

APPLICATION NO P19/S3339/HH

THE OLD FARMHOUSE, LOWER FARM, OTMOOR LANE, BECKLEY, OX3 9TD

PROPOSED SIDE EXTENSION AND CHANGE OF USE OF AGRICULTURAL
LAND TO RESIDENTIAL GARDEN

**SUBMISSIONS ON BEHALF OF MR
JOHN OVENS**

1. These are submissions prepared on behalf of Mr John Ovens, an objector to the application and an adjoining neighbour to the property that is the subject of this application.
2. Whilst on the face of it this may appear to be a minor application, this is an application which, if granted on the basis of the officer report that has been submitted to you which recommends the grant of permission, would risk setting an extremely concerning precedent in terms of protection of the Green Belt in South Oxfordshire. It would also risk undermining key policies of the Council designed to protect the countryside.
3. The purpose of this submission is to highlight certain key points where the Committee, if it were to proceed on the basis of the current officer recommendation of the Officer's Report, would be at real risk of erring in law and misinterpreting both national and local planning policy.

(1) The approach to Policy H13 and its application to the proposed extension.

4. It is of course for the Committee to decide whether on balance the proposal accords with the development plan taken as a whole. The key policy in the local plan is clearly policy H13, which states that:

“Extensions to dwellings or the erection and extension of ancillary buildings within the curtilage of a dwelling, will be permitted provided that:

(i) in the Green Belt, outside the limits of the larger and smaller villages the extension would be no greater than 40% of the volume of the original dwelling”.

5. Critical to deciding whether the proposal accords with Policy H13 is the determination of what the volume of the original dwelling is.
6. In that respect, the Committee should be aware that when granting permission in 11 December 2009 for a first floor extension on the same building, on the face of the decision notice itself the Head of Planning, Adrian Duffield, expressly stated in the reasons for the decision: *“the property has already been extended over the 40% allowance”*.
7. The Committee is under a legal duty to act consistently with previous decisions of the Council and to provide reasons were it to decide to depart from those decisions. Having found previously that the property had as a matter of fact already been extended beyond the 40% maximum limit it would require compelling evidence that this previous assessment was wrong to justify taking a different approach. What is concerning is that the current officer report does not even mention the previous decision of the Council in this respect. He should be asked by you to explain why it is the case that this decision has not been mentioned. However, given the officer’s assessment of the evidence now submitted that is that he is not able to state with certainty one way or the other whether or not certain structures at the rear of the building were part of the original building (an issue which is dealt with in detail in below), it is very hard to see on what possible basis the Council has sufficiently compelling reasons to justify deciding to depart from its previous decision.

What is the original size of the building?

8. Mr Ovens has spent considerable time and resources commissioning independent expert reports in establishing what the volume of the original building is. Some time ago he submitted air photograph reports and an analysis by architects as to what the volume of the building was in 1948. The key documents we refer you in this respect are:
 - a. The expert report by Chris Cox of APS Limited (“the APS Report”)
 - b. The Massing Statement from Lynn Palmer Architects (“the Massing Statement”).
9. These reports read together confirm that the Council was correct in 2009 to consider that the property has already been extended over the 40% allowance.
10. The starting point is to understand that the Applicant considers the proposal falls within the H13 limit by a very small margin: 15m³.
11. The APS Report and the Massing Statement identify four coloured areas which APS considers did not exist in 1948 but which are included in the Applicant’s own figures as

being part of the original building. If you agree that any one or more of these did not form part of the dwelling-house then the proposal will not be policy compliant.

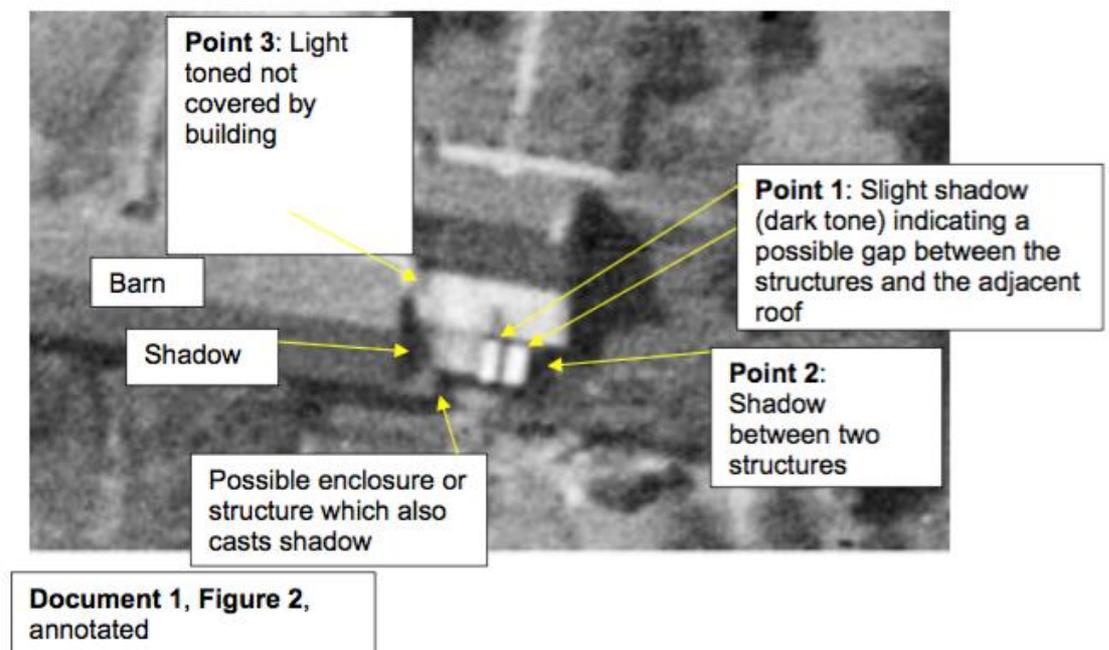
12. The Officer Report states that in relation to these structures that he “*is not able to state with certainty that these structures were mobile or not part of the building*” and that “*in the absence of independent evidence to the contrary I contend that the council should take the buildings as shown in the photograph 1947 as being the most likely form of building that was there on 1 July 1948*”.
13. With respect, your officer has adopted the wrong approach here. There is a real risk that if the Committee were to follow this advice, it would be misled as to where the burden lies when considering whether or not an extension does fall within the allowance set out in Policy H13.
14. Policy H13 imposes strict conditions that have to met in order for an extension to be considered proportionate. It is for the Applicant to demonstrate to the Committee that the extension would be no greater than 40% of the original building (not for an objector to establish otherwise). When your officer has stated that he cannot say with certainty that “the rear structures in question were not part of the building” he is getting the burden of proof wrong. He should have asked himself – and guided the Committee - that if members cannot be sure that the rear structures were part of the building in 1948, then they should assume they did not form part of the original building.
15. Worse still, the references in the officer report to “*the absence of independent evidence to the contrary*” and the contention that “*the council has no evidence that would assist in determining what the volume of the building would have been in 1948*” are both factually wrong and fail to acknowledge that the burden lies on the applicant to show what the volume of the original building is
16. Any other approach would be an unlawful misapplication of Policy H13. It would result in the policy protection and strict safeguards of Policy H13 being fundamentally undermined if the onus of accurately establishing the original building size was not placed on applicants. If the Committee is in any real doubt of the original building size, such that it cannot be sure if the 40% threshold is exceeded, it ought to conclude that there is conflict with Policy H13.
17. In any event the officer is wrong to suggest there is no independent evidence: the expert reports of APS and Lynn Palmer Architects quite clearly are independent expert reports by professionally qualified consultants. It would be unlawful to disregard those independent

expert reports in the absence of any expert evidence to the contrary: and as things stand they are unchallenged.

18. To assist the Committee to understand what the rear structures are, and where they are identified, and the difference to the overall volume calculations, the photographs below show (taken from screenshots of the APS Report and dated to 1947) show where the structures alleged to form part of the original building are:



Figure 3



Document 1, Figure 2, annotated



Figure 1. Aerial photograph. Ref: 3008, Year 1947
Historic England

Document 1, Figure 1,
unannotated for clarity

8
Christine Diane Cox BA MA MCIFA FSA
Interpretation of aerial imagery
Lower Farm Beckley, 1948 building extent

19. The table below (prepared by Mr Oven’s planning consultant Jeff Lowe Planning Consultants (“JPLC”) and submitted to SODC on 15 May 2020 but not referred to by the officer in his report) sets out in the right hand column headed “Difference from limit on volume” the reduction in the volume now available to the Applicant the removal of each of those structures from the original building calculation would effect:

Coloured Area	Volume	APS Expert Aerial Photography Analysis	JLPC comment	Deduction from limit on volume (H13)
Red	11m3	<p><i>“They cast shadows as pointed out above, and those shadows indicate that they are likely to have been:</i></p> <ul style="list-style-type: none"> <i>• Two separate closely adjacent structures;</i> <i>• Not attached to the adjacent house to the immediate south – there are visible shadows between the structures and the house.”</i> 	<p>This area clearly contains two detached, moveable structures/objects, that are not physically attached to the house.</p>	15.4m3
Blue	11m3	<p><i>“... a) there are faint lines or possible shadow running north to south or top to bottom of the photograph through the middle of this area and between the objects and the extension b) that the easterly or left hand part of these objects appears slightly shorter than the westerly or right hand object.”</i> Concludes</p>	<p>This area most likely contains two closely adjacent moveable objects that are not physically attached to the house. It is not a single object as represented by the Applicant</p>	15.4m3

		photos indistinct in this area but possibly two “closely adjacent moveable objects not connected to the house”		
Green	25m3	<i>“In my view it is quite possible that in 1947 there was an access way between the Extension and the Barn giving access to the farmyard from the rear of the farmhouse. Any access may possibly have led to a small rectangular enclosed area which casts a shadow.”</i>	On the balance of probability, it is highly likely that that this area was open ground providing an access way between the house and the barn leading to both the farmyard (front) and a small enclosed area (rear). This is supported by the fact that a part of this area abuts the extension wrongly represented by the Applicant as covering the yellow area (see below)	35m3
Yellow	15m3	<i>“It is clearly possible to see the ground between the Extension and the Barn in this area. I am therefore able to conclude that the Extension does not immediately abut the Barn in this area. There is a clear gap between the two buildings.”</i>	The main rear extension clearly did not abut the barn at its southernmost end.	21m3

20. Whilst the committee has the benefit of expert reports, it is clear when viewing the aerial photography merely with the naked eye that the position is as stated in the comments by JPLC in fourth column in the above table.

(2) The change of use from agricultural land to garden land

21. The critical issue here is whether or not the change of use of land from agricultural to garden land is inappropriate development for the purposes of national policy protecting the Green Belt.
22. The officer report - if followed by the Committee – is, with respect, entirely wrong in its conclusion that this change of use can fall within paragraph 146(e) of the NPPF.
23. Paragraph 146 of the NPPF states as follows:

146. Certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These are:

a) mineral extraction;

b) engineering operations;

c) local transport infrastructure which can demonstrate a requirement for a Green Belt location;

d) the re-use of buildings provided that the buildings are of permanent and substantial construction;

e) material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds); and

f) development brought forward under a Community Right to Build Order or Neighbourhood Development Order.

24. The officer report when assessing appropriateness of this proposal for the purposes of NPPF paragraph 146 appears to have focussed on an exercise of comparing the relative impact of the proposed change of use to a garden to some of the examples expressly set out at paragraph 146(e). This is the wrong approach – a two stage test applies: firstly, whether it preserves openness and whether it does not conflict with the Green Belt purposes.
25. Neither of those two tests have been properly applied.
26. There is no assessment at all whether the proposal conflicts with the Green Belt purposes: the most important one being that set out at paragraph 134(a): “to assist in safeguarding the countryside from encroachment”. This is exactly what allowing an agricultural use to change to a garden use would enable: the incremental encroachment of development into the Green Belt.
27. Worse still, in his report the officer has failed to refer Committee members to the various Inspectorate decisions submitted by Mr Ovens as part of his objection where it was expressly held that a change of use to a garden would have an impact on openness. “The Noke Appeal” and “The Chelmsford Appeal” are defined in the objection letter, and the key parts of the analysis by the Inspectors in those decisions are set out below for ease of reference:

“ While the access drive might be said to maintain the openness of the Green Belt, because it is simply a flat surface, I consider that it conflicts with the purposes of including land in the Green Belt because, through the parking that it facilitates, it leads to Urban sprawl and it does not safeguard the countryside from encroachment.

I conclude that the access drive is inappropriate in the Green Belt and, therefore, harmful to it.

The use of the Appeal Site for ancillary residential purposes has the clear potential for reducing the openness of the green Belt. If planning permission were to be granted for this use it would become part of the residential curtilage of the cottage. The land could be used for all manner of domestic purposes, including a wide range of gardening activity involving the placing of garden furniture, play equipment sheds and greenhouses and other garden paraphernalia on the land. I consider that the grant of planning permission....could well harm the openness of the Green Belt ..The Appellants havesuggested a willingness to comply with conditions removing GPDO rights.... These Planning Conditions would, if properly adhered to, go a long way to overcoming the harm caused. However, these conditions are not, in my view, reasonable.....If such conditions were imposed I doubt they would be fully complied with.” (The Noke Appeal paras 26-30)

28. Note that proposal considered in that appeal included a driveway within the area for which change of use was sought and it was held that removal of permitted development rights was insufficient to alter the decision to refuse consent.

29. In the Chelmsford appeal decision, the following was held:

“I note that the proposal does not specifically incorporate any new structures. However, were the land to be used for residential amenity, this could, over time, result in the placement or storage of items normally associated with domestic use; examples being garden planters and furniture, parked vehicles, and play equipment. A fundamental aim of Green Belt Policy is to prevent urban sprawl by protecting the openness of land, which one of the key characteristics of the Green Belt. A loss of openness can occur through urban encroachment, and even a small loss would be in conflict with the aims of Green Belt designation.

Such encroachment or intrusion would result in a loss of openness within the site, with the impact visible from the public footpath, road, and surrounding land. I conclude that such a loss would result be harmful to the Green Belt and would conflict with the Framework, which notes at paragraph 79 that the aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, which is an essential characteristic of the Green Belt” (The Chelmsford Appeal paras 9-10)

30. It is difficult to understand why the officer has chosen to ignore these decisions which so closely mirror the facts of the case being considered by the Committee in this instance. They are material considerations and ought to be considered.

31. Furthermore, the officer:

- a. Wrongly discounts the very real possibility of the land becoming part of the domestic curtilage of the building.

- b. Fails to acknowledge that in 2000 when granting permission for the barn conversion and extension to the existing building (and therefore on the same land covered by this application), the Council expressly stated on the face of the decision notice that "*...planning permission is unlikely to be granted for any further change of use of land to garden land in this location*". The reason for that was precisely because of the need to protect the Green Belt. Again, there is a concerning lack of consistency with a previous Council decision.
 - c. Fails to acknowledge that an assessment of openness as a matter of law can entail both a spatial element and a visual element: see the recent decision of the Supreme Court in Samuel Smith Old Brewery Tadcaster v North Yorkshire County Council and Dorrington Quarries [2020] UKSC 3. In that regard, the comparison with agricultural land (which the officer relies on in his assessment of impact on openness), fails to take into account the very different visual impact that domestic paraphernalia has to agricultural machinery and equipment.
32. To make this point, and to be clear what the visual impact is the Committee is referred to the photomontages at Annex A to this submission. This should assist the Committee in being able to form a view of the visual impact of the introduction of domestic paraphernalia into an agricultural field. It is clear on any analysis and consideration of previous Inspectorate decisions that it does not "preserve openness" – and that is one of the two keys test that should have been applied by the officer when assessing Green Belt policy.
33. In summary, this proposal is clearly both contrary to the development plan and contrary to national Green Belt policy. There are no material considerations suggested by the Applicant which would outweigh the conflict with the development plan, and permission should be refused.

JAMES NEILL

Landmark Chambers

29 June 2020

Annexes:

Annex A: Lower Farm Photomontages



Camera make & model	Canon EOS 1200D	Viewpoint height (AOD)	60m	Visualisation Type	N/A	NOTES: TO BE VIEWED AT A COMFORTABLE ARMS LENGTH
Lens make & focal length	40mm	Distance from site	335m	Horizontal Field of View	31° (Approximate)	
Date of photograph	20/01/2020	Projection	Planar	Height of camera AGL	1.5m	
OS grid reference	456361, 212609	Enlargement / Sheet Size	100% @ A3	Page size / Image size(mm)	420 x 297 / 390 x 260	

**VISUALISATION VIEWPOINT 1
EXISTING VIEW**

View from Bridleway 123/8/20



Camera make & model	Canon EOS 1200D	Viewpoint height (AOD)	60m	Visualisation Type	N/A
Focal length	40mm	Distance from site	335m	Horizontal Field of View	31° (Approximate)
Date of photograph	20/01/2020	Projection	Planar	Height of camera AGL	1.5m
OS grid reference	456361, 212609	Enlargement / Sheet Size	100% @ A3	Page size / Image size(mm)	420 x 297 / 390 x 260

NOTES:
 TO BE VIEWED AT A COMFORTABLE ARMS LENGTH
 FOR ILLUSTRATIVE PURPOSE ONLY.

**VISUALISATION VIEWPOINT 1
 ILLUSTRATIVE VISUALISATION VIEW**

View from Bridleway 123/8/20



Camera make & model	Canon EOS 5D Mark IV	Viewpoint height (AOD)	60m	Visualisation Type	N/A
Focal length	176mm	Distance from site	335m	Horizontal Field of View	12' (Approximate)
Date of photograph	02/01/2020	Projection	Planar	Height of camera AGL	1.5m
OS grid reference	456361, 212609	Enlargement / Sheet Size	100% @ A3	Page size / Image size(mm)	420 x 297 / 390 x 260

NOTES:
 TO BE VIEWED AT A COMFORTABLE ARMS LENGTH
 FOR ILLUSTRATIVE PURPOSE ONLY.

**VISUALISATION VIEWPOINT 1
 ILLUSTRATIVE VISUALISATION VIEW**

View from Bridleway 123/8/20



© 2019 MICROSOFT © 2019 HERE

Camera make & model	Canon EOS 1200D	Viewpoint height (AOD)	60m	Visualisation Type	N/A	NOTES: TO BE VIEWED AT A COMFORTABLE ARMS LENGTH
Lens make & focal length	40mm	Distance from site	332m	Horizontal Field of View	31° (Approximate)	
Date of photograph	20/01/2020	Projection	Planar	Height of camera AGL	1.5m	
OS grid reference	456473, 212617	Enlargement / Sheet Size	100% @ A3	Page size / Image size(mm)	420 x 297 / 390 x 260	



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**VISUALISATION VIEWPOINT 2
 ILLUSTRATIVE VISUALISATION VIEW**

View from Bridleway 123/8/20



© 2019 MICROSOFT © 2019 HERE

Camera make & model	Canon EOS 5D Mark IV	Viewpoint height (AOD)	60m	Visualisation Type	N/A	NOTES: TO BE VIEWED AT A COMFORTABLE ARMS LENGTH FOR ILLUSTRATIVE PURPOSE ONLY.
Lens make & focal length	176mm	Distance from site	332m	Horizontal Field of View	12' (Approximate)	
Date of photograph	02/01/2020	Projection	Planar	Height of camera AGL	1.5m	
OS grid reference	456473, 212617	Enlargement / Sheet Size	100% @ A3	Page size / Image size(mm)	420 x 297 / 390 x 260	

VISUALISATION VIEWPOINT 2
ILLUSTRATIVE VISUALISATION VIEW

View from Bridleway 123/8/20



Camera make & model	Canon EOS 5D Mark IV	Viewpoint height (AOD)	60m	Visualisation Type	N/A
Lens make & focal length	400mm	Distance from site	332m	Horizontal Field of View	5° (Approximate)
Date of photograph	02/01/2020	Projection	Planar	Height of camera AGL	1.5m
OS grid reference	456473, 212617	Enlargement / Sheet Size	100% @ A3	Page size / Image size(mm)	420 x 297 / 390 x 260

NOTES:
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**VISUALISATION VIEWPOINT 2
 ILLUSTRATIVE VISUALISATION VIEW**

View from Bridleway 123/8/20