



Delegated Report Planning Application

Application Number: S/2020/0082/MAF

Location: Mill House Farm Mill House Farm Mill Lane Kings Sutton OX17 3QP

Development: Removal of farm buildings adjoining farmhouse, replace with new community building and farm machinery barn. Construction of new farm buildings comprising 2 no barns to house farm animals, office and detached hay barn. Re-construction of original barn 4. Instillation of micro-hydro generator to mill stream. Replacement gates, new recycling compound, associated external works, hard standing, access road and parking.

Applicant: World Tamils Historical Society Oxford

Agent: Bozeat Partnership

Case Officer: Maria Philpott

Ward: Kings Sutton

1 RECOMMENDATION

1.1 The application is recommended for **APPROVAL**

2 THE PROPOSAL

2.1 The proposal seeks consent for 4 different aspects as follows:

2.2 Agricultural Buildings

The existing farm buildings to the east of the farm house are to be removed and replaced with a new Tractor Shed (with mezzanine for plant store) and Barns A (hay barn), B (animal barn) and C (animal barn) together with an office/store and feedstore. A further former stone agricultural barn in front of the farmhouse is to be reconstructed.

2.3 Community Buildings

On the site of the existing farm buildings to be removed, a new community building is proposed to be attached to the proposed Tractor Shed. It will be able to accommodate 200 people in the main hall with the Tractor Shed doubling up as overflow space. It is intended that the use of the community hall for larger events involving the Tractor shed will be for less than 28 days a year (under permitted development).

The Community building will comprise entrance hall, library/study room, toilets, kitchen and hall with a mezzanine over.

2.4 Installation of Micro-hydro generator to Mill Stream

The proposal seeks consent for a micro-hydro generator to replace the now lost original wheel in the mill race to supplement the power requirements of the community centre using a natural power generating source. It will be sited under the south end of the existing farmhouse.

2.5 Retrospective permission for religious buildings and structures

The application originally included applying for retrospective consent for two timber religious buildings – a Christian Church by the existing access road (before the railway bridge) and a Hindu building beyond the railway bridge. However, during the course of discussions on the application, the applicants have now agreed to remove these buildings from the proposal and the site. As a consequence, these aspects have been removed from the description.

The archway and shrine also on the site did not form part of the application but are also intended to be removed.

2.6 Associated works

Replacement of site entrance gates, new recycling compound (just prior to the railway bridge), hardstanding, farm access road and car parking.

2.7 Permitted Development

It should be noted that the proposal is not being applied specifically for meetings and events to take place externally at the site as the use of the land for events can take place under permitted development rights (Schedule 2, Part 4, Class B) provided they are for not more than 28 days per calendar year. This is the current fall-back position.

This application comprises a new building to be used as a place of worship and community facility which would not be covered by the permitted development granted by Part 4 Class B as this only applies to land not buildings. Therefore this application is considering the new building and its proposed use as place of worship and community facility.

3 SITE DESCRIPTION

3.1 The application site is located on the boundary between South Northants and Cherwell District to the south of Kings Sutton village. The site is nestled between the M40 motorway, a railway line and the River Cherwell. The Oxford Canal also lies a little beyond following the curve of the River Cherwell (outside the application site boundary).

3.2 The access to the site is via Mill Lane which also necessitates crossing a bridge over the railway line which is restricted to a weight limit. Part of the application site is located before the railway bridge and the large part of the site (where Mill House and the farm buildings are) is located beyond the railway bridge.

- 3.3 The access is on considerably higher land than the farmhouse and farm buildings. Beyond the railway bridge the land drops down steeply to the farm house below.
- 3.4 The Pig Place lies to the south of the site on the opposite side of the canal which comprises a canal side small holding operating a small campsite with farm shop, café and bar.
- 3.5 There are some canal boat moorings on the canal and a handful of residential properties on the southern side of the canal.

4 CONSTRAINTS

4.1 The application site is affected by the following:

- Within open countryside;
- Mill House and part of the barn to be reconstructed lie within Flood zones 2 and 3 (medium and high risk) and lies within the 'River Bank Tops' zone defined by the Environment Agency;
- The site of the proposed agricultural barns and community building lies just outside of Flood Zone 2;
- Within a Special Landscape Area;
- Within areas of Archaeological assets;
- Within 2km of local wildlife sites;
- Within 500m of Oxford Canal (buffer);
- Close to the Oxford Canal Conservation Area (in Cherwell District)
- The railway line cuts through the application site

5 RELEVANT PLANNING HISTORY

5.1 The following planning history is considered relevant to the current proposal:

<u>Application Ref.</u>	<u>Proposal</u>	<u>Decision</u>
S/1999/0356/P	Change of use of water mill to holiday accommodation	Approved

6 RELEVANT PLANNING POLICIES AND CONSIDERATIONS

- 6.1 Statutory Duty
Planning law requires that applications for planning permission must be determined in accordance with the Development Plan, unless material considerations indicate otherwise.
- 6.2 Development Plan

- West Northamptonshire Joint Core Strategy Local Plan (Part 1) policies:
 - SA – Presumption in Favour of Sustainable Development
 - S1 – Distribution of Development
 - S2 – Hierarchy of Centres
 - S7 – Provision of Jobs
 - S8 – Distribution of Jobs
 - S10 – Sustainable Development Principles
 - S11 – Low Carbon and Renewable Energy
 - RC1 – Delivering Community Regeneration
 - RC2 - Community Needs
 - BN2 – Biodiversity
 - BN3 – Woodland Enhancement and Creation
 - BN5 – The Historic Environment and Landscape
 - BN7 - Flood Risk
 - BN7A – Water Supply, Quality and Wastewater Infrastructure
 - BN9 – Planning for Pollution Control
 - R1 – Spatial Strategy for the Rural Areas
 - R2 - Rural Economy
- South Northamptonshire Local Plan (Part 2) policies:
 - SS1 – The Settlement Hierarchy
 - SS2 – General Development Principles
 - EMP4 – The Visitor Economy
 - EMP6 – Farm Diversification
 - INF2 – Community Facilities
 - HE2 – Archaeology
 - HE6 – Conservation Areas
 - NE2 – Special Landscape Areas
 - NE4 – Trees, Woodland and Hedgerows
 - NE5 – Biodiversity and Geodiversity
 - NE6 – Protected Species

6.3 Material Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- The Planning (Listed Buildings and Conservation Areas) Act 1990
- EU Habitats Directive
- Natural Environment and Rural Communities Act 2006
- Conservation of Habitats and Species Regulations 2017
- Circular 06/2005 (Biodiversity and Geological Conservation)
- Human Rights Act 1998 (“HRA”)
- Equalities Act 2010 (“EA”)
- SNC Corporate Priorities - to ensure the District is “Protected, Green & Clean”, is a place which supports “Thriving Communities & Wellbeing”, and is a District of “Opportunity & Growth”
- SPD on Parking (2018);
- SNC Design Guide

7 **RESPONSE TO CONSULTATIONS**

- 7.1 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.
- 7.2 KINGS SUTTON PARISH COUNCIL: **Object.** The exact nature, size and scope of the development is not defined sufficiently clearly in the application. The Parish Council shares the concerns of the Planning Policy Team regarding the inconsistency of the development with both adopted and emerging development plan policies. The development consists partly of new farm buildings in a Special Landscape Area which should be sympathetic to the surrounding area.

CONSULTEES

- 7.3 CHERWELL DISTRICT COUNCIL: The majority of the works would not affect any land in Cherwell District. However if the micro-hydro generator to the mill will be within Cherwell District then an application would be required.
- 7.4 HIGHWAYS ENGLAND: No objection.
- 7.5 NCC HIGHWAYS: No comments to make.
- 7.6 SNC PLANNING POLICY: **Comment.** The proposals do not comply with planning policies and to be supported, in accordance with Para. 47 of the NPPF would need to demonstrate that there are material considerations to overcome the current inconsistency with both adopted and emerging development plan policies.
- 7.7 AGRICULTURAL CONSULTANT: The size and scale of the agricultural farmstead is such that it is reasonably necessary on a unit of this size and nature. However I cannot support the community facilities on agricultural grounds.
- 7.8 NATURAL ENGLAND: No objection.
- 7.9 WILDLIFE TRUST: No comments received.
- 7.10 SNC ECOLOGY: **Insufficient Information.** The Ecological Assessment has not assessed the impact of the proposals specifically the micro hydro-generator on protected species or other wildlife, in particular otters, water voles and potential impact on fish passage. In addition, the application does not demonstrate that a net gain in biodiversity will be achieved by the proposal.
- 7.11 THE ENVIRONMENT AGENCY: **Object.** (Objection relates to the reconstruction of the original barn and does not relate to the community building or farm machinery store as these will be re-built in flood zone 1). The Flood Risk Assessment is not acceptable as it does not take the impacts of climate change into account, the flood risk mitigation measures are inadequate as they will not make the development resilient to floor levels for the 1% annual probability (1 in 100) flood extent and it does not identify the correct Flood Zone.
- 7.12 Following the submission of further information on 5th March the Environment Agency were reconsulted again but maintained their objection as the FRA did not adequately identify whether the site is within Flood zone 3a or 3b.
- 7.13 THAMES WATER:

Waste water: **No objection.** Informative to be added if to be approved for a Ground Water Risk Management Permit to be required.

Surface Water: **No objection** providing the applicant follows the sequential approach to the disposal of surface water.

Waste water network and Sewage Treatment Works: **No objection** based on the information in respect of infrastructure capacity.

Water comments: **No objections.** Informative to be imposed regarding water pressure.

- 7.14 CRIME PREVENTION DESIGN ADVISOR: **No objections.** No crime or disorder issues including traffic problems.
- 7.15 NETWORK RAIL: **No comments received** only an Asset Protection Enquiry Form – which will be forwarded onto the applicant with the decision notice.
- 7.16 INLAND WATERWAYS ASSOCIATION: **No comments received.**
- 7.17 NCC ARCHAEOLOGY: **No comments to make**
- 7.18 LANDSCAPE SERVICES: **No comments received.**
- 7.19 SNC BUILDING CONTROL: **No objection.** All surface water to soakaways. Radon protection required. Fire Brigade Access required. Fire Risk Assessment required. Flood zone risk undertaken.
- 7.20 SNC PUBLIC ART: **No comments received.**
- 7.21 SNC ENVIRONMENTAL HEALTH: **No objection.** Recommends conditions be imposed in respect of a Construction Environmental Management Plan to protect the area from noise and dust during construction, a Noise Impact Assessment to protect existing residents and further residents from any noise emanating from the site and standard conditions relating to contamination to ensure there are no contaminants at the site that pose a risk and are required to be remediated. Informatives also to be added for the applicant's attention in respect of asbestos removal at the site.

AMENDMENTS AND RECONSULTATION: Following renotification on 18th September 2020 in respect of the receipt of a Supporting Agricultural Statement and response to Planning Policy Officers report submitted by the agent the following further consultee comments were received:

- 7.22 KINGS SUTTON PARISH COUNCIL: **Withdraw objection.** However note that the additional information provided by the applicants does not address the concern over the inconsistency of the proposal with the policies of the development plan. The weight restriction on the bridge over the railway may impact the development.
- 7.23 PLANNING POLICY: **Comments.** Still advises that the community aspects of the proposal do not comply with planning policies and to be supported material considerations will need to outweigh the policy conflict.
- 7.24 AGRICULTURAL CONSULTANT: **Comments.** Despite the additional Supporting Statement submitted by the agent, still consider that whilst the farm buildings can be supported, the community buildings are still excessively large and not appropriate.

- 7.25 HIGHWAYS ENGLAND: **No further comments to make.**
- 7.26 NCC HIGHWAYS: **No comments to make.**
- 7.27 NETWORK RAIL: **Comments.** Access and egress is over a Network Rail Bridge which has a limit on it of 7.5T which cannot be increased. Activities must take into consideration the weight restriction on the bridge and the developer will need to submit a form with details of the construction traffic management plan which will need to be agreed with Network Rail.
- 7.28 CRIME PREVENTION DESIGN ADVISOR: **No further comments to make.**
- 7.29 SNC BUILDING CONTROL: **Reiterates previous comments.**
- 7.30 NATURAL ENGLAND: **No objection.** The amendments are unlikely to have significantly different impacts on the natural environment.
- 7.31 THE ENVIRONMENT AGENCY: **No objection.** Reviewed the revised FRA and satisfied with the void design and therefore prepared to remove previous objection. No conditions required.
- 7.32 SNC ENVIRONMENTAL HEALTH: **No further comments to make.** Previous comments made are still applicable.
- 7.33 LEAD LOCAL FLOOD AUTHORITY: [First Response] Insufficient information in respect of surface water drainage. [Second response, following submission of Drainage Strategy] **No objection.** Reviewed the information and request conditions to be imposed to make the development acceptable.
- 7.34 ECOLOGY: **Comments.** The further assessment information supplied overcomes the limitations of the previous submission. The ecology report and woodland creation plan show that the development proposed is unlikely to have a significant impact on protected species or habitats if the mitigation enhancements identified in the Protected Species Survey are followed. Recommends conditions.

8 RESPONSE TO PUBLICITY

- 8.1 Below is a summary of the neighbour and third-party responses received at the time of writing this report.

- 6.1. **1 letter of objection** received on the following grounds:

- The existing site impacts on residents and customers of “The Pig Place” who have observed agricultural practices that would not comply with DEFRA.
- The proposal is to reduce farming activities on the land – but the floor plan of all the new buildings shows an increase of 1,040 sq m.
- There are no details on the function of the community building or why it is required.
- Why is there a requirement for a community building when there are already temporary wooden structures – can these not be used?

- The community building with connecting door to the tractor shed is to allow for overflow usage for no more than “28 days per year”. Does this mean there will be a minimum of 28 large events of around 1000-2000 people (as per the gathering around 27th November every year)?
- How many smaller events will there be?
- The events require overnight set up of marquees, tombstones, flood lighting, generators and multiple power tools
- Still a site for a marquee shown.
- Would have no objection if all temporary structure were removed from site within 48hours of the end of each event.
- The proposal appears to be aimed only at the Tamil community, contrary to development plan policies and will not benefit the local community or economy under farm diversification guidelines.
- The proposal will harm the Special Landscape Area and the Oxford Canal Conservation Area – none of the temporary structures are in keeping
- The proposal already has a detrimental impact on our business and the proposal will increase this.

6.2. AMENDMENTS AND RENOTIFICATION: Following renotification on 18th September 2020 in respect of the receipt of a Supporting Agricultural Statement and response to Planning Policy Officers report submitted by the agent.

6.3. 1 letter of **objection** on the following grounds:

- Maintains previous objection.
- Proposal will negatively impact on the business at The Pig Place.
- The proposed new farm buildings are desperately needed as the farms existing buildings are in a poor state of repair. However the community buildings are not considered to be an essential requirement for the farm to operate effectively.
- The community activities proposed are commendable but are they simply a way of “sugar coating” the application to achieve the objective of mass gatherings and monthly commemoration ceremonies?

6.4. 3 letters of **support** on following grounds:

- Support the proposal for new farm buildings as essential for a farm of this size to have good quality, modern facilities.
- Also support the community building. Encouraged that urban dwelling children and their families are encouraged to visit, help out and attend functions.
- Also projects in progress to plant trees, set up a bird sanctuary on the land and river to benefit local ecology and wildlife.

- Many farms now struggle to survive, and this community farm project will ensure the continued sympathetic use of this site for many years to come.
- The new buildings will also help maximise the risk of introducing pollution into the River Cherwell.
- Will be able to be a place of learning for children and others in a safe and local environment and learning about human diversity.
- The farming family are the only people there permanently with the monthly meetings unlikely to have impact on the rest of the community.

9 APPRAISAL

9.1 Key Issues:

- Principle of development:
Agricultural buildings
Community uses
Other buildings and works
- Design, and impact on the character of the area, including the Special Landscape Area
- Highways
- Residential amenity
- Crime Prevention
- Noise and Pollution
- Flooding and Drainage
- Archaeology
- Ecology and Trees

The Principle of Development

- 9.1. The application site lies in open countryside where development is more severely restricted under the WNJCS and SNLP policies. However, there are exemptions when development in these locations are deemed to be acceptable and this is set out below.

Agricultural Buildings:

- 9.2. The proposal for new agricultural buildings (including the rebuilding of one traditional one) is considered to be acceptable in accordance with policies SA of the JCS and policies SS2 and EMP6 of the SNLP. The Council has consulted with an Agricultural Consultant who considers that they are reasonably necessary for the purposes of agricultural. The existing farm buildings need replacing, and the size and scale of the proposed buildings are in proportion with the holding. The positioning of the buildings is appropriate for their use and not too far from the farmhouse and other structures.

Community Uses:

- 9.3. In respect of the proposed community facilities, the proposal is considered to be acceptable and in accordance with policies SA, S1, S2, RC1 and RC2 of the WNJCS and policies SS1, INF2, R1 and R2 of the SNLP.

- 9.4. The community hall will primarily be used by the Tamil community who come from the general locality but also from across the UK. The Tamil community have regular weekly services but also hold one large memorial event a year. Occasionally it is intended that the community hall may also be used to hold weddings, but this will only be a few times a year.
- 9.5. Community facilities are usually required to be provided in close proximity to the community that it is to serve and not in isolated open countryside locations such as this. Community farms likewise should also have clear links with the local community and clear objectives as to how the community will be involved in the site. In this respect, the proposal therefore conflicts with policy INF2 of the Local Plan. However in this case, the community centre proposed will serve the Tamil community who already have an established use on this site. Policy S1 permits development and economic activity in rural areas where it will enhance the vitality of rural communities and strengthen rural enterprise and linkages between settlements providing the character of the area is respected.
- 9.6. The site is large enough to accommodate the community facilities and associated car parking without having a significant impact on the wider area. The community intends to create links with the local community to offer use of the centre for educational activities, farm activities and trips. To this end, the applicant has provided further justification to demonstrate that other users in the locality have expressed an interest in taking up the offer to use the site and in this respect the proposal has some local support.
- 9.7. In addition to the potential community links this proposal may bring, there are also other economic benefits that could be derived from this proposal. Visitors coming to the site to attend events held here and for weddings may stay overnight in local accommodation and the establishment of more of a community enterprise at the site may bring about some additional jobs to the district, outside of the Tamil community. In this respect the proposal is considered to comply with policies S7, S8, R1 and R2 of the JCS and policy EMP4 of the SNLP. Farm diversification is also generally supported by policy R1 of the JCS and EMP6 of the SNLP in order to enable farm holdings to continue to be sustainable and financially viable.
- 9.8. It is therefore considered that on balance, whilst the proposal may conflict with some parts of the Development Plan it can also be said to comply with other parts of the Plan. As the proposal has the potential to create both linkages with the local community and the creation of jobs and other economic benefits (e.g. tourism) to the District it is felt that these are material considerations to outweigh any potential policy conflict.

Other buildings and works:

- 9.9. The other works proposed at the site are all considered to be ancillary to the main uses proposed above and so are considered acceptable in principle subject to being acceptable in all other respects discussed below.

Design and Impact on the Character of the Area

- 9.2 The design of the various elements of the building works are considered to be acceptable and in accordance with policies SS2 and NE2 of the SNLP and the Council's Design Guide as set out below.

- 9.3 The agricultural buildings will be of a functional design typical of modern agricultural buildings and constructed in timber cladding with masonry to the lower walls. They will be in keeping with the rural character of the area and positioned so as to be close to the existing farm buildings.
- 9.4 The rebuilding of the traditional stone agricultural building will be acceptable and proposes sympathetic new openings. Conditions will be imposed in respect of the stone to be used (sample panel) and window and door details to ensure these are in keeping.
- 9.5 The community building will also be constructed similarly to the agricultural buildings and will therefore be in keeping with the rural area, again using materials of timber and stonework. A schedule of materials condition will be imposed to ensure that all parts of the building are constructed sensitively.
- 9.6 No details have been provided of the micro-hydro generator to the stream – but it is anticipated that much of this will not been seen above the water level. A condition will be imposed for further details of this to be submitted and approved.
- 9.7 The design of the new gates at the site entrance are acceptable. They include a 2m high timber close boarded gates with stone walling and piers which will be in keeping with the character of the area. They are set back from the road frontage and will be set in between hedging which will soften their appearance.
- 9.8 The recycling compound is considered to be acceptable and will also be constructed in similar materials (conditions to be imposed).
- 9.9 The areas of hardstanding in front of the farmhouse already exists but the new farm access track leading from there to the new farm buildings is considered to be acceptable. A condition will be imposed for the details of the materials and construction to be submitted to ensure it is of a rural appearance.
- 9.10 The design of the building and the use of materials, together with conditions being imposed as relevant will ensure that the character of the rural area and Special Landscape Area is preserved.

Highways

- 9.11 No comments have been made on the proposal by either Highways England or the Local Highway Authority. The proposal is located in the open countryside which is not within a sustainable location as it is not closely related to existing settlements and services. However, the Tamil community is already established at the site and therefore the provision of additional community buildings will reinforce the existing use at the site. There is sufficient informal car parking within the site in a field when necessary for larger events (no planning permission required for this) and car parking available near the farmhouse for smaller religious services. A coach lay-by is provided just prior to the railway bridge so that members of the community arriving by coach are able to park without crossing the railway bridge as this has a weight limit on it. It is not considered that the proposal will cause any harm to highway safety.

Residential Amenity

- 9.12 The nearest residential properties are those at Nell Bridge House and Farm and Pig's Place on the south side of the Oxford Canal. The proposals are not considered to

cause any detrimental harm to the occupiers of residential amenities due to loss of privacy or overshadowing from the proposed buildings as they are fully contained within the site and there are significant separation distances from the proposed buildings to the nearest residential properties.

- 9.13 The proposal has the potential to give rise to other issues such as noise and disturbance however which is discussed in the section below.

Crime Prevention

- 9.14 The proposal does not give rise to any crime and disorder issues. The Council has consulted with the Crime Prevention Design Adviser who has no concerns about the proposals.

Noise and Pollution

- 9.15 The Council's Environmental Health team have been consulted and recommend conditions being imposed in respect of a Construction Environmental Management Plan to protect the area from noise and dust during construction works; a Noise Impact Assessment to protect existing residents and further residents from any noise emanating from the site and standard conditions relating to contamination to ensure there are no contaminants at the site that pose a risk and are required to be remediated.
- 9.16 The use of the site for larger events does not require planning permission and this can be undertaken in any case for no more than 28 days in a calendar year. This permission does not grant consent for the applicant to use the site for large events more frequently than those granted by permitted development rights.

Flooding and Drainage

- 9.17 The site is located on the River Cherwell therefore some of the site is in either Flood Zone 2 or 3 or the River Back Top. The traditional barn proposed to be reconstructed is in Flood Zone 3.
- 9.18 The Environment Agency have been consulted on the application and were only concerned about the barn to be reconstructed as this falls within Flood Zone 3. After amendments were made to the Flood Risk Assessment and the design of the barn, they are now satisfied with the proposals as the barn will now incorporate a void area below the finished floor levels (i.e. to allow the internal floor level to be raised).
- 9.19 The Lead Local Flood Authority consider matters in relation to surface water drainage and requested a Drainage Strategy to be submitted. This has been assessed and considered to be acceptable with conditions imposed.
- 9.20 Thames Water have been consulted and have no objections to the proposal from a waste water/surface water perspective. Informative are recommended.

Archaeology

- 9.21 Although the site is located within various archaeological assets, the Council has consulted with Archaeology and they have no comments to make on the proposals.

Ecology and Trees

- 9.22 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 Local Planning Authorities 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.
- 9.23 Natural England'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
- 9.24 It also states that LPA's can also ask for:
- a scoping survey to be carried out (often called an 'extended phase 1 survey'), which is useful for assessing whether a species-specific survey is needed, in cases where it's not clear which species is present, if at all
 - an extra survey to be done, as a condition of the planning permission for outline plans or multi-phased developments, to make sure protected species aren't affected at each stage (this is known as a 'condition survey')

Section 40 of the Natural Environment and Rural Communities Act 2006 (NERC 2006) states that *"every public authority must, in exercising its functions, have regard ... to the purpose of conserving (including restoring / enhancing) biodiversity"*.

Strict statutory provisions apply where European Protected Species (EPS) are affected, as prescribed in Regulation 9(5) of Conservation of Habitats and Species Regulations 2010. When determining a planning application that affects a EPS, local planning authorities must have regard to the requirements of the EC Habitats Directive which states that "a competent authority, in exercising any of their functions, must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions".

Under Regulation 41 of the Conservation Regulations 2010 it is a criminal offence to cause harm to a EPS and/or their habitats which includes damage or destruction of a breeding site or resting place. However, licenses from Natural England for certain purposes can be granted to allow otherwise unlawful activities to proceed when offences are likely to be committed, but only if 3 strict legal derogation tests are met which include:

- 1) Is the development needed for public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature?
- 2) Is there any satisfactory alternative?
- 3) Is there adequate compensation being provided to maintain the favourable conservation status of the species?

In order for the local planning authority to discharge its legal duty under Reg 9(5) of the Conservation Regulations 2010 when considering a planning application where EPS are likely or found to be present at the site or surrounding area, local planning authorities must firstly assess whether an offence under the Regulations is likely to be committed. If so, the local planning authority should then consider whether Natural

England would be likely to grant a licence for the development. In so doing to authority has to consider itself the 3 derogation tests above.

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 Natural England will not grant a licence then the Council should refuse planning permission; if it is likely or unclear whether Natural England will grant the licence then the Council may grant planning permission.

In this case the site is in a rural area, adjacent to the River Cherwell, close to a canal and within 2km of various local wildlife sites providing trees, hedgerow and grassland habitat. There are also various agricultural and redundant buildings at the site creating various opportunities for protected species to be present at the site.

The application is supported by a detailed protected species survey (amended on 14th March 2021) which concluded that the development would have no significant impact on protected species. The proposals also include a Woodland Creation Plan as part of biodiversity enhancements at the site.

Natural England were consulted on the application and made no comments on the application. The Council's Ecologist has also been consulted and confirmed that the proposal will not have a significant impact on protected species and that the biodiversity enhancements are acceptable. Conditions are recommended to ensure the mitigations and enhancements are implemented correctly.

10 CONCLUSION

- 10.1 The proposal therefore accords with Policies SS1, SS2, EMP4, EMP6, INF2, HE2, HE6, NE2, NE4, NE5 and NE6 of the adopted Local Plan, policies S1, S2, S7, S8, S10, S11, RC1, RC2, BN2, BN3, BN5, BN7, BN7A, BN9, R1 and R2 of the JCS and/or the following material considerations: NPPF, the PPG, and the Council's SPD on Parking and the SNC Design Guide.

Case Officer	Maria Philpott	Date	30/06/2021
Authorising Officer	Emily Shaw	Date	08.07.2021