



Appeal Decision

Site visit made on 3 May 2022

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 JUNE 2022

Appeal Ref: APP/C3105/W/21/3280416

Glebe Farm, Boddington Road, Claydon, OX17 1TD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by W A Adams Partnership against the decision of Cherwell District Council.
 - The application Ref 20/02446/F, dated 7 September 2020, was refused by notice dated 12 February 2021.
 - The development proposed is the formation of an inland waterways marina with ancillary facilities building, car parking, access and associated landscaping including the construction of a new lake.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in the appeal are:
 - Whether or not the proposal is a suitable form of development given its location in the open countryside;
 - Whether or not the proposal would preserve or enhance the character or appearance of the Oxford Canal Conservation Area and its setting;
 - Whether or not the proposal makes adequate provision for footpath and highway improvements; and
 - The effect of the proposal on highway safety.

Reasons

Whether or not a suitable form of development

3. The appeal site is a large arable field that forms part of the appellant's agricultural land holding. It is located in the open countryside between the small villages of Claydon and Lower Boddington. Whilst the field is adjacent to the Oxford Canal, it is at a slightly lower level to it. The proposed new marina would have 192 berths and would be used for recreational moorings.
4. Within the open countryside the *Cherwell Local Plan 2011 – 2031 (Part 1)* (adopted July 2015) (CLP) seeks to control new development. Nonetheless, Policy SLE3 provides support for new or improved tourist facilities in sustainable locations where they accord with other policies in the plan and the supporting text recognises that the Oxford Canal is a resource that is not used to its full potential.

5. Policy ESD16 provides specific advice on the Oxford Canal. Whilst it supports proposals to promote transport, recreation, leisure, and tourism related uses of the canal, it states that other than small scale car parks and picnic facilities, new facilities for canal users should be located within or immediately adjacent to settlements. No definition is given of what is covered by "new facilities for canal users" and the supporting text indicates the approach to residential moorings and boater's facilities would be dealt with by Part 2 of the local plan, whose production has now been subsumed into the production of a new Local Plan. Nevertheless, a new marina would be a facility for those who will use the canal and the proposal is located in the open countryside, some distance from the nearest settlements which are small in size and have very little in the way of services or facilities.
6. Whilst a marina can only be provided where the canal is, the nearby marinas at Fenny Compton and Cropredy show that it is possible to provide such facilities in locations that are within or adjacent to settlements. The appellant carried out an assessment of other potential sites for a marina within Cherwell District against various criteria including proximity to a settlement. This indicated that there are limited opportunities to provide any new facility within or adjacent to settlements. This is not disputed by the Council.
7. Whether located within or adjacent to settlements or not, it is unlikely that people would utilise public transport to come to the marina as they would be likely to be bringing luggage and food with them. From my own observations and comments from local residents it is clear that apart from the public house in Lower Boddington there are no services and facilities in either that village or Claydon. Cropredy has a slightly greater range of services and facilities, but this is not within easy walking distance. The narrowness, and the uneven nature of the towpath, together with the lack of lighting on this or the local roads, also limits the ability to use bicycles for such trips too.
8. Thus, the opportunities to access local facilities and services once at the marina by means other than the car would be minimal. However, the majority of people coming to the marina would be likely to then leave by boat and would have access to services and facilities located along the canal network. As such, the accessibility of the site by means other than a motor vehicle is probably less important than if it were to be a residential marina, or for alternative tourist facilities such as a campsite where people would stay on the site.
9. To this end the *National Planning Policy Framework* (the Framework) supports sustainable rural tourism and leisure developments which respect the character of the countryside as a way of supporting a prosperous rural economy. It also highlights that to do this, sites may need to be found adjacent or beyond existing settlements and in locations not well served by public transport (paragraphs 84 and 85).
10. The Council's evidence and the reason for refusal refers to Policy SLE1 of the CLP. The supporting text to this policy identifies that it applies to employment development covered by the former Class B of the Use Classes Order. Whilst the appellant has indicated that the marina could create 3 full time and 3 part time jobs, it is a Sui Generis use. As such, I am not persuaded that the requirements of this policy are relevant to this proposal.
11. A variety of conflicting evidence regarding the need for the development has been put forward by the appellant and third parties. The Canal and River Trust

does not provide any advice in this regard, and so getting a clear, independent, and up to date picture of demand is difficult. However, there is no specific policy requirement to establish the need for the development. Moreover, as highlighted in the Officer's report, the proposal requires significant capital investment and so the appellant is unlikely to be proposing the development unless it was thought it was capable of providing a good return.

12. Bringing all these points together: the proposal would be located in the open countryside where the development plan seeks to control new development. Although the CLP is supportive of rural tourism in general, and more specifically leisure and tourism related uses of the canal, the proposal would not accord with the policy requirement for new facilities for canal users to be within or adjacent to an existing settlement. However, opportunities to provide such a facility in locations that accord with the policy within the district is limited and given the nature of the use the need for it to be provided in a location accessible by various means of transport is less important than for many uses.
13. Nevertheless, I am not satisfied that these provide sufficient reason to justify a proposal that would be contrary to the requirements of Policy ESD16. Therefore, I consider that the site would not be a suitable site for the proposed new marina having regard to its location in the open countryside.

Conservation area

14. The appeal site lies adjacent to the Oxford Canal Conservation Area which covers both the canal and its towpath. As such it forms part of the setting of the canal, but the work to create the entrance to the marina and a bridge over the towpath impact directly on the conservation area itself. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention to be had to the desirability of preserving or enhancing the character and appearance of a conservation area.
15. The *Oxford Canal Conservation Area Appraisal (adopted October 2012)* (CAA) identifies that, unlike most canals, the Oxford Canal is largely rural in nature. As well as the canal's historic significance, this distinctive tranquil rural character, forms part of its significance. The rural agricultural landscape to which the appeal site contributes, is therefore a positive feature that enhances the conservation area and is important to the way in which the conservation area is experienced and appreciated by users.
16. In the immediate vicinity of the appeal site, the hedgerow adjacent to the towpath limits the views of the field and the wider landscape beyond. In contrast, to the other side of the canal there are open views of the agricultural land. The CAA states that this strong boundary alongside the towpath is a significant element of the canal and should be retained if possible.
17. The proposed development would require a new entrance and new towpath bridge to be constructed. These would result in the loss of a stretch of the towpath hedge, contrary to the advice in the CAA, and they would be notable engineered structures in this otherwise rural agricultural landscape. Thus, their introduction would be detrimental to the character and appearance of the conservation area.
18. The CAA highlights the development of marinas along the canal as a potential threat to the historic character and appearance of the conservation area. To

- protect the character of the canal it advises that future development of marinas in the rural area should be very carefully designed and limited in capacity and that large marina developments should be within urban areas such as Banbury and Kidlington. The size and location of the proposal would be contrary to this advice.
19. The creation of the marina, which would require extensive earthworks on the site, would result in the loss of its agricultural character, altering the setting of this stretch of the canal. The marina itself would be divided up with landscaped peninsulas between areas of moorings and extensive landscaping would be provided around the site which as it matures would help to integrate the marina into the landscape.
 20. Nevertheless, notwithstanding the fact that the proposed building has been designed to reflect an agricultural building, it, together with the internal roads and parking areas, would introduce a distinctly more urban character into this rural landscape that would be an unsympathetic addition to the setting of the canal. This would be evident not only from the proposed new towpath bridge but also from Boddington Road. In these views, the proposal would detract from the rural character and appearance of the conservation area.
 21. The *Planning Practice Guidance* (PPG) indicates the need to consider the implications of cumulative change¹. The proposal would create an additional large marina in relatively close proximity to the ones at Fenny Compton and Cropredy. The proximity of this number of marinas over a relatively short stretch of canal would harm the character of the setting of the canal and the way it is experienced by users. As such, it would be detrimental to its significance.
 22. Consequently, I consider the proposal, both individually and cumulatively, would fail to preserve, and would unacceptably harm, the character and appearance of the Oxford Canal Conservation Area and its setting. As a result, it would be contrary to Policies ESD15 and ESD16 of the CLP, which amongst other things, require developments to conserve, sustain and enhance designated and non-designated heritage assets in general, and specifically not to be detrimental to the character and appearance of the Oxford Canal Conservation Area.
 23. Having regard to paragraph 202 of the Framework, I consider the harm caused to the conservation area would be less than substantial and therefore needs to be weighed against the public benefits of the scheme.
 24. The proposed marina would increase the availability and choice of moorings along the canal for users. It would also contribute to developing tourism in the area. Nonetheless, time spent at the actual marina by most users is likely to be limited, and so the contribution to the local economy would be relatively small, especially as the appellant's evidence suggests that those who may just come for a weekend are likely to bring most of the things, they need with them.
 25. As well as the economic benefits of the construction phase which would be relatively short lived, it is stated that the proposal would create 3 full-time and 3 part-time jobs. This would make a small contribution to the local economy. The proposal would also enable the diversification of the agricultural business,

¹ Paragraph ID 18a-013-20190723

which has been affected by the nearby HS2 development. In addition, the secondary lake would enable the business to expand the range of crops it can cultivate. Benefits to the business are largely private rather than public benefits, but in helping to maintain the jobs this business supports, it would have some benefits to the local economy. Overall, I consider that the proposal would have a modest positive benefit to the local economy.

26. It is proposed that the development would provide an educational facility for local schools and the appellant's evidence shows that 3 local schools have expressed an interest in this. However, I consider that such a facility is not likely to be so unique that it would attract schools other than from the local area. As such, I only give this benefit limited weight.
27. It is also stated that the proposal would result in additional income to the Canal and River Trust for maintaining the canal network. However, no indication is given of how much income this might generate, nor how much of this would be needed to mitigate the impact of additional boat movements along the canal that the proposal would be likely to create. Therefore, I only give this minimal weight.
28. The Framework states that great weight should be given to the conservation of designated heritage assets. Whilst the proposal would have modest economic benefits, and some limited educational benefits, as well as contributing towards the maintenance of the canal network, I am not satisfied that taken together these benefits outweigh the harm that would be caused to the character and appearance of the conservation area and its setting.

Provision for footpath and highway improvements

29. One of the reasons for refusal refers to the need for an obligation under Section 106 of the Planning Act to secure appropriate footpath improvements, and off-site highway works, in order to make the impacts of the proposal acceptable in planning terms. Policy INF1 of the CLP indicates that development proposals will be required to demonstrate that infrastructure requirements can be met including the provision of transport, education, health, social and community facilities.
30. To this end the appellant has provided a completed planning obligation in the form of a Unilateral Undertaking. I have considered the submitted obligation in the light of the statutory tests contained in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 and paragraph 57 of the Framework.
31. The obligation makes a contribution of £10,000 towards improvements and mitigation measures on the footpaths to the south and east of the site that link it to Claydon. The development has the potential to increase the use of these footpaths and, as such, improvements to the surfacing, signage, and associated furniture along them are necessary to mitigate the impacts of the development. However, I have not been provided with any details of how the contribution has been calculated or any policy justification for the costings. In the absence of this I cannot determine whether the payments are fairly related in scale, and so this part of the obligation does not meet the statutory tests and therefore cannot be taken into account.

32. The Unilateral Undertaking also makes a contribution of £120 for the administration and monitoring costs of the County Council, who as Highways Authority would be responsible for the monitoring and administration of this obligation as it relates to highway works. It is indicated that the monitoring fee would not exceed the authority's estimate of the cost of monitoring the development over the lifetime of the obligation. However, I have not been provided with the details of how the contribution has been calculated for this scheme and so cannot determine whether the payment is fairly related in scale. Therefore, it has not been demonstrated that this part of the obligation meets the statutory tests either.
33. The Unilateral Undertaking also makes provision to ensure the development is not brought into use until the highway works, which will be undertaken through a section 278 agreement, have been completed. These works are the provision of the passing places along Boddington Road and the construction of the access to the development from the same road. As set out below, I consider the provision of the passing places is necessary to make the development acceptable, as is the creation of a new access. Therefore, this part of the obligation would ensure that these are completed before the development is brought into use and so ensures adequate provision is made for the necessary highway improvements.
34. Overall, whilst the Unilateral Undertaking makes satisfactory provision for the necessary highway improvements, in the absence of sufficient justification, it does not make adequate provision for footpath improvements. As a result, the proposal would be contrary to Policies SLE4 and ESD1 of the CLP and Policy TR1 of the *Cherwell Local Plan (adopted November 1996)* (CLP1996) which seek to ensure that transport measures required to mitigate the impact of the development are provided and that sustainable transport options such as walking are encouraged.

Highway safety

35. Vehicular access to the marina would be from Boddington Road. This would require the removal of some of the existing boundary hedge but elsewhere the existing hedge would be retained and gapped up. Whilst the width and radius of the access would be large in comparison to the road, this would not be detrimental to highway safety.
36. Boddington Road is largely a single carriageway road, with only informal passing places that utilise the grass verges. It is unlit, has no footway, and is uneven and poorly surfaced in places. In the immediate vicinity of the proposed site access, the approach to the bridge over the canal in both directions provides little forward visibility. However, the road is lightly trafficked and despite these characteristics does not have a poor accident record. Local residents have highlighted that other roads into and out of Claydon share many of these characteristics, which concurs with what I observed on my site visit.
37. As part of the development 3 passing places would be provided on Boddington Road – formalising what at present are informal passing places. These would be on the part of the road to the north of the proposed site entrance. As outlined above, the appellant has submitted a completed Unilateral Undertaking which includes the provision of these off-site highway works.

38. It is proposed that construction traffic would not use Boddington Road but would access the site from the north via Springfield Farm, which is the main farmstead associated with the appellant's agricultural business. This can be secured by condition.
39. The appellant's Transport Statement highlights that traffic movements to and from marinas vary depending on the facilities they offer but, utilising data from marinas with similar characteristics to the proposal, at the busiest periods (Bank Holiday weekends) it is estimated that the proposal could generate one vehicle every 3 minutes. In addition, the Council have stated that data from traffic counts utilised in the application for the extension to Cropredy marina showed that this 249-berth marina averaged 53 traffic movements a day over a 4-week period during the busiest summer period.
40. The appellant has suggested that users would be provided with guidance advising them to approach the site from the north and that any large vehicles serving the site would be instructed to do so because of the hump backed bridge over the canal to the south. However, whilst service vehicles out of necessity may follow such advice, without any physical restriction, I am not persuaded that other vehicles will necessarily follow such advice, as many will just use the route suggested by their navigation system. Moreover, a planning condition seeking use of this route could only encourage its use and so would fail the test of enforceability.
41. The proposal would undoubtedly result in an increase in traffic movements in the area. However, subject to conditions and the provision of the passing places, the Highways Authority raised no objection to the proposal and were satisfied that the local road network had the capacity to deal with this increase. Moreover, despite the nature of the roads serving the site and the wider area, they considered it would not result in unacceptable highway or pedestrian safety issues.
42. The Framework states that developments should only be refused on highway grounds if there would be an unacceptable impact on highway safety or the residual cumulative impacts on the road network would be severe. I accept that the proposal would generate more traffic on what in the immediate vicinity are quiet rural roads. Nevertheless, having considered all the evidence, and in the light of my own observations and the views of the Highway Authority, subject to the provision of the proposed passing places on Boddington Road, I am satisfied that the level of these additional movements would not result in a severe impact on the capacity of the network or unacceptable harm to safety.
43. As such, I consider the proposal would not have a detrimental impact on highway safety. Therefore, it would not conflict with Policy SLE4 of the CLP or with policies TR7 or TR10 of the CLP1996 which indicate that a development should be suitable for the roads that serve it and should not attract large number of movements either by cars, or heavy goods vehicles, on unsuitable minor roads.

Other Matters

44. The appeal site forms part of a mixed-use agricultural holding which has lost a significant area of land to the HS2 construction project which bisects the appellant's land holding. Whilst compensation for this is provided nevertheless, this has an adverse impact on economies of scale and thus the efficiency and

profitability of the business. In addition, the business is having to adapt to the loss of EU subsidies. It is estimated that the proposal would provide a significant source of non-agricultural related income to the business. In addition, the second lake to be created on the site would also provide irrigation enabling the business to diversify the crops it grows. The development and diversification of agricultural businesses is supported by the Framework.

45. The proposal would involve significant landscaping in and around the site including, trees, shrubs, grasslands, and wildflower areas, as well as improvements to the adjacent County Wildlife Site. This planting would more than compensate for that which would be lost to accommodate the access to the marina from the canal and the road. This element of the appeal scheme would not only help to assimilate the development into the landscape, but it would be beneficial for biodiversity and wildlife.

Planning Balance and Conclusion

46. Having regard to its location in the open countryside, the appeal site would not be a suitable site for the proposed development and would be contrary to the development plan policies that seek to restrict development in this area. It would also harm the character and appearance of the conservation area and its setting and would not make adequate provision for the necessary footpath improvements.
47. Whilst I have concluded that the proposal would not be detrimental to highway safety an absence of harm in this regard is a neutral factor. As is the highway improvement provision in the Unilateral Undertaking which would mitigate the harm from the development.
48. The proposal would enable the diversification of an agricultural business and would improve the tourism offer in the area, both of which would be beneficial for the local economy, as would be the jobs it would create. The proposal would also increase the choice and availability of moorings on the canal, bring some limited educational benefits for local schools as well as modest environmental benefits.
49. Whilst I have had regard to all the benefits of the proposal, I consider that taken together these do not outweigh the harm I have identified it would cause. Consequently, I conclude that the appeal should be dismissed.

Alison Partington

INSPECTOR