

Linda Griffiths

Principal Planning Officer (Major Developments)

Cherwell District Council

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24th August 2023

CDC

25 AUG 2023

POST ROOM

Dear Linda,

Re: 22/03868/OUT – Planning Application

I am writing in direct response to the letter dated 10th August from Jenny Davies of Barwood Land that was posted onto the Planning Portal on 18th. They have made various representations and assertions regarding Construction Access, Pedestrian Linkages, etc that, for the most part, could directly and adversely affect our property and, to a lesser but nonetheless important extent, the property at Number 1 Crouch Cottages. I have the support of that property's occupiers in relation to my comments. The purpose of this letter is to address each of Barwood's comments which, as I am sure you appreciate, are designed to do no more than further the prospects of success of their planning application. There are substantive reasons why their choice of access route for construction vehicles would not be permitted and full details of those reasons follow. We have no objections to the construction of the properties themselves; our comments are restricted to issues relating to the lawful use of the track, part of which is a vital and necessary component of the curtilage of our property.

Construction Access

1. Your colleague, Roger Plater, at Oxfordshire County Council proffered an opinion regarding construction traffic without (as he later admitted) considering whether his suggestion would be viable given the status of the track in relation to Crouch Farm, 2 Crouch Cottages, and his own County Council's defined and legislated position on the realigned A361. He had not made any enquiry into the planning history relating to the areas directly affected, including binding arrangements in legislation proposed and passed by his own Council and his admission that he simply accepted the assertions made by the agent without doing any detailed research has substantially contributed to the current situation. There are important lessons to be learned and, regardless of what pressure (nuanced or otherwise) is brought to bear on busy local authority officers, there is no excuse for making comments or suggestions without consideration of wider issues. I am not intending to be critical of Mr Plater but he, as they say, has no skin in this particular game and does not have to live through the potential consequences. His comment was therefore seized upon by Barwood and subsequently tagged onto (right at the very end presumably in the hope that it would slip through un-noticed) of their most recent iteration of the Design and Access Statement dated

31st May as if that comment by Mr Plater was a definitive statement of Oxfordshire County Council's legal position. It is not.

2. You will have noted that Barwood's original Design and Access Statement made no mention of using the track for any access purposes, all traffic to be directed through a newly-created access road that would be the main access road for the development, and this was the position that Mr Horgan (the landowner) had emphasised to me at the start of the year when he informed me about his planning application. Throughout he was at pains to assure me that he had no intention of allowing any part of the track within the curtilage of our cottage and garage to be used for any purpose relating to the application in full knowledge of the detrimental effect such a purpose would have on the quiet enjoyment of our property. Personal relations with Mr Horgan have always been cordial. My partner and I are of the opinion that it isn't he who is flying this particular kite, but his agents as they explore whatever avenues they can in order to secure planning permission.
3. The principal catalyst for Barwood's sudden change of tack within the Design and Access Statement, emboldened by the injudicious comments of Mr Plater, appears to be the co-ordinated responses to the planning application by a small number of residents on the Redrow Estate who raised objections to the extension of the access road through the middle of a small area of woodland onto the site. Their comments can perhaps be condensed into a singular concern that the vehicular traffic would continue for a period beyond the completion of the Redrow Estate. While I am not seeking to disparage their concerns in any way, I would however suggest that is not a valid or justifiable reason for subjecting the residents of 1 and 2 Crouch Cottages to a brand new misery instead of a short continuation of an existing access arrangement to the Redrow Estate that those residents were well aware of when they purchased their properties in the last one or two years. However, our rights are every bit as important and valid as those of the Redrow residents especially as our cottages have stood since 1901, not 2021.
4. It is always interesting when a developer's agent resorts to assertions regarding legal rights over property when it suits them to do so. Barwood have gone to the trouble of accessing information from the Land Registry to support their opinion. You will be aware that at no point have I stated or otherwise suggested that we "own" the track but it is disingenuous for Barwood to suggest that we "only have an easement over part of the track in order to facilitate access to the garage". Our rights are more extensive than they would care to admit to you. In the original deed of surrender from the former owner (Mr Horgan's father, in the guise of a Jersey Trust) from 2005, the year we purchased the property, we have the right "to pass and repass with or without vehicles over the farm drive" and this is for the full length of the track from Bloxham Road to where the black metal gates are now situated. We also own the drainage equipment situated directly across the farm track with full rights of access, maintenance and the right to security over that equipment, etc. The transfer deed also specifies that the access track within our curtilage is to be jointly maintained by both 2 Crouch Cottages and Crouch Farm. Our right to pass and repass with or without vehicles is an extensive right and can be exercised by us without restriction, at any time of day or night,

and given the fact that our property is always extremely active with cars and pedestrians there is no doubt that this right could not be truncated, restricted or circumvented under any circumstances.

5. I was intrigued by Barwood's attribution to me of concerns regarding the safety of using the track for construction purposes due to pedestrian movements between the Redrow scheme and the area of public open space. This issue was well-documented some years ago. As you will have noted from your site visit, that public space can only be accessed by crossing the farm track. Barwood consider that this can be managed through a construction traffic management plan and that it is not an impediment. They refer in their letter to a comment by your predecessor, Matthew Parry, regarding this matter when the original planning application (both under 16/02598/F and later 17/01617/F) for Mr Horgan's new farm access road was made. This comment needs to be seen in its proper context; Mr Parry was listing reasons to refuse the application but his argument was subsequently over-ruled by the Planning Inspectorate upon appeal. Barwood should perhaps have referred to the arguments put forward by their equivalent agent acting at the time for Mr Horgan in order to provide you with a more balanced view. The Statement of Case on Behalf of the Appellant, with which the Planning Inspector agreed, prepared by Simon Taylor stated (inter alia) "the concern is that this arrangement (*ie that the public space can only be accessed by crossing the farm track*) will significantly affect the enjoyment of the open space by the public...." And "It would lead to conflict between vehicles using the access and track serving Crouch Farm and the occupiers of the new dwellings (*ie the Redrow Estate*) and users of the public open space.... With the safety of the open space users being compromised" In his summary, Mr Taylor stated "the existing track will form a significant visual and psychological barrier between the new houses and the public open space. Its continued use..... will significantly affect the enjoyment, and, perhaps, discourage the use, of the public open space. LPA officers have agreed that the track affects the permeability of the masterplan for the development site and separates the amenity area from the new housing. The housebuilder has written in support" (*letter attached from the Managing Director of Redrow*).
6. Importantly, Mr Taylor states that "the cessation of the use of the access and track..... will improve safety and security at the site by enabling the gates onto A361 (*sic*) to be locked shut...." While Mr Taylor meant the wooden and metal gates on the Crouch Farm side of the track, his point (and by inference, the view of the landowner) is clear. This is as unequivocal a statement as can be made, and which was successfully argued before the Planning Inspectorate. With regard to the application for the new access Mr Taylor further reports that "The Highway Authority has stated that it had no objection to the proposals...(see email from Joy White, E&E, Oxfordshire County Council dated 8th February 2017 in the knowledge that the existing access onto Bloxham Road, adjacent to Crouch Farm Cottages, was to remain open to provide access to those cottages....The cessation of the use of the track in association with Crouch Farm itself would be required."
7. This decision, however, is clouded by the apparently deliberate delay in opening of the new farm access to the south, when it was clearly the original intention that it be opened without

such delay, meaning that the existing track continues in temporary use. The Inspectorate presumably did not foresee such a delay but in any event given the above it is clear that the requirement is for the existing access to be locked shut as soon as the new access is opened. This delay in opening the new access must not be exploited in the hope that the existing access can remain open for any purpose. It is clear from the arguments put to the Planning Inspectorate that the existing access must be closed off. It is difficult to see therefore how it is possible for the applicant's agent (whether it be Mr Taylor or Messrs Barwood) to argue on the one hand that the track should in effect be blocked from use yet in this current application is arguing that it can be used for construction traffic. It is entirely irrelevant whether they consider the access to be a temporary expedient; it is precluded because of the earlier application. One may surmise that the second a planning application is approved that new access will immediately spring open.

Access Track in Perpetuity

8. In the section of Barwood's letter entitled "Access Track in Perpetuity" they state that "there is no *formal (my italics)* requirement for the use of the existing track to cease. However it is envisaged that the majority of farm traffic will utilise the new southern access track" This appears to be a case of the applicant simultaneously having their cake and eating it too. The argument put forward in 5-7 above should be sufficient to dissuade them from that notion.
9. I note the further comment in this section that "the owner would be willing to include the existing track into the red line of the application so it can form part of the public open space for the development scheme. This would then remove the owner's rights of access over this track in perpetuity and remove any potential for future pedestrian/vehicle conflict in this area." I assume that this refers specifically to the length of track from the entrance closest to Crouch Farm to the eastern edge of the planned development site up but not the section between Point B on their plan to the two sets wooden/metal double gates adjacent to our cottage. It is only the curtilage of our cottage and garage area that is of our concern.
10. Barwood conclude their letter by stating that "the eastern most (*sic*) part of the track will still be subject to the easement benefitting 2 Crouch Cottages and also Redrow have access rights to facilitate maintenance of the SUDS pond/POS (*presumably meaning "public open space"*) however the majority of the track can be included within the POS to the benefit of existing and future residents. We consider that this would result in a much improved position and is a clear and tangible benefit to the wider public". I have already dealt with their comments regarding the "easement" and the requirement for the gates to be locked shut. What has so far not been referred to is the implied right for Redrow to access the pumping station and open space. The proper access to the pumping station and POS upon the completion of the Redrow development is via the Redrow estate road network and NOT from the track/drive adjacent to our cottage. This is set out clearly in any number of the approved plans contained in applications such as 17/00669/REM or 18/01973/REM and the

report prepared by Wormald Burrows Partnership Limited entitled "Surface Water Drainage Maintenance Plan June 2017" references E3535/529-111 or V11 whereby vehicular access is required to be from the Redrow estate. The only permitted use of the track in future will be to the pumping station in an emergency and not as a convenience for normal maintenance/ grass mowing etc. The only reason that the current access has been granted is because Redrow have fenced off the legal access while they are working in that area so vehicles are unable to reach the pumping station and POS. It is therefore misleading for Barwood to suggest that the track access is somehow normalised and that "Redrow have access rights to facilitate maintenance.....". They do not. They have access rights in an emergency only. I am attaching one of the documents referred to for reference with regard to access to the pumping station. You will note that nowhere does it show a "secondary access" or similar wording. While this is not, strictly, related to the detail of the current planning application it is nevertheless an important and relevant point as it further demonstrates the extremely limited grounds under which any access can be given to the track.

Pedestrian Linkages

11. With regard to the section of Barwood's letter marked "Pedestrian Linkages" it seems prima facie that this relates to access onto the existing Redrow development and that there is no proposal or intention that will affect the curtilage of our cottage, ie the easternmost extremity of the track beyond the double wooden and metal gates.

Other Matters

12. Aside from the collective comments made by Barwood there is an important matter that has not hitherto been referred to. This relates to the ability of that part of the former Bloxham Road, now bypassed following the realignment of the A361 in 2022, to be used for any other purpose than as an access road for Crouch Cottages and (temporarily, pending "completion" of the new southern access road) Crouch Farm.
13. As part of a planning application 14/01932/OUT, where permission was granted on 19th December 2019, the Environmental Statement delivered by David Lock Associates on behalf of Gallagher Estates, Page 18, stated that "a key design criterion has been to realign the Bloxham Road.... Ensuring retention of access to the existing properties, Crouch Cottages and Crouch Farm". You will note that this statement was prepared well before the planning application by Mr Horgan (16/02598/F and 17/01617/F) for the new farm access so the references to Crouch Farm access are now (or shortly will be) superseded.
14. In your predecessor, Matthew Parry's report on that application (14/01932/OUT), dated 4th August 2016 where approval was recommended, he confirmed in paragraph 2.2 that this "existing section of Bloxham Road is proposed to be retained in order to provide access to Crouch Cottages and Crouch Farm" and in paragraph 7.8 he states that "Part of the existing

Bloxham Road carriageway would be retained as an adopted road to enable access to Crouch Cottages and Crouch Farm albeit it would function essentially as a private road with respect to motor vehicle traffic" and that "Officers have no concerns about the suitability of this arrangement for occupants of these existing properties (*ie Crouch Cottages*) given that, in all probability, it would improve the quality of their living conditions due to a movement of traffic away from the houses. Any inconvenience associated with having a single means of vehicular access from their houses onto the Bloxham Road is considered minor and more than outweighed by the benefits associated with being served by a quiet semi-private section of road" This is, I would suggest, a powerful and binding argument put forward by Cherwell District Council officers which should not be undermined under any circumstances.

15. You may also be aware that Oxfordshire County Council (Banbury Area) (Speed Limits) Order 2022 was enacted on 28th February 2022 following the decision reached by the Cabinet Member for Environment on 17th September 2020 (item number 24/20) which included the Prohibition Of Motor Vehicles On Length Superseded By Revised Road Layout (*sic*). This affirms the noting by the Cabinet that "the (private) access road should be appropriately signed to ensure that the only vehicles who are accessing Crouch Cottages (save for emergency vehicles) are permitted to enter.... and that the proposed signing will be reviewed to ensure that it is correct and minimises the risk of the above happening". This is, in my opinion, as definitive an assessment of the status of this access road that can be made and would therefore preclude its use for any other purpose other than access to Crouch Cottages. It should also be noted, of course, that the current permitted and temporary usage by Crouch Farm could not be extended to construction traffic because that planned development does not belong or otherwise relate to Crouch Farm; it is separate and therefore not a permitted use. In any event, already I have witnessed anti-social behaviours by people entering the access road, such as urination and defecation, and we are constantly litter-picking so it is difficult to imagine what this would be like if construction or any other form of traffic is allowed to use the access road.
16. As a final point to consider, given that we have not raised any objections to the actual construction of the dwellings (simply the proposed access), is that it may be an opportune time to mention the elephant in the room that Barwood have not yet addressed or suggested although undoubtedly they would be well aware of it. Prima Facie it seems that they were initially content to use the existing Redrow estate as an access road through the copse to the north of the site which (presumably) had the prior approval of Redrow, but when a number of residents objected to that proposal they turned their attention to the farm track, emboldened by an ill-informed Oxfordshire County Council employee, presumably on the grounds that our collective voices of objection would be less important than those of the Redrow residents. That, as this correspondence demonstrates, is not the case and I believe that they will simply be unable to proceed with their proposals for the reasons stated herein. It would therefore not be unreasonable for Barwood to propose the use of the so-far dormant new farm access road to the south. Their letter to you dated 10th August does, in fact, intimate that they would consider this option. They state with reference to their proposed use that "whether this be via the access track, the Redrow

scheme or *another route (my italics)*". I suspect that should you suggest this to them they will put forward an amended proposal accordingly.

17. The new access road has received all the current planning approvals for access for as many farm vehicles as one farm could conceivably need. Savills, the agents appointed to deal with the initial planning application 16/02598/F stated that "the proposed access point has been designed in accordance with the County Council's guidance in relation to such development. Submitted in support of the Application is a Access Arrangement Statement which has been compiled by Glanville, Highways Consultant responsible for the project. This sets out the design proposals in detail. The proposed access point provides a suitably constructed access way to enable adequate space for vehicles such as livestock lorries and agricultural vehicles." For livestock lorries and agricultural vehicles you can easily substitute construction vehicles. That road contains a large open bellmouth and passing place and was constructed sufficiently wide enough to allow large vehicles of any description (when and if ever required) to pass along.

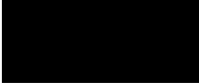
18. This access road passes within a few metres of the southern end of the planning site and it would be (in the grand scheme of things) a simple matter to have a temporary separate gated access to Crouch Farm and a separate site access. A copy of Savills helpful illustrative map is attached. This expedient solution would (as Barwood are keen to state) be for only 18 months whereupon the site access would no longer be required. As the current Crouch Farm movements are mainly restricted to private motor vehicles and delivery vehicles of varying sizes it presumably would not be an inconvenience to them to temporarily share some 100 metres of the first part of the track, where (thanks to the Council's insistence on visibility splays etc) there would be no issues regarding vehicle movements. It would also represent a significant magnanimous gesture by the applicant who, of course, owns both Crouch Farm and the proposed development site as well as being the former owner of the Redrow site. At one fell swoop this would achieve Barwood's newly-acquired aim of alleviating Redrow residents' concerns, and also avoid further continued exhortations regarding access via the curtilage of our properties. It does seem a Win-Win situation. In fact this solution is so obvious I should be surprised (I should be...) that it had not previously been explicitly put forward especially that Barwood would have been fully aware of the adverse effect of their current proposals. My suspicion is that, left unconstrained, developers only pay lip service if at all to the consideration of other people affected by their plans as, for example, I suspect they have not made any attempt to directly engage with those people directly and adversely affected. T was ever thus. I believe that this could be the only viable option available to them.

Finally, I should reiterate that, as previously advised since this planning application was first proposed, there is no objection from the Crouch Cottages residents to the houses themselves but we will not stand by and permit developers and/or their paid agents and servants, regardless of who they are, to run roughshod over our rights, especially as we have enjoyed peaceful enjoyment and use of our property and curtilage for many, many years, not to mention the previously-agreed and legislated position by both Cherwell District Council and Oxfordshire County Council.

As in previous correspondence I shall seek confirmation directly from you by email that you have read this letter in detail and are cognisant of the points raised. Publication on the planning portal is conditional upon that.

Kind regards

(signed; to save the signature redaction)



Attachments

1. Letter from Managing Director of Redrow.
2. Wormald Burrows Map of Access to SUDS/Pumping Station (as approved)
3. Savills Map adapted to show the development area and relationship to the new access to Crouch Farm

Redrow Homes South Midlands
Redrow House
6 Waterside Way
The Lakes
Northampton
NN4 7XD

9th May 2017

[REDACTED]
Crouch Farm
Bloxham Road
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OX16 9UN

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Fax: 01604 609136
DX: 155320 NORTHAMPTON 31
Email: southmidlands@redrow.co.uk
Website: www.redrow.co.uk

RE: Proposed New Access to Crouch Farm

[REDACTED]
I am sorry to learn that your planning application (Ref. 16/02598/F) has been refused by Cherwell District Council.

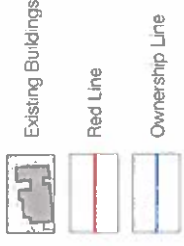
I believe the proposed new access and consequent removal of vehicles from the existing access would have had an overall positive effect on our future development.

Should you wish to submit a new application or appeal against the refusal of your application I am happy for you to submit this letter as part of your application/appeal in support of the proposal for a new access to Crouch Farm which removes traffic from the existing access track.

I would be grateful if you could keep me up to date with your progress.

Yours sincerely

Mr John Mann
Managing Director



Crouch Farm, Bloxham Road



drawing no.	SK01	drawing	Site Location Plan
number	B	drawn by	CS
scale	1:250 @A4	checked by	NH
			CS
			25/6
			22 Dec 2016

Permitted in accordance with the Planning Permission for Crouch Farm - HAI Siskens Open-Grow through Planning Permission 13/02/16/15/1/1
 Dated 16.12.16 and approved by the Local Planning Authority on 16.12.16
 Validity: 10 years from date of issue
 Crouch Farm, Bloxham Road