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WEST OXFORDSHIRE DISTRICT COUNCIL

LOWLANDS PLANNING SUB COMMITTEE 12TH DECEMBER 2016

PLANNING APPLICATION FOR THE CHANGE OF USE OF THE ZINC BUILDING, VENTURA WAY, CARTERTON FROM OFFICES TO FLATS (REF 16/02349/FUL)

REPORT OF THE HEAD OF PLANNING AND STRATEGIC HOUSING

(Contact: Phil Shaw, Tel: (01993 861687)

(The decisions on this matter will be resolutions)

1. PURPOSE

To determine the application for Planning Permission having also had due regard to the legal advice contained in exempt Appendix A and the valuation advice in exempt Appendix B.

2. RECOMMENDATION

That Planning Permission be **REFUSED** on the terms set out in the report.

3. BACKGROUND

- 3.1. This application is appearing before Members as an agenda item as the recommendation relies in part upon (1) valuation advice which is exempt as it relates to the financial and business affairs of the Council and (2) legal advice which is exempt as it is information in respect of which a claim to legal professional privilege could be maintained in legal proceedings. It is not in the public interest to disclose either of these. As such there will be the need to move into confidential session in order for the valuation and legal advice to be debated. The debate as to the remaining planning matters and recommendation/resolution will of course be held in public session.
- 3.2. Members will recall that when the Shilton Park housing scheme was developed, the land adjoining the West Oxfordshire Business Park was also allocated for commercial use. That site received planning permission for commercial use and is now largely built out and occupied. The building the subject of this application is a three storey office building located adjacent to the Council's leisure centre car park. Other boundaries of the site abut trading commercial uses including open storage. The proposal seeks to convert the existing building from offices to use as 15 flats. There will be no material external changes and each flat will benefit from a parking space with 4 additional spaces provided. No useable outside amenity areas are provided. The key plans will be displayed as part of the officer presentation to committee.
- 3.3. Members will recall that the Government relatively recently introduced a permitted development right that, subject to certain criteria, enabled the change of use of offices to residential use without the need for planning permission but rather subject to a separate 'prior approval' process. The building the subject of this application was subject to such a prior approval application - which was refused on the basis that it involved significant physical works that of themselves also required planning permission.

- 3.4. A second such prior approval application was also refused, as in the interim period the Council had made the site the subject of an article 4 direction that had the effect of withdrawing the permitted development right. The report confirming the article 4 direction on this particular site went to Cabinet on 22/6/2016. It indicated inter alia that the loss of the office floorspace would prejudice the proper planning of the District and adversely affect the supply of high quality premises in Carterton with the high cost of replacement meaning replacement was unlikely. The Secretary of State has confirmed that he does not wish to intervene in the imposition of the article 4 direction. Thus the change of use now sought needs planning permission.
- 3.5. Whilst the article 4 direction means that the change of use now needs planning permission there is an additional consequence that does not apply to conventional planning applications. As the article 4 direction came into effect on the same day it was made (which was 29th February 2016) then if within a 12 month period from this date a planning application is received which the Council refuses consent for or imposes conditions that are more onerous than those contained in the General Permitted Development Order the Council opens itself up to the risk of paying compensation to the owner of the Zinc building. Officers have therefore sought legal and valuation advice which is exempt information. The key elements of the legal advice is set out in Appendix A and valuation advice in Appendix B.

Consultations

- 3.6. OCC - No objections on Highway, Archaeology or Education grounds.
- 3.7. Carterton TC - The site is in the middle of an industrial park near a tyre warehouse, a leisure centre and other industrial units. There is no other housing nearby. The development would be dangerous for children. The industrial estate would have a noise impact on residents of the new flats. The area is short of industrial sites. Submission by planning agent was inaccurate. Area likely to be developed in the future for football pitches which will have strong lighting. Has the rental price been put artificially high to prevent the premises being rented? In planning terms the Committee wish to object on the following terms:
- 3.8. Adequacy of parking loading and turning - although there are 1.2 spaces in reality with 2 bedroom dwelling there are likely to be 35 cars resident at the site. The roads are used to park vehicles at the moment.
- Traffic generation
Noise and disturbance resulting from use - the residents may be subject to noise from the industrial estate.
Disabled persons access - the access for disabled persons was not clear from the attached documentation. The development appeared to contravene local planning policies.
- 3.9. Thames Water - No objection.
- 3.10. Contamination - No objection.
- 3.11. Env Health - Initially raised no objections but following a request to visit the site commented as follows:
- 3.12. Following my site visit this morning I have the following new observations:
- Adjacent the proposal site to the north is a commercial fencing contractor known as Warefence Ltd, Unit 7, Ventura Park OX18 1AD. The current proposal for Zinc building has not rated the noise from this business and this oversight needs to be

corrected by a technical noise report assessment which rates the impact and impulsive character of the likely noise from metal fencing/poles being delivered and loaded-up etc. I would expect to see the methodology defined in BS 4142:2014 'Methods for rating and assessing industrial and commercial' sound used in this assessment.

- In addition, there are other potential sources of commercial and industrial type noise which have not been addressed by the applicants. For example noise from Cotswold Vehicle Recovery (CVR) which is also to the north of the proposal site. CVR activity can and should be assessed according to BS 4142:2014. There are a range of commercial companies in the vicinity. The scope of noise assessment/s may need to extend beyond that of Warefence and CVR.
- To the south is a plot of land (0.33 acres) for sale as 'serviced building plot' (B1/B2/B8). This is also of concern in terms of potential noise impact in the future.

3.13. The response of the EHO in respect of the updated noise assessment provided by the applicant will be reported verbally to members if received in time for the meeting.

Representations

3.14. None received

Applicants Case

3.15. Writing in support of the application the agent has tabled a considerable volume of technical and other information which may be viewed in full on line or upon request to the case officer. The summary of the planning statement is reported in full below:

3.16. In summary, Carterton and Ventura Park is a sustainable location and a deliverable site for much needed housing. The additional units will make use of an brownfield site, will allow the site to come forward as a viable housing scheme, will provide accommodation of a size which reflects local needs and will critically add to the Council's five-year housing land supply. It is also relevant to note that the grant of planning permission will result in capital receipts to the Council in the form of rates paid by each householder and in terms of the new homes bonus, and a significantly limited compensation claim when considered against the likely claim to be made in the event of a refusal of planning permission. Therefore, the NPPF presumption in favour of sustainable development is an overriding consideration and the delivery of housing on the site and the resultant social and economic benefits weigh heavily in favour of allowing the proposal. It is therefore respectfully requested that the application be approved.

3.17. The summary of the Noise Assessment tabled during the course of processing the application advises as follows:

Hepworth Acoustics has undertaken a noise assessment out a noise assessment relating a proposed development, from office use to residential, across the each of the three floors of Zinc Building, Carterton. A noise survey has been undertaken at the site and daytime and night-time noise levels have been determined. The measured noise levels have been assessed against the relevant British Standard guidelines. It has been concluded that noise associated with neighbouring commercial uses will not have an unacceptable noise impact on occupants of the proposed development.

Planning Policies

3.18. The key planning policies are E6 of the adopted local plan, E1 of the emerging local plan and the provisions of the NPPF when taken as a whole.

Planning Assessment

3.19. It is considered that the key planning issues when determining this application are:

- Policy/principle
- Housing land supply
- Employment land supply
- Quality of environment for occupiers
- Impact on adjoining commercial users
- Highways/other technical matters

3.20. Additionally members will also need to have regard to the potential extent of compensation payable by the Council if the application is refused as this is also a material planning consideration.

3.21. Dealing with the first key issue the application site is and iconic building located at the entrance to an area of land allocated and consented for employment use and is occupied and trading. Whilst not at the present time carrying full weight our planning policies (adopted E6 and emerging E1) in general terms seek to keep employment sites in employment use in order to retain the employment base of the district, discourage out commuting to higher order settlements, retain a balance of employment and housing uses as part of a sustainable rural economy and to reduce commuting pressure. As such housing is not usually consented in employment areas and the concerns about the impact of the “uncontrolled” change of use of employment sites to residential use were at the heart of the decision to impose the article 4 direction to bring the matter back under planning control. In the context of the recent appeal for the provision of housing at an established employment site in Downs Road/Burford Rd Witney the appeal inspector supported the retention of the land for employment purposes recognising the validity of these arguments in that particular case. In that arguably Carterton is more peripheral to the main alternative economic centres of employment than was the case in Witney and that the Carterton economy is more fragile it could be considered that this places more emphasis on retaining these modern trading employment facilities and resisting non employment uses. However, it must also be recognised that in introducing the new permitted development right the Government were signalling that they place considerable emphasis on the provision of housing. In that regard the advice of NPPF at paragraph 51 sets out that a LPA “should normally approve planning applications for change of use to residential use and any associated development from commercial buildings (currently in the B class) where there is an identified need for additional housing in that area, provided that there are not strong economic reasons why such development would be inappropriate”. In enabling Members to perform this balance between need and harms it is therefore necessary to look first at the housing land supply position.

3.22. Members will be aware that as part of the SE Plan that a housing build rate for the District of approx 300 dwellings per annum(dpa) was required and that as part of the case put to the Local Plan Inquiry late last year it was argued that a figure of 525 dpa was appropriate and represented a step change in delivery. The Inspector determined that the case for 525dpa had not been made out and opined that the figure lay somewhere between that figure and the 660 set out in the SHMA. As an option he offered the opportunity for the Council to commission work to explore further some of the factors in the SHMA that itself recognised as potentially inflating the numbers as they applied to WODC - but on the proviso that if this route was taken we would also need to factor in any unmet need from Oxford City as part of the overall target. The Council decided to commission that work

and has agreed a target of 660 units with the shortfall addressed through the so called “Liverpool “method which will be put forward shortly in the context of the revised emerging plan. However, in the interim with no guarantee that the Liverpool method will be accepted by the Local Plan Inspector the supply falls below the targets that would be applicable were the alternative Sedgfield methodology for dealing with the backlog used such that the Council is not in a position to claim a 5 year housing land supply and a series of recent appeal decisions have reinforced that point. In a position where no 5yhl is in place the policies of the adopted plan are considered out of date and the so called tilted balance of paragraph 14 of the NPPF is invoked where development should be approved unless the harms of so doing significantly and demonstrably outweigh the benefits of so doing when assessed against the provisions of the NPPF taken as a whole. The lack of a 5 year land supply and application of the tilted balance thus weigh strongly in favour of approval of the application- albeit that the housing provided would only go a very small way to meeting the likely identified needs and the units provided are not of a form or mix that would meet the demographic needs of the District as set out in the emerging plan.

- 3.23. In terms of the employment land supply much of the rationale as to why the building was made the subject of the article 4 direction remains pertinent in terms of the potential for there being “strong economic reasons” why residential use should not be allowed. The West Oxfordshire Economic Snapshot (January 2015) identifies that West Oxfordshire has an existing undersupply of office space. It also identifies that build costs for office buildings are high and that the viability for building speculative office space is questionable. The loss of the office floorspace in the Zinc Building through a change of use to residential will inevitably have a negative impact on the supply of office floorspace in Carterton, and in the District, as it appears unlikely that new office premises will be built to replace this stock if it is lost to office use. The emerging local plan directs employment uses towards Land at Ventura Park and identifies Ventura Park as a key employment site. Policy E6 of the adopted local plan states “that retaining a wide range of existing employment sites throughout the district plays an important part in maintaining and promoting a balance between employment and housing both in urban and rural areas. Retaining existing sites is as important as promoting new ones. Whilst the impact of the loss of a single employment site may be small, the cumulative impact of the loss of a series of sites can be significant in terms of job losses and reduction in economic activity.” Furthermore the West Oxfordshire Economic Snapshot (January 2015) identifies that West Oxfordshire has an undersupply of office space and that the loss of any further units will have a negative impact. Referring to the office market in the district, the Snapshot states, “A number of schemes have been created in the centre of Witney in recent years, and a few in Chipping Norton, Long Hanborough and Carterton. But the schemes are small scale and availability is shrinking. While there is some availability, this tends to be older, town centre stock. The identified need is for more purpose-built stock that will allow firms to move from starter units into better specified buildings and in sites where there are other office occupiers.” The emerging local plan also emphasises the importance of retaining existing employment sites. Para 6.26 states, “There are many existing employment sites throughout the District, the loss of which would undermine the sustainability of our market towns and rural communities and the economic diversity of West Oxfordshire. The Council will therefore seek the retention of all employment sites where there is an ongoing prospect of a suitable business use and will support the expansion and redevelopment of sites of an appropriate scale to enable businesses to expand, adapt and make the most efficient use of this resource.” The Economic Snapshot also identifies Carterton as having the largest excess of workers over jobs of any sub-areas in the District. The report identifies that there are

14,000 economically active people (13,200 in employment) and, taking HM forces employment on RAF Brize Norton into account, there are in the region of 3,000 more workers than jobs in the town. The Snapshot recommends that Carterton is identified as a priority area for economic regeneration but there is a limited supply of purpose built office space in Carterton. The only modern office buildings in the town are the Zinc Building, Wesley House (across the road from Zinc) and the Airbus Defence and Space Headquarters on West Oxfordshire Business Park. There is a demand for more office space in the town and, if the Zinc building was available to let, officers are confident that it could achieve a high occupancy rate very quickly. There are companies that would like to be based in Carterton who are currently renting office space in Witney. The Zinc Building is at the entrance to Ventura Business Park and as such is surrounded on three sides by businesses in a thriving and developing business park.

- 3.24. Taking all these concerns into account your Officers consider that notwithstanding the tilted balance arising from the current inability to demonstrate a 5 year housing land supply pending the LPI determining the exact position, that the economic harms in the terms set out in paragraph 51 of the NPPF are significant and demonstrable enough by themselves to justify refusal when assessed against the policies of the NPPF taken as a whole.
- 3.25. In terms of whether there are any other significant and demonstrable harms, the amenities of the intended occupiers is clearly a key issue. The proposed units would be right next to a very well used car park and active employment uses and a number of ground floor flats would, without screening, be overlooked to a degree. Many potential employment uses are by definition not capable of being undertaken in a residential area without harm to that area by way of noise, dust, fumes, smoke etc. In that regard the Town Council has raised noise impact as a potential concern and having viewed the site in context the Council's own Environmental Health Officer similarly advised that noise may be an issue that required further assessment. It is pertinent to note that since the initial refusals of prior approval the potential impact of noise has been recognised by Government in that they have issued a revision to the previously existing permitted development right (to change from office to residential) that now allows the impact of noise on the intended occupiers to be considered as part of the prior approval process.
- 3.26. In response to the request for further information additional noise evidence has now been provided by the applicants in order to enable an assessment to be undertaken albeit that at the time of agenda preparation the final comments of the EHO have not been received. They will be reported verbally to the meeting.
- 3.27. An additional factor that goes to the quality of the residential environment is that the units have very little amenity space. To set against that factor though is that there is dedicated parking available to serve the units and the site is located close to the leisure centre, sports fields and open countryside where other recreation opportunities exist. Thus some harms may arise to the occupiers from a lack of private amenity space but in other respects they are well served by amenities that would give a reasonable standard of residential environment.
- 3.28. In terms of the impact of the incoming residents upon the trading environment of existing lawful commercial uses, the site was designed as a commercial estate with no residential occupiers in close proximity. Residents occupying the new units would however expect a reasonable standard of residential amenity and in that regard may have cause to complain about the operations on adjoining sites that impact upon them. Powers are available outside of the planning process to limit statutory nuisance but if applied to secure residential amenity this would act to inhibit employment operations of legitimate existing

occupiers and may inhibit new commercial occupiers taking up employment sites in the vicinity for fear that the neighbouring residential occupiers would complain about the impact of their activities. Again these were concerns that were supported in the context of the recent Burford Road/Downs Road appeal and are considered to justify refusal as the economic harm would outweigh the housing benefits even with the tilted balance in place.

- 3.29. With regards to highways, drainage, pollution etc the relevant statutory consultees are not raising objections and as such these aspects of the development are considered acceptable.
- 3.30. Taking all the above in the round your officers are satisfied on the planning evidence currently available that the degree of harm is such that a refusal is warranted. However before Members decide upon whether that is or is not the correct course of action it is necessary to give detailed consideration to the legal and valuation advice set out in appendices A and B. Because of the fact that the advice contained in the two appendices contains matters that potentially affect the financial position of the Council and its ability to defend any potential claim for compensation it is not considered appropriate that this is put into the public domain. However for the benefit of those persons without access to the exempt information the Council has sought specialist valuation advice as to the level of compensation that may be payable in a series of potential outcomes ranging from approving the application without conditions through issuing a conditional approval to refusing the application. Separately Counsel's opinion has been sought as to the circumstances when compensation would and would not be payable. This advice has helped to inform the options and recommendations set out below:

Summary

- 3.31. The Government has clearly flagged, by introducing the permitted development right, that it sees commercial sites as potentially contributing to housing supply. Where, as is the case for WODC at present, it is not possible to demonstrate a 5 year housing land supply, the so called tilted balance applies and there is a presumption in favour of granting approval unless the harms significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF taken as a whole. In that latter regard a recent appeal decision has confirmed that the residential development of employment sites can give rise to planning harms that notwithstanding the tilted balance do justify a refusal of permission. In this particular case the economic harms are similarly considered to justify a refusal. Additionally, when undertaking the balancing exercise as to whether the planning harm is outweighed by the harm of paying the compensation, officers consider that it does not.
- 3.32. Thus, having weighed the planning merits against the relevant provisions of the local plan, applied due weight to their status, considered the provisions of the NPPF taken as a whole and having regard to the legal and compensation advice offered your Officers recommendation is that permission be refused as follows:

That by reason of the loss of the existing modern and commercially attractive commercial premises in a location where such premises would be unlikely to be replaced, where the loss of the facility would adversely affect the local economy, where the development would result in additional commuting to higher order settlements and where the incoming residential use is likely to put pressure on the continued economic activity on adjoining sites in order to limit the impacts on the residential amenity of incoming occupiers, the proposal is considered to give rise to strong economic objections. As such the proposals would give rise to the harms identified in paragraph 51 of the NPPF and additionally would be contrary to the terms of policy E6 of the adopted WOLP and policy E1 of the emerging plan.

4. ALTERNATIVES/OPTIONS

4.1. Approve with no conditions.

This option would have the advantage of avoiding any compensation being payable. However it would mean that the commercial unit would be lost and the potential economic and other impacts would not be properly addressed. It is not therefore recommended.

4.2. Approve subject to conditions that mirror the provisions of the GPDO .The advantage of this is that it enables some of the adverse impacts to be addressed through a further prior approval process without the payment of compensation but it does not allow the economic impacts to be properly considered. It is not therefore recommended.

4.3. Approve subject to conditions- This would not address the economic harms but would enable a greater degree of control to be exercised over the new use-but if the conditions exceed the provisions of the GPDO then compensation potentially becomes payable and it goes against what the new permitted development right is seeking to achieve. It is not therefore recommended.

4.4. Refuse- This would retain the site with a lawful employment use. The decision could be appealed and would potentially put the Council at risk of paying compensation. However in light of the specialist valuation advice set out in Appendix A as to the potential levels of compensation that would be payable (and even were it to be payable the limited amount) then this is the option that is recommended.

5. FINANCIAL IMPLICATIONS

5.1. Appendix B sets out the potential levels of compensation dependant on a series of scenarios ranging from a land value of nil (but including application costs) to a larger sum as set out in the exempt appendix B. Compensation could be avoided by granting an unconditional consent or by granting consent based on the terms of the 'prior approval' process but only by agreeing to the economic harm to the District that the article 4 is seeking to avoid.

5.2. Other financial implications of refusing the permission (excluding compensation) are set out below:-

Gain (Loss avoidance)in Business Rates (District Share)	£10,000 per annum
Loss of potential Council Tax (District Share)	£1,000 per annum
Loss of potential New Homes Bonus (District Share)	£40,000 (one off)

5.3. On this basis the financial impact of refusing the application (excluding compensation) is to forego New Homes Bonus of the order of £40,000 but retain in the order of £9,000 annual revenue benefit from the additional business rates generated compared to Council Tax generated. It would therefore take just four years to recover the lost New Homes Bonus.

6. RISKS

The financial risk is set out in para. 5.1 above. Additionally, as set out in Appendix A, there are a series of scenarios that may or may not apply to the valuation of the building and which limit the ability of Officers to be explicit as to the exact amount of compensation over and above application costs (if any) that may apply. Members need to be fully aware that this uncertainty has the potential to both raise as well as lower the extent of any compensation as may become due.

7. REASONS

The retention of the building in commercial use helps to ensure a strong and vibrant rural economy to facilitate economic growth.

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