

9th August 2007

Mr Andrew Murphy
Stansgate Planning Consultants
Conrad House
Birmingham Road
Stratford-on-Avon
CV37 0AA

Our Ref: APP/J3720/A/06/2024949

Your Ref: KW/ADM/K/5028

13 AUG 2007

RE SERVICES

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990: SECTION 78
APPEAL BY MR TIM LANGER
MOORING BASIN FOR 150 BERTHS, SERVICE BUILDING, NEW VEHICULAR
ACCESS AND ASSOCIATED DEVELOPMENT
LAND ADJACENT TO THE WHARF, WELSH ROAD, MARSTON DOLES.
APPLICATION REF: 06/00641/FUL**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Jennifer Vyse DipTP DipPBM MRTPI, who held a Hearing on 17 April 2007 into your client's appeal. The appeal was made against the decision of Stratford-On-Avon District Council ('the Council') to refuse planning permission for a mooring basin for 150 berths, service building, new vehicular access and associated development, in accordance with application number 06/00641/FUL, dated 7 March 2006.
2. On 16 February 2007, the appeal was recovered for the Secretary of State's own determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be dismissed and planning permission be refused. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and with her recommendation. A copy of the Inspector's report (IR) is enclosed. All paragraph references, unless otherwise stated, are to that report.

Procedural matters

4. This decision relates solely to the planning application described above. The linked section 247 Order, which was considered concurrently with the planning appeal,



falls to be determined by the Secretary of State for Environment, Food and Rural Affairs. A separate decision letter is being issued today about the section 247 Order.

5. The Secretary of State agrees with the Inspector, for the reasons set out in IR3, that accepting the appellant's amended site layout plan (Plan B) would not prejudice the interests of any party and, like the Inspector, she has considered the appeal on this basis.
6. At IR4, the Inspector records that the appellant suggested at the Hearing that the 88 car parking spaces shown on the original and on the revised layout could be reduced by around 23 spaces, in order to reduce the amount of hard surfacing within the site. The Secretary of State agrees, for the reasons given by the Inspector, that no-one's interest would be prejudiced by this, and she has determined the appeal on this basis.

Policy considerations

7. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the Regional Spatial Strategy for the West Midlands (RSS11), published in 2004, the Warwickshire Structure Plan 1996-2011 (SP), adopted in 2001, and the Stratford-on-Avon District Local Plan Review 1996-2011 (LP), adopted in 2006.
8. The Secretary of State agrees with the Inspector that the most relevant policies to this application are those set out at IR12 to IR13 and that those noted in IR14 are not relevant.
9. Other material considerations include Planning Policy Statement 1 (PPS1): *Delivering Sustainable Development* and *The Planning System: General Principles*; Planning Policy Statement 7 (PPS7): *Sustainable Development in Rural Areas*; Planning Policy Guidance note 13 (PPG13): *Transport*; Planning Policy Guidance note 17 (PPG17): *Planning for Open Space, Sport and Recreation*; Circular 11/95: *The Use of Conditions in Planning Permission*, and Circular 05/2005: *Planning Obligations*.
10. The Secretary of State has also taken into account as material considerations the *Good Practice Guide on Planning for Tourism*, published in 2006; and *The Countryside Design Summary* adopted in 2000 and the associated *Character Map of Stratford-on-Avon*.
11. The Secretary of State has also had regard to the *Warwickshire Landscapes Project: Avon Valley, Feldon, Cotswolds*, produced by the County Council in 2003, although, for the reasons given by the Inspector (IR17), she has given it limited weight.
12. For the reasons given by the Inspector at IR18, the Secretary of State has given little weight to *The Napton on the Hill Parish Plan*, published in autumn 2006.

Main issues

13. The Secretary of State agrees that the main issues in this case are:
 - Character and appearance;

- Sustainability;
- Highway matters; and
- Need for the proposed development.

Development Plan

14. The Secretary of State agrees with the Inspector's reasoning and analysis at IR69-70 and, like the Inspector, she concludes that the appeal proposal would not compromise the use or operation of existing navigable waterway features such as junctions or locks. The proposed development is not, therefore, in conflict with this aspect of LP policy COM.23.
15. The Secretary of State has considered other aspects of the proposal's compliance with the Development Plan under the headings below. She sets out her overall conclusion on compliance with the Development Plan at paragraph 27 of this letter.

Character and Appearance

16. The Secretary of State has had regard to the fact that both national and local policies and guidance generally resist development in the open countryside in order to protect and enhance the character and quality of an area (IR72). She agrees with the Inspector in IR72, however, that some development is permissible and that COM.23 of the Local Plan gives encouragement to the enhancement and recreational use of water-based features, including existing navigable waterways subject to the proviso, among other things, that the character of the area is maintained. For the reasons set out in IR73, the Secretary of State agrees with the Inspector that the proposed arrangements for vehicular access would not, by themselves, impinge unduly on the character and appearance of the surrounding countryside.
17. Like the Inspector (IR74), the Secretary of State considers that the steeply banked, engineered slopes of the basin would be seen as a visually intrusive and incongruous feature, which would jar when seen in the context of the generally flat countryside within which the mooring basin would be set. She also agrees that the proposed basin is far from being a naturally occurring landform and that it would be seen as an extensive and intrusive landform in its own right. Like the Inspector (IR75), the Secretary of State considers that the proposed parking along the base of the embankment would add to that impact, even were it reduced along the lines suggested by the appellant during the Hearing.
18. The Secretary of State agrees with the Inspector that planting could, to some extent, mitigate against the adverse visual impact, but agrees with the Inspector that it would take many years before the planting would be of sufficient height and maturity to screen the vehicles, the bunded embankments and the moored boats and that the screening would be less effective during winter months, when a greater concentration of boats is likely within the basin (IR76). For the reasons set out in IR77, the Secretary of State agrees with the Inspector that the nature and scale of development proposed would form a particularly prominent and discordant feature in views from the surrounding area, significantly detracting from and eroding its remote rural character, including the character of the adjacent Special Landscape Area.

19. The Secretary of State shares the Inspector's concern (IR78) that the casualty reduction measures proposed by the Highways Authority would have a harmful visual impact, but that this impact would not, in itself, be so great as to justify refusal of the proposed development.

Sustainability

20. The Secretary of State has had regard to the fact that the appeal site lies in a remote rural location, accessed from a rural 'C' class highway, that public transport is limited to a single weekly bus service, and that British Waterways confirmed that owners of boats based at the site would, in all likelihood, arrive at the site by car, bringing their provisions with them (IR80). She has considered the Inspector's comments in IR81 about the lack of services or facilities at Marston Doles, and the fact that the nearest pubs and shops are at Napton, some 3-4km away by road. For the reasons set out in IR81, the Secretary of State agrees with the Inspector that the route from the appeal site to local facilities would not be an attractive prospect for pedestrians or cyclists, particularly after dark or in inclement weather.
21. The Secretary of State agrees with the Inspector (IR82) that a significant number of trips by private car would be generated by future owners of boats based at the appeal site, both in terms of visiting the site itself, and then subsequently accessing services and facilities in neighbouring towns and villages. She also agrees with the Inspector that this would be contrary to national policy objectives which seek to minimise the need to make such journeys, and to SP policy I.8 and policy COM.23 of the LP.

Highway Matters

22. The Secretary of State has had regard to the Highway Authority's suggestion that the likely increase in traffic movements that would be a consequence of the development proposed, would necessitate the provision of casualty reduction features along the highway (IR83). For the reasons set out in IR84, the Secretary of State agrees with the Inspector that the use of the proposed access would not, of itself, be materially harmful to highway safety.
23. The Secretary of State also agrees with the Inspector (IR85) that there would be some increase in traffic associated with the development proposed, and that this increase, combined with the accident record on this part of the Welsh Road provides sufficient justification for casualty/speed reduction measures. The Secretary of State agrees with the Inspector, in IR87, that the Highway Authority might introduce the suggested casualty reduction measures at its own expense. However, she also agrees that the development proposed would necessitate the introduction of casualty reduction measures if such a scheme was not already in place.

Need for the Proposed Development

24. The Secretary of State notes the whole-hearted support of British Waterways for this proposal and she attaches considerable weight to this support and to the evidence of British Waterways.
25. The Secretary of State has had regard to the pressing need for additional off-line moorings for the South East area, including the Oxford Canal, which British

Waterways has identified (IR88) and to the appellant's evidence about sequential appraisal (IR89-90). For the reasons set out in IR89 to IR90, the Secretary of State agrees with the Inspector (IR91) that there is every indication that no other single site could provide the off-line mooring facility proposed, and that the appellant and British Waterways consider this site to be the best available (IR91). She has also had regard to the fact that British Waterways considers that the development proposed would help to realise the potential of the canal network (IR91), although she notes that limited detailed evidence was put forward on this issue. However, the Secretary of State also agrees that those considerations have to be viewed in the light of national and local environmental policy objectives.

26. Like the Inspector, the Secretary of State considers that there is a telling need for this development, and that there is every indication that, without it, the pressure for on-line moorings and canal congestion would continue to increase. The Secretary of State gives considerable weight to this need. However, she also agrees with the Inspector (IR92), that the proposal would be seen as an intrusive, visually discordant feature in this generally open area of countryside that would significantly detract from its established pastoral character. She also shares the Inspector's view that the proposal would result in material harm to the character and appearance of the area and that it would be contrary to the provisions of SP policies ER1 and ER2 and LP policies PR.1, DEV.1, EF.2 and COM.23. She also agrees that the development would conflict with the advice in PPS7, which seeks to protect the countryside for the sake of its intrinsic character and beauty, and to ensure that the quality and character of the wider countryside is protected and, where possible, enhanced.

Overall Conclusions

27. For the reasons given above, the Secretary of State concludes that there is a pressing and growing need for additional off-line moorings in this area and that the development proposed would help to realise the potential of the canal network. She has afforded the support of British Waterways for the proposal considerable weight. However, she has found that the proposed mooring basin and associated works would have a significant adverse impact on the character and appearance of this relatively remote rural area, and that it would result in development in an unsustainable location with future users relying largely on the private car to access services and facilities. Overall, the Secretary of State concludes that the harm which would be caused by the development proposed is not outweighed by the need for the facility, benefits that might arise from the development, or the support of British Waterways.

Formal Decision

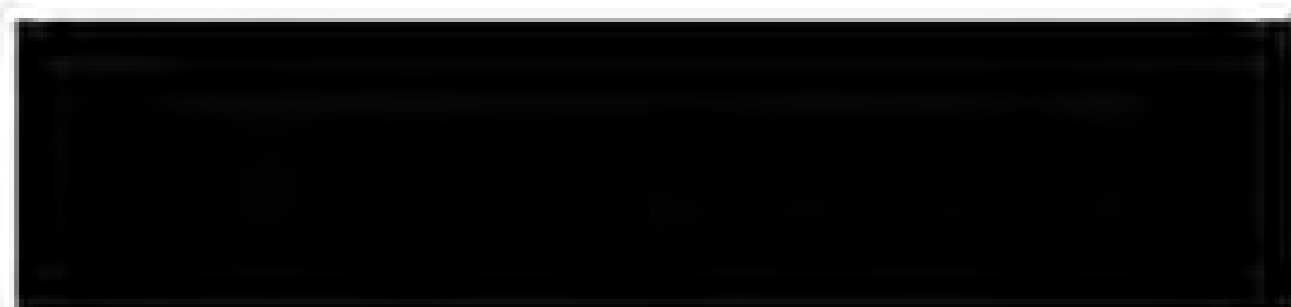
28. Accordingly, for the reasons given above, the Secretary of State hereby dismisses the appeal and refuses planning permission for a mooring basin for 150 berths, service building, new vehicular access and associated development, in accordance with application number 06/00641/FUL, dated 7 March 2006.

Right to challenge the decision

29. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within 6 weeks of the date of this letter.

30. A copy of this letter has been sent to Stratford-on-Avon District Council, and interested third parties.

Yours faithfully,



Christine Symes

Authorised by the Secretary of State to sign in that behalf



**Report to the Secretary of
State for Communities and
Local Government
& the Secretary of State for
Environment, Food and
Rural Affairs**

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by Jennifer Vyse DipTP DipPBM MRTPI

an Inspector appointed by the Secretary of State for
Communities and Local Government & the Secretary of State
for Environment, Food and Rural Affairs

Date 14 May 2007

TOWN AND COUNTRY PLANNING ACT 1990

HEARING INTO AN APPEAL BY

MR TIM LANGER

AGAINST THE DECISION OF STRATFORD-ON-AVON DISTRICT COUNCIL

AND

PUBLIC INQUIRY INTO CONFIRMATION OF A DRAFT ORDER FOR THE DIVERSION
OF BRIDLEWAY NO SM95A AND OF AN UNRECORDED BRIDLEWAY PATH

Hearing opened on 17 April 2007

Inquiry held concurrently on 17 April 2007

Site visit in relation both the Hearing and the Inquiry made on 18 April 2007

File Refs: APP/J3720/A/06/2024949 and NATROW/J3720/151/06/115

File Ref: APP/J3720/A/06/2024949

Land adjacent to The Wharf, Welsh Road, Marston Doles

- 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 Tim Langer against the decision of Stratford on Avon District Council.
- The application No 06/00641/FUL, dated 7 March 2006, was refused by a notice dated 24 May 2006.
- The development proposed is described as a mooring basin for 150 berths, service building, new vehicular access and associated development.

Summary of Recommendation: That the appeal be dismissed.

Order Ref: NATROW/J3720/151/06/115

Proposed Diversion of Bridleway No SM95A and of an Unrecorded Bridleway Path

- The application for the Order, dated 15 November 2006, was made by Mr Tim Langer.
- The Order is drafted under Section 247 of the Town and Country Planning Act 1990 and would be known as The Diversion of Bridleway No SM95a and of an Unrecorded Bridleway Path at Land Adjacent to The Wharf, Welsh Road, Marston Doles, Southam, Warwickshire (No *) Order 200*.
- The Order would divert a length of Bridleway No SM95a and an unrecorded bridleway path, as shown on the draft Order Map and as described in the draft Schedule.
- When the Inquiry opened there were no outstanding objections to the Draft Order.

Summary of Recommendation: That the Order not be confirmed.

PREAMBLE AND PROCEDURAL MATTERS

1. The outcome of the Draft Order is a matter for determination by the Secretary of State for Environment, Food and Rural Affairs. It is linked to a Section 78 planning appeal. That appeal was recovered by means of a direction dated 16 February 2007 (Document 21). The reason given in the direction is that the appeal would be most efficiently and effectively decided together with an Order under Section 247 of the Town and Country Planning Act 1990 (as set out above) over which Inspectors have no jurisdiction.
2. I ran the Inquiry into the Draft Order and the Hearing relating to the planning proposal concurrently, opening both on 17 April 2007 at the Council Offices, Elizabeth House, Church Street, Stratford-on-Avon, Warwickshire. The Inquiry ran for one day and I conducted the accompanied site visit on the following day. The Hearing was formally closed on conclusion of the accompanied site visit on the following day. With the agreement of the parties, I made an unaccompanied visit on 18 April 2007 to other marinas/mooring basins in the vicinity¹, namely Ventnor Farm Marina at Stockton and Black Prince Holidays Limited at Napton Junction (Wigrams Turn)².
3. An amended site layout plan (Plan B) was submitted by the appellant at the Inquiry. It differs from the site layout plan that formed part of the application considered by the Council, in that the proposed route for the diverted bridleway and unrecorded bridleway path is sited approximately 10m further north along that part of its length adjacent and parallel to the appeal site. However, the location of its junction with Welsh Road remains unaltered, as does its continuation across land to the south-west, through a field gate. In

¹ Appendix 5 of Document 15 shows the location of existing mooring basins, basins with planning permission but not yet developed, and possible sites for new basins. The two facilities I visited are numbered 3 and 5 in that appendix.

² Photo 2 submitted by a third party during the Hearing shows the Black Prince site.

answer to my questions, the appellant confirmed that, although the revision had not been advertised and that no further consultation had been undertaken, the amendment reflected the suggestions of Warwickshire County Council³. No objection was raised by any of the parties present to consideration of the appeal on the basis of the amended plan and, being satisfied that no-one's interests would be prejudiced as a result, I have considered the appeal accordingly.

4. Both the original layout and the revised layout submitted at the Hearing show some 88 parking spaces in the main car parking area. During the Hearing, the appellant suggested that this could be reduced by around 23 spaces in order to reduce the amount of hard surfacing within the site. (This could be dealt with by condition if necessary.) No objections were raised to this proposal and, as before, being satisfied that no-one's interest would be prejudiced by so doing, I have considered the appeal accordingly.
5. At the Inquiry, it was confirmed that all the statutory requirements relating to the draft Order as originally proposed, had been met (Document 12).
6. The proposal constitutes Schedule 2 development under section 12(b) of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. A screening direction was made on 11 October 2006, which confirms that the proposal is not EIA development (Document 6).

REASONS FOR REFUSAL

7. The Council's Decision Notice (Document 22) sets out two reasons for refusal. These are:

'1. The site lies in an extremely rural and isolated location and is an exposed site, adjacent to the Cotswold Scarp Special Landscape area. The proposals comprise a major development using a site just over 5ha in size. In the opinion of the Local Planning Authority, the proposed development could not be successfully integrated into the landscape by reason of its size and scale and the creation of a large artificial bank in an elevated position. The Local Planning Authority considers landscaping works and planting, either as proposed or a more extensive scheme, would be insufficient to mitigate the unacceptable harmful impact to the visual appearance of the rural landscape and the unacceptable harm to the character of the Special Landscape area. Furthermore, the Local Planning Authority considers there would be unacceptable harm to the rural character of the area by reason of urbanisation through the creation of the vehicular access and the introduction of casualty reduction features. For all these reasons, the Local Planning Authority considers the proposed development to be in conflict with policies ER1, ER2 and ER4 of the Warwickshire Structure Plan, policies ENV1 and ENV5 of the adopted Local Plan and policies PR1, EF2 and DEV1 of the emerging Local Plan.

2. The site lies in an extremely rural and isolated location, remote from any classified road and not related to a settlement of any substantial size. Marston Doles is a very small group of buildings, with no essential services or facilities. In the opinion of the Local Planning Authority this is an unsustainable location for a development of this scale, as users of the marina would have to travel elsewhere, most likely by car, to access all other services and facilities. The Local Planning Authority therefore considers the proposals to be in conflict with policy 18 of the Warwickshire Structure Plan, policies REC1, REC10 and TSM12 of the adopted Local Plan and policies CTY1 and COM23 of the emerging Local Plan.'

³ See paragraphs 63-66 below

THE SITE AND SURROUNDINGS

8. The appeal site and its surroundings are described in detail in Documents 18 and 19. In summary, the site comprises part of a much larger field that was being grazed at the time of my visit. The field, which is bounded by hedgerows, falls gently from the south-east to the north-west, with the Oxford Canal running along its eastern boundary. The surrounding area is predominantly flat to the north-west of the canal, comprising open fields with limited tree cover, and scattered farm buildings with related dwellings. There is a small cluster of red brick buildings, some currently in use as offices, plus a couple of dwellings, on the opposite side of the canal, next to the bridge where Welsh Road crosses the waterway, immediately to the north-east of the appeal site. By contrast, land on the far side of the canal to the south-east comprises rising Ironstone Upland, which is included within the Cotswolds Scarp Slopes Special Landscape Area (SLA)⁴ (Document 4).
9. The village of Napton on the Hill lies some 2.5km as the crow flies, to the north of the appeal site. The villages of Priors Marston and Priors Hardwick lie a similar distance to the east and south respectively. The town of Southam is approximately 5.5km to the northwest.
10. Welsh Road is a rural 'C' class road (Document 16) running through Marston Doles, between Southam and the village of Priors Marston. Narrow rural lanes lead off Welsh Road to the neighbouring villages. There is a towpath along the western bank of the Canal and public footpaths and bridleways cross the surrounding fields.

PLANNING POLICY AND OTHER GUIDANCE

11. The Council's Decision Notice refers to policies in the District Local Plan, adopted in 2000. That Plan has since been superseded. The statutory development plan for the area currently comprises the West Midlands Regional Spatial Strategy, the Warwickshire Structure Plan, adopted August 2001, and the Stratford-on-Avon District Local Plan Review 1996-2011, adopted July 2006. The policies I consider to be most relevant are set out below.

Structure Plan

12. Policies ER1 and ER2 seek, amongst other things, to protect the character and quality of the countryside, including the setting of landscape areas of regional or local importance. Policy ER4 was agreed as being of no relevance to this case, since it relates only to development within SLAs. Policy I8 is supportive of new tourist, leisure and recreation development where it would create new jobs meeting local needs for employment and provide community benefits, where there is easy access to the main transport routes and urban areas, where there is opportunity to maximise the use of alternatives to the private car, and where it would not undermine the intrinsic value of natural or cultural assets.

Local Plan

13. Policy PR.1 requires that all development proposals should respect, and where possible enhance, the quality and character of an area. Proposals that would damage or destroy features that contribute to the distinctiveness of the local area will not be permitted unless significant public benefit would arise from the scheme. Policy DEV.1 requires that development proposals should contribute to the character and quality of an area, with policy EF.2 seeking to conserve and protect the high quality of the SLAs. The explanatory text to

⁴ There was a discussion at the Hearing as to whether the boundary to the SLA runs along one or other of the canal banks, or along the centreline of the canal. Whilst no definitive evidence was available to determine the exact boundary, it was agreed that no part of the appeal site lies within the SLA.

the policy makes it clear that regard is to be had in this respect to proposals close to, but outside, an SLA. Policy CTY.1 resists all development in the countryside other than where it would accord with other provisions of the Local Plan. Policy COM.23 encourages the enhancement and recreational use of water-based features, including existing navigable waterways, subject to the character of the area being maintained. Additional permanent moorings and marinas will only be permitted in response to a proven need to realise the potential of the navigable waterway network, where there is adequate access, availability of existing facilities such as transport links or shops, and where they would not compromise the use or operation of existing navigable waterway features. Policy CTY.F allocates 6ha of land at Napton Brickworks for mixed use development, incorporating B1 use, dwellings, holiday accommodation and canal based recreation.

14. Reference was made by one of the local Councillors to policies CTY.8, CTY.9 and CTY.10 of the Local Plan Review. Policy CTY.8 relates specifically to mobile homes and caravans for permanent accommodation. Having regard to the nature of the proposal, as clarified at the Hearing, the Council confirmed that this policy is of no relevance to the appeal proposal. Policy CTY.9 relates to holiday accommodation and refers specifically to touring caravans, holiday chalets, static holiday homes and camping. Again, the development proposed, which relates to canal boat moorings, is not covered by this policy, such facilities being the subject of policy COM.23, referred to above. Whilst policy CTY.10 is supportive of small-scale recreation and leisure facilities in the countryside, it was a matter of agreement that the development proposed is not small-scale. The policy is therefore of no relevance in this case.

National Guidance

15. National guidance and advice in Planning Policy Statements 1 'Delivering Sustainable Development' (PPS1) and 7 'Sustainable Development in Rural Areas' (PPS7), in Planning Policy Guidance Notes 13 'Transport' (PPG13), 17 'Planning for Open Space, Sport and Recreation' (PPG17) and in the Good Practice Guide on Planning for Tourism' is also a material consideration in this case.

Supplementary Planning Guidance and Other Documents

16. I was advised that the Council adopted a document entitled 'The Countryside Design Summary' as supplementary planning guidance in September 2000. Since adoption followed appropriate consultations with interested parties, I afford the advice therein substantial weight. In particular, my attention was drawn to the 'Character Map of Stratford-on-Avon District' (Document 4) produced in conjunction with the Design Summary. It sets out the important landscape features that define the different parts of the District and informed the Council's consideration of the appealed application.
17. My attention was also drawn to guidance in the 'Warwickshire Landscapes Project: Avon Valley, Feldon, Cotswolds', produced by the County Council in November 2003 (Document 7). Whilst the guidance is a material consideration in this case, its non-statutory status limits the weight I afford it.
18. The Napton on the Hill Parish Plan was produced in autumn 2006 (Document 8). Although it is intended to be adopted as supplementary planning guidance, I was advised that it is subject to further revision and so has not been published as yet. This limits the weight it can be afforded. In any event, I am mindful that the appeal site lies close to, but is outside, the boundary of that parish.

PLANNING HISTORY

19. A planning application was submitted in December 2004 for a 158 berth mooring basin (Application No 04/04054/FUL) on the appeal site. That application was withdrawn prior to determination by the Council, following comments from the local community and statutory consultees.
20. In an attempt to address previous concerns, a second application (No 05/02872/FUL) was submitted for a 150 berth mooring basin. The scale of the earth movements and associated lorry movements was reduced, as was the number of berths, and the parking area was moved further from the basin. That application was refused by the Council in December 2005 on the grounds that the proposed shape and layout of the site would harm the character and appearance of the rural landscape, and that the potential increase in traffic would increase danger to pedestrians and horse riders using the canal bridge. In addition, it was asserted that the plans did not indicate a diversion route for the public bridleway (Appendices 1-3 to Document 18).
21. In support of the appealed application, reference is made to an application by Black Prince Holidays Limited for a 197 berth mooring basin for narrow boat fleet hire and private boats at Napton Junction. That application (No S97/0351) was refused by the Council and was the subject of a successful appeal (Ref APP/J3720/A/97/289053) (Appendix 2 to Document 15 and Appendix 4 to Document 18).

THE PROPOSAL

22. It is proposed to construct a mooring basin for 150 canal boats for private use, together with associated wet and dry docks, service building, slipway, car parking, a footbridge to carry the canal towpath over the basin entrance, and alterations to an existing field access off Welsh Road. At the Hearing, the appellant confirmed that he was seeking permission for long-term static moorings, not residential moorings. That said, it was also confirmed that owners would sleep on the boats at times and that one would be permanently occupied as warden accommodation for security purposes.
23. A Transport Assessment (Document 16) and two separate ecological surveys accompanied the application - a water vole survey (Appendix 8 to Document 15) and a white-clawed crayfish survey (Document 17). No sign of either species was detected during the survey periods.

THE CASE FOR THE APPELLANT

The material points were as follows⁵:

NEED

24. Canal-based recreation makes a considerable contribution to the local, regional and national economy, often in rural areas, and demand for narrow boat recreation continues to rise. Whilst the narrow boat market is very buoyant, with boats selling as fast as they become available, the shortage of moorings, particularly in the South East area, is getting worse (Appendices 7 and 8 to Document 18). There is currently an 18 month waiting list for moorings on the Oxford Canal, with British Waterways projecting an increase of 435 boats on this canal, between 2002-2012. Additional mooring facilities are generally encouraged

⁵ Taken from the appellant's written statement, as amplified orally during the Hearing.

by Local Plan policy and Government guidance and British Waterways lends its full support to the proposal.

25. A successful mooring basin must take into account a number of commercial and physical considerations, such as critical mass, ground levels, long pounds⁶, good road links with a safe junction, proximity to canal junctions, and water supply (Document 15). British Waterways considers that the only location capable of satisfying all the relevant criteria between Braunston and Banbury is Marston Doles (Appendix 8 to Document 18). The Inspector who dealt with the appeal at Black Prince Marina, accorded considerable weight to the views of British Waterways on matters of water supply, the capability of the canal system to cope with additional boat traffic, and potential congestion problems, since the organisation has the statutory duty of managing the canal system (Appendix 4 to Document 18).
26. The Napton area is a major crossroads on the British canal network and is an important focus for the large Midlands market. Indeed, an independent sequential appraisal of a 1.5 hour journey time along the Oxford Canal north and south of Marston Doles (Document 15), clearly supports the case that this is by far the best contender for additional moorings on this stretch. It is ideally located to take advantage of the available water supply and is in full accordance with British Waterways' 'Plan for the Future' (Appendix 8 to Document 18).

CHARACTER AND APPEARANCE

27. The Council objected to the previous proposal for the site, which included large, curved, 'organic' landscapes shapes (Appendices 1-3 to Document 18). The appeal application comprises a revised scheme, tailored to a geometric pattern in line with detailed comments from the Council's Landscape Officer, which resulted in a recommendation for approval to the Planning Committee (Appendix 6 to Document 18). Nonetheless, the Council now considers that the proposal cannot, under any circumstances, be assimilated into its setting.
28. The site is adjacent to but outside the SLA and the field within which the basin would be sited, as described by the Council, is a bland landscape, lacking features and interest. The proposal involves building one linear, canal-related man-made feature (the mooring basin) next to another (the canal) and together with the strategic landscaping proposed, would reflect the angular, geometric landscape of the area. Existing views of the SLA from the west will be completely unaffected and no trees or other landscapes features require removal. In fact, there will be a considerable net gain in planting. It is also relevant that the whole character of Marston Doles has been shaped by canal-based development.
29. Associated development has been kept to a minimum, lighting will be in the form of low bollards, no engineering or boat-building will take place, other than essential maintenance in the dry dock, no cranes are required on site, and no large boats would enter or leave the site by road. The proposed access would utilise an existing field entrance and no additional trees or hedgerows would need to be felled to facilitate this. The access road would run behind an existing mature hedge for the majority of its length and would be largely screened in views from Welsh Road.

SUSTAINABILITY

30. The previous application for the same number of berths as now proposed was not refused for sustainability reasons (Appendix 3 to Document 18). It is therefore inconsistent of the

⁶ The distance between lock flights.

Council to raise this as a matter for concern now. Notwithstanding this inconsistency, mooring basins must follow the route of the canal: Marston Doles is the only settlement suitable for a mooring basin through which the canal passes during a 1.5 hour journey time (Document 15). A possible alternative, Napton Brickworks (policy CTY.F of the Local Plan Review), is unsuitable due to site levels and water supply problems (Appendix 8 to Document 18). The volume of traffic associated with the Marston Doles proposal will be low, and Welsh Road has good links with the nearest main settlement, Southam.

31. The proposal is for a mooring basin, not a marina – marinas catering for the hiring of boats are normally associated with higher visitor numbers, high volume trips, cafés, gift shops etc. In contrast, private boaters are generally self-sufficient, either arriving by boat on the canal or driving from home. Private owners would know beforehand that there are no shops at the appeal site. This self-sufficiency will help keep the basin as low key as possible, minimising potential vehicular movement⁷. Distances travelled would be reasonably short and journeys infrequent.
32. In terms of construction traffic, the favourable difference in site levels between the field and the canal facilitates an efficient basin design compared with its capacity, requiring relatively little imported material (Plan A3). The design is more efficient than one with a similar capacity at Napton Brickworks by a factor of more than 25, and would generate significantly less HGV traffic on the surrounding road network.

HIGHWAY MATTERS

33. The casualty reduction features suggested by the Council and the Highway Authority (Documents 20A and 20B, Appendix 6 to Document 18, and Plan C) are not necessary: there is no record of accidents on the straight stretch of road next to the proposed access point and the volume of traffic generated by the proposal would be low (Document 16). Whilst there is a cluster of reported accidents and fatalities on the 'S' bend by the canal bridge (Appendix 10 to Document 18) that is some 250m to the east of the proposed access. Even if the casualty reduction features suggested are held to be necessary, their visual impact would be minimal and would not significantly urbanise Welsh Road.
34. The Highway Authority also raises concerns over the potential for damage to the highway by construction traffic (Document 20B), referring to section 59 of the Highways Act 1980 (Document 10) and 'extraordinary traffic' that it believes would be generated by the development proposed. It is suggested that the appellant should complete an undertaking that would oblige him to enter into an agreement with the Highway Authority for the purpose of funding essential repairs to the public highway as a consequence of the construction of the proposed mooring basin.
35. Having regard to the provisions of section 59 of the Highways Act 1980, traffic movements associated with construction of the proposed mooring basin cannot be considered as 'extraordinary'. In any event, the placing of a bond with the Highway Authority is a voluntary arrangement. It is, in essence, an insurance policy and it is for the appellant to decide what measures he wishes to take in this respect. It is not a matter that should be imposed on him by the Council. Consideration was given to the possibility of securing agreement through the submission of an undertaking, but the Highway Authority did not prove to be very helpful in this respect.

⁷ Although both the appellant and the Council refer in their statements of case to a limited bus service past the appeal site, it was confirmed at the Hearing that the shuttle service has been discontinued, the remaining service comprising a single bus to Rugby on a Thursday at 09.53, returning just after mid-day at 12.30 (Document 5).

THE CASE FOR INTERESTED PERSONS SUPPORTING THE PROPOSAL

British Waterways⁸

36. The development proposed is in full accordance with British Waterways' Plan for the Future. It is policy to accommodate all moorings of a permanent nature off the mainline canals into managed basins, in order to minimise visual impact on the canal environment and to prevent congestion. There has been a substantial increase in waterways traffic on the North Oxford Canal and recreational demand continues to grow. Within the South East area, there are waiting lists for all British Waterways managed moorings, as have private operators, with demand for off-line moorings⁹, particularly on this stretch of the canal, outstripping supply. The development proposed would provide much needed mooring berths in an area of high demand, helping to alleviate congestion attributable to on-line moorings on the South East waterways, further supporting the growing economy of the canal within the District. The development has been sensitively designed to complement the rural character of the area and the developer has a proven track record in successfully managing mooring basins.
37. Marston Doles best meets the criteria for new off-line mooring basin development on the section of the Oxford Canal between Braunston to the north and Banbury to the south. The alternative development at Napton Brickworks is not supported due to differences in levels necessitating the removal of a significant amount of earth to create the basin, and a negative impact on both water supply and congestion at key sites in the area. The development of any sites to the north of Marston Doles would result in problems related to water supply and congestion, whilst the meandering nature of the canal through remote countryside, makes sites to the south unfeasible. Two marinas to the west of Napton junction already provide off-line moorings there.

THE CASE FOR THE COUNCIL

The material points were as follows¹⁰:

38. The District Council did not object to, and made no representations directly, in respect of the draft Order. Its concerns related solely to the planning appeal.

CHARACTER AND APPEARANCE

39. The proposal would be contrary to national and local policies and guidance that seek to protect and enhance landscape quality and character. The appeal site lies within a field of open grassland, falling gradually from the canal towpath towards the proposed road access (115m AOD at the towpath down to 109m AOD at the proposed road access). The field is bounded by linear hedgerows within geometric patterned pasture grassland. Long views are afforded towards Napton on the Hill, with views along the canal channelled and enclosed by towpath hedging, probably the most significant soft landscape feature of the site.
40. A cluster of attractive red brick buildings and structures associated with canal heritage lie to the north-east of the site, with more functional agricultural buildings associated with Willow Farm, directly to the north, off Welsh Road. To the west of the canal, the landscape is predominantly flat, with little tree cover and scattered settlement, identified on the

⁸ Taken from appendices 7 and 8 to Document 18 and from the Council officer's report to the planning committee (found at appendix 6 to Document 18) as amplified orally during the Hearing.

⁹ Moorings along the canal banks, within the navigational channel are referred to as on-line moorings. Off-line moorings are those moorings in lay-bys, basins and marinas.

¹⁰ Taken from the Council's written statement, as amplified orally during the Hearing.

'Character Map of Stratford on Avon District as Feldon ('Clay Vale') (Document 4). It is a rather bland landscape, comprising a broad flat valley lacking features and interest, with few villages and scattered farmsteads. By contrast, to the east of the canal, the rising pasture of the Ironstone Uplands landscape is more interesting. It is a more rolling landscape with a large scale, strongly hedged tree pattern, small areas of permanent pasture and small ironstone villages on rising ground (Document 4) and lies within the SLA. The overarching management strategy for this part of the Feldon landscape character, as set out in the Warwickshire Landscapes Project (Document 7) is to conserve and restore the pastoral, hedged character of the landscape.

41. The scale of development proposed would adversely impact on the character and quality of the SLA fringe, an area described by the Warwickshire Landscapes Project as having a remote rural character which is largely inaccessible and empty (Document 7). There is a lack of beneficial enclosing landscape elements that might provide a basis for landscape structure and mitigate against any adverse visual impact on the landscape. The landscape proposal does not respond to the exiting landscape setting.
42. The cantilevered mooring basin would project into the falling topography of the site. This massive change in levels would be difficult to effectively mitigate in the existing landscape, steeply sloping, narrow engineered slopes not being generally acceptable as a means of achieving level changes. On this site, they would introduce additional visual intrusion in a flat landscape. The scale of the proposal would represent a dominant change to the existing remote and open rural landscape. The nearest mature hedgerow trees to the west of the site have relatively little screening value, given the fairly continuous public views of the site for road users. In addition, the introduction of a new 6m wide access and necessary casualty reduction features (Documents 20A and 20B, Appendix 6 to Document 18, and Plan C) onto Welsh Road, a rural highway, would have a harmful, urbanising impact on the remote rural character of the area.

SUSTAINABILITY

43. The site lies in a remote rural location, some 5km from Southam, one of eight main rural centres identified by the Local Plan Review as providing a range of shops, services and job opportunities. Napton on the Hill, identified in the Local Plan as a Local Centre Village, lies some 3km to the north of the appeal site. Marston Doles itself, however, comprises a small cluster of buildings with no services or facilities. Users of the marina would have to travel elsewhere to access all services and facilities, with the vast majority of journeys inevitably being made by car. With the marina in full occupation (150 boats) the development would generate a significant number of journeys. Users would not only arrive at and depart from the site by car, they would also make car trips to access pubs, shops, restaurants, tourist attractions and other facilities in the area, all along small rural roads¹¹. The significant number of car-based journeys that would be generated by the development proposed would be contrary to adopted policies.

HIGHWAY MATTERS

44. The appellant calculates that some 1700 HGV movements would be generated by the need to import material to the site to construct the proposed bunds/embankments (Document 18). In comments to the Council (Document 20B) the Highway Authority suggests that the appellant should be bound into an agreement under the provision of section 59 of the Highways Act 1980 (Document 10) by means of a planning condition, to ensure that a bond

¹¹ See footnote 7.

is agreed for the potential repair of road damage caused by construction traffic. The reason given was 'to ensure the discharge of the Highway Authority's liability as to damage caused to Welsh Road as a result of 1700 HGV loads of imported material. The HGV movements over the period of construction will be significantly greater than the road would otherwise experience.' In addition, an agreement to address concerns over the routing of HGVs is requested. It is maintained that this is a matter that may not be adequately addressed by condition and should therefore be dealt with by way of an agreement under the provisions of section 106 of the Town and Country Planning Act 1990 (as amended).

THE CASE FOR INTERESTED PERSONS OPPOSING THE DEVELOPMENT

Councillor Williams - Ward Member for Fenny Compton

45. The development proposed would have a very prominent impact on the landscape. It is a remote rural area at the edge of an SLA. In addition to the impact on the views from the surrounding area, views from the SLA will also be affected, as will the views of those who walk along the footpaths, bridleways and towpaths in the area.
46. The engineered bunding proposed is not typical of this part of Warwickshire. Other developments involving significant bunding have been refused permission in the past, for example developments associated with agriculture. The gradients proposed are too steep for this flat area and will not blend in at all.
47. The decision, albeit contrary to officer recommendation, was made by the elected Members, who gave informed reasons for refusal.

Councillor N Rock – Ward member for Stockton & Napton

48. This is a proposal to build a sizeable marina in open countryside, where conditions of general restraint pertain. Light pollution and the urbanising highway improvements required to make the access satisfactory are also reasons to oppose the application.
49. Although the adopted Local Plan makes provision for a canal-based resource close by, at Napton Brickworks (policy CTY.F) that site is not supported by British Waterways (Appendix 8 to Document 18). Napton's Parish Plan (Document 8) specifies a restriction on large marina developments in the area.
50. Changes in the behaviour of boat moorers over the years have had implications for the balance between economic inward investment and strain on infrastructure (long-term mooring as opposed to hirers). Semi-permanent occupancy, akin to a dwelling, appears to be a feature of a number of boats in the area, with British Waterways confirming that long-term static mooring is an expectation. In such cases, the moored boats would meet the definition of a mobile home. In this respect, it should be noted that the site is in a very rural area, poorly related to A-roads.
51. A further consideration is the strain on local services that another large-scale marina would have on this locality, with the density of canal moorings around Napton Junction being a major concern. In the wider Midlands area, the density of canal moorings is around 9.68 boats per kilometre of canal (2632 boats on 272km). Around Napton Junction however, that density is some 66.24 boats per kilometre (924 boats on 13.95km). This is greater than any similar length of canal anywhere in the enlarged Midlands area. The incremental and substantial development proposed will further harm the countryside and will cause congestion on the canal network. Furthermore, owners are often retired persons and there have been a number of difficult emergency ambulance call-outs to moored boats.

52. British Waterways' interests are water supply and income from moorers. A major back pumping scheme to address the water supply to Napton top lock (Marston Doles) was completed a few years ago. In this respect, the company cannot be seen as independent. The heritage of the waterways as a tourist resource is important and a balanced approach is required to prevent over-development.

I Brodie – Volunteer with Head Start First Responder Group for Napton on the Hill

53. The Group provides trained volunteer responders who support the ambulance service covering this area, Napton lying beyond the 8 minute distance for an ambulance response. In addition to local residents, there are around 1000 boats carrying around 2,310 people on the local canal system lying within the area served by the group. The development proposed would add significantly to the number of people in the locality. The numbers envisaged mean that 24 hour cover throughout the year is just not possible. In this respect, it should be noted that boaters tend to be of a certain age, more likely to need a first response service.
54. There are some 14km of canals in the Parish with only 10 access points. Marston Doles is difficult to access. Getting volunteers on and off the boats to attend a patient, and transferring a patient off a boat, can be very difficult, particularly in the dark. The low level lighting proposed by the appellant would not be appropriate for safety reasons, but the lighting necessary to make the site safe would have significant implications for the character and appearance of the countryside. Furthermore, the use, on a metal boat, of electrical equipment associated with the use of defibrillators, could endanger life.

Mrs M Brindley – Chair of Priors Marston Parish Council

55. The visual impact of the development proposed would be unacceptable. It would unfairly impose itself on local residents, and wildlife will disappear. This rare, beautiful and tranquil area will be destroyed.
56. Although Welsh Road has been repaired between Southam and the canal bridge, the verges are already breaking up and are dangerous to road users including horse riders, cyclists and pedestrians, there being no footpaths along this length of the road. The extra traffic generated by the development proposed would result in an increase in the number of fatalities on this stretch of road, which is very busy. If the development goes ahead, the casualty reduction features suggested by the County Council will be a necessity.

J Appleton - Priors Marston Parish Council

57. This is a very remote area, where local policies restrict new development. It is important to preserve the existing character of the area: boats will be present on the site for long periods which will completely change the character of the area. Marinas and mooring facilities are being concentrated in one corner of the District. At present, there are approximately 15-20 on-line moorings at Marston Doles, with boaters attracted to those moorings because of the tranquil environment. The environment for those boaters, and for the many walkers using the towpath, would be destroyed. The development proposed would significantly increase activity in the area and the tranquil nature of the area would be lost.
58. There are more sustainable locations in places such as Banbury, which would be more appropriate for the type of development proposed.

59. Use of this unlit country road by construction traffic, particularly during the winter months, would present a hazard. The signage suggested should be installed if the development proposed goes ahead, but it should only be temporary, otherwise it will lose its impact.
60. With regard to emergencies that may arise, it is important to note that this is a remote site: the telephone call box is often out of order and mobile phones do not work here.

WRITTEN REPRESENTATIONS IN RELATION TO THE APPEAL

Warwickshire County Council

61. No objections are raised to the planning application.

Napton on the Hill Parish Council

62. The majority of the Parish Councillors support the comments made by Councillor Rock.

WRITTEN REPRESENTATIONS IN RELATION TO THE DRAFT ORDER

Warwickshire County Council – Access Information Officer

63. The proposed route of the bridleway would cross the access road to the marina at a point close to the car park entrance and there is concern that emerging drivers may not notice pedestrians or horses¹². Public bridleway users might also fail to see emerging vehicles, particularly since they would be separated by a hedge until near to the junction. Whilst vehicles might well travel slowly along the access road, these concerns would be best addressed if the bridleway were moved 10m further away from the car park entrance, where there would be fewer distractions and a clearer view both for motorists and the users of the bridleway. Deletion of the intervening hedgerow proposed would also assist.¹³
64. The bridleway would exit the site on a bend on Welsh Road, a short distance from the canal bridge¹⁴. The road between this exit and the bridge is narrow: this bend, and the one onto the canal bridge, are quite sharp, offering poor visibility. The increased traffic that the new development is likely to attract, would increase the danger to equestrians and walkers who emerge onto the road intending to cross the bridge and continue on further paths and bridleways in the area. The recent history of this section of Welsh Road shows an above average number of accidents, including a number of fatalities (Appendix 10 to Document 18).
65. The provision of 88¹⁵ parking spaces, plus spaces for staff vehicles and overflow parking, does not suggest a negligible amount of extra traffic on this section of road. The fact that no services or facilities are available on site suggests that users of the marina would make extra trips to nearby settlements, and a gas and coal store indicates that deliveries will be made to the marina, probably by larger vehicles. The Transport Assessment that accompanied the planning application has not been seen. If not done already, a traffic management study should be undertaken and if possible, a safer route should be found for users of the bridleway, or at least traffic calming measures should be put in place to minimise the risk of collision.

¹² Route as shown on the layout plan submitted with the planning application (Plan A4).

¹³ The revised siting of the bridleway and unrecorded bridleway path, and the deletion of a stretch of proposed hedgerow, are shown on the revised plan submitted at the Hearing (Plan B).

¹⁴ This is a different location from the proposed vehicular access to the appeal site, which would join with Welsh Road, some 250m to the north-west of the canal bridge.

¹⁵ This figure was reduced at the Hearing (see paragraph 4 above).

66. Finally, it is confirmed that there is no objection to the proposed diversion of the bridleway, but it is strongly recommended that the location of the bridleway is revised as suggested above¹⁶. It is also hoped that casualty reduction features on Welsh Road, as recommended by the Highway Authority, are included. Measures should be taken to ensure the safety of bridleway users during construction.

PLANNING CONDITIONS

67. The Council has suggested a number of conditions (Documents 20A and 20B). These were discussed at the Hearing together with others relating to the need for wheel washing facilities at the site exit during construction, and a restriction precluding use of the boats moored within the basin for permanent residential occupancy, other than in connection with a single resident warden. My findings on these matters, together with comments on the suggested need to secure the provision of casualty reduction features within the highway and the posting of a bond with the Highway Authority for the purposes of funding any essential repairs to the highway as a consequence of the construction of the mooring basin, are contained in my conclusions below.

¹⁶ As reported at the start (paragraph 3) a revised plan accommodating the suggestions of the Access Officer was submitted at the Hearing. I have dealt with the appeal on the basis of the revised plan.

INSPECTOR'S CONCLUSIONS

68. The numbers in the square brackets [] in this section denote the paragraphs above on which my conclusions are based.

The Planning Appeal

69. It is a matter of fact that mooring basins must follow the route of the canal [30] and that, for long distances, the canals wend through the open countryside [37]. In this respect, policy COM.23 of the Local Plan is permissive of additional permanent moorings subject to the character of the area being maintained, where they would respond to a proven need, where there is adequate access, where there is availability of existing facilities such as transport links or shops, and where they would not compromise the use or operation of existing navigable waterway features such as junctions or locks.
70. In relation to the last of these criteria, the appeal site lies some 4.5km to the south of Napton Junction (some 6km by canal), where the Grand Union Canal joins with the Oxford Canal. There is a flight of locks between the appeal site and that junction. British Waterways confirmed at the Hearing that the location of the appeal site would not compromise the use or operation of either the locks or the junction. I find no conflict with policy COM.23 in this respect. With regard to access and availability of existing facilities, this aspect of the policy is addressed later in this Report as a separate issue.

Character and Appearance

71. It is proposed to create an off-line mooring facility with 150 berths for canal boats [22], by creating an embanked basin within an open grassed field abutting the western bank of the Oxford Canal at Marston Doles [28, 39, 42]. The field slopes gently down from the towpath and the basin would be enclosed by bunds that would be built up from existing ground levels [39]. The submitted details indicate that the outward facing slopes of the bunds would be at an angle of around 35°, with an overall length of some 260m running parallel to the canal (Plans A4 and B). The top of the bund would be some 5m above the level of the vehicular entrance to the site off Welsh Road, with the moored boats projecting almost 2m higher still (Plans A4 and B).
72. Both national and local policies and guidance generally resist development in the open countryside in order to protect and enhance the character and quality of an area [12, 13, 15]. Some development is permissible however, and, as set out above, policy COM.23 of the Local Plan gives encouragement to the enhancement and recreational use of water-based features, including existing navigable waterways subject, among other things, to the proviso that the character of the area is maintained.
73. The vehicular access to the appeal site would lie some 250m to the north-west of the bridge where Welsh Road crosses the canal, through an existing field entrance (Plan A5). No part of the roadside hedgerow would need to be removed to facilitate the access [28, 29], and the existing visibility splays are acceptable to the Council without alteration. The access track would run towards the proposed mooring basin behind the existing roadside hedge [29] and I am satisfied that these arrangements would not, by themselves, impinge unduly on the character or appearance of the surrounding countryside.
74. However, I saw during my site visit that there are clear views across the field to the site of the proposed mooring basin from Welsh Road, when travelling from Southam towards Marston Doles, and from the adjacent bridleway and unrecorded bridleway path. In my opinion, the steeply banked, engineered slopes of the basin (Plans A4 and B) would be seen

as a visually intrusive and incongruous feature in those views, which would jar when seen in the context of the generally flat countryside within which the mooring basin would be set. I recognise that the rectangular shape of the basin would, to some extent, reflect the geometric field pattern seen throughout the area [27, 28, 39], but that pattern is created by hedged field boundaries [39, 40], not major engineering works. I recognise also, that the land on the far side of the canal rises up, but as part of a wider geologically-derived landscape form [40]. The proposed basin is far from being a naturally occurring landform; on the contrary, I consider that it would be seen as an extensive and intrusive landform in its own right.

75. The proposed parking along the base of the embankment would add to that impact, even were it reduced along the lines suggested by the appellant during the Hearing¹⁷. I am mindful, in this respect, of my observations during the unaccompanied part of my site visit to a couple of marinas/mooring basins in the locality. I saw that even in mid-April, the majority of berths were occupied, with a good number of cars and other vehicles present¹⁸.
76. I recognise that in time, planting could, to some extent, mitigate against the adverse visual impact I have identified. It would take many years, however, before the planting would be of sufficient height and maturity to screen the vehicles, the bunded embankments and the moored boats etc. Furthermore, that screening would be less effective during winter months, when a greater concentration of boats is likely within the basin.
77. My own observations during the site visit confirm the description of the area set out in the Warwickshire Landscapes Project (Document 7) as having a remote rural character that is largely inaccessible and empty [41]. In my opinion, the nature and scale of development proposed which, on the evidence of both the appellant and British Waterways would be well used [24, 36], would form a particularly prominent and discordant feature in views from the surrounding area, significantly detracting from and eroding that remote rural character, including the character of the adjacent SLA which forms a backdrop to the appeal site [40].
78. A further element of the Council's concerns in respect of the impact of the proposed development on the character and appearance of the area, relates to the impact of casualty reduction features suggested by the Highway Authority [33] as being necessary. I address this matter in more detail below, under other matters. Suffice it to say, that whilst I do have concerns as to the visual impact of the measures suggested, that impact would not, by itself, be fatal to the success of the appeal. I am mindful in this respect that local residents are generally supportive of the safety measures proposed [56, 59].

Sustainability

79. I recognise that there was no reference to sustainability in the reasons for refusal in relation to the earlier application (Appendix 3 to Document 18) and that the appealed application was intended to address the previous reasons for refusal [20]. Nevertheless, it is a matter that was raised by the Council in its reasons for refusal in relation to the appealed application [7]. I am also mindful of current Government guidance in this respect: PPS1 makes it clear that sustainable development is the core principle underpinning planning. In terms of transport, PPG13 stresses that planning can help reduce the need to travel, reduce the length of journeys and make it safer and easier for people to access leisure facilities,

¹⁷ See paragraph 3 above.

¹⁸ Photo 2 submitted by a third party during the Hearing shows moored boats and vehicle parking at one of the sites I visited (Black Prince) and is a fair reflection of the level of activity that I saw there.

amongst other things, by public transport, walking and cycling. In other words, reducing the need to travel, especially by car.

80. The appeal site lies in a remote rural location, accessed from a rural 'C' class highway, Welsh Road [10]. The nearest access to the main road network is some 5km to the north-west at Southam [43] (A423 Coventry-Banbury road, the A425 Leamington Spa-Daventry road, and the A426 to Rugby), with Byfield, some 8km away to the south-east, lying on the A361 Banbury-Daventry road (Document 19). Other than a single bus on a Thursday [footnote 7], no public transport service passes the site. In any event, British Waterways confirmed at the Hearing, that owners would, in all likelihood, arrive at the site by car, bringing their provisions etc with them.
81. Other than a handful of dwellings, some offices in converted canal buildings, and agricultural buildings and structures, there are no services or facilities at Marston Doles [31, 43]. The nearest pubs and shops are at Napton, 4.8km (3 miles) away along the canal, some 3-4km (1.9-2.5 miles) by road, well in excess of the 2km figure suggested in PPG13 as being the distance that offers the greatest potential for replacing car trips by walking. PPG13 also places emphasis on providing safe and secure walking routes. In this respect, I saw during my visit that the roads and lanes in the area are winding and unlit, with Welsh Road crossing the canal on a narrow hump-backed bridge, at a point where there is an 'S' bend in the road. These factors combine, in my opinion, to create a route that would not be an attractive prospect for pedestrians, particularly after dark or in inclement weather. Whilst the PPG indicates that cycling has the potential to substitute for short car trips under 5km, the same concerns in relation to the roads and lanes providing an attractive alternative to the car apply.
82. I would therefore expect a significant number of trips by private car to be generated by future owners, both in terms of visiting the site itself, and then subsequently accessing services and facilities in neighbouring towns and villages. This would be contrary to national policy objectives which seek to minimise the need to make such journeys, and to Structure Plan policy 18 and policy COM.23 of the Local Plan Review.

Highway Matters

83. Whilst no objection was raised by the Highway Authority to the previous application for a mooring basin on this site, three fatal accidents have since occurred in the proximity of the site over a ten month period during 2005 (Appendix 10 to Document 18). Accordingly, the Highway Authority now suggests that the likely increase in traffic movements that would be a consequence of the development proposed, would necessitate the provision of casualty reduction features along the highway [33]. As reported to the planning committee (Document 20A and appendix 6 to Document 18) the suggested option included a vehicle-activated sign warning eastbound vehicles to slow on the approach to the bend, combined with some additional signs and/or lining of the road.
84. The proposed access to the appeal site would be sited some 250m to the north-west of the canal bridge and 'S' bend, on a relatively straight stretch of road (Plan A5). There was no objection to the proposal with regard to the geometry or safety of the arrangement proposed and I have no reason to suppose that use of the proposed access would of itself, be materially harmful to highway safety.
85. The Transport Assessment submitted with the application (Document 16), the findings of which were not contested either by the Council or the Highway Authority, found that the anticipated volume of traffic associated with the proposed mooring basin would be modest

in absolute terms. It is a matter of fact, however, that there would be some increase in traffic associated with the development proposed, anticipated to be in the region of an additional 90 two-way movements per day on a summer weekday, equating to an 8.4% increase between 07.00-19.00 hours. In my opinion, the accident record on this part of Welsh Road, in close proximity to the appeal site (a total of nine reported accidents between 1995 and February 2006, including the fatalities mentioned above) (Appendix 10 to Document 18) and the *de facto* increase in vehicle movements on the adjacent roads that would be a direct consequence of the mooring basin proposal, combine to provide sufficient justification for casualty/speed reduction measures.

86. The Council produced a plan at the Hearing on behalf of the Highway Authority, setting out a possible speed/casualty reduction scheme (Plan C). That plan is dated August 2006, some three months after the planning application had been refused by the Council. It had not been seen by the appellant before and the Council was unable to confirm whether or not the measures shown were to be implemented by the Highway Authority whatever the outcome of the appeal. It was confirmed however, that the plan, which includes two vehicle activated signs, shows the currently preferred option of the Highway Authority.
87. I recognise that were the mooring basin development not to go ahead, then it might be that the Highway Authority would introduce the suggested measures at its own expense in any event. Nevertheless, I am of the opinion that the development proposed would, by itself, necessitate the introduction of casualty reduction measures if such a scheme was not already in place. I am satisfied that this is a matter that could be dealt with by way of a 'Grampian' style condition, were the appeal to succeed.

Other Matters

88. In support of the application, my attention was drawn the pressing need for additional off-line moorings identified by British Waterways for the South East area, including the Oxford Canal [36] and to the appeal decision relating to the Black Prince development at Wigrams Turn (Appendix 4 to Document 18) in which the Inspector gave considerable weight to the views of British Waterways.
89. I too, give the whole-hearted support of British Waterways for the proposal considerable weight. I also recognise that the general need for additional off-line moorings was not disputed by the Council and am mindful of the findings of a sequential appraisal carried out by the appellant (Document 15), which were undisputed.
90. The appraisal looked for sites along the Oxford Canal, including an examination of the site at Napton Brickworks identified by policy CTY.F of the Local Plan. However, that site was rejected as British Waterways has withdrawn support for that location due to differences in levels necessitating the removal of a significant amount of earth to create the basin, and due to the resulting negative impact on both water supply and congestion at key sites in the area [37]. The advantages of the appeal site over the Napton Brickworks site, as set out in the appraisal, are that it is located on a summit pound, meaning that there would be no negative consequences on water supply within the canal network, the development would not cause congestion or problems with the operation of locks, and the material to be removed would be around one tenth of that associated with developing the Napton Brickworks site (Appendix 8 to Document 18). It concluded that the site at Marston Doles was the most suitable, meeting all the commercial and physical criteria identified as being necessary to deliver a successful mooring basin [25, 37].

91. Accordingly, there is every indication that no other single site could provide the off-line mooring facility proposed, with the appellant and British Waterways considering this site to be the best available. I also recognise that allowing the appeal would help to realise the potential of the canal network. Having said that, those considerations have to be viewed in the light of national and local environmental policy objectives.
92. As set out above, it is my opinion that the proposed development would be seen as an intrusive, visually discordant feature in this generally open area of countryside that would significantly detract from its established pastoral character. In the final analysis, whilst I accept that the need for this development is telling, indeed, without it, there is every indication that the pressure for on-line moorings and canal congestion would continue to increase, the proposal would result in material harm to the character and appearance of the area, contrary to the provisions of policies ER1 and ER2 of the Structure Plan, and policies PR.1, DEV.1, EF.2 and COM.23 of the Local Plan. The development would also conflict with advice in PPS7, which seeks, among other things, to protect the countryside for the sake of its intrinsic character and beauty, and to ensure that the quality and character of the wider countryside is protected and, where possible, enhanced.
93. During the Hearing, both the Council and local residents expressed concern at the potential for light pollution from the proposed facility during the hours of darkness. I am satisfied that this is a matter that could be controlled by condition were the appeal to succeed.
94. Whilst I have some sympathy with the concerns expressed at the Hearing in relation to emergency 'first response' cover in the area [51, 53, 54], it is not a consideration of such weight that the appeal should fail in this respect.

Conditions

95. I have considered what conditions would need to be attached to a planning permission should the Secretary of State allow the appeal. In so doing, I have had regard to the conditions suggested by the Council together with additional conditions that were suggested during the Hearing [67], having regard to the advice in Circular 11/95: *The use of conditions in planning permissions*. My recommended conditions, in the event of permission being granted, are set out in the Annex attached hereto. I have, where appropriate, made detailed changes to improve the wording suggested by the Council, to bring the conditions into line with the advice in the Circular, to avoid repetition, and to reflect the associated discussion at the Hearing. The numbers in brackets below, relate to the numbering of the Council's suggested conditions¹⁹.
96. In addition to the standard time limit condition (1), it is necessary, in order to prevent pollution of the water environment and to prevent increased risk of flooding, to secure the submission of an appropriate scheme of foul and surface water drainage (2, 3, 5).
97. The Council took issue with the design of the service building, the 2.4m high fencing around the refuse, gas and coal storage area, and the extent of hardsurfacing (7). It was agreed that revised details should be submitted to address those concerns were permission to be forthcoming. I have recommended a condition to this effect.
98. Having regard to the rural setting of the development and in the interest of visual amenity, details of hard and soft landscaping are required, together with protective fencing during construction, cross sections and long sections of the ramped access road, and external

¹⁹ Documents 20A and 20B.

- lighting (4, 8, 9, 10, 11, 12, 13, 17). For the same reason, it is necessary to prevent open storage within the site, other than that shown on the submitted plans (23²⁰).
99. In the interest of highway safety, it is necessary to ensure that the access to the car park and mooring basin is laid out and properly surfaced, that wheel cleaning facilities are provided during construction, that visibility splays and parking spaces are provided and retained, and that a scheme of signage directing construction vehicles to a particular route be agreed and implemented (15, 16,). Having regard to my findings above in relation to the accident record in the locality and the increase in traffic that would be a consequence of the development proposed, it is necessary to ensure that casualty reduction measures are in place prior to the commencement of development (22).
100. A condition is necessary to ensure that the development is fully accessible to disabled users (18).
101. The white-clawed crayfish and water vole surveys were carried out some time ago. Although neither species was detected during those surveys, it is necessary, given that ideal conditions exist in the canal for those species, for further surveys to be undertaken prior to commencement of development in order that appropriate mitigation measures can be implemented, including control over the timing of works (19, 20).
102. The appeal site is in a remote rural location where residential accommodation would not normally be permitted. I have recommended conditions that would preclude permanent residential occupation of any of the boats, other than one that would provide for a permanent warden presence on the site.
103. A condition was suggested to secure the further diversion of the proposed bridleway route (14). That revision however, was the subject of the revised plan handed in during the Inquiry. A condition to that effect is therefore unnecessary although, in the interest of clarity, it is necessary, in my opinion, to detail by condition the plans to which the permission would relate, since my recommendation is based on an amended plan. Another suggested condition required the submission of a combined ecological and landscaping survey (21). That provision is subsumed through the provisions of conditions 5, 6, and 17 in the attached Annex.
104. A condition prohibiting the use power tools on the site was discussed (6). The parties were unable to agree a practical definition of a power tool and in any event, a total prohibition would be unreasonable in my view, given the need for boat owners to carry out running repairs etc. On balance, I consider that the use of power tools on the site by boat owners would be largely self regulating and would be a matter better dealt with through on-site management.
105. The Council also suggested that the appellant should be obliged, by way of a legal agreement, to place a bond with the Highway Authority in relation to any road repairs that might be necessitated as a consequence of the development proposed, were the appeal to succeed [34, 35, 44]. However, it would, in my opinion, be a matter for the appellant as to how he might wish to insure against any costs that might be levied against him in the event that he was held responsible for damage to the public highway during construction. It might well be that he elects to place a bond with the Highway Authority to this effect, or he could make alternative arrangements. He should not be obliged to take out that cover necessarily with the Highway Authority and I am satisfied that it is not a matter that is

²⁰ Additional condition within supplementary paper to committee report – Document 20B)

appropriately dealt with by planning condition. Neither does the absence of a unilateral undertaking to this effect tell against the development proposed. Should the Secretary of State should come to a different view, a suggested condition is attached at the end of the Annex below.

The Draft Order

106. The concerns of the County Council, as expressed by the Access Information Officer [63, 64, 65, 66] have, by and large, been met by the revised layout submitted during the Inquiry (Plan B). The amendment re-sites the proposed route for the bridleway a further 10m to the north, and the proposed hedging between the point where the bridleway would cross the access track and the car park entrance has been deleted. The appellant was also happy to reduce the number of parking spaces proposed [4].

107. There is no dispute that were the planning appeal to succeed, the proposed development would be physically incompatible with the bridleway along part of its current alignment and with the route of the unrecorded bridleway path. Indeed, the layout plan shows those routes running through the proposed mooring basin (Plans A4 and B). The proposed diversion would therefore be necessary to enable the development the subject of the planning appeal to be carried out, were planning permission to be granted. No objections are raised to the draft Order in this respect.

OVERALL CONCLUSIONS ON THE APPEAL

108. I am in no doubt that the development proposed would meet a pressing and growing need for off-line moorings and would help to realise the potential of the canal network. In particular, I recognise the support of British Waterways for the proposal, having regard to its statutory duty to manage the canal system. However, I have found that the proposed mooring basin and associated works would have a significant adverse impact on the character and appearance of this relatively remote rural area. Furthermore, the proposal would result in development in an unsustainable rural location, with future users relying, for the most part, on the private car to access services and facilities. In my opinion, that harm is not outweighed by the need for the facility or the support of British Waterways. Therefore, for the reasons given above and having regard to all other matters raised, I conclude on balance that the appeal should not succeed.

OVERALL CONCLUSIONS IN RESPECT OF THE DRAFT ORDER

109. Given my findings in relation to the planning appeal, there is no need to divert either that part of bridleway SM95A, or the unrecorded bridleway path, which cross the appeal site, and I recommend that the Order not be confirmed.

RECOMMENDATIONS

The Planning Appeal

110. I recommend that the appeal be dismissed.

The Draft Order

111. I recommend that that the Order should not be confirmed.

J A Vyse

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

A Murphy BA(Hons), MSc, MRTPI Stansgate Planning Consultants, Conrad House,
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T Langer Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mrs E Nicholson BSc(Hons), MSc, Area Planning Officer with Stratford-on-Avon District
Dip TP, MRTPI Council
Ms J Cawood Landscape Architect with Stratford-on-Avon District
Council

INTERESTED PERSONS:

P Spencer British Waterways, Fearn's Wharf, Neptune Street,
Leeds LS9 8PB
Councillor C R Williams Ward Member for Fenny Compton c/o Stratford-on-
Avon District Council
Councillor N I C Rock Ward Member for Stockton & Napton c/o Stratford-
on-Avon District Council
I Brodie Holly House, Godsons Lane, Napton, Southam
CV47 8LX
Mrs M Brindley Bicknell, School Lane, Priors Marston, Southam
(Chair of Priors Marston Parish Council) CV47 7RR
Councillor J Appleton Beechcroft, Shuckburgh Road, Priors Marston,
(Priors Marston Parish Council) Southam CV47 7RY

DOCUMENTS

- 1 Letter of Notification and list of persons notified
- 2 Letters of representation in response to the Notification
- 3 Local Plan Proposals Map
- 4 Character Map of the District
- 5 Timetable for Flexibus Service 214
- 6 EIA Screening Direction
- 7 Extract from the Warwickshire Landscape Guidelines
- 8 Napton on the Hill Parish Plan and accompanying committee report
- 9 Copy of application for Diversion Order
- 10 Section 59 of the Highways Act 1980 (recovery of expenses due to
extraordinary traffic)
- 11 Letter dated 26 March 2007 from appellant's agent to the Council
responding to the suggestion that an agreement might be
appropriate/required
- 12 Bundle of Documents relating to the Draft Diversion Order
- 13 British Waterways Briefing Note: Road traffic generation and car parking
requirements of marinas (April 2007)
- 14 British Waterways: National Statement of Support for New Marina
Developments and Extensions

- 15 Supporting statement submitted with the planning application, including appendices Nos 1-9
- 16 Transport Assessment submitted with the planning application
- 17 White-clawed crayfish survey submitted with the planning application
- 18 Appellant's statement of case and appendices Nos 1-12
- 19 Council's statement of case
- 20A Suggested planning conditions
- 20B Additional suggested conditions on Planning Committee update sheet (23 May 2006)
- 21 Recovery letter dated 16 February 2007
- 22 Council's Decision Notice

PLANS AND DRAWINGS

Application Plans

- A1 Drawing No 5327/1 entitled Site Survey
- A2 Drawing No 5327/2 entitled Site Survey
- A3 Calculation Sheet No 0036A/CALC.1.
- A4 Plan No 0036/SL33A entitled Proposed Marina Plan
- A5 Plan No 0036/SL34B entitled Site Location Plan

Amended Plans

- B Plan showing revised routing for the proposed bridleway diversion (No 0036/SL33B entitled Proposed Marina Plan)

Other Plans

- C Highway Authority Plan showing speed reduction measures on Welsh Road (No SE/CSB/Marston Doles/01)
- D Plan showing length of bridleway SM95A and unrecorded bridleway path to be diverted

PHOTOGRAPHS

- Photo 1 Photographs of local canal network
- Photo 2 Photograph of Black Prince Marina

ANNEX

RECOMMENDED PLANNING CONDITIONS IN THE EVENT THAT THE APPEAL SHOULD SUCCEED

- 1) The development hereby permitted shall begin before the expiration of three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the details shown on the following plans – Site Survey drawings No 5327/1 and 5327/2, Calculation Sheet No 0036A/CALC.1., Proposed Marina Plan No 0036/SL33B, and Site Location plan No 0036/SL34B – except insofar as may be required otherwise by other conditions to which this permission is subject.
- 3) Development shall not commence until a scheme detailing foul and surface water drainage has been submitted to and approved in writing by the local planning authority. The scheme shall employ the principles of sustainable urban drainage wherever possible. The works shall be implemented in accordance with the approved details prior to first use of the mooring basin.
- 4) No permission is either granted or implied for the detailed appearance of the service building, the fencing around the refuse storage area, or the extent of hard surfacing shown on the submitted plans. Prior to commencement of development, revised details covering these matters, including materials, shall be submitted to and agreed in writing with the local planning authority. Development shall be carried out only in accordance with the approved details.
- 5) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. Development shall be carried out only in accordance with the approved details. These details shall include the design and materials for all boundary treatment; any means of enclosure within the site; any gates to be erected; car parking layout (which include at least four spaces for disabled drivers) and other vehicular and pedestrian areas; and hard surfacing materials. Soft landscape works shall include planting plans; written specifications; a schedule of plants, noting species, plant sizes and proposed numbers/densities; and a programme of implementation, management and maintenance. Plans must also include accurate plotting of all existing landscape features. The works approved as part of this condition shall be completed in accordance with a timetable which shall previously have been submitted to and agreed in writing with the local planning authority.
- 6) Any planting undertaken in pursuance of condition 5 above which, within a period of 5 years from the completion of the development die, is removed or become seriously damaged or diseased shall be replaced in the next planting season with other plants of similar size and species, unless the local planning authority gives written approval to any variation.
- 7) No part of the development hereby permitted shall be commenced, nor shall any equipment, machinery or materials be brought onto the site until a scheme for the protection of all existing trees and hedges to be retained on site has been submitted to and approved in writing by the local planning authority and has been put in place. The scheme shall include details of stout protective fencing in accordance with BS5837:2005. The protection agreed shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area protected in accordance with this condition and the

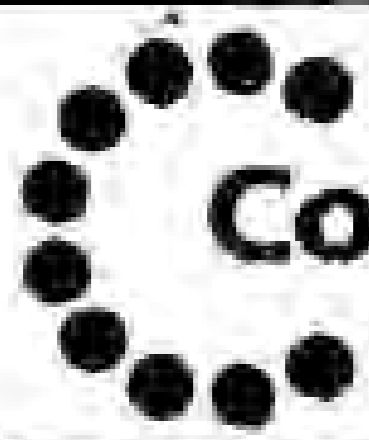
ground levels within the protected areas shall not be altered, nor shall any excavation be made, without the prior written approval of the local planning authority.

- 8) Prior to commencement of development, plans showing cross and long sections of the ramped section of the access road shall be submitted to and agreed in writing with the local planning authority. Development shall be carried out only in accordance with the approved details.
- 9) Prior to commencement of development, details of any external lighting within the site, including floodlights and security lighting, shall be submitted to and approved in writing by the local planning authority. Development shall be carried out only in accordance with the approved details.
- 10) Prior to first use of the mooring basin, the access track to the basin shall be laid out and surfaced in materials that shall previously have been agreed with the local planning authority pursuant to condition 4 above.
- 11) Before development commences, details of facilities to be provided at the site exit for cleaning the wheels of construction vehicles leaving the site, have been submitted to and approved in writing by the local planning authority. The agreed facilities shall be provided before construction begins and thereafter used and maintained until completion of construction.
- 12) The visibility splays shown on the approved plans shall be provided prior to first use of the mooring basin and thereafter retained, with nothing to be erected, planted or retained within the splays exceeding, or likely to exceed at maturity, a height of 0.9m above the level of the adjacent public highway.
- 13) The parking spaces to be provided pursuant to condition 5 above, shall be laid out prior to first use of the mooring basin and thereafter shall be kept available for use for the approved purposes at all times.
- 14) No part of the development hereby permitted shall be commenced, nor shall any equipment, machinery or materials be brought onto the site until a scheme of directional signage for construction vehicles, which shall previously have been agreed in writing with the local planning authority, has been implemented. The agreed signage shall be retained until completion of construction.
- 15) Development shall not commence until a scheme of speed/casualty reduction features has been implemented within the highway in accordance with a scheme that shall previously have been submitted to and agreed in writing with the local planning authority.
- 16) Development shall not begin until a scheme indicating the provision to be made for disabled people to gain access to the mooring basin and its associated facilities has been submitted to and approved in writing by the local planning authority. The agreed scheme shall be implemented before the development hereby permitted is first brought into use.
- 17) Development shall not commence until further surveys for white-clawed crayfish and water voles have been undertaken at a time and in a manner that shall previously have been agreed in writing with the local planning authority. Should either or both species be found present, a detailed mitigation and contingency plan, including the timing of development works, shall also be submitted to and agreed with the local planning authority. Development shall be carried out only in accordance with the agreed details.

- 18) No storage of any description shall take place on any open land within the boundary of the application site, other than that shown on the approved plans.
- 19) No more than one boat within the mooring basin hereby approved shall be permanently occupied, with occupation restricted to a site warden and any dependant(s) residing with him or her.
- 20) Other than in accordance with the provision of condition 19 above, no permission is either granted or implied for permanent residential occupation of any of the moorings hereby permitted.

ADDITIONAL CONDITION SHOULD THE SECRETARY OF STATE DETERMINE THAT, WERE THE APPEAL TO SUCCEED, THE APPELLANT SHOULD BE REQUIRED TO PLACE A BOND WITH THE HIGHWAY AUTHORITY

Development shall not commence, nor shall any equipment, machinery or materials be brought onto the site, until the appellant has first entered into an agreement under Section 59 of the Highways Act 1980 for the purposes of funding essential repairs to the public highway as a consequence of the construction of the development hereby permitted.



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RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.