

Cherwell District Council
Planning & Development Services
Bodicote House White Post Road
Bodicote
Banbury
OX15 4AA

Our ref: WA/2022/129953/03-L01

Your ref: 22/01682/F

Date: 05 June 2024

Dear Sir/Madam

Development Of A Ground Mounted Solar Farm Incorporating The Installation Of Solar PV Panels, Associated Infrastructure And Access, As Well As Landscape Planting And Designated Ecological Enhancement Areas

Land North Of Manor Farm, Noke

Thank you for re-consulting us on the above application on 15 December 2024, following the submission of additional information and thank you for agreeing an additional timeframe for the provision of our comments.

Environment Agency position

We have reviewed the additional information and consider that it satisfactorily addresses our earlier concerns. Subject to the three conditions below, we therefore withdraw our previous objection, dated 08 September 2022.

Condition 1 – Flood risk

Prior to commencement of development a scheme to provide compensatory floodplain storage for loss of floodplain storage for all floods up to and including the 1% climate change flood level, based on a level for level and volume for volume principles, shall be submitted to, and approved in writing by, the local planning authority.

The scheme shall be fully implemented and subsequently maintained, in accordance with the scheme's timing/ phasing arrangements, or within any other period as may subsequently be agreed, in writing, by the local planning authority.

Reasons

This condition is in accordance with paragraph 173 of the National Planning Policy Framework (NPPF) and seeks to prevent increased flooding to third parties.

Did you know that in the UK, 6.6 million tonnes of household food waste a year is thrown away? Almost three quarters of that is food which could have been eaten. Do your bit to avoid domestic food waste to fight climate change! www.lovefoodhatewaste.com www.wrap.org.uk

Condition 2 – Buffer Zone

No development shall take place until a scheme for the provision and management of a 10 metre wide buffer zone alongside the watercourse has been submitted to, and approved in writing by, the local planning authority.

Thereafter, the development shall be carried out in accordance with the approved scheme. Any subsequent variations shall be agreed in writing by the local planning authority, in which case the development shall be carried out in accordance with the amended scheme. The buffer zone shall be free from built development including lighting, domestic gardens and formal landscaping. The scheme shall include:

- plans showing the extent and layout of the buffer zone
- details of proposed planting scheme (native species)
- details demonstrating how the buffer zone will be protected during development
- details of any proposed footpaths, fencing, bridges, lighting, etc

Reasons

This approach is supported by paragraphs 180 and 186 of the National Planning Policy Framework (NPPF) which recognise that the planning system should conserve and enhance the environment by minimising impacts on and providing net gains for biodiversity. If significant harm resulting from a development cannot be avoided, adequately mitigated, or as a last resort compensated for, planning permission should be refused. Without this condition we would object to the proposal because it cannot be guaranteed that the development will not result in significant harm to the river corridor.

Our position is also supported by Local Plan policies and paragraphs which recognise the importance of river corridors as linear features through urban areas (ESD 9, paragraph B.236). This paragraph also states that “developers will be expected to incorporate and enhance such feature within a site wherever possible” Paragraph B.237 also states that “surveys should include consideration of the site’s value as a wildlife corridor and the contribution it makes to ecological networks”.

Condition 3 – LEMP

No development shall take place until a landscape and ecological management plan, including long-term design objectives, management responsibilities and maintenance schedules for the ecological buffer zone along the River Ray and ecological enhancements has been submitted to, and approved in writing by, the local planning authority. The landscape and ecological management plan shall be carried out as approved and any subsequent variations shall be agreed in writing by the local planning authority.

The scheme shall include the following elements:

- details of maintenance regimes for the ecological buffer along the River Ray
- details of any new habitat or enhancements created on-site which should include the island and the corner of the current arable site, including planting and ongoing maintenance including how the island will be accessed for maintenance
- details of management responsibilities

Reasons

Land alongside watercourses is particularly valuable for wildlife and it is essential this is protected. This is especially important at this site to ensure the protection of wildlife and supporting habitat of the River Ray corridor and the Otmoor Local Wildlife Site/RSPB reserve and Otmoor SSSI.

This approach is supported by paragraphs 180 and 186 of the National Planning Policy Framework (NPPF) which recognise that the planning system should conserve and enhance the environment by minimising impacts on and providing net gains for biodiversity. If significant harm resulting from a development cannot be avoided, adequately mitigated, or as a last resort compensated for, planning permission should be refused.

These conditions are also supported by legislation set out in the Natural Environment and Rural Communities Act 2006 and Article 10 of the Habitats Directive which stresses the importance of natural networks of linked corridors to allow movement of species between suitable habitats, and promote the expansion of biodiversity.

In addition, our position is supported by Local Plan policies and paragraphs which recognise the importance of river corridors as linear features through urban areas (ESD 9, paragraph B.236). This paragraph also states that “developers will be expected to incorporate and enhance such feature within a site wherever possible” Paragraph B.237 also states that “surveys should include consideration of the site’s value as a wildlife corridor and the contribution it makes to ecological networks.

Sequential test – advice to Planning Authority

What is the sequential test and does it apply to this application?

In accordance with the National Planning Policy Framework (paragraph 168), development in flood risk areas should not be permitted if there are reasonably available alternative sites, appropriate for the proposed development, in areas with a lower risk of flooding. The sequential test establishes if this is the case.

Development is in a flood risk area if it is in Flood Zone 2 or 3, or it is within Flood Zone 1 and your strategic flood risk assessment shows it to be at future flood risk or at risk from other sources of flooding such as surface water or groundwater.

The only developments exempt from the sequential test in flood risk areas are:

- Householder developments such as residential extensions, conservatories or loft conversions
- Small non-residential extensions with a footprint of less than 250sqm
- Changes of use (except changes of use to a caravan, camping or chalet site, or to a mobile home or park home site)
- Applications for development on sites allocated in the development plan through the sequential test, which are consistent with the use for which the site was allocated.

Avoiding flood risk through the sequential test is the most effective way of addressing flood risk because it places the least reliance on measures such as flood defences, flood warnings and property level resilience.

Who undertakes the sequential test?

It is for you, as the local planning authority, to decide whether the sequential test has been satisfied, but the applicant should demonstrate to you, with evidence, what area of search has been used. Further guidance on the area of search can be found in the planning practice guidance [here](#).

What is our role in the sequential test?

We can advise on the relative flood risk between the proposed site and any alternative sites identified - although your strategic flood risk assessment should allow you to do this yourself in most cases. We won’t advise on whether alternative sites are reasonably available or whether they would be suitable for the proposed development. We also won’t advise on whether there are sustainable development objectives that mean

steering the development to any alternative sites would be inappropriate. Further guidance on how to apply the sequential test to site specific applications can be found in the planning practice guidance [here](#).

Exception test – advice to Planning Authority

In accordance with the National Planning Policy Framework (paragraphs 170 and 171), the proposed development is appropriate provided that the site meets the requirements of the exception test. Our comments on the proposals relate to the part of the exception test that demonstrates the development is safe. The local planning authority must decide whether or not the proposal provides wider sustainability benefits to the community that outweigh flood risk.

The exception test should only be applied as set out in flood risk table 3 of the Planning Practice Guidance (PPG) following application of the sequential test. The exception test should not be used to justify the grant of planning permission in flood risk areas when the sequential test has shown that there are reasonably available, lower risk sites, appropriate for the proposed development.

In those circumstances, planning permission should be refused, unless you consider that sustainable development objectives make steering development to these lower risk sites inappropriate as outlined in PPG (ref ID: 7-033-20140306).

Our role in the exception test

The exception test is in two parts, described in the NPPF (paragraph 170). In order for the test to be passed it must be demonstrated that

1. The development would provide wider sustainability benefits to the community that outweigh flood risk; and
2. The development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.

Paragraph 171 of the NPPF makes clear that both parts need to be met for the test to be satisfied. It is for the applicant to demonstrate this.

We provide advice on the second part of the test, but it is for you, as the local planning authority, to consider the first part of the test, accounting for the findings of the flood risk assessment and our flood risk advice, and to determine whether the test, overall, has been satisfied. Development that does not satisfy both parts of the exception test should be refused.

Where the flood risk assessment shows the development will be safe throughout its lifetime without increasing flood risk elsewhere

Even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, there will always be some remaining risk that the development will be affected either directly or indirectly by flooding. You will need to weigh these risks against any wider sustainability benefits to the community.

Environmental permit - advice to applicant

The Environmental Permitting (England and Wales) Regulations 2016 require a permit or exemption to be obtained for any activities which will take place:

- on or within 8 metres of a main river (16 metres if tidal)
- on or within 8 metres of a flood defence structure or culverted main river (16 metres if tidal)

- on or within 16 metres of a sea defence
- involving quarrying or excavation within 16 metres of any main river, flood defence (including a remote defence) or culvert
- in a floodplain more than 8 metres from the river bank, culvert or flood defence structure (16 metres if it's a tidal main river) and you don't already have planning permission

For further guidance please visit <https://www.gov.uk/guidance/flood-risk-activities-environmental-permits> or contact our National Customer Contact Centre on 03708 506 506 (Monday to Friday, 8am to 6pm) or by emailing enquiries@environment-agency.gov.uk.

The applicant should not assume that a permit will automatically be forthcoming once planning permission has been granted, and we advise them to consult with us at the earliest opportunity.

Other Consents – advice to applicant

As you are aware we also have a regulatory role in issuing legally required consents, permits or licences for various activities. We have not assessed whether consent will be required under our regulatory role and therefore this letter does not indicate that permission will be given by the Environment Agency as a regulatory body.

The applicant should contact 03708 506 506 or consult our website to establish if consent will be required for the works they are proposing. Please see <http://www.environment-agency.gov.uk/business/topics/permitting/default.aspx>

Final Comments

Thank you again for consulting us on this application. Our comments are based on the best available data and the information as presented to us.

Should you require any additional information, or wish to discuss these matters further, please do not hesitate to contact me. Please quote our reference number in any future correspondence.

Yours faithfully

Miss Chloe Alma-Daykin
Planning Advisor

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