application discussions have taken place with regard to this proposal.

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 **25 September 2020**, although comments received after this date and before finalising this report have also been taken into account.
- 5.2. No comments have been raised by third parties.

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 COUNCIL AND NEIGHBOURHOOD FORUMS

- 6.2. THE BOURTONS PARISH COUNCIL: **No objections.**

OTHER CONSULTEES

- 6.3. OCC HIGHWAYS: **No objections.**
- 6.4. CDC BUILDING CONTROL: A Building Regulations application will be required.
- 6.5. CDC ECOLOGY: No comments received.
- 6.6. CDC ENVIRONMENTAL HEALTH: **No objections**, subject to the submission of a verification report, prior to occupation, which demonstrates that remedial actions have been completed.
- 6.7. CDC RIGHTS OF WAY: **No objections.**

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 Part 1)

- ESD10 – Biodiversity and the Natural Environment
- ESD13 – Local Landscape Protection and Enhancement
- ESD15 - The Character of the Built and Historic Environment
- Villages 1 – Village Categorisation

CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- C28 – Layout, design and external appearance of new development
- C30 – Design control

7.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Cherwell Residential Design Guide (2018)
- 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
- Residential amenity
- Highway safety
- Ecology

Principle of development

8.2. The principle of residential development on the site was considered acceptable in outline application 19/00250/OUT. As a result, both the principle and amount of residential development on this site has been established and is no longer for consideration. Therefore, having established that the proposal is broadly consistent with that granted outline consent, the scope of consideration of this application extends solely to the "reserved matters", i.e. matters directly associated with the access, appearance, landscaping, layout and scale of the approved development.

Design, and impact on the character of the area

8.3. Government guidance contained within the NPPF requiring good design states that good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people. Further, permission should be refused for development of poor design that fails to take the opportunities for improving the character and quality of an area and the way it functions.

8.4. Saved Policy C28 of the Cherwell Local Plan 1996 exercise control over all new developments to ensure that the standards of layout, design and external appearance are sympathetic to the character of the context.

- 8.5. Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1 states that new development will be expected to complement and enhance the character of its context through sensitive siting, layout and high quality design. All new development will be required to meet high design standards, and should respect the historic environment including Conservation Areas and listed buildings.
- 8.6. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) states that: *In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority...shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.*
- 8.7. Crockwell House is a Grade II Listed Building and the barns on the site are considered to be curtilage listed. This reserved matters application has been submitted alongside a listed building consent application for the proposed works to the listed building.
- 8.8. The matters for consideration under this application are the access, appearance, landscaping, layout and scale of the development. This includes the changes proposed to the external appearance of the listed building and its setting, which are a material consideration for this application.
- 8.9. Following the design changes that have been negotiated during the course of the application, it is considered that the design of the dwelling is acceptable and is now similar to that shown on the indicative scheme on the outline application. The development would retain the simple form of the building – the scale of the building would not materially change – and the existing openings of the building have been used where possible, with new openings kept to a minimum. The ridge and eaves height of the roof of the building will not be altered under the proposals. The roof would be externally faced in clay tiles, which is an appropriate material given the context of the site.
- 8.10. The appearance and scale of the development are therefore considered to be acceptable and would retain the agricultural and simple character of the building.
- 8.11. A detailed landscaping scheme has not been submitted with the application, but some landscaping features are shown on the site plan. This drawing shows that a garden area would be provided to the front of the dwelling and would be bounded by a 1.4m beech hedge. This is acceptable in principle, subject to a more detailed landscaping scheme being required by a condition. The parking for the dwelling is proposed to the west of the dwelling. This location for the parking is considered to be acceptable and would contribute to the agricultural character of the site by not being located in front of the dwelling. Subject to conditions, the layout and landscaping of the development would be acceptable.
- 8.12. The creation of new openings in the building would result in less than substantial harm being caused to the significance of the listed building but based on the amended proposals on which this application is being determined and subject to conditions relating to materials and architectural detailing this harm would be minor. However, the proposal would bring a listed building back into use that has been derelict for a number of decades. The re-use of the listed building (as a residential dwelling) would be a public benefit of the proposal that would balance out minor harm to the listed building.

- 8.13. It is therefore considered that the development would comply with Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the NPPF.

Residential amenity

- 8.14. Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1 states that new development proposals should consider the amenity of both existing and future development, including matters of privacy outlook, natural lighting, ventilation, and indoor and outdoor space.
- 8.15. Given the single storey scale and fenestration arrangement of the proposed dwelling, it is considered that the development would not cause harm in terms of overlooking or a loss of light on neighbouring dwellings. The dwelling would have rooflights on the southern roofslope which would result in a small amount of lightspill which would be visible from the dwellings to the south. However, given the size of the rooflights and their location relative to the neighbouring dwellings, it is considered that the impact on these dwellings would not be so harmful as to justify a reason for refusal in this regard.
- 8.16. It is therefore considered that the proposed development complies with Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the NPPF.

Highway safety

- 8.17. The Highways Officer has offered no objections to the development, subject to the conditions imposed on the outline consent. Given that these conditions are imposed on the outline consent they do not need to be re-imposed to any consent given here. The development would take access from Manor Road to the southeast. Two parking spaces are to be provided to the west of the dwelling.
- 8.18. A condition requiring further details of the access was included on the outline consent. Subject to this condition, it is considered that the development would not cause harm to highway safety.

Ecology

- 8.19. A bat survey has been submitted with the application. The Council's Ecology Officer has been consulted on the application but has not provided comments at the time of writing this report.
- 8.20. The bat survey found a single Brown Long-eared Bat roosting within gaps in the rafters of the building. The bat survey states that appropriate mitigation would be needed, along with a licence from Natural England consenting to the loss of the roost. Given the presence of a roosting bat, and the low status of the roost, the site is eligible for registration under Natural England's Bat Mitigation Class Licence (BMCL) scheme. The bat survey also recommends the provision of two bat boxes.
- 8.21. A condition shall be included requiring no works to be carried out until a Bat Licence has been granted and a further condition shall be included to ensure that bat boxes are provided as part of the development. It is considered that subject to these conditions, the development would not cause harm to local ecology and biodiversity and that the proposals would comply with Policy ESD10 of the Cherwell Local Plan 2011 – 2031 and Government guidance contained within the NPPF.

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 principle of residential development on the site was established under the granting of 16/00609/OUT and 19/00250/OUT. Following amendments to the scheme, and subject to conditions, the layout and scale of the development is considered acceptable and would not cause harm to the character and appearance of the area. The alterations to the building would cause harm to the significance of the listed building, but subject to appropriate materials and architectural detailing this harm would be minor and would be balanced out by the public benefits of the scheme namely the re-use of the listed building. The development would provide a suitable access which would not cause harm to the safety of the highway network. Subject to conditions, the development would not cause harm to the safety of the local highway network or the amenities of neighbours. The application is therefore recommended for approval.

10. RECOMMENDATION

That permission is granted, subject to the following conditions:

1. Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the application forms and the following plans and documents: Site Location Plan (3561/A Map); Proposed Site Plan (20.08.03.13 Rev B); Proposed Ground Floor Plan (20.08.02.10 Rev B); Proposed North and South Elevations (20.08.02.11 Rev B); Proposed East and West Elevations (20.08.02.12 Rev C); Estate Car Swept Path Analysis - Access and Internal Site Road (SP02) and Fire Appliance and 7.5T Box Van - Swept Path Analysis - Access and Site Road (SP03).

Reason – For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and comply with Government guidance contained within the National Planning Policy Framework.

2. No development shall commence until samples of the timber to be used in the louvres over the glazing screens of the development and any new tiles to be used externally to cover the roof of the development have been submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out other than in accordance with the samples so approved and shall be retained as such thereafter.

Reason - To ensure the satisfactory appearance of the completed development and to safeguard the significance of heritage assets and in the interests of the character and appearance of the area and to comply with Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

3. No development shall commence until full details of the doors and windows hereby approved, at a scale of 1:20 including a cross section, cill, lintel and recess detail and colour/finish, have been submitted to and approved in writing by the Local Planning Authority. Thereafter the doors and windows shall be installed within the building in strict accordance with the approved details and shall be retained as such thereafter.

Reason - To ensure the satisfactory appearance of the completed development

and to safeguard the significance of heritage assets and in the interests of the character and appearance of the area and to comply with Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

4. No rainwater goods shall be used in the development unless they are either cast iron or aluminium finished and shall be painted matt black.

Reason - To ensure the satisfactory appearance of the completed development and to preserve the historic character and significance of designated heritage assets and to comply with Policy ESD 15 of the Cherwell Local Plan 2011 - 2031 Part 1, Saved Policy C18 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

5. Notwithstanding the landscaping shown on the submitted site plan and prior to the occupation of the development hereby approved a landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme for landscaping the site shall include:-

(a) details of the proposed tree and shrub planting including their species, number, sizes and positions, together with grass seeded/turfed areas,

(b) details of the existing trees and hedgerows to be retained as well as those to be felled, including existing and proposed soil levels at the base of each tree/hedgerow and the minimum distance between the base of the tree and the nearest edge of any excavation,

(c) details of the hard surface areas, including pavements, pedestrian areas, reduced-dig areas, crossing points and steps.

The hard landscaping shall be provided in accordance with the approved details prior to the first occupation of the development and shall be retained as such thereafter.

Reason - In the interests of the visual amenities of the area, to ensure the creation of a pleasant environment for the development and to comply with Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

6. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in accordance with BS 4428:1989 Code of Practice for general landscape operations (excluding hard surfaces), or the most up to date and current British Standard, in the first planting and seeding seasons following the occupation of the building(s) or on the completion of the development, whichever is the sooner. Any trees, herbaceous planting and shrubs which, within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the current/next planting season with others of similar size and species.

Reason - In the interests of the visual amenities of the area, to ensure the creation of a pleasant environment for the development and to comply with Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

7. No development shall commence unless and until full details of a scheme for the location of bat boxes have been submitted to and approved in writing by the Local Planning Authority. The bat boxes shall be installed on the site in accordance with the approved details prior to the first occupation of the development and shall be retained as such thereafter.

Reason - To ensure that the development does not cause harm to any protected species or their habitats in accordance with Policy ESD10 of the Cherwell Local Plan 2011 – 2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

8. The development shall not be occupied until the remedial works have been carried out in accordance with those set out in Section 8.4 of the Ground Investigation Report prepared by Soiltechnics dated June 2020. A verification report that demonstrates the effectiveness of the remediation carried out must be submitted to and approved in writing by the Local Planning Authority, prior to the first occupation of the dwelling.

Reason - To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with Saved Policy ENV12 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

9. Where an offence under Regulation 41 of the Habitat and Species Regulations 2010 is likely to occur in respect of the development hereby approved, no works of site clearance, demolition or construction shall take place which are likely to impact on bats until a licence to affect such species has been granted in accordance with the aforementioned Regulations and a copy thereof has been submitted to the Local Planning Authority.

Reason - To ensure that the development does not cause harm to any protected species or their habitats in accordance with Policy ESD10 of the Cherwell Local Plan 2011 – 2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

Case Officer: Matthew Chadwick

DATE: 16.10.2020

Checked By: Nathanael Stock

DATE: 21.10.2020

APPENDIX 5

Highways Comments

Rachel Tibbetts

From: Batchelor, Kevin - Communities <Kevin.Batchelor@Oxfordshire.gov.uk>
Sent: 13 August 2020 13:43
To: George Smith
Cc: Speakman, Glenn - Communities; Cllr George Reynolds; DC Support
Subject: 20/01902/Q56 Crockwell Fm Gt BOURTON

George

Due to the Coronavirus situation, a site visit as part of this assessment has not been possible. Therefore this application has been assessed on its merits from the information provided for consideration and a desk top analysis

The proposal, if permitted, will not have a significant detrimental impact (in terms of highway safety and convenience) on the adjacent highway network

Recommendation:

Oxfordshire County Council, as the Local Highways Authority, hereby notify the District Planning Authority that they **do not object** to the granting of planning permission

Kevin

Kevin Batchelor
Area Liaison Officer
Oxfordshire County Council
0345 310 1111



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