



# Appeal Decision

Site visit made on 1 March 2010

by **Richard McCoy** BSc, MSc, DipTP,  
MRTPI, IHBC

an Inspector appointed by the Secretary of State  
for Communities and Local Government

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**Decision date:**  
**1 April 2010**

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## Appeal Ref: APP/Y2810/A/09/2114076

### Land adjacent Oxford Canal, Barby Lane, Rugby, Northamptonshire,

- 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 Mr A J Welton against the decision of Daventry District Council.
- The application Ref DA/2009/0106, dated 7 February 2009, was refused by notice dated 7 April 2009.
- The development proposed is the construction of a marina adjacent to the Oxford Canal and the change of use of an agricultural property and barn to mixed use for chandlery, reception, accommodation and barn to storage use for marina only.

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### Procedural matter

1. During the consideration of this appeal the government published Planning Policy Practice 5; *Planning for the Historic Environment* (PPS5) which cancels Planning Policy Guidance 15; *Planning and the Historic Environment*. I have dealt with the appeal on this basis.

### Decision

2. I dismiss the appeal.

### Background and Main issues

3. The appellant's, *Great Crested Newt Population Class Size Assessment* produced by Menhir Ecology, dated May 2009, indicated the presence of Great Crested Newts which is a protected species under the Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007. Although a copy has not been submitted in evidence, the Council confirms that Natural England, in a consultation response received after the application was determined, objected to the proposal.
  4. In addition, the appellant states that on submission, the application was accompanied by a Flood Risk Assessment (FRA). However, the Environment Agency (EA) in its consultation response dated 13 March 2009 indicated that, as the proposal comprises operational development of 1 hectare or greater within Flood Zone 1, it would be necessary for the appellant to submit a FRA that complies with Annex E of Planning Policy Statement 25 (PPS25); *Development and Flood Risk*. The EA then confirmed in a subsequent response dated 10 April 2009 that a FRA, which was not PPS25 compliant, had been received but this response was received after the Council had determined the planning application.
  5. Taking these events into account, I consider the main issues to be whether the proposal complies with national planning policy in respect of biodiversity,
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whether the proposal complies with national planning policy in respect of flood risk and the effect of the proposal on the character and appearance of the open countryside and the setting of the conservation area.

## **Reasons**

### *Biodiversity*

6. The presence of Great Crested Newts that would be affected by the development has been confirmed in evidence submitted by the appellant. While the appellant's Assessment indicates that a licence may be required to undertake any works within the local area, it does not suggest any mitigation measures that would be effective in reducing the impact of the proposal. In the absence of this evidence I cannot reach a view on the likely effect of the proposed development on the population of Great Crested Newts.
7. I consider that this matter could not be resolved by imposing a planning condition, along the lines of that suggested by the Council, as mitigation measures should be put in place before any planning permission is granted. Therefore, the proposal would fail to comply with the Key Principles set out in Planning Policy Statement 9; *Biodiversity and Geological Conservation* in respect of a protected species and this is a compelling reason to dismiss the appeal.

### *Flood risk*

8. The appeal site lies within Flood Zone 1. As the risk of flooding from rivers or the sea is classified as low within Zone 1, FRAs should be focussed on the management of surface water run-off. A FRA should identify and assess the risks of all forms of flooding to and from the development and demonstrate how these flood risks could be managed, taking climate change into account.
9. The EA in a letter dated 10 April 2009 identifies certain shortcomings in the appellant's FRA, produced by ALP Ambrose Minerals Planning & Development Consultancy, dated January 2009. In my opinion, the submitted FRA fails to address the issues identified in items 1 to 6 of the EA letter. As such it is not possible to fully assess the actual risk and consequence of flooding at this site and for that reason the FRA is not compliant with the requirements of PPS25 Annex E.
10. However, given the appeal site's location within Flood Zone 1 and the proposed marina use into which surface water could presumably be directed, I consider that this matter could be adequately addressed by the imposition of a condition to any grant of planning permission, along the lines of that suggested by the Council. This would require, prior to development commencing that a FRA, which takes account of the matters raised in the EAs' letter dated 10 April 2009, is submitted for the written approval of the Council and that development is carried out in accordance with the approved FRA.

### *Effect on the character and appearance of the countryside and the setting of the conservation area*

11. The appeal site is located within the open countryside alongside the Oxford Canal. It extends to around 4.2 hectares and is flat open pasture land. It stands adjacent to the Grand Union/Oxford Canal Conservation Area which is

characterised by the linear form of the canal and towpath, punctuated by canal-side infrastructure such as cottages, pubs, bridges, locks, wharfs and marinas. A public bridleway runs diagonally across the appeal site.

12. Proposed is the excavation of a large basin to provide berths for 98 canal boats with a single entrance point from the canal. The existing site entrance would be extended and a car park formed in a raised area to the north east of the proposed marina. The bridleway would be diverted around the southern and western edges of the basin and the canal towpath carried over a new footbridge.
13. The appeal site is low lying with the main unrestricted views being from the hump-backed bridge, which crosses the canal nearby, and from the bridleway. As I observed, part of the character of the conservation area is derived from the existing marinas. Such development is to be expected next to a canal. The proposal, including existing buildings and other engineering and landscaping works would, in my opinion, be at a scale that would be compatible with this sensitive area, would employ sustainable construction techniques and would preserve the setting of the conservation area.
14. In this regard the proposal would be of a type, scale and design that would be in keeping with the character of this canal-side open countryside location and would not conflict with the objectives of saved Policy GN2 of the Daventry District Local Plan (LP), adopted June 1997 or the advice in PPS5.
15. With regard to whether or not the appeal site would be a suitable location for a marina, LP Policy RC8 seeks to restrict canal based recreation facilities to sites that are closely related to existing settlements. The appeal site is located about 1.6km from the nearest settlement. While access is available on foot and by a limited bus service, given the distance, I consider that the appeal site is not closely related to the nearest settlement, contrary to LP Policy RC8.
16. Nevertheless, I note the appellant's argument that *The Good Practice Guide on Planning for Tourism* (GPG) which the Government advises may be material to individual planning decisions, should be taken into account. This recognises that tourism is of crucial importance to this country and that a pro-active approach should be taken to facilitate and promote the implementation of good quality development. This advice post dates the local plan and sets out that there will be some occasions where development for tourism is sought at a location where it will be difficult to meet the objective of access by sustainable modes of transport and the choice of location may have been determined by functional need.
17. My attention was drawn to a previous appeal decision relating to a similar development close to the appeal site (ref. APP/Y2810/A/09/2100581) and I agree with that Inspector insofar as a marina (of the size proposed in this appeal) needs to be located on a straight stretch of the canal and also needs to be located a reasonable cruising distance from other facilities. As with the previous appeal this proposal meets such functional criteria and in accordance with the GPG advice, it is necessary to weigh up any benefits associated with the proposal against any disadvantages arising from its location.
18. In a letter dated 18 November 2009, which followed up an earlier consultation response, British Waterways commented, taking account of other permitted

and proposed facilities within the same area, that a need remains for at least 1,500 additional marina berths up to 2015. This discounts "apportionment" but even when that is considered there would be a need within the District for around 366 off-line moorings.

19. British Waterways also comments that the economic benefits of a marina with a 200 berth capacity are in the region of £421,000 total retained income per annum within a 32km radius. Taken in proportion to what is proposed, I consider this would bring substantial benefits to the area. Accordingly, the proposal would accord with the advice contained within Planning Policy Statement 7 (PPS7); *Sustainable Development in Rural Areas* which seeks to support countryside based activities which contribute to rural economies and promote recreation/tourism in and enjoyment of the countryside.
20. I find, in line with the previous Inspector, that the disadvantages associated with the proposed location are not significant. Buses do pass the site and whilst it is likely that patrons would rely on private motor vehicles, I anticipate that they would come and park for the day or longer and then use their boat to cruise along the canal. As a result, I find this proposal is comparable with that considered by the previous Inspector and consider that the site does not perform so badly in terms of access by sustainable modes of transport as to dismiss the appeal on that basis. Consequently, I find that the benefits of the proposal clearly outweigh any disadvantages associated with the location of the proposed development.
21. I therefore conclude that whilst the proposal would not strictly accord with the location criteria set out in LP Policy RC8, overall in this regard the proposal would accord with planning policies that deal with the provision of marinas within the countryside including the advice contained within PPS7 and the GPG.

*Other matters*

22. Interested parties raised concerns regarding highway safety and the realignment of a bridleway. However, I note from the Transport Statement submitted by the appellant that it is likely that the proposal would result in a 3% increase in traffic volume on weekdays and a 12% increase on weekends. To my mind this small increase in vehicular movement would be unlikely to compromise highway safety. These figures are not refuted by the Council and I have no evidence before me to suggest that this proposal, allied to other recent grants of planning permission in the vicinity, would lead to a harmful reduction in highway safety in the area.
23. In addition, although the visibility towards the hump-backed bridge is below the recommended standard, I consider that traffic speeds from this direction are slowed by the bridge (as demonstrated by the appellant's Traffic Statement) and the reduced visibility would not pose a threat to highway safety. With regard to the Bridleway, the proposed diversion would have to proceed on its own merits by way of an Order made under the appropriate legislation though I note, from the consultation response that the Ramblers' Association are satisfied that the diversion would be an improvement over the existing situation.

## **Conclusion**

24. While I find in favour of the proposal in terms of flood risk, the effect on the character and appearance of the countryside, the setting of the conservation area and other matters, these considerations would not be sufficient to outweigh the conflict with national planning policy in respect of biodiversity. Therefore, for the reasons given above I conclude that the appeal should be dismissed.

*Richard McCoy*

INSPECTOR