



Cherwell

DISTRICT COUNCIL
NORTH OXFORDSHIRE

**CHERWELL DISTRICT COUNCIL
TOWN AND COUNTRY PLANNING ACT 1990**

Appeal by W A Adams Partnership against Cherwell District Council's refusal to grant full planning permission for the formation of inland waterways marina with ancillary facilities building, car parking, access and associated landscaping including the construction of a new lake - re-submission of 18/00904/F

Appellant: W A Adams Partnership
Appeal Site: Glebe Farm, Boddington Road,
Claydon, Banbury, OX17 1TD
LPA Reference: 20/02446/F
Planning Inspectorate Reference: APP/C3105/W/21/3280416
Start Date: 9th December 2021

COUNCIL'S STATEMENT OF CASE

January 2022

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1.0 INTRODUCTION

- 1.1 This Statement of Case ('Statement') has been prepared on the Council's behalf for this appeal under s.78 of the *Town and Country Planning Act, 1990 (as amended)* by Duncan Chadwick, BSc, MSc, MRTPI, Managing Director of Chadwick Town Planning Limited ('CTPL'), planning consultants instructed by Mr Nathanael Stock, Team Leader, General Developments Planning Team at Cherwell District Council ('the Council' or 'local planning authority' or 'LPA') with inputs from IMA Transport Planning and the Council's Conservation Officer, Emma Harrison.
- 1.2 Duncan has 38 years' experience of both public and private sector planning across the country, including dealing with inland waterways marinas and associated development. Between 1993 and 2008, Duncan was Planning Control Manager/Head of Development Control and Major Developments at Cherwell District Council before leaving the public sector and becoming Senior Associate and then a Partner at David Lock Associates ('DLA') in Milton Keynes. Duncan left DLA in 2021 to set up CTPL. Duncan has handled many written representations and other appeals whilst in the public sector, at Cherwell District Council, DLA and now at CTPL, including giving evidence at hearings and public inquiries.
- 1.3 This Statement of Case is presented on behalf of Cherwell District Council in support of its decision to refuse planning permission for a proposed development by W A Adams Partnership ('the Appellant') for the formation of an inland waterways marina with ancillary facilities building, car parking, access and associated landscaping including the construction of a new lake ('the proposal' or 'proposed development') at Glebe Farm, Boddington Road, Claydon, OX17 1TD ('the appeal site').
- 1.4 The proposed development was the subject of a planning application (Ref. No 20/02446/F) submitted to the Council in September 2020, which was recommended for approval by Officers when it was reported to the Council's Planning Committee on 14th January 2021. However, Members of the Planning Committee decided not to accept the Officer's recommendation and resolved to refuse the application due to the unsustainability of the location, the impact that the proposal would have on the safety of the local highway network and the impact upon the

character and appearance of the Oxford Canal Conservation Area. The formal reasons for refusal were considered at the Planning Committee meeting on 11th February 2021 and the decision notice refusing application no. 20/02446/F, which was the re-submission of an earlier withdrawn application (18/00904/F), was issued on 12th February 2021.

1.5 The Council's reasons for refusal are as follows:

1. *The proposed development, by reason of its nature, size and scale combined with its isolated location away from settlements, established moorings and existing popular destinations and with poor alternative transport links, would be an unsustainable insertion into the open countryside. Future users of and visitors to the development would have no realistic choice of transport other than the private car, and the proposal would result in an unsustainable form of development. The proposal would therefore be contrary to Policies SLE1, ESD1, ESD16 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance within the National Planning Policy Framework.*
2. *By virtue of its scale and location, the proposed development would result in a significant increase in traffic on the surrounding road network, and it has not been demonstrated that the access to the development or the visibility over bridges in the local area would be adequate for the scale of development proposed. The proposal would therefore be to the detriment of local highway safety and contrary to Policy SLE4 of the Cherwell Local Plan 2011-2031 Part 1 and saved Policies TR1, TR7 and TR10 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.*
3. *By virtue of its scale and siting, the proposed development would fail to preserve the character and appearance of the Oxford Canal Conservation Area. This harm, which would be less than the substantial, would significantly and demonstrably outweigh the benefits of the proposed development. The proposed development would therefore be contrary to Policies ESD15 and ESD16 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.*

4. In the absence of a satisfactory unilateral undertaking or any other form of Section 106 legal agreement the Local Planning Authority is not satisfied that the proposed development provides for appropriate footpath improvements and off-site highway improvement works required as a result of the development and necessary to make the impacts of the development acceptable in planning terms, to the detriment of both existing and proposed residents and contrary to Policies SLE4, ESD1, ESD15 and ESD16 of the Cherwell Local Plan 2011-2031 Part 1, saved Policy TR1 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

- 1.6 This Statement of Case addresses all four reasons for refusal, with input from the IMA Transport Planning (transport consultants instructed by the Council) on the highway safety aspects of the appeal (Reason for Refusal No. 2 above) and the Council’s Conservation Officer, Emma Harrison, on the justification for the heritage reason for refusal (Reason for Refusal No.3 above). Reason for Refusal No. 4 relates to the absence of a satisfactory s.106 Planning Obligation for footpath improvements and off-site highway improvement works necessary to mitigate development impacts. Such s.106 issues can potentially be addressed through the Appellant signing of a Planning Obligation/Unilateral Undertaking, which is understood to be progressed between the Appellant and Oxfordshire County Council, as local highway authority.
- 1.7 This Statement provides the context for the Council’s decision (Section 2.0) before describing the appeal site, the proposal and the site’s planning history (Section 3.0). Section 4.0 identifies the development plan and other material considerations before Section 5.0 examines the justification for each reason for refusal. Section 6.0 assesses the overall planning balance and sustainable development with Section 7.0 concluding the Statement of Case and requesting that the appeal be dismissed and the Council’s decision to refuse upheld. Section 8.0 includes the recommended conditions the Council recommends are imposed on any permission for the proposed development, if the appeal is allowed. These conditions are submitted without prejudice to the Council’s reasons for refusal.

2.0 COUNCIL'S DECISION

2.1 It is neither incorrect nor inappropriate for a council's Planning Committee - as in this case - to disagree with the recommendation of its planning officer(s). Local planning decisions are ultimately the responsibility of democratically elected councillors, accountable to their communities, whilst planning officers are responsible to the Council that employs them in exercising their own professional judgement, ensuring they comply with their professional code of conduct.

2.2 Having a planning committee arrive at different conclusions from the planning officers advising them, after having balanced the various considerations, is both legitimate and to be expected. The Nolan Committee on Public Life¹ stated that:

"There is nothing intrinsically wrong if planning committees do not invariably follow the advice of officers. Planning officers exist to advise planning committees, which are entitled to reach their own decisions by attaching different weight to the various planning criteria which are relevant to an application. If a decision is thought to be perverse, a planning officer should so advise the committee, but respect the committee's conclusion."

2.3 Nevertheless, elected councillors are obliged to make their decisions within the legal and policy framework that exists, which will comprise, *inter alia*, the statutory development plan and other material considerations, such as the National Planning Policy Framework ('NPPF'). The NPPF states at Paragraph 38 that: "Local planning authorities should approach decisions on proposed development in a positive and creative way... Decision-makers at every level should seek to approve applications for sustainable development where possible". This is given effect through Paragraph 11 of the NPPF, which contains a presumption in favour of sustainable development.

¹ Third Report of the Committee on Standards in Public Life, Standards of Conduct in Local Government in England, Scotland and Wales, Cm 3702, July 1997

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- 2.4 Paragraph 12 of the NPPF is clear, however, that the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making. Where a planning application conflicts with an up-to-date development plan, the NPPF states that permission should not usually be granted. It adds that local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the development plan should not be followed. This reflects the legislative basis for planning decision-making referred to later in this Statement.
- 2.5 It is clear throughout the very comprehensive officer's report on the application the subject of this appeal that the planning officer's recommendation of approval was very finely balanced (with adverse impacts identified) and influenced by a previous report on an earlier application (18/00904/F) by the Appellant that was withdrawn before being considered and determined by the Council's Planning Committee.
- 2.6 The Council's decision by the Elected Members sitting on the Planning Committee was because, in their judgement, the balance of development plan policy and other material considerations fell in favour of a refusal of the proposal for the reasons set out.
- 2.7 The Council's decision to refuse was supported by the Claydon-with-Clattercote Parish Council, many local residents (around 68 individual letters of objection were submitted to the Council), operators of Fenny and Cropredy Marinas and the Council's Conservation Officer.
- 2.8 It is clear that the Planning Committee followed the legal and policy framework and reached its own decision on legitimate planning grounds attaching different weight to the principal considerations relevant to the proposal than their planning officer.
- 2.9 In accordance with Section 38(6) of the *Planning and Compulsory Purchase Act, 2004* and Section 70(2) of the *Town and Country Planning Act, 1990* and advice in Paragraph 12 of the NPPF, the Council has taken the statutory development plan as the starting point and this is not silent on the principle of where developments such as this should be located.

They are directed to the environs of established, sustainable settlements. The appeal proposal would conflict with this intention and a fundamental principle of the NPPF is that the planning system should be genuinely plan-led.

- 2.10 The Council contends that there would be significantly harmful conflict with the development plan and the NPPF's intentions in respect of sustainability, extra car use, traffic generation and the protecting character and appearance of this part of the Oxford Canal Conservation Area, an important heritage asset within the district, which could not be adequately mitigated by the imposition of planning conditions. In addition, whilst there may well be some benefits including to tourism and the rural economy, the Council considers that these would be insufficient to outweigh the considerable harm caused by this proposal, including conflict with the development plan, less than substantial harm to the Oxford Canal Conservation Area and highway safety. Hence, the adverse impacts of allowing the proposed marina and related development would significantly and demonstrably outweigh the benefits of doing so when assessed against the NPPF taken as a whole.
- 2.11 Therefore, the Council contends that the proposed development cannot be considered to represent sustainable development and conflicts with the development plan in numerous respects with no material considerations indicating that the proposal ought to be approved contrary to the development plan.
- 2.12 For these reasons – and those set out in full in this Statement – the Council respectfully requests that the appeal be dismissed.

3.0 THE APPEAL SITE, PROPOSAL AND PLANNING HISTORY

o Appeal Site and Surroundings

3.1 The appeal site extends to just under 18 hectares (17.79ha) and is part of Glebe Farm, located off Boddington Road, to the north-east of the small village of Claydon, south-west of Lower Boddington and within open countryside. See Figure 1 below.

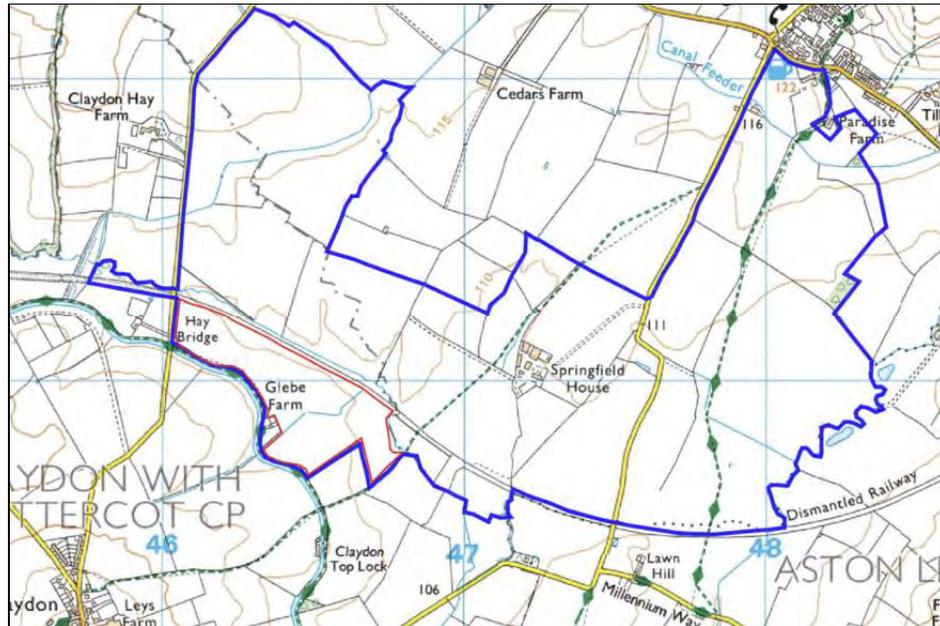


Figure 1 – The Site Location Plan

3.2 The appeal site lies about 0.6 miles (1k) north of Claydon, which is Oxfordshire's most northerly village located itself about 6 miles (10 km) north of Banbury and 3.0 miles (4.7k) to the north of Cropredy. About 300 people live in Claydon² with Cropredy having a population of 689.

3.3 The site lies to the north of the Oxford Canal, whilst its northern boundary borders a dismantled railway, which is also a Local Wildlife Site. Its western boundary is provided by the Boddington Road - from where vehicular access will be taken to the north of Hay Bridge - which takes the minor road from Claydon to Boddington over the Oxford Canal, with a steep gradient on its northern side. See Figure 2.

² ONS 2019 Mid-Year Estimates



Figure 2 – View South from close to proposed access towards Hay Bridge

- 3.4 At its eastern corner the appeal site lies adjacent to the district boundary with the former South Northamptonshire now West Northamptonshire administrative area. A public right of way (PROW) lies to the immediate east of the site. The canal towpath is also a PROW. Finally, a watercourse (known as Wormleighton Brook) runs parallel to the appeal site's northern boundary. Part of the northern extent of the site lies within Flood Zone 2/3.
- 3.5 The appeal site forms part of a larger mixed-use farming operation of around 580ha (grass and arable) at Glebe Farm, which is farmed by the Appellant. The site is currently in arable use and sits in a 'bowl' which is slightly lower than the Oxford Canal. See Figure 2 for a panoramic photograph of the appeal site taken from a position just north of Hay Bridge. The scale of the proposed development can be seen from views in this position as the site extends up to the PROW from Little Boddington to Claydon, which crosses the Oxford Canal.



Figure 3 – Appeal Site Viewed from Hay Bridge

- 3.6 The appeal site lies in the Northamptonshire Uplands National Character Area (NCA), which is an area of gently rolling, limestone hills and valleys capped by ironstone-bearing sandstone and clay lias, with many long, low ridgelines. This can be seen in Figure 3. Rivers flow out from the NCA in all directions, including several major rivers, such as the Cherwell.
- 3.7 Whilst there are areas of differing character, there are strong unifying landscape features across the Northamptonshire Uplands, most importantly the extensive areas of open field systems with ridge and furrow and the earthworks of deserted and shrunken settlements which occur throughout. Other features include the strong enclosure pattern with high, wide, hedgerows bounding the largely rectilinear fields with their frequent mature ash and oak trees. A further view of the appeal site from the area of the proposed access from Boddington Road is included at Figure 4.



Figure 4 – Appeal Site viewed from Boddington Road

- 3.8 There is an existing house adjacent to the Oxford Canal and owned by the Appellants (excluded from the appeal site) and neighbouring sporadic

residential and agricultural properties further north and west of Boddington Road.

3.9 The Oxford Canal extends for about 75 miles from Oxford to Coventry. It is a designated Conservation Area. The Canal mainly runs down the valley of the River Cherwell and ends in the northern suburbs of Oxford, in the low-lying meadows by an arm of the River Thames. Apart from passing through Banbury, it is almost entirely rural in Cherwell district, and indeed, quite isolated, until it meets the outer suburbs of Oxford.

3.10 There is a line of residential moorings further west along the canal. Figure 5 shows a view west from Hay Bridge towards the moorings and shows the typical character of this part of the Canal and Conservation Area.



Figure 5 – View along the Canal from west of the Appeal Site

3.11 The line of HS2 is proposed to run to the north east of the appeal site, approximately 1-1.5km away. Accommodation works are already underway but these are not visible or evident from the appeal site, given distance and topography.

o **The Proposal**

3.12 The appeal proposal seeks permission to create a marina with associated facilities and earthworks. There is an adjacent lake proposed to be used as an irrigation reservoir. See Figure 6.



Figure 6 – Proposed Site Plan

3.13 The marina would provide mooring for 192 boats for recreational purposes and there will be no residential moorings. In addition to the basin, moorings and lake the proposals include:

- A facilities building providing office and chandlery, clubhouse, showers, toilets, Elsan disposal point and laundry, store and workshop and manager's accommodation and office.
- Car parking spaces for 142 vehicles arranged in groups around the marina's perimeter.
- New vehicular access from Boddington Road with internal access roads and footpaths.
- New pedestrian towpath bridge over the marina entrance continuing the PROW.

- Yard area with wet dock/maintenance bay for pump out, refuelling and light maintenance.
- Various embankments from cut and fill

3.14 The marina seeks to attempt to be organic in form with groups of berths separated by landscaped 'spits' of land and groups of no more than 16 boats. A large wildlife embankment would extend as a promontory to its eastern end.

3.15 However, due to existing ground levels the proposal involves extensive earthworks to accommodate the marina at the adjacent canal water level, and to create its dam. The result would be extensive embankments rising up from Boddington Road and the northern site boundary in particular.

3.16 As an example, existing ground levels at Boddington Road are around 113.000 AOD at its lowest point, with the embankment rising to 118.000 AOD at its highest on this western end. The canal and marina water level would be set at 115.000 AOD. The marina would be circled by an access road (surfaced in local stone) with loading/unloading points to the bottom of the embankments, with a footpath circling it along the top of the embankments.

3.17 The facilities building tries to replicate a converted agricultural barn and has a GIA of 363sqm. It is finished with timber cladding and local stone under a natural slate roof. It would be sited at the western end of the appeal site to provide surveillance over the canal access point for security purposes. An entrance for boats would be provided from the canal into the marina, with a new footbridge provided to continue the canal towpath across the marina entrance. Landscaping proposals show wildflower/grass edges to the marina leading into shrub and native tree planting.

- **Planning History**

3.18 Not surprisingly, given its rural location, the site has a short and only quite recent, relevant planning history, as set out below.

16/00082/SO – Screening opinion for proposed marina development – not EIA development – issued by the LPA on 24/10/16

18/00041/SO – Screening Opinion to 18/00904/F - Formation of inland waterways marina with ancillary facilities building, car parking, access and associated landscaping including the construction of a new lake – not EIA development (based upon 16/00082/SO) – issued by the LPA on 30/07/18

18/00904/F - Formation of inland waterways marina with ancillary facilities building, car parking, access and associated landscaping including the construction of a new lake – withdrawn on 13th September 2019 by agent prior to the Planning Committee meeting on 19th September 2019.

- 3.19 Section 4.0 of the Statement will now set out the key development plan policies and other material considerations. Compliance with relevant policy falls to be considered under the reasons for refusal identified in Section 5.0 of the Statement.

4.0 DEVELOPMENT PLAN & OTHER MATERIAL CONSIDERATIONS

- 4.1 Section 38(6) of the *Planning and Compulsory Purchase Act, 2004* and Section 70(2) of the *Town and Country Planning Act, 1990* require that planning applications be determined in accordance with the adopted development plan unless material considerations indicate otherwise. This is also reflected in Paragraph 12 of the NPPF, which makes clear that the NPPF and the achievement of sustainable development does not change the statutory status of the Development Plan as the starting point for decision making.
- 4.2 The development plan mainly consists of the *Cherwell Local Plan 2011-2031 - Part 1 ('Local Plan Part 1')*, which was formally adopted by Cherwell District Council on 20 July 2015 and provides the strategic planning policy framework for the District to 2031. The Local Plan Part 1 replaced numerous previously 'saved' policies in the adopted *Cherwell Local Plan 1996 ('Local Plan 1996')*, though many of the Local Plan 1996 policies are retained and remain part of the development plan.
- 4.3 On the 7th September 2020, the Council adopted the *Cherwell Local Plan 2011-2031 (Part 1) Partial Review – Oxford's Unmet Housing Need* and it too now forms part of the development plan. However, this Partial Review Plan only deals with development to the immediate north of Oxford in Cherwell District around Kidlington, Yarnton and Begbroke and therefore has no relevance to this appeal. There is no neighbourhood plan for Claydon or covering the appeal site.
- 4.4 The full list of relevant planning policies of Cherwell District's statutory Development Plan are set out below:

CHERWELL LOCAL PLAN 2011 - 2031 PART 1

- Policy PSD1 - Presumption in Favour of Sustainable Development
- Policy SLE1 - Employment Development
- Policy SLE3 - Supporting Tourism Growth
- Policy SLE4 - Improved Transport and Connections
- Policy ESD1 – Mitigating and Adapting to Climate Change

- Policy ESD2 – Energy Hierarchy and Allowable Solutions
- Policy ESD3 – Sustainable Construction
- Policy ESD6 – Sustainable Flood Risk Management
- Policy ESD7 – Sustainable Drainage Systems (SuDS)
- Policy ESD8 – Water Resources
- Policy ESD10 – Protection and Enhancement of Biodiversity and the Natural Environment
- Policy ESD13 – Local Landscape Protection and Enhancement
- Policy ESD15 - The Character of the Built and Historic Environment
- Policy ESD16 – The Oxford Canal
- Policy ESD17 – Green Infrastructure

CHERWELL LOCAL PLAN 1996 'SAVED' POLICIES

- Policy C5 –Protection of ecological value
- Policy C8 – Sporadic development in the open countryside
- Policy C23 – Retention of features contributing to the character and appearance of a conservation area
- Policy C28 – Layout, design and external appearance of new development
- Policy C29 – Appearance of development adjacent the Oxford Canal
- Policy TR1 – Transportation Funding
- Policy TR7 –Minor Roads
- Policy TR10 – HGVs
- Policy TR11 – Oxford Canal
- Policy ENV1 - Pollution Control
- Policy ENV7 – Water Quality

OTHER MATERIAL CONSIDERATIONS

- National Planning Policy Framework
- Planning Practice Guidance
- National Design Guide
- The Planning (Listed Buildings and Conservation Areas) Act 1990
- Oxford Canal Conservation Area Appraisal
- The Setting of Heritage Assets Advice Note 3 (Historic England)

- EU Habitats Directive
- Natural Environment and Rural Communities Act 2006
- Conservation of Habitats and Species Regulations 2017
- Circular 06/2005 (Biodiversity and Geological Conservation)
- Human Rights Act 1998
- Equalities Act 2010
- Other Related Planning Appeal Decisions

4.5 At the end of July 2020, the Council published its first Community Involvement Consultation Paper as the first stage in its review of the Local Plan Part 1, in preparation for a new Local Plan to 2040. The Council also made a 'call for sites' and invited comments on a Sustainability Appraisal Scoping Report. In September 2021, a second Community Involvement Consultation Paper was published for consultation. This was to develop Options and proposed a place and people-based vision for the district with a focus on developing a sustainable local economy, meeting the climate change challenge and healthy place shaping. These consultations are part of a possible 3-year process with further stages of consultation to follow where the Council will review the policies in the existing adopted Local Plan Part 1, the relationship to the emerging Oxfordshire Plan 2050 and the replacement of the remaining saved policies of the Local Plan 1996. Given the early stage in their preparation, the emerging draft Local Plan Review to 2040 and the draft Oxfordshire Plan 2050 carry very limited, if any, weight for this appeal, but are referenced for information.

4.6 However, insofar as the development plan is concerned, in line with Paragraph 11 d) of the NPPF, the Local Plan Part 1 contains relevant development plan policies and the policies which are most important for determining the application are up to date and carry full weight. Insofar as the Local Plan 1996 policies are concerned, whilst they are of considerable age, they are nevertheless 'saved' policies that attract weight according to their consistency with more up to date national guidance and policy.

4.7 The NPPF, National Design Guide and PPG provide national Government guidance and carry full weight as material considerations in the assessment and determination of this appeal. The NPPF sets out the Government's definition of sustainable development and the policies

through which it envisages the planning system will deliver this. It reinforces the plan-led system and has at its heart a presumption in favour of sustainable development. The PPG assists in the interpretation of national planning policy in the NPPF and its application to both plan-making and decision-taking. It also provides guidance on relevant planning legislation as well as details of best practice in the planning system to assist practitioners and the public with general development management and plan-making matters. The National Design Guide illustrates how well-designed places that are beautiful, enduring and successful can be achieved in practice and relates to the NPPF, 2021 and its focus on good design.

- 4.8 As the Local Plan Part 1 contains relevant development plan policies and the policies which are most important for determining this appeal are up to date, Paragraph 11 d) of the NPPF, which places a presumption in favour of sustainable development, is not engaged. In addition, the Council considers that policies in the NPPF that protect areas or assets of particular importance – the designated heritage asset of the Oxford Canal Conservation Area - provide a clear and further reason for refusing the development proposed and dismissing this appeal.
- 4.9 Section 5.0 of the Statement now sets out the Council’s case on each of the reasons for refusal set out in the decision notice.

5.0 COUNCIL'S CASE ON EACH OF THE REASONS FOR REFUSAL

- 5.1 In this section references made to the Council's case on matters concerning Refusal Reason No. 1 have been prepared, on behalf of the Council by CTPL. Matters relating to Refusal Reason No. 2 have been prepared by IMA Transport Planning and those in respect to Refusal Reason No. 3 have principally been provided by Emma Harrison, the Council's Conservation Officer, who objected to the application the subject of the appeal in 2021 and the previous proposal in 2018. It is understood that the Appellants are in discussion with the County Highway Authority regarding the Obligation/Undertaking, the absence of which was the subject of Refusal Reason No.4.
- 5.2 The Reasons for Refusal are set out in full in Paragraph 1.5 of this Statement. The Decision Notice, Officer Reports, Update and Minutes of the Planning Committee meeting have been included with the Council's Appeal Questionnaire response.

Refusal Reason No.1 – Nature, Scale & Sustainability

- 5.3 Refusal reason no. 1 states:

The proposed development, by reason of its nature, size and scale combined with its isolated location away from settlements, established moorings and existing popular destinations and with poor alternative transport links, would be an unsustainable insertion into the open countryside. Future users of and visitors to the development would have no realistic choice of transport other than the private car, and the proposal would result in an unsustainable form of development. The proposal would therefore be contrary to Policies SLE1, ESD1, ESD16 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance within the National Planning Policy Framework.

- 5.4 The NPPF at Paragraph 12 and the legislation referred to Paragraph 4.1 of this Statement indicate clearly that the development plan is the starting point for not only an assessment of the appeal but also for deciding

whether a development proposal constitutes “sustainable development”. There are many references to “sustainable development” in the NPPF including meeting economic, social and environmental objectives, which are assessed in Section 6.0 of this Statement.

- 5.5 The Local Plan Part 1 aims to deliver sustainable development in the district by promoting a sustainable pattern of development that seeks to meet the development needs of the area, align growth and infrastructure, protect and improve the environment, mitigate climate change (including by making effective use of land in urban areas) and adapt to its effects. It is clear that significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes, whilst recognising that sustainable transport solutions will vary between urban and rural areas. This is consistent with the NPPF.

Unsustainable location

- 5.6 The appeal proposal conflicts with the development plan, especially Policy ESD 16, which seek to direct such development to locations well-related to established settlements or locations which are or can be made sustainable.
- 5.7 In examining this in more detail against the development plan, Policy ESD 1 of the Local Plan Part 1 effectively repeats what is contained in the NPPF, particularly Paragraph 11 relating to the promotion of sustainable development.
- 5.8 Policy SLE 1 is also quoted in Reason for Refusal No. 1. However, it should be acknowledged that the appeal proposal is not an employment development *per se*. This is underlined by the fact that the Appellant indicates that the development itself has the potential to create just 3 full time and 3 part time jobs³ [and preserve jobs at the Farm].

³ Planning Statement, September 2020, Paragraph 7.115

- 5.9 Nevertheless, it is worth noting that Policy SLE 1 seeks to generally locate employment-related development growth on existing, allocated or previously-developed sites within the principal towns of Banbury and Bicester including at Kidlington and the former RAF Upper Heyford. This is for sustainable development reasons aimed at balancing the growth in housing, co-locating homes and jobs and reducing the need to travel by the private car, avoiding related congestion, emissions and pollution, in accordance with the expectations of the NPPF and mitigating, as far as possible, climate change.
- 5.10 Outside the principal urban areas, Policy SLE 1 states that unless exceptional circumstances are demonstrated, employment development in the rural areas should be located within or on the edge of those villages in Category A (see Policy Villages 1) of the Local Plan Part 1. The appeal site lies in a remote, rural location about 0.6 miles from the “satellite” or Category B settlement of Claydon and some 3.0 miles to the north of the nearest Category A village in Cherwell at Cropredy, which has a primary school, two public houses, a shop, part time post office, cafes, community hall, church, recreation facilities and a doctor’s surgery. There is just a church and a village hall in the small village of Claydon (see Parish Profile included as Appendix 1 to this Statement).
- 5.11 The remote location and isolation of the appeal site from any settlements of size to support services and facilities can be seen on Figure 7 below.

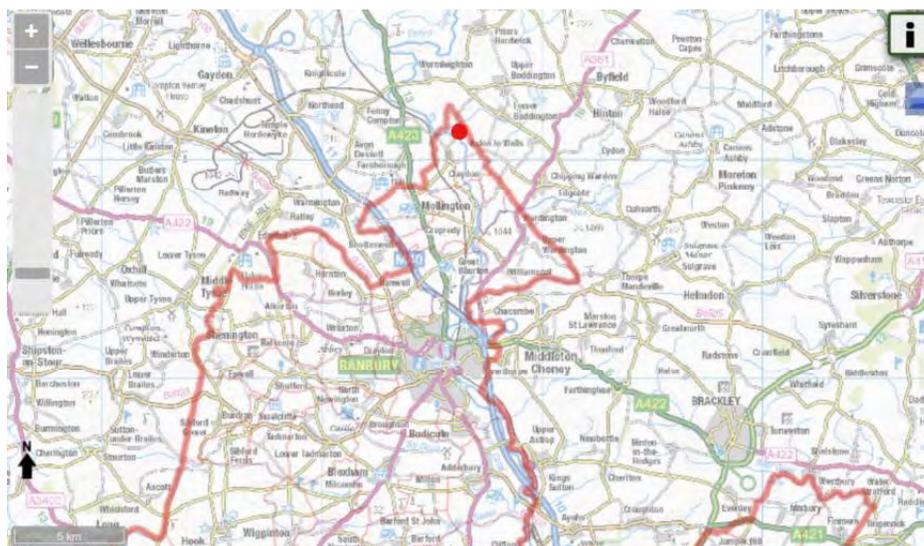


Figure 7 – Remote location of Appeal Site from Settlements

- 5.12 The appeal site is about 8.0 miles north of Banbury, which is the largest of Cherwell's two main towns (population approximately 47,600) and is a commercial, retail, employment and housing market centre for a large rural hinterland (often referred to as 'Banburyshire'). It is a sub-regional shopping centre, has a strong industrial heritage, a dynamic retail/tourism market, a mainline railway station (Chiltern Railways), is close to the M40 and has excellent public transport links to London, Birmingham and the rest of the country.
- 5.13 Banbury and Cherwell district occupy a central location with excellent transport links, being not only a rewarding destination in its own right, with numerous picturesque villages to discover, as well as the two market towns of Banbury and Bicester, but is also an ideal base. Many world famous destinations are close by – Oxford, Silverstone Circuit, Blenheim Palace, Warwick Castle, Stratford-upon-Avon and the Cotswolds – but all require access to a car or public transport, being some distance from the appeal site.

Scale

- 5.14 Policy SLE 1 does allow for some limited employment development within rural areas on non-allocated sites if they meet certain criteria. This proposal – although likely to generate few employment opportunities – cannot, in any way, be considered "limited" or "small-scale". Figure 8 overleaf shows the scale of it in graphic detail.
- 5.15 The appeal site is almost 18 hectares in size (or 44.5 acres) – which is considerably larger than the physical extent of the village of Claydon (see Figure 8) - with moorings for 192 narrow boats, 142 car parking spaces, 4 hectares of water and associated facilities.
- 5.16 There is no doubt that this is a major development of considerable and inappropriate scale for this unspoilt, tranquil, isolated rural part of Cherwell, well away from any built up or urban activity. The HS2 project to the north-east of the site in Northamptonshire is a national infrastructure project and should have no bearing upon this appeal. The new high speed rail network in Northamptonshire will, in any event, travel

underground in two new eco-friendly 'green tunnels' (2.6km of the Greatworth Green Tunnel and 2.4km of Chipping Warden Green Tunnels) while three viaducts are to be designed to blend into the landscape.

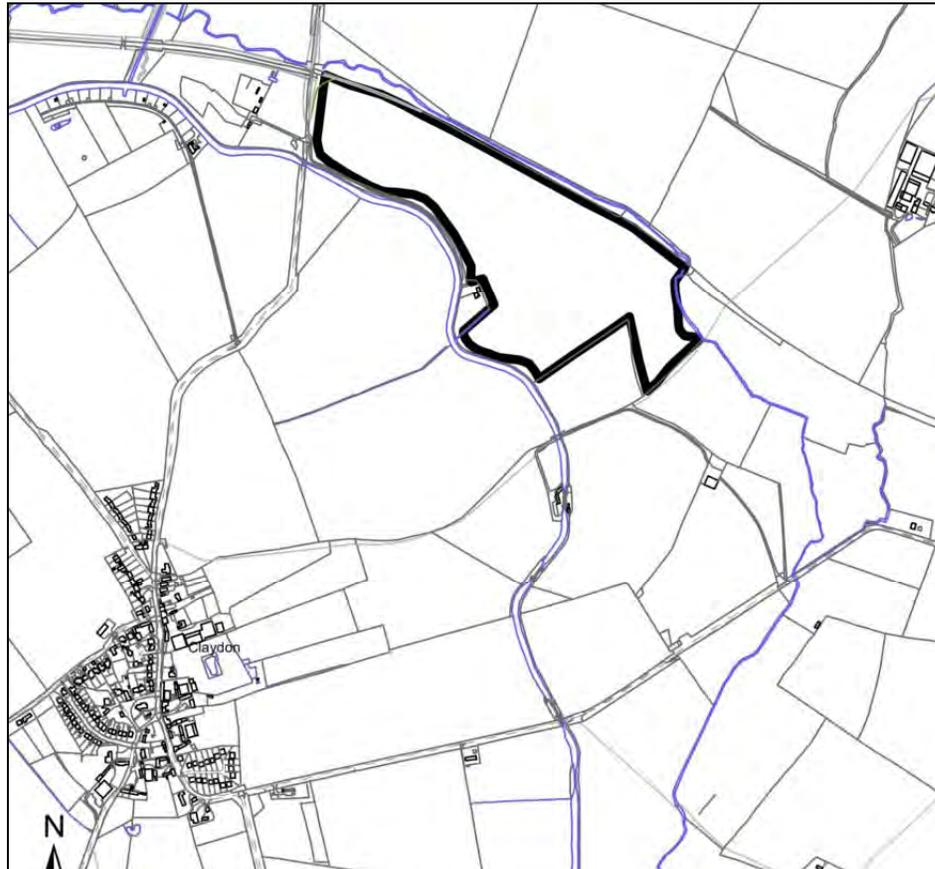


Figure 8 – Scale of Proposed Development Site

5.17 In this case, if assessing the proposal as an employment-related development, which the Council considers is just a small related benefit but not the primary function of the proposal, the Council considers that the appeal proposal clearly conflicts with Policy SLE 1 of the Local Plan Part 1 because it:

- Fails to provide sufficient justification to demonstrate why the development should be located in the rural area on a non-allocated site
- Is of inappropriate scale and does not respect the character of its surroundings
- Is far in excess of what could be reasonably regarded as "small-scale"

-
- Will have significant adverse impacts on the character of the area alongside the Oxford Canal (see Reason for Refusal No.3) and its surrounding environment (setting of the Canal)
 - Would be unduly detrimental to the highway network (see Reason for Refusal No.2), the character of the area and the environment generally including on any designated heritage assets
 - Would give rise to excessive or inappropriate traffic and will not contribute to the general aim of reducing the need to travel by private car.

5.18 Policy SLE 1 states that the Local Plan has an urban focus. With the potential for increased travel by private car and other environmental impacts, justification for employment development on new sites in the rural areas will need to be provided. Policy SLE 1 adds that this should include demonstrating a need for and benefits of employment in the particular location proposed and explaining why the proposed development should not be located at the towns, close to the proposed labour supply.

Need

5.19 On the question of need, the Council recognises that it is not for the planning system to determine the operation of any market or to unnecessarily restrict competition, in this case in providing recreational moorings for boats on the Oxford Canal. Rather, it is for the planning system to identify planning harms, notably conflicts in this case with the intentions of national and local planning policy or relevant statute and adverse impacts upon the area.

5.20 Neither the Canal and River Trust ('CRT')⁴ nor any other body have provided clear, evidence-based, independent or objectively assessed need for further recreational moorings on the Canal, at this scale. The Council does not consider that it is acceptable, in this case, where national and

⁴ It appears that CRT only comment on proposals as it relates to their asset, in particular navigation aspects, heritage, ecology etc. They have various design guides but these are intended to get marina promoters to self-select before seeking CRT advice and advice from the LPA.

local planning policies are at issue and where there would clearly be harm as a consequence of the proposed development, to simply accept that there is a “need” because a landowner or operator wishes to invest in a marina, because the market is content to provide new marinas and the canal system may be capable of accommodating them in operational terms.

- 5.21 On this stretch of the Oxford Canal there are some long-established moorings and more recent marina development at Cropredy. The spatial distribution of the moorings is shown on Figure 9 from the Canal and River Trust website.

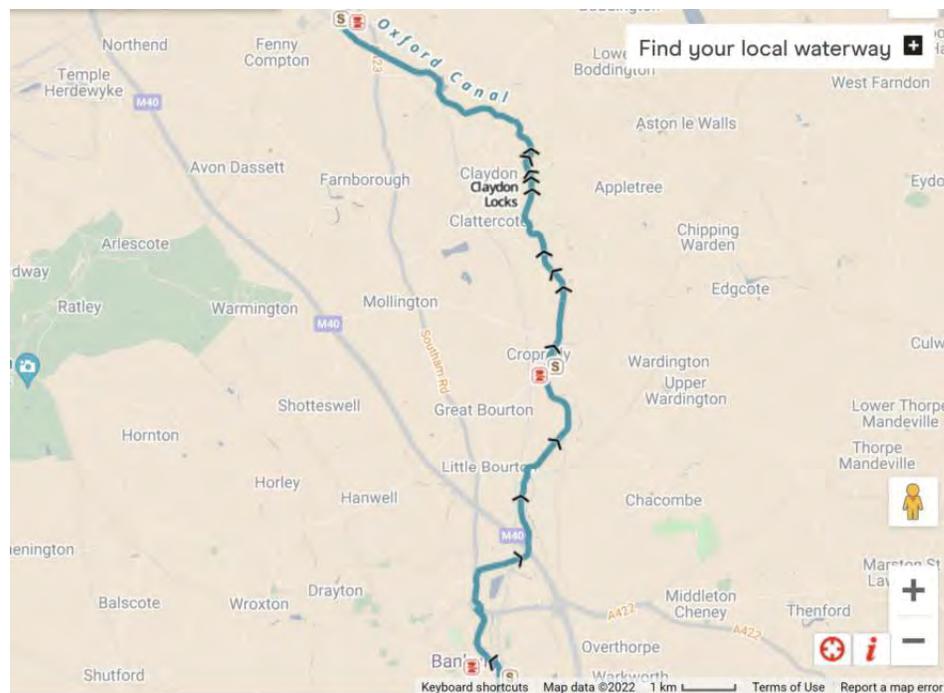


Figure 9 – Existing Moorings on the upper section of Oxford Canal

- 5.22 From this it can be seen that the existing moorings/marinas follow the locational principles set out in the Local Plan Part 1 of being within or adjoining an existing settlement, for accessibility to services, sustainable development and related reasons. Fenny Marina is understood to have 100 berths, whilst the moorings at Compton Road, Banbury are much smaller. The marina at Claydon Road, Cropredy is relatively recent, having been approved in 2011, opened in 2013 and with an extension approved in 2017 and completed in late 2020. This has taken its total capacity from 249 moorings up to 347 moorings. Another 50 berths have planning

permission at School Lane, Cropredy close to the Cropredy Primary School, following a permission and discharge of conditions in 2012 (see Appendix 2 for drawing and permission), but have not been completed or opened as yet.

5.23 With another 192 moorings proposed via the appeal, this rural part of the Oxford Canal is faced with accommodating a total of 589 moorings in a 7-mile stretch of countryside in about 8 years after many, many years of Canal use without any additional facilities. Figure 10 shows Cropredy Marina and its recently completed extension – to the north.

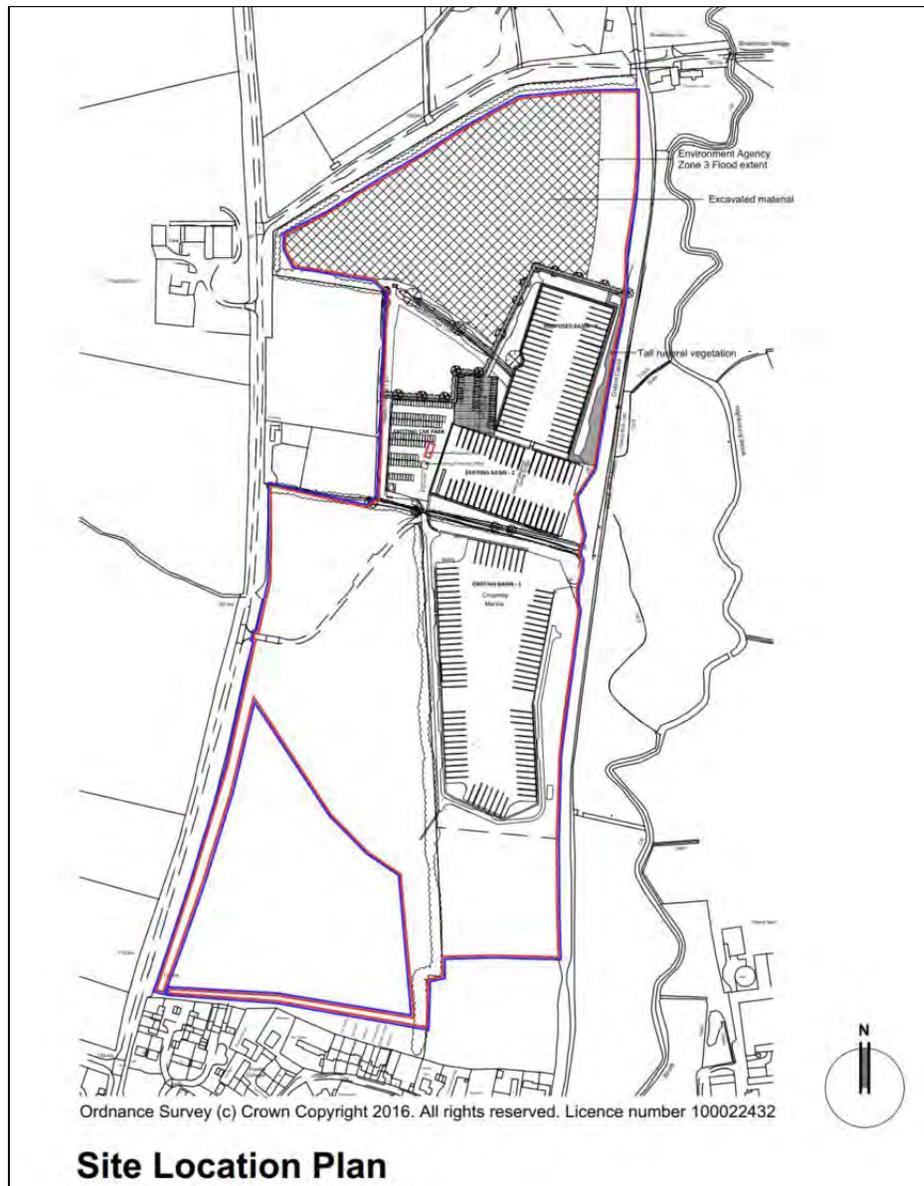


Figure 10 – Cropredy Marina

5.24 It has been accepted by Inspectors on previous appeals⁵ that marinas for canal boats could not be expected to locate other than adjacent to a canal but there must be danger of a potential glut of such moorings in this short, rural stretch of Canal. Figures 11 and 12 show the extension at Cropredy Marina on 23rd January 2022 and currently empty moorings.



Figure 11 – Northern area of Cropredy Marina Extension



Figure 12 – Southern area of Cropredy Marina Extension

⁵ For example, APP/Y2810/A/09/2114076 – see Appendix 3 of this Statement

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- 5.25 The Canal & River Trust produced a “Mooring Area Report for Oxon” in 2015 – see Appendix 4 - but this is vague, out-of-date and contains only general, anecdotal information but does say that “generally, the nearer the mooring is to Oxford, the higher the demand is”. Indeed, there appears to be counter evidence available of a potential surplus of moorings available in the locality from nearby Fenny and Cropredy Marinas – see representations which accompanied the Council’s Appeal Questionnaire - which suggests vacancies, a lack of need or certainly a fair degree of uncertainty in the current and future demand for moorings on this part of the Oxford Canal, especially following recent provision.
- 5.26 The Council notes the Appellant’s Sequential Test⁶ but does not consider that this overrides the significant development plan and other objections to the appeal proposal. As set out in this Statement, in planning sequential terms, the appeal site performs poorly. It is located in an isolated rural location, well away from any settlement, with poor accessibility and sustainability credentials and is very close to other similar facilities – e.g. Claydon Marina – which are more sustainably located and are potentially capable of being expanded further, if there is a need for further moorings, which is in some doubt at present (see above). This would avoid the need for harmful, unsustainable development in the countryside well away from an existing settlement, contrary to the development plan.
- 5.27 In short, the Council is not convinced that there is a pressing objectively assessed need for additional residential mooring capacity in this location. In any event, the Council does not consider that the economic and any other benefits of the proposal outweigh the harm caused by the proposed development and the conflict with the development plan and NPPF. This is examined in more detail in Section 6.0 of the Statement.
- 5.28 Therefore, the Council considers that the proposal is in breach of Policy SLE 1 of the development plan relating to “employment development” albeit that the proposal would be likely to only generate a limited amount

⁶ Dated 2018 and revised 2019, since which Banbury Golf Club (Site 09) has closed

of additional employment in this locality and should be assessed against other policies in the development plan.

- 5.29 Of more direct relevance to this appeal is Policy ESD 16 of the development plan, which relates directly to the Oxford Canal. Policies on the approach to residential canal moorings and boater’s facilities on the Oxford Canal were intended to be set out in the Local Plan Part 2, but this was not progressed by the Council and the work programme on the review of the *Cherwell Local Plan Part 1 to 2040* has now superseded any work on the Local Plan Part 2.⁷

Not within or immediately adjacent to a settlement

- 5.30 Policy ESD 16 is based upon a recognition that the Oxford Canal is an iconic historic structure running the length of the district through the attractive valley of the River Cherwell, and is of historic, ecological and recreational significance. See Figure 13 for a photograph from the towpath taken alongside the appeal site.



Figure 13 – Oxford Canal adjacent to the appeal site

⁷ Cherwell District Council Local Development Scheme September 2021 & Annual Monitoring Report, 2020

- 5.31 Related to this is the designation of the Canal as a Conservation Area in October 2012. Policy ESD 16 states:

*We will protect and enhance the Oxford Canal corridor which passes south to north through the District as a green transport route, significant industrial heritage, tourism attraction and major leisure facility through the control of development. The length of the Oxford Canal through Cherwell District is a designated Conservation Area and proposals which would be detrimental to its character or appearance will not be permitted. The biodiversity value of the canal corridor will be protected. We will support proposals to promote transport, recreation, leisure and tourism related uses of the Canal where appropriate, as well as supporting enhancement of the canal's active role in mixed used development in urban settings. We will ensure that the towpath alongside the canal becomes an accessible long distance trail for all users, particularly for walkers, cyclists and horse riders where appropriate. **Other than appropriately located small scale car parks and picnic facilities, new facilities for canal users should be located within or immediately adjacent to settlements.** The Council encourages pre-application discussions to help identify significant issues associated with a site and to consider appropriate design solutions to these and we will seek to ensure that all new development meets the highest design standards. [Council's emphasis]*

- 5.32 This policy was flagged by the CRT in its Appraisal of Expression of Interest for the proposal/site in 2016 (see Appendix 5). The policy is not new. It is similar to the policies contained in the Local Plan 1996, including 'saved' Policy R9, which states:

WITH THE EXCEPTION OF APPROPRIATELY SITED SMALL CAR PARKS AND PICNIC AREAS, NEW FACILITIES FOR CANAL USERS WILL NORMALLY ONLY BE PERMITTED WHEN THEY ARE LOCATED WITHIN OR IMMEDIATELY ADJACENT TO SETTLEMENTS.

6.49 Policy R9 seeks to prevent the proliferation of facilities outside settlements in order to protect the open countryside. Proposals for small

car parks, picnic areas or other similar facilities outside settlements will be considered against the environmental and transport policies in the Plan.

5.33 Policy ESD 16 is based upon the development plan’s spatial strategy of focusing the bulk of the proposed growth in and around Bicester and Banbury, limiting growth in the rural areas and directing it towards larger and more sustainable villages and strictly controlling development in open countryside. This is amplified in the 15 Strategic Objectives set out in the Local Plan Part 1, with Strategic Objectives 12-15 setting out explicitly why policies [such as ESD 16] have been drafted and how they seek to ensure “sustainable development” is delivered. See Figure 14.

No.	Strategic Objective
SO 12	To focus development in Cherwell's sustainable locations, making efficient and effective use of land, conserving and enhancing the countryside and landscape and the setting of its towns and villages.
SO 13	To reduce the dependency on the private car as a mode of travel, increase the attraction of and opportunities for travelling by public transport, cycle and on foot, and to ensure high standards of accessibility to services for people with impaired mobility
SO 14	To create more sustainable communities by providing high quality, locally distinctive and well-designed environments which increase the attractiveness of Cherwell's towns and villages as places to live and work and which contribute to the well-being of residents
SO 15	To protect and enhance the historic and natural environment and Cherwell's core assets, including protecting and enhancing cultural heritage assets and archaeology, maximising opportunities for improving biodiversity and minimising pollution in urban and rural areas

Figure 14 – Local Plan Part 1 - Strategic Objectives for Ensuring Sustainable Development

5.34 The appeal site is not immediately adjacent to or within a settlement. It lies in a remote, isolated rural location about 0.6 miles from Claydon and some 3.0 miles to the north of the nearest Category A village in Cherwell at Cropredy. Lower Boddington, where there is a pub, is about 1.2 miles to the north-east.

5.35 The appeal site is accessed from a narrow, rural highway, Boddington Road, with the nearest principal highways being about 1.7 miles (2.5km)

at the A423 Southam Road and 1.8 miles (3km) to the A361 near Chipping Warden both accessed via narrow, minor roads with no footway or lighting. Other than a single bus service on a Thursday⁸, which stops in Claydon, there are no other public transport services available nearby. The Stagecoach service (502) stops in Farnborough (1.6 miles or 2.7km away), Mollington (2.4 miles or 4.0km away) or Cropredy (3 miles or 4.8km away) from the appeal site but only operates on a Saturday. Even for a rural area, this is a very poor level of accessibility to public transport. Advice in Paragraph 85 of the NPPF is noted but this does not justify approving a large, significant development that has an unacceptable impact on local roads (see Reason for Refusal No. 2) and is unable – given its location – to make it appreciably more sustainable. This is similar to a Secretary of State decision in dismissing an appeal for a mooring basin for 150 berths at Welsh Road, Marston Doles on the Oxford Canal (APP/J3720/A/06/2024949) in 2007. See Appendix 6.

- 5.36 Evidence supporting the Local Plan Part 1⁹ showed that Cropredy – a Category A settlement had a reasonable amount of local facilities but was on a bus route that only had six return journeys per day; this is now down to just two return journeys (Service nos. 497 and 502).
- 5.37 Walking to these larger village destinations is not easy or safe for pedestrians as they would normally be along unsurfaced rural footpaths or single-track, rural roads with some “overrun” passing places but no lighting, poor surfaces and subject to the national speed limit (60 mph). Access to the nearest pubs and shops at Fenny Compton and Cropredy along the Canal towpath is possible, but at around 3.8km and 4.5km respectively (round trips of 4.6 miles or 7.6km and 5.6 miles or 9.0km) in distance, in unlit conditions, would be primarily a fair weather, daytime option for some people using narrow boats, but not others who are older and less mobile.¹⁰

⁸ Coventry Mini-buses – Service No. 497 – Radford to Banbury

⁹ Cherwell District Council Cherwell Rural Area Integrated Transport and Land Use Study (CRAITLUS) Stage 2: Criteria-Based Assessment, August 2009

¹⁰ The most recent data from the Canal and River Trust confirms that the vast majority of boat owners in the UK are over the age of 55, and many of these are either retired or semi-retired – Appellant’s Statement of Case, Paragraph 4.12

5.38 The Chartered Institution of Highways and Transportation's (CIHT) *'Planning for Walking' (2015)* states that "Across Britain about 80 per cent of journeys shorter than 1 mile (1.6km) are made wholly on foot – something that has changed little in thirty years. In 2012 walkers accounted for 79 per cent of all journeys shorter than 1 mile, but beyond that distance cars are the dominant mode (DfT, annual)". It is normally considered that 2km, a distance that can be walked in around 25 to 30 minutes, represents a reasonable distance to expect that walking can be a viable option. The walking distances to Fenny Compton and Cropredy, even along the Canal towpath, are well in excess of this. The towpath near the appeal site is also in a poor, unstable condition in parts, despite some modest stabilisation work. See Figure 15 and also Appendix 5.



Figure 15 – Towpath adjacent to the appeal site

5.39 The NPPF also places emphasis (Paragraph 112) on creating places that are safe, secure and attractive. In short, taking all these factors into account, the walking options would not be safe or particularly attractive prospects for pedestrians, particularly after dark or in inclement weather.

5.40 It is noted that the Appellant considers that narrow boat owners/users are likely to walk from the site using one of the many accessible public footpaths or alternatively cycle to a local pub or restaurant. Cycling is likely to be the only practical or effective alternative for short trips. Whilst this is to be encouraged, the Chartered Institution of Highways and Transportation's '*Planning for Cycling*' (2014) states that 'cycle use is more seasonal than for other modes, with up to twice as many cyclists in summer compared with winter. The majority of cycling trips are for short distances, with 80% being less than five miles (8km) and with 40% being less than two miles (3km). Whilst cycling has some potential to substitute for short car trips, given the distances involved, the remoteness of the appeal site from the nearest settlements and available services and the limitations of the roads, lanes and the Canal towpath, cycling is unlikely to be an attractive and safe alternative to use of the car for many boat owners/users. Cycling on the road is possible but the narrow (2.7/2.8m) width of roads and the absence of passing places, especially to the south, will bring cyclists into conflict with vehicles using Boddington Road.

5.41 In practice, the Council expects a significant number of trips by private car to be generated by future boat owners and users, both in terms of visiting the marina itself and then subsequently accessing services and facilities in villages, the town of Banbury and other destinations in north Oxfordshire, Warwickshire, Northamptonshire and further afield. The proposed marina would be effectively isolated from any established settlements including those with any meaningful services and facilities. In particular, Paragraph 105 of the NPPF states: '*Significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes.*'

5.42 The proposal would run directly counter to Policy ESD 16 which states clearly:

"Other than appropriately located small scale car parks and picnic facilities, new facilities for canal users should be located within or immediately adjacent to settlements."

-
- 5.43 This is to protect the character of the Canal and the open countryside from the proliferation of facilities outside settlements. Read together with the Strategic Objectives and other development plan policies in the Local Plan Part 1, it is clear that the intention is to focus significant development like this in locations which are or can be made sustainable in accordance with Government guidance in the NPPF.
- 5.44 In conclusion on Reason for Refusal No. 1, the appeal proposal is contrary to Policies SLE1, ESD1 and ESD16 of the *Cherwell Local Plan 2011-2031 Part 1* and Government guidance within the NPPF. Paragraph 15 of the NPPF states that the planning system should be genuinely plan-led. The proposal conflicts with the development plan and there are no material considerations that indicate that the development plan should not be followed, as required by statute. The proposal given its unsustainable rural location cannot be considered to constitute sustainable development so the appeal should be dismissed.

Reason for Refusal No. 2 – Detriment to local highway safety

- 5.45 Refusal Reason no. 2 states:

By virtue of its scale and location, the proposed development would result in a significant increase in traffic on the surrounding road network, and it has not been demonstrated that the access to the development or the visibility over bridges in the local area would be adequate for the scale of development proposed. The proposal would therefore be to the detriment of local highway safety and contrary to Policy SLE4 of the Cherwell Local Plan 2011-2031 Part 1 and saved Policies TR1, TR7 and TR10 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

- 5.46 It is firstly acknowledged that this reason for refusal runs counter to the position of Oxfordshire County Council ('County Council'), as highway authority, which indicated no objection on highways grounds subject to:
- S106 agreement to:
 - > secure a contribution of £10,000 towards public footpath improvement works; and

-
- > *Mitigate the development's local highway impact under Section 278 of the Highways Act 1980 to enable completion of off-site highway improvements. This includes identifying places within the highway to provide at least passing places along Boddington Road.*
 - *An obligation to enter a S278 Agreement will be required to secure mitigation/improvement works along Boddington Road by provision of about three passing bays in suitable locations within Oxfordshire County Council jurisdiction.*
 - *A planning condition requiring a construction management plan.*

5.47 The County Council's comments on the application the subject of this appeal (dated 20/10/2020) indicated that the access from the development onto Boddington Road was acceptable and that visibility splays were appropriate to the design speeds. This is not challenged by the Council. However in its consultation response the County Council highlighted that Boddington Road, which is *'the strategic access to the wider network from Banbury Road is not without constraints such as width of carriageway, winding nature and dilapidated surfacing. The above factors exacerbated by the site being remote draws attention to safety along the route.'*

5.48 The County Council added that *'In order to improve accessibility to the site discussions between the OCC and the applicant agreed that it is reasonable to provide at least three passing places at suitable locations along Boddington Road (within Oxfordshire County's jurisdiction). As such, the applicant will identify areas along Boddington Road for localised widening north of the site that would ensure that safe passage of vehicles in opposite directions can be achieved. This will be subject to a S278 agreement of the Highways Act 1980 secured through a S106 obligation.*

5.49 It is on the basis of this response from the highway authority that the Council was advised, in highway terms, to approve the application – that is, knowing that Boddington Road is a narrow, single-track road with few passing places, and with no details (at the time) of what improvements would be provided beyond the highway authority indicating that it and the applicant agreed that it was reasonable to provide at least 3 passing

places at suitable locations along Boddington Road. No assessment, even at a high level, was provided of how many passing places would actually be needed, where passing places were required, how large they should be, and whether they could be provided where they were actually required.

5.50 Even on this basis, Reason for Refusal No. 2 is considered entirely justifiable – it was not demonstrated, at the time Members of the Council’s Planning Committee were being asked to make a decision, that the overall vehicular access to the development on the poor road network or the visibility over bridge would be adequate for the scale of development proposed or had actually been secured (see Reason for Refusal No.4).

5.51 The officer’s report to the Council’s Planning Committee comments that: *‘The applicants have further offered that the marina operator could send guidance to users about routes. This would warn that long vehicles, or vehicles hauling trailers, should not approach from the south because of the hump back bridge. This would also apply to vehicles servicing the marina, such as tankers or refuse vehicles which would be instructed to enter and leave the marina via the north only. Boats would be brought to the site by canal only. A condition requiring submission and approval of a traffic management strategy to secure such measures is recommended.’*

5.52 This is reflected in Condition 13 recommended by officers, which reads:

‘No boats shall be moored at the marina until the applicant has submitted to the Local Planning Authority a Traffic Management and Routeing Strategy and had that Strategy approved in writing by the Local Planning Authority. This Strategy shall provide details of measures that will be taken by the marina operators to ensure that wherever possible all vehicles visiting the marina enter and leave the marina to the north and avoid routeing through Claydon village. The marina operators shall ensure that the agreed measures are in place before the marina is first brought into use and maintained at all times thereafter.’

5.53 However, whether this condition would pass all of the six tests of appropriateness for conditions set out in Paragraph 56 of the NPPF and Planning Practice Guidance (*Paragraph: 003 Reference ID: 21a-003-20190723*) is questionable. Enforcement of this condition would appear to be extremely difficult, which is highlighted by the inclusion of...*'wherever possible'*... It is likely that in reality, unless physically prevented, users will choose the route which suits their journey best, which will include use of Boddington Road to the south towards and through Claydon and Cropredy, the nearest Category A settlement with facilities.

Highway Context

5.54 The appeal site is proposed to be accessed from Boddington Road. This is a narrow single-track road which runs between the village of Claydon (some 0.8km south of the proposed access) and Banbury Road (some 2km to the north of the proposed access), crossing Hay Bridge. The CRT referred to the restricted highway access in its EOI Appraisal (see Appendix 5)

5.55 This section of road is shown on Plan IMA-22-014-002 attached as Appendix 7. This plan shows measured road widths, and includes photographs showing the existing areas where passing occurs which are typically informal in the form of verge overrunning and erosion. It is notable that measured road widths vary between 2.7m and 3m, only widening out as Boddington Road enters Claydon village and at Banbury Road.

5.56 To the south of Claydon village, Mollington Road continues south-westwards to form a junction with the A423 Southam Road, which heads southwards from that junction towards Banbury and the M40. The distance from the proposed access to the A423 through Claydon is around 3.7km. To the north, Banbury Road runs broadly east-west, and to the west also joins the A423, which heads north-westwards toward Southam and on to Coventry.

5.57 It is notable that the distance from the appeal site to the A423/Mollington Road junction heading north on Boddington Road, then west on Banbury

Road and south on the A423 is 11.4km compared with just 3.7km via the southern route – i.e. 3 times the distance. And drivers would still need to travel 2km of this on a single-track road. It therefore seems likely that most drivers travelling to and from the south would do so through Claydon by choice, and would not be likely to observe an informal request to route to the north.

- 5.58 Immediately south of the proposed access, Boddington Road passes over the canal by way of Hay Bridge. This is typical of canal bridges, though rather extreme being both narrow (single track) with short passing bays on either side, and forward visibility issues, due the levels on the approaches which makes the southbound approach blind and creates a hidden dip on the south side of the bridge when approaching from the south. Having said that, the Transport Statement submitted with the Appellant’s application provided *Crashmap* person injury collision statistics which showed no history of accidents at the Bridge. This is likely to be due to the comparatively low traffic flows and because users of the road will be typically familiar with the road layout and proceed accordingly.

Existing Traffic Flows

- 5.59 Existing traffic flows taken from the ATC survey data submitted with the Appellant’s Transport Statement are shown in the table below.

Time Period	Average Weekday			Saturday			Sunday		
	NB	SB	2-Way	NB	SB	2-Way	NB	SB	2-Way
07:00	5	3	8	2	2	4	2	4	6
08:00	7	9	16	7	5	12	4	6	10
09:00	6	4	10	4	3	7	1	6	7
10:00	10	6	15	15	6	21	7	10	17
11:00	7	5	12	8	12	20	9	21	30
12:00	7	6	13	5	9	14	13	11	24
13:00	7	8	15	6	10	16	15	7	22
14:00	6	8	13	9	6	15	8	3	11
15:00	7	7	14	5	6	11	11	11	22
16:00	9	6	15	6	5	11	15	8	23
17:00	9	10	19	6	6	12	6	7	13
18:00	6	6	12	5	7	12	14	11	25
Ave Hourly (0700-1900)	7	7	14	7	6	13	9	9	18

0700-1900	82	78	160	78	77	155	105	105	210
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5.60 It can be seen that two way flows are generally low at between 8-19 vehicles per hour on an average weekday between 07:00 and 19:00 hours, between 4-21 vehicles per hour on the Saturday, and between 6 to 30 vehicles per hour on a Sunday. The busiest hourly two-way flow on a weekday was on the Friday at 27 vehicles per hour between 17:00-18:00 (the typical evening peak hour).

5.61 The Transport Statement indicated, at Paragraph 3.21, that very few HGVs were recorded and no buses. It goes on to explain:

'On Friday there were never more than one per hour and only three in total; on Saturday there were three during 10:00 – 11:00 but none for the rest of the day. On Sunday there were four between 11:00 – 12:00 and throughout the day there were 15, more than on any other day.'

5.62 Hence Sunday was the busiest day for HGVs with 15 movements counted, and a maximum of 4 per hour.

5.63 No survey has been undertaken of pedestrian and cycle activity, but some use, particularly by local residents, dog walkers and recreational walkers and cyclists would be expected and has been observed in visits to the site.

Existing Road Widths

5.64 In terms of the existing road width, as indicated above (See Appendix 7), this has been measured at between 2.7m to 3m between Claydon village and Banbury Road. This is sufficiently wide to accommodate cars, but is clearly narrow for HGVs which themselves can be up to 2.5m wide – leaving a 100mm clearance either side at 2.7m and 250mm at 3.0m road width. What is clear, however, is that the road is not sufficiently wide to allow a cycle and car to pass. Guidance in *LTN1/20¹¹* indicates that a minimum width of 4m and preferably 4.5m is required to allow a bus (i.e. larger vehicle) to pass a cycle. On the basis that a typical car is around 1.7m-2.0m wide compared with a bus at 2.5m, a minimum width of 4m

¹¹ <https://www.gov.uk/government/publications/cycle-infrastructure-design-ltn-120>

would be needed to allow a car to pass a cycle. LTN 1/20 guidance also states that a lane width between 3.2m and 3.9m should be avoided when cycling in mixed traffic (on the basis that at less than 3.2m overtaking would not be attempted) and, hence, the existing width is below the width necessary to allow a car to pass a cycle safely.

Passing Places

- 5.65 Plan IMA-22-014-002 at Appendix 7 shows the location of existing informal passing places, which are either where the verge has been overrun, and through the use of accesses. It can be seen that these are generally infrequent, with spacings of up to around 300m in places. It can also be seen that the passing places that do exist do not all have intervisibility – i.e. that you can see from one passing place to the next, and indeed that in places there are bends between passing places. This means that drivers cannot make decisions at passing places on whether to proceed or wait for an on-coming vehicle. Given spacings between passing bays of up to 300m, drivers meeting an on-coming vehicle may be required to reverse up to 150m to get to an existing passing place. This reversing would be on a very narrow road with little margin for error.
- 5.66 The other matter to consider in relation to the road width and spacing of the passing places is when a vehicle and cyclist meet. Irrespective of where they meet, one of 3 things will need to happen:
- The vehicle would need to reverse to the nearest passing place;
 - The cyclist would need to mount the verge to get out of the way of the vehicle;
 - The vehicle would need to mount the verge to let the cyclist through.
- 5.67 This clearly creates a poor cycling environment and a potential safety hazard.

Proposed Development and Access

- 5.68 The proposed vehicle access to the appeal site, including sightlines, is that shown on EAS Plan 1319-SK01 Rev F, which was included in the Transport Statement submitted in support of the Appellant’s planning application.
- 5.69 The main thing that stands out regarding the proposed access is that it is completely out of scale with the existing road. The access road is shown to be 10m wide with 10m radii, tying into a road that scales around 2.8m wide both sides of the junction.
- 5.70 Whilst it is possible to achieve sightlines appropriate to the measured speed of traffic on Boddington Road, it is clear that the sightline to the right will require the removal of a considerable length of established vegetation over a length of around 100m.
- 5.71 The scale of the junction and access road proposed to serve the development highlights the inadequacy of the road that would provide access to it. [NB. It is noted that on the Plan 25958_03_020_01.5 A submitted by the Appellant to the County Council to show the 3 proposed passing places shows an access to the north of the development site onto Boddington Road, but this is not the development access and it is not clear what purpose this access would serve.]

Trip Generation

- 5.72 The Transport Statement submitted by the Appellant points to the use of survey data collected in 2004 and used for the expansion of a marina at Crick (on the Grand Union Canal) and data collected by the former British Waterways Board (BWB) in 2008 at a marina in Sawley (River Trent) as being the most appropriate comparison. The main difference between Crick and the proposed site is that the Crick site is accessed off a main road (the A428), is close to the settlement of Crick, and has bus stops immediately outside the marina, making public transport a realistic option; this is clearly not a realistic option at the proposed site. Similarly, the marina in Sawley is also accessed off a main road (B6540) and there

are bus stops on the B6540 less than 100m from the access to the marina.

- 5.73 Hence, it is likely that traffic flows to the proposed development at Glebe Farm could be higher given no realistic alternative to the car. However, taking the predicted flows at face value, the Transport Statement indicates two-way traffic flows of between 12-21 vehicles per hour at the weekend. This would represent an increase of between 40-70% over existing traffic levels. While it is accepted that for a standard two-way road the flow would not be significant, given the very narrow width of Boddington Road and the existing spacing of passing places, such an increase is considered material and a potential highway safety hazard to other users, contrary to policies in the development plan, particularly the Local Plan, 1996 (Policies TR7 and TR10) that seek to ensure significant development has good access to principal highways and avoids the use of unsuitable rural roads.
- 5.74 The Appellant's Statement of Case highlights at Paragraph 4.16 that many boat owners keep cycles on their boats for the purpose of accessing pubs and shops from their boats. The nearest facilities – more than just the pub at Lower Boddington – are at Cropredy some 3 miles to the south of the site, so that cycling, rather than walking, would be the main alternative to use of the car. But also as indicated above, Boddington Road is unsuited to carrying both car drivers and cyclists, being of such a narrow width and a potential highway safety risk.

Proposed Passing Places

- 5.75 Whilst the proposed provision of three formal passing places would represent an improvement, this is only considered a minor benefit, particularly given that they would be provided close to where existing informal areas already exist. Their formalisation would clearly help to eliminate further verge damage in these locations, but would not increase the frequency of spaces for road users.
- 5.76 It is also clear that even with these formal spaces, there will remain long lengths of Boddington Road that do not have appropriate passing places,

including sections where bends prevent intervisibility. This is both to the north, where it is intended to informally route traffic to and from the site, but especially to the south where it is considered traffic to and from Cropredy, Banbury and the M40 is more likely to route in any event.

- 5.77 The works proposed would not address the inadequate width of Boddington Road to carry walkers, cyclists and motor vehicles – this could only realistically be achieved by a continuous widening to around 4m-4.5m between Claydon and the Banbury Road.

Proposed Footpath Improvement Works

- 5.78 The Appellant has offered to fund improvements to PROW 170/6/20, which links the appeal site with the village of Claydon to the south, up to a value of £10,000. The works are identified as providing a small link from the south-east corner of the site onto the PROW, through a small area of land under the Appellant's ownership, which extends south west for a distance of approximately 1050m before connecting into Claydon. The works are indicated to include surfacing, furniture (stile to gate replacement) and vegetation management.
- 5.79 Although improvements to the public right of way are welcomed, it is unclear as to how this would benefit the proposed development to any significant degree, given a lack of facilities within the village of Claydon. The only facility that seems relevant to the development is the bus service. However, given the very limited service available, just on a Thursday, it is of little benefit.

Summary

- 5.80 In summary:
- The appeal site is proposed to be accessed by a narrow single-track road which is wide enough to accommodate cars but narrow for HGVs and not sufficiently wide enough to allow a cycle and car to pass;
 - There are areas where passing occurs but these are infrequent and with little or no intervisibility in places; drivers meeting an oncoming vehicle or

cyclist may be required to reverse up to 150m along a very narrow road to get to an existing passing place;

- The narrow width of the road and lack of passing places creates a poor cycling environment and a potential safety hazard;
- The proposed access road is completely out of scale with the existing road and highlights the inadequacy of the road that would provide access to it;
- Although existing two-way flows along Boddington Road are generally low, the predicted trip generation would represent an increase of between 40-70% over existing traffic levels (and possibly higher given the lack of a realistic alternative to the car); given the very narrow width of Boddington Road and the existing spacing of passing places, such an increase is considered material and a highway safety risk;
- The Appellant’s Statement of Case highlights that many boat owners keep cycles on their boats for the purpose of accessing pubs and shops from their boats. However as indicated above, Boddington Road is unsuited to carrying both motor vehicle traffic and cyclists, being of such a narrow width;
- The provision of three formal passing places is only considered a minor benefit; there will remain long lengths of Boddington Road that do not have appropriate passing places, including sections where bends prevent intervisibility;
- This is both to the north but especially to the south where it is considered traffic to and from Cropredy, Banbury and the M40 is more likely to route. The proposed condition to prevent the latter is unlikely to be enforceable or adhered to;
- The works proposed would also not address the inadequate width of Boddington Road to carry a mix of walkers, cyclists and motor vehicles.
- Improvements to PROW 170/6/20 are welcomed but it is unclear as to how this would benefit the development to any significant degree, given a lack of facilities within the village of Claydon.

5.81 In summary, as demonstrated above, Reason for Refusal No. 2 is considered entirely justifiable, both at the time of the decision, and now in spite of the additional detail which has been provided subsequent to the decision to refuse the proposal in relation to the passing places.

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- 5.82 The development plan policies seek to prevent or discourage development that would attract commercial and vehicular traffic from using unsuitable minor or rural roads. Paragraph 111 of NPPF states that ‘Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe’. In this case it is considered that providing a major development that would increase car and cycling demand on a road that is clearly not appropriate for that mix of modes constitutes an unacceptable impact and appropriate grounds for the Council to refuse the proposal.

Reason for Refusal No. 3 – Harm to character and appearance of the Oxford Canal Conservation Area

- 5.83 The third reason for refusal relates to the Council’s concerns about undue harm to the character and appearance of the Oxford Canal Conservation Area and states:

By virtue of its scale and siting, the proposed development would fail to preserve the character and appearance of the Oxford Canal Conservation Area. This harm, which would be less than the substantial, would significantly and demonstrably outweigh the benefits of the proposed development. The proposed development would therefore be contrary to Policies ESD15 and ESD16 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

Oxford Canal – Conservation Area Appraisal

- 5.84 The Oxford Canal is an heritage asset of significance – being among the earliest of cuts in the canal age - running the length of Cherwell district through the attractive valley of the River Cherwell, and is of historic, ecological and recreational significance. Following an appraisal, the length of the canal through the district was designated as a Conservation Area in October 2012. The conservation area boundary has been drawn to include the towpath and towpath hedge, canal-related earthworks and features including historic wharfs and locks and woodland. A copy of the *Oxford*

Canal Conservation Area Appraisal, October 2012 ('the Appraisal') has been provided with the Council's Appeal Questionnaire. The Appraisal describes the character, appearance and significance of the Canal Conservation Area.

- 5.85 The Oxford Canal runs from Coventry to Oxford, and a stretch of around 33 miles lies within the Cherwell and former South Northamptonshire districts. The Canal is of the rural contour type, using and circumnavigating the landscape, giving it the relaxed cruising atmosphere that is its greatest attraction for tourists and residents alike. Work on the Canal started in 1769; the stretch between Banbury and Oxford was constructed between 1778 and 1790. The arrival of the railways reduced the use of the Canal, which was used mainly for coal transportation, and following WWII, the Canal was classed as a 'cruiseway', rather than for commercial use.
- 5.86 Although the boundary of the Conservation Area is quite tightly drawn to correspond to the Canal and its related features, its broader setting – as briefly described above – is clearly important to the manner in which its character and appearance is experienced and appreciated by all users, including tourists, those using boats, pedestrians using the towpath, residents and others using the highways and public rights of way in the area. In effect, by its very nature, being a long, linear feature circumnavigating the landscape, the Canal, the Conservation Area and its setting are indivisible.
- 5.87 The Canal does pass close to and through settlements, including Cropredy and Banbury but most of its setting is rural.
- 5.88 This is reflected in the Appraisal at Paragraph 3.2 when it states:

Although the Cherwell District has a complex topography, with steep valley sides and open upland areas rising to a height of around 200m in places, the canal follows the contours of the land: as level a route as possible, at least half of which lies below 80m. The valley is generally fairly wide and flat between the low undulating hills of the valley sides, with occasional raised terraces on which the settlements mainly lie. The scenery is pleasant, stretching back from the canal in rural areas with wide agricultural and pastoral fields, dotted with occasional wharf sites

and associated canal buildings adjacent the canal. Immature woodland clusters in areas on the banks provide sporadic visual barriers which hide the canal from wider view.

5.89 This is echoed by the Canal & River Trust’s website¹², which states:

The picturesque Oxford Canal meanders slowly through the countryside, free from large-scale development. Most of the settlements along its length are pretty villages such as Thrupp, Cropredy and Aynho - all popular mooring spots for narrowboats.

5.90 The appeal site has a rural, agricultural, bucolic character. Whilst for the most part the site lies outside the Conservation Area, the proposed engineering and related works to create an entrance to the proposed marina and continue the towpath will directly impinge upon the Conservation Area. Given the definition of “setting of a heritage asset” in the NPPF, the appeal site is clearly within that definition and within the setting of the Conservation Area at this location. The CRT also flagged that the site was outside the Conservation Area but would be visually prominent from within it, in its Appraisal of Expression of Interest (Appendix 5) in 2016.

Setting

5.91 Historic England, in *Historic Environment Good Practice Advice in Planning Note 3: The Setting of Heritage Assets (2017)* confirms that the setting of a historic asset will include, but generally be more extensive than, its curtilage. Historic England’s advice is also that setting does not depend on public rights or ability to access it.

5.92 Section 72(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended)* states that in carrying out its functions as the Local Planning Authority in respect of development in a conservation area, the Council should give special attention to the desirability of preserving or enhancing the character or appearance of that area.

¹² [Oxford Canal | UK Canal network | Canal & River Trust \(canalrivertrust.org.uk\)](https://www.canalrivertrust.org.uk)

Development Plan Policies

- 5.93 Policy ESD 15 of the Local Plan Part 1 states, *inter alia*, that new development proposals should conserve, sustain and enhance designated and non-designated 'heritage assets' including buildings, features, archaeology, conservation areas and their settings, and ensure new development is sensitively sited and integrated, furthermore development should respect the traditional pattern of the form, scale and massing of buildings.
- 5.94 Policy ESD 16 of the Local Plan Part 1 relating to the Oxford Canal, referred to in relation to Reason for Refusal No.1 above, states that proposals which would be detrimental to its character or appearance will not be permitted.

NPPF

- 5.95 The NPPF (Paragraph 199) requires when considering the impact of a proposed development on the significance of a designated heritage asset that great weight should be given to the asset's conservation. Paragraph 200 of the NPPF adds that significance can be harmed or lost through alteration or destruction of the asset or from development within its setting. Any harm to, or loss of, the significance of a designated heritage asset requires clear and convincing justification.

Significance

- 5.96 In this case, the significance of the appeal site lies in the association between this area of currently rural, agricultural land and the Canal Conservation Area.
- 5.97 The proposed development covers a substantial area of land (almost 18 hectares) which is currently part of the natural, unspoilt agricultural landscape. Therefore, the setting of the Canal Conservation area will be notably altered in this section of the Oxford Canal. Currently the area is part of the rural landscape comprising of agricultural land with an enclosed field pattern. This rural setting is highlighted in the Oxford Canal Conservation Area Appraisal as enhancing the conservation area. The

scale of the proposed development to create a Marina is considerable, with extensive cut and fill operations, creating embankments, a huge lake, pontoons, roads, service areas, car parking with associated buildings. These engineering, building and other works will encroach into this surrounding area and therefore detract from this rural setting of the Conservation Area and fail to preserve or enhance the character or appearance of that Area as required by statute, Government guidance and the development policies set out above.

- 5.98 Although the creation of the marina, lake and hard surfacing will themselves alter the appearance of the agricultural land that characterises this part of the Canal Conservation Area, the new buildings and structures proposed will increase the impact. The large clubhouse building will be very prominent particularly in views both on the approach from Boddington Road and also along the pedestrian route through the Canal corridor. The new pedestrian bridge over the canal entrance to the marina will also significantly alter the experience of the Canal at this location as it will be an engineered structure in place of what is currently a “green” boundary. See Figure 16 below.



Figure 16 – View of Appeal Site from Hay Bridge

- 5.99 The Conservation Area Appraisal highlights that the rural sections of the Canal have natural viewpoints both of the Canal and along it; furthermore two positive vistas within this section of the Canal Conservation Area are identified. See Figure 17 taken from Figure 9 of the Appraisal.



Figure 17 – Positive Vistas across the Appeal site

5.100 The proposed marina and associated development is considered to adversely impact upon both of these vistas and will result in harm to the views enjoyed both out from the Conservation Area into the wider rural setting and into the Conservation Area from the wider landscape, including PROW and highways.

Potential Threat

5.101 It is accepted that this type of development is in keeping with the nature of the canals and their function. However, the introduction of marinas are highlighted as a potential threat to the Canal Conservation area in the Appraisal. At Paragraph 6.96 of the Appraisal it states:

There are several successful marinas on this section of the canal, catering for the growing needs of recreational boating. Two of these, at Aynho Wharf and Lower Heyford, are fairly large and in a rural setting, but they have no adverse impact on the character of the canal. Similarly, there are

also some smaller ones on the line that are also more positive than negative in their impact. It is strongly suggested that any future development of marinas in the rural areas be very carefully designed and quite limited in their capacity. Otherwise they will be obtrusive and inappropriate. It is further recommended that large marina development should be within urban areas, such as Banbury or Kidlington.

- 5.102 The proposed marina is of major scale, much, much larger than at Ayhno Wharf and Lower Heyford (for the latter see Figure 18). The Council considers that the Appraisal’s concern about “threat” should be given weight when assessing the suitability of the proposed scheme.



Figure 18 – Lower Heyford (Google Earth Image)

- 5.103 The Council’s Conservation Officer paid regard to the development of the HS2 railway line to the north-east and that this may have an overall impact on the rural landscape nearby. However, this does not impact in the Canal Conservation Area and is not the subject of this appeal. The proposed marina, buildings and other development is considered to impact on the immediate setting of the Canal and its Conservation Area, a designated heritage asset. It would be a harmful intrusion into the landscape that will result in harm to the setting of the Canal Conservation Area.

Less than substantial harm

5.104 The Council considers that the development results in less than substantial harm¹³ to the significance of the setting of the Conservation Area. As such, Paragraph 202 of the NPPF comes into play and states:

'Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.'

5.105 The NPPF identifies two levels of harm: substantial harm and less than substantial harm. The courts¹⁴ have made it clear that there is no spectrum of degree of harm within the less than substantial harm category but, as explained above, the more important a heritage asset is, the greater the weight to be attached to its preservation or the preservation of its setting, irrespective of whether the harm caused is substantial or less than substantial.

Public Benefits

5.106 In terms of public benefits, there would be some additional local employment opportunities during construction and operation of the marina. Wider economic and social benefits are also likely to arise including providing more choice for boat owners, increasing local visitor spend in the district as cruisers through spend and support local retail outlets, pubs, restaurants and tourist facilities and by encouraging longer stays and increased numbers of visitors in the district. However, these are extremely difficult to quantify. The proposal would also help to sustain and diversify an existing agricultural enterprise, which has apparently been affected by HS2 - but would have been compensated by the Government¹⁵ - and other factors affecting the farming industry in the UK. In terms of social benefits, the Appellant is apparently keen to see the marina and its facilities make a contribution to local education. As such they have

¹³ See Planning Practice Guidance Paragraph: 018 Reference ID: 18a-018-20190723 which states that in general terms, substantial harm is a high test, so it may not arise in many cases.

¹⁴ *R.(oao James Hall and Company Limited) v City of Bradford Metropolitan District Council and Co-Operative Group Limited* [2019] EWHC 2899 (Admin)

¹⁵ [Claim compensation if your property is affected by HS2 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/claim-compensation-if-your-property-is-affected-by-hs2)

approached local primary schools to discuss whether the facilities that the Marina offers would be of interest to them for educational purposes. Some public benefits would accrue from improvements to public rights of way and the passing bays on the public highway.

5.107 Conversely, avoiding harmful conflict with the development plan and the preservation and protection of the open countryside, natural environment and heritage assets are of considerable public benefit for current and future generations.

5.108 The Council considered the “public benefits” but did not consider that these were sufficient to outweigh the harm to the significance of the heritage asset (the Canal and its setting) or the conflict with the development plan and NPPF, as that harm cannot be successfully mitigated.

Cumulative Change

5.109 As indicated elsewhere in this Statement, Cropredy Marina has been constructed, recently been expanded and provides 347 moorings. Another small (50 berths) marina is under construction in the village of Cropredy. There are long established residential moorings just to the west of the appeal site and a marina at Fenny Compton (100 berths).

5.110 Just 2.2 miles (3.6k) to the north of Claydon Marina, regard has been paid to advice in Planning Practice Guidance (Paragraph: 013 Reference ID: 18a-013-20190723), which states:

'When assessing any application for development which may affect the setting of a heritage asset, local planning authorities may need to consider the implications of cumulative change.'

5.111 The Historic England advice - *The Setting of Heritage Assets Historic Environment Good Practice Advice in Planning Note 3 (Second Edition)* includes similar guidance and states (Paragraph 9) that:

'Where the significance of a heritage asset has been compromised in the past by unsympathetic development affecting its setting, to accord with

NPPF policies consideration still needs to be given to whether additional change will further detract from, or can enhance, the significance of the asset.'

- 5.112 Paragraph 32 of Historic England's Planning Note 3 states that when assessing the effects of a proposed development, whether beneficial or harmful, may have on setting(s) of a heritage asset, *'in some circumstances, this evaluation may need to extend to cumulative and complex impacts, which may have as great an effect on heritage assets as large-scale development and which may not solely be visual.'*
- 5.113 Claydon Marina was approved in January 2012, before the Oxford Canal Conservation Area was designated under Section 69 of the *Planning (Listed Buildings and Conservation Areas) Act 1990*, in October 2012. The 100 berth extension was approved in August 2017 on the basis that it would be clearly associated with the existing marina and would be read as an extension of this (at just 0.9ha – see Figure 18). It is within walking and cycling distance of a Category A village and was considered, in combination with the existing marina, to not unduly harm the historical importance of the Canal Conservation Area and its setting.
- 5.114 Whilst each proposal needs to be considered on its own planning merits and the impact of a single marina or other development may be acceptable or limited in terms of the overall length of the Canal, the cumulative impact of such developments (including the sequential impact of people moving through the landscape (i.e. along the Canal)) should also be considered, in line with PPG and other heritage advice. The character of the canal corridor here at risk of changing from a narrow enclosed linear channel to a series of large open bodies of water connected by short broken stretches of canal in-between, which is in danger, if this appeal is allowed, of fundamentally altering the character of the Conservation Area on this stretch of the Canal. See Figure 19.



Figure 19 – Cropreddy Marina (Left) and Appeal Proposal (Right)

5.115 The Council acknowledges the Canal provides a focal point for tourism, and that a pro-active approach should be taken to facilitate good quality, sustainable development. However, the Council - and the local community, many of whom have objected to the appeal proposal - is very concerned that a series of marina developments along a relatively small stretch of canal will change the way the canal is appreciated and experienced by all users. The individual and cumulative changes would detract from the setting of the route, changing its essential rural nature to something more dominated by large water bodies, built development and associated paraphernalia. This has the potential to erode its unique character and harm the significance of the Conservation Area, including its setting. As indicated above, any benefits would not outweigh the harm the development would have on the character, appearance and setting of the Conservation Area.

5.116 In conclusion on this Reason for Refusal, the Council contends that the proposed development, both in its own right and cumulatively with others of its type in the locality, would erode the fundamental linear and rural character and appearance of the Oxford Canal Conservation Area, particularly the setting within which it is appreciated, thereby undermining its significance as a heritage asset. Notwithstanding that marinas will inevitably be associated with canals, in this case there would be harmful

conflict with relevant statute, the development plan, the NPPF and the Conservation Area Appraisal.

Reason for Refusal No.4 – Absence of a S106 Obligation

5.117 As the planning application the subject of this appeal was refused before any legal agreement/obligation under section 106 of the *Town and Country Planning Act, 1990 (as amended)* could be drafted, there could be no certainty at the time that the Appellant (and any other parties with an interest in the land) would have committed to the necessary covenants to secure appropriate mitigation, contributions and deliver the infrastructure required, if the proposed development was to be permitted and proceed.

5.118 Therefore, Reason for Refusal No.4 was legitimately included on the decision notice and states:

In the absence of a satisfactory unilateral undertaking or any other form of Section 106 legal agreement the Local Planning Authority is not satisfied that the proposed development provides for appropriate footpath improvements and off-site highway improvement works required as a result of the development and necessary to make the impacts of the development acceptable in planning terms, to the detriment of both existing and proposed residents and contrary to Policies SLE4, ESD1, ESD15 and ESD16 of the Cherwell Local Plan 2011-2031 Part 1, saved Policy TR1 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

5.119 As the footpath improvements and off-site highway improvement works were requested by Oxfordshire County Council as local highway authority, the County Council has prepared a statement (see Appendix 8) with its evidence setting out the justification for the commitments expected to be made within any planning obligation, having regard to the statutory tests in Regulations 122 and 123 of the *CIL Regulations 2010 (as amended)*.

5.120 This is expected to be broadly in line with the recommended heads of terms for a planning obligation as listed in the Officer's report to Planning

Committee in January 2021, taking account of any material changes in circumstances since that date.

- 5.121 Without prejudice to the Council’s decision and position on this appeal, the County Council’s evidence demonstrates that the lack of a satisfactory s.106 obligation/unilateral undertaking [if this appeal is allowed] to secure the necessary transport/highway infrastructure improvements and contributions would result in a proposal that would fail to mitigate the impact of the development, which would contribute towards an unsustainable form of development, contrary to Development Plan policies and the NPPF.
- 5.122 Nevertheless, it is noted within the Appellant’s evidence¹⁶ that the footpath improvement contribution and provision of passing bays have been agreed in principle with Oxfordshire County Council. It is understood they will be secured by the Appellant in a section 106 obligation which will be forwarded to the Planning Inspectorate in due course. Works within the highway will also be subject to a s278 agreement under the *Highways Act, 1980*.
- 5.123 The Council will maintain its position on this reason for refusal pending submission of an acceptable s106 obligation. According to the Planning Inspectorate’s “start date” letter of 9th December 2021, a certified copy of any s106 obligation must be submitted to the Planning Inspectorate no later than 7 weeks from the date of the “start date” letter [unless this is extended for any reason].

¹⁶ Appendices L and M attached to the Appellant’s Statement of Case

6.0 OVERALL PLANNING BALANCE & SUSTAINABLE DEVELOPMENT

- 6.1 Section 38(6) of the *Planning and Compulsory Purchase Act, 2004* and Section 70(2) of the *Town and Country Planning Act, 1990* require that planning applications be determined in accordance with the adopted development plan unless material considerations indicate otherwise. Paragraph 12 of the NPPF states that the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making. The NPPF adds that where a planning application conflicts with an up-to-date development plan, permission should not usually be granted.
- 6.2 As previously referenced, the Development Plan for Cherwell District includes the *Cherwell Local Plan 2011-2031 Part 1 (adopted in July 2015)* and 'saved' policies from the *Cherwell Local Plan 1996*. The appeal site is not allocated for development in any adopted or emerging policy document forming part of the statutory development plan. It is not previously developed land, sits some distance outside any recognised settlement, even further from the nearest Category A settlement [which are seen as the most sustainable in the district] at Cropredy and is located in an attractive, unspoilt area of open countryside alongside the Oxford Canal, an historic and important designated heritage asset that passes through the whole of Cherwell district.
- 6.3 The Council has taken the statutory development plan as the starting point for the assessment of the appeal proposal. This is not silent on the principle of where developments such as this should be located. They are directed to the environs of established, sustainable settlements. This is supported by the Canal Conservation Appraisal. Great weight is afforded to this non-compliance with the Development Plan for sustainability, accessibility and related reasons. The appeal proposal would conflict with this intention and a fundamental principle of the NPPF is that the planning system should be genuinely plan-led.
- 6.4 As there are relevant development plan policies [for the assessment of the proposal] and these policies, which are the most important for determining this appeal, are not out-of-date and because policies in the

NPPF protect heritage assets, such as the Oxford Canal Conservation Area, the “tilted balance” contained in Paragraph 11 of the NPPF is not engaged.

6.5 The Council maintains that the appeal proposal would also conflict with the legislation, Development Plan policies, NPPF (Section 16 - Conserving and enhancing the historic environment), Oxford Canal Conservation Area Appraisal and Historic England on the protection of heritage assets. The Council considers the proposal will significantly and adversely affect the character of the Conservation Area in this location and the wider rural setting, leading in itself – but also cumulatively with others on this relatively small stretch of Canal - to less than substantial harm to the significance of the heritage asset without clear and convincing justification. In this case, therefore, the Council holds that in accordance with Paragraph 11 d) i) the application of policies in the NPPF that protect areas or assets of particular importance¹⁷ provides a clear reason for refusing the development proposed.

6.6 Notwithstanding this, and in the absence of a clear position on demand/need for the proposed development in this location, in addition to existing and recently extended mooring/marina facilities on this stretch of the Oxford Canal, the Council has considered whether the proposal represents sustainable development, as defined in the NPPF, and concludes that in social, economic and environmental terms, the harmful effects of the proposal would significantly and demonstrably outweigh the benefits.

6.7 In summary, these are as follows:

Harmful Effects

6.8 The appeal site is in a remote location with poor sustainability credentials. There are very limited facilities available in either Claydon or Lower Boddington and the site is a significant distance from Cropredy as the nearest Category A village in Cherwell district. The site is therefore not in

¹⁷ Footnote 7 of the NPPF

a location that is suited to sustainable transport modes and users of the marina would be dependent on car travel.

- 6.9 The proposed development, by reason of its nature, significant size and scale combined with its isolated location away from settlements with services and facilities, established moorings and existing popular destinations and with poor alternative transport links is considered to be unsustainable insertion into the open countryside. This should attract significant weight, given the policies in the development plan (SLE1, ESD1 and ESD16) and the advice in the NPPF.
- 6.10 There are other harmful effects, as indicated above, on the Oxford Canal Conservation Area. It is inevitable that the development of a marina of this nature, scale and extent will affect the character of the Conservation Area in this location and the wider rural setting. In this case this is considered to be less than substantial harm.
- 6.11 There is also concern that a series of large-scale marina developments along a relatively small stretch of the Oxford Canal will change the way the canal is appreciated and experienced and therefore have the potential to erode its unique character. This can also be argued for any new addition to the canal network, including bridges and buildings. Hence, the additional structures associated with the proposed marina will also have an impact and are considered to contribute to the overall harm.
- 6.12 When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The NPPF requires harm to be weighed against the public benefits of the proposal (see Section 5.0 of the Statement) but the Council considers that any public benefits do not outweigh the less than substantial harm identified to the Conservation Area, which is protected by statute, the NPPF and the Development Plan (Policies ESD15 and ESD16), supported by the Conservation Area Appraisal and Historic England's advice notes.
- 6.13 There is also the impact of increased traffic on the surrounding highway network, which is narrow, with limited opportunities for vehicles to pass

safely, in poor condition, with a canal bridge restricting visibility of on-coming vehicles, which could lead to highway safety dangers, contrary to Policy SLE4 (and others) of the Development Plan and advice in the NPPF.

Benefits

- 6.14 There are likely to be some benefits to the locality, principally the economic benefits arising from providing more choice for boat owners, increasing local visitor/tourist spend in the District as cruisers are likely to make use of local retail outlets, pubs, restaurants and tourist facilities, encouraging longer stays in the District and providing some local employment opportunities during construction (temporary) period and subsequent operation (albeit small in number) of the proposed marina in this rural area, with support for employment on the farm. The proposal also helps to sustain and diversify an existing agricultural enterprise, which is supported by Paragraph 84 of the NPPF, where sustainable and sensitive its surroundings and meets other criteria, but there are concerns about this, in this case, and diversification can detract from main farming activities.
- 6.15 The lack of objectively assessed evidence of need for additional mooring capacity, means there is a risk that the economic benefits could be diluted, even if local competition between marinas did not result in loss to or impacts upon established and rival concerns, which would affect economic objectives.
- 6.16 The proposal, if allowed, would make some small s.106 contributions towards local infrastructure, which could bring some social and environmental benefits albeit of a proportionate level necessary to meet the needs of the development itself. Therefore, the benefit derived should have only slight weight, as it is a requirement necessarily needed to mitigate otherwise harmful impact. Some limited benefits might also accrue from links to local schools, but overall these are considered to be limited, especially when taking into account that the proposal is not in an accessible location.

6.17 There are also considered to be some, minor, environmental benefits arising from the landscaping and biodiversity enhancements proposed. However, this needs to be tempered by the fact that the proposal would be a significant man-made construction project on presently unspoilt farmland and be a necessary requirement of development in any case.

Overall Assessment

6.18 Paragraph 15 of the NPPF states that the planning system should be genuinely plan-led. In this case, the proposal conflicts with the Development Plan. Therefore, the appeal should be dismissed in line with planning legislation as there are, the Council contends, no material considerations that indicate that the decision should be otherwise than in accordance with the development plan.

6.19 Paragraph 11 of the NPPF is not engaged. In terms of achieving sustainable development, the Council considers that the economic benefits are not sufficient to outweigh the harm, including the less than substantial harm to the significance of a heritage asset, without any overriding or significant public benefits, including some minor social benefits. Indeed, great weight should be given to the asset's (Oxford Canal and its setting) conservation¹⁸.

6.20 For the reasons set out, including the conflict with the Development Plan, the Council contends that the adverse effects of the proposal would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.

6.21 Therefore, the proposed development cannot be considered to represent sustainable development in the context of the NPPF.

¹⁸ Paragraph 199 of the NPPF

7.0 CONCLUSION

- 7.1 The Development Plan (including Policy ESD16) seeks to direct development such as this to locations within or immediately adjacent to settlements, which is consistent with the NPPF's objective of focussing significant development on locations which are or can be made sustainable. This is a very significant development on a site extending to almost 18 hectares in an unsustainable location, in the countryside, well away from any settlement and served by a poor road network, which would be likely to lead to highway safety issues. The appeal clearly conflicts with the Development Plan.
- 7.2 Planning legislation, the Development Plan and the NPPF seek to protect heritage assets such as the Oxford Canal and give great weight to their conservation. The Council considers that the proposal would be harmful to its character and landscape setting and that in the absence of any overriding public benefits should be resisted.
- 7.3 The NPPF states that the purpose of the planning system is to contribute to the achievement of sustainable development. The three objectives of sustainable development – economic, social and environmental – have been considered by the Council balancing the benefits against the harm. The Council concludes that the adverse impacts would significantly and demonstrably outweigh any economic and social benefits.
- 7.4 The Council's evidence demonstrates that the proposed development of the appeal site would fail to deliver a sustainable development. Both the principle of development in this location and the harm which would be caused would be contrary to adopted Development Plan policies, national policy as set out in the NPPF/PPG and both planning and heritage legislation.
- 7.5 For these reasons, the Inspector is respectfully requested to dismiss this appeal.

8.0 PLANNING CONDITIONS

8.1 In accordance with the Planning Inspectorate’s *Procedural Guide: Planning appeals – England (Updated 13 October 2021)* and without prejudice to the Council’s reasons for refusal and position on this appeal, as set out in this Statement and supporting documentation, in the event that the appeal should be allowed, the Council suggests the following draft conditions, which the Appellant has previously seen as they have been extracted from the Officer’s Report to the Council’s Planning Committee in January 2021.

GENERAL

Time Limit

1. The development to which this permission relates shall be begun not later than the expiration of three years beginning with the date of this permission.

Compliance with Plans

2. Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the following plans:

- Site Location Plan AdamCM-1-5-001A dated 06/02/2019
- Proposed Site Plan A05/020F dated 15/07/2019
- Proposed Site Plan (Levels and Contours) A05/022E dated 15/07/2019
- Proposed Site/Marina Sections A05/100F dated 19/07/19
- Proposed Highways Access and Visibility Splay Plan ADAMCM-1-1-005 Rev A dated 15/01/19
- Proposed Detention Basin Sections ADAMCM-1-4-003 dated 21/08/19
- Landscaping Proposal - Species Selection and Planting Specification: April 2018 (Rev B – July 2019)
- Tow Path Bridge A05/601B dated 25/10/2018
- Proposed Building A05/405B dated 28/01/2019

Compliance with Ecological Report

3. The development hereby permitted shall be carried out in accordance with the recommendations set out in Section 4 of the Preliminary Ecological Appraisal Report by RSK dated April 2018 and Section 3 of the RSK Follow Up Report dated 27th July 2019 unless otherwise agreed in writing by the Local Planning Authority. This shall include;

- Completion of a detailed badger activity walkover survey no more than 3 months prior to development or site clearance works commencing, with the findings and any mitigation and/or Licensing requirements submitted to the Local Planning Authority for written approval. No development or site clearance to take place until such written agreement is provided.
- A hand-search of any suitable terrestrial-phase amphibian and reptile habitat prior to any vegetation clearance. Once the affected area has been hand-searched, the habitat will be made unsuitable for amphibians and reptiles as a precaution, by strimming long grass from the centre in an outwards direction to allow any animals present to move to adjacent habitat. The habitat will be kept in an 'unsuitable' condition for terrestrial phase amphibians and reptiles until the construction phase is complete, during which time enhancements will be made across the wider site for a variety of species, including amphibians in accordance with details which have been previously submitted to and approved in writing by the Local Planning Authority. Any common reptiles and amphibian species found will be moved to suitable areas in the north of the site which will not be affected by works.
- Checks for Holts and Otter resting sites prior to construction.
- Ecological Clerk of Works present on site to assess exact headwall locations prior to de-vegetation and during installation.
- Use of subdued lighting located away from the watercourse so as not to illuminate the brook corridor.
- Planting and maintenance of additional habitat outside of the site's northern redline boundary (part of the North Claydon Disused Railway LWS) to provide additional cover and habitat connectivity between the watercourse and the boundary of the proposed development.
- Leaving the banks along the north-eastern boundary of the site (adjacent to Wormleighton Brook) undisturbed and uncut to encourage vegetation growth for otter and water vole.

PRE COMMENCEMENT CONDITIONS

Access Provision

4. Prior to the commencement of the development hereby approved, full details of the means of access between the land and the highway, including, position, layout, construction, drainage and vision splays shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the means of access shall be constructed and retained in accordance with the approved details.

Construction Traffic Management Plan

5. No development shall take place until a Construction Traffic Management Plan (CTMP) has been submitted to, and approved in writing by, the Local Planning Authority. The CTMP should incorporate the following in detail:

- The CTMP must be appropriately titled, include the site and planning permission number.
- Routing of construction traffic and delivery vehicles with signage to the necessary standards/requirements. This includes means of access into the site.
- Details of and approval of any road closures needed during construction.
- Details of and approval of any traffic management needed during construction.
- Details of wheel cleaning/wash facilities – to prevent mud etc. from vehicle tyres/wheels migrating onto the adjacent highway.
- Details of appropriate signing, to accord with the necessary standards/requirements, for pedestrians during construction works including any footpath diversions.
- The erection and maintenance of security hoarding / scaffolding if required.
- Contact details of the Project Manager and Site Supervisor responsible for on-site works.
- The use of appropriately trained, qualified and certificated banksmen for guiding vehicles/unloading etc.

- No unnecessary parking of site related vehicles (worker transport etc) in the vicinity – details of where these will be parked and occupiers transported to/from site to be submitted. Areas to be shown on a plan not less than 1:500.
- Layout plan of the site that shows structures, roads, site storage, compound, pedestrian routes.
- A before-work commencement highway condition survey and agreement with a representative of the Highways Depot – contact 0845 310 1111. Final correspondence is required to be submitted.

Improvements to Boddington Road

6. No development shall take place until details of improvements to Boddington Road which shall include the provision of passing places to the north of the access to the marina have been submitted to and approved in writing by the Local Planning Authority. The improvements shall be completed in accordance with the approved details before the marina is first brought into use.

Construction Method Statement and Environmental Management Plan

7. No development shall take place until a Construction Method Statement and Environmental Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Statement and Plan shall provide for at a minimum:

- details of pollution prevention measures
- method of construction to ensure that there would be no potential threat to the water environment of the adjoining canal and the wider network
- the parking of vehicles of site operatives and visitors
- the loading and unloading of plant and materials
- the storage of plant and materials used in constructing the development
- Details of protective measures to protect current biodiversity interest and avoid impacts during construction (both physical measures and sensitive working practises)
- Measures to control the emission of dust and dirt during construction

- A scheme for recycling/ disposing of waste resulting from construction works
- A timetable to show phasing of construction activities to avoid periods of the year when sensitive wildlife could be harmed (such as when badgers, reptiles and amphibians are active and during bird nesting seasons)
- The mitigation measures recommended in Section 4 of the Preliminary Ecological Appraisal Report by RSK dated April 2018 and the RSK Follow Up Report Rev 3 dated 26th July 2019 including appropriate mitigation to avoid negatively impacting upon Wormleighton Brook and its surrounding habitats during the construction phase of the development
- Details of how regular reviews of the impacts on the Local Wildlife Site will take place during construction
- Delivery, demolition and construction working hours
- Persons responsible for: i) Compliance with legal consents relating to nature conservation; ii) Compliance with planning conditions relating to nature conservation iii) Installation of physical protection measures during construction; iv) Regular inspection and maintenance of the physical protection measures and monitoring of working practices during construction; v) Provision of training and information about the importance of Environment Protection measures to all construction personnel on site. The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

Tree Protection

8. No development shall take place until the existing trees and hedgerows to be retained have been protected in accordance with a Tree Protection Plan and Arboricultural Method Statement that has been submitted and approved in writing by the Local Planning Authority. The approved protection measures shall be in place before any equipment, machinery or materials are brought onto the site for the purposes of development and shall be maintained until all equipment machinery and surplus material has been removed from the site. Nothing shall be stored or placed within the areas protected by any barriers erected in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavations be made, without the written consent of the Local Planning Authority.

Foul & Surface Water Drainage

9. Development shall not begin until a detailed foul and surface water drainage scheme for the site, in accordance with the approved flood risk assessment and Drainage Strategy, has been submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed. The scheme shall also include:

- a compliance report to demonstrate how the scheme complies with the 'Local Standards and Guidance for Surface Water Drainage on Major Development in Oxfordshire'
- full micro-drainage calculations for all events up to and including the 1 in 100 year Page 141 plus 40% climate change
- a Flood Exceedance Conveyance Plan
- detailed design drainage layout drawings of the SuDS proposals including cross section details
- detailed maintenance management plan in accordance with Section 32 of CIRIA C753 including maintenance schedules for each drainage element; and
- details of how water quality will be managed during construction.

Ecological Buffer Zone

10. No development shall take place until a scheme for the provision, protection and management of a 10 metre wide ecological buffer zone alongside the Wormleighton Brook has been submitted to, and approved in writing by, the local planning authority. Thereafter, the development shall be carried out in accordance with the approved scheme and retained and maintained thereafter throughout the lifetime of the development. Any subsequent variations shall be agreed in writing by the local planning authority, in which case the development shall be carried out in accordance with the amended scheme. The buffer zone scheme shall be free from built development including lighting, domestic gardens and formal landscaping. The scheme shall include: top of the bank) managed over the longer term including adequate financial provision and named body responsible for management plus production of detailed

management plan discharge and that the localised impact will be mitigated for.

CONDITIONS REQUIRING APPROVAL OR COMPLIANCE BEFORE FIRST USE OF THE MARINA

Footpath Link

11. The marina shall not be brought into first use until a footpath link from the site connecting into the existing public rights of way network (footpath 170/6/20) and as shown indicatively on the PROW Access Plan AdamCM-1-1-004 dated 15th Page 142 November 2018 has been provided in accordance with details which have been submitted to and approved in writing by the Local Planning Authority. The footpath link shall be retained and made available for use by users of the marina at all times thereafter.

Landscaping

12. Notwithstanding the approved plans, a scheme for landscaping the site shall be submitted to and approved in writing by the Local Planning Authority which shall include:- (a) details of the proposed tree and shrub planting including their species, number, sizes and positions, together with grass seeded/turfed areas and written specifications (including cultivation and other operations associated with plant and grass establishment i.e. depth of topsoil, mulch etc), (b) details of the existing trees and hedgerows to be retained as well as those to be felled, including existing and proposed soil levels at the base of each tree/hedgerow and the minimum distance between the base of the tree and the nearest edge of any excavation, (c) details of the hard landscaping including hard surface areas, pavements, footpaths, parking and yard areas, pedestrian areas and steps (d) Tree Pit details Such details shall be provided prior to the first use of the marina, or such alternative time frame as agreed in writing by the developer and the Local Planning Authority. The hard landscape elements shall be retained as such thereafter. The soft landscape elements shall be implemented by the end of the first planting season following completion or first use of the marina, whichever is the

sooner. Any tree(s) or shrub(s) removed, dying, or becoming seriously damaged, defective or diseased within 10 years from the substantial completion of the scheme shall be replaced within the next planting season by tree(s) or shrub(s) of similar size and species to those originally required to be planted.

Traffic Management and Routeing Strategy

13. No boats shall be moored at the marina until the applicant has submitted to the Local Planning Authority a Traffic Management and Routeing Strategy and had that Strategy approved in writing by the Local Planning Authority. This Strategy shall provide details of measures that will be taken by the marina operators to ensure that all vehicles visiting the marina enter and leave the marina to the north and avoid routeing through Claydon village. The marina operators shall ensure that the agreed measures are in place before the marina is first brought into use and maintained at all times thereafter.

LEMP

14. A Landscape and Ecology Management Plan (LEMP) shall be submitted to and approved in writing by the Local Planning Authority prior to the first use of the marina. The LEMP shall show ongoing management and objectives for the site with the aim of achieving the best possible ecological condition for all habitats in the long term and shall include the following details;

- Landscape and ecological maintenance and management arrangements for the site for a minimum period of 25 years with the aim of achieving best possible ecological condition for all habitats in the long term;
- Additional enhancement measures for wildlife to demonstrate that a net biodiversity gain will be achieved (including within the building proposed)
- Areas of habitat provision on site in areas that are less accessible to people
- Proposals for the use and management of the irrigation lake (which shall not be stocked with fish)
- Measures to prevent any disturbance by domestic pets

- Proposals for the enhancement and maintenance of the buffer to the LWS.

Thereafter the measures approved in the LEMP shall be carried out as approved and all habitats and planting shall thereafter be maintained/managed for a period of at least 25 years from the completion of the development in accordance with the approved details unless otherwise approved in writing by the Local Planning Authority.

CONDITIONS REQUIRING APPROVAL OR COMPLIANCE BEFORE SPECIFIC CONSTRUCTION WORKS TAKE PLACE

Materials and Detailing

15. Samples of the slate to be used in the construction of the roof of the facilities building and the timber cladding and bricks to be used on the walls of the facilities building shall be submitted to and approved in writing by the Local Planning Authority before construction of the facilities building above slab level. Thereafter the development shall be carried out in accordance with the samples so approved.

Sample Panel of Stone

16. Prior to the commencement of the facilities building hereby approved above slab level, a stone sample panel (minimum 1m² in size) shall be constructed on site which shall be inspected and approved in writing by the Local Planning Authority. Thereafter, the external walls of the building shown on the approved plans to be stone shall be laid, dressed, coursed and pointed in strict accordance with the approved stone sample panel.

Door & Window Details

17. Notwithstanding the approved plans, prior to the commencement of the facilities building hereby approved above slab level, full details of the doors and windows (which are to be constructed in timber) and eaves and verges hereby approved, at a scale of 1:20 including a cross section, cill, lintel and recess detail and colour/finish, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the doors,

windows, eaves and verge shall be completed in accordance with the approved details.

Details of Marina Entrance

18. Notwithstanding the approved plans, prior to the commencement of any works to the marina entrance from the mainline of the Oxford Canal full details of the marina entrance and towpath bridge shall be submitted to and approved in writing by the Local Planning Authority. These details shall include:

- Handrail details to the towpath bridge;
- Surface finishes for the towpath bridge and approach ramps;
- Finishes for the 'Geobag' retaining structure;
- Maintenance and management regimes for the marina entrance and towpath bridge. Thereafter the works shall be carried out wholly in accordance with the approved details.

SuDS

19. The development shall be carried out in accordance with the submitted flood risk assessment (ref 1319/2019 Rev B dated 26/07/2019) and the Hydraulic Modelling Report 2420 Rev C August 2020 and following mitigation measures it details:

- 35% allowance for climate change as shown in Appendix 14 of the modelling report August 2020

These mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the scheme's timing/phasing arrangements. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

Flood Risk

20. The development shall be carried out in accordance with the submitted flood risk assessment (ref 1319/2019 Rev B dated 26/07/2019)

and the Hydraulic Modelling Report 2420 Rev C August 2020 and following mitigation measures it details:

- There shall be no land raising within the 1% annual probability flood extent with a 35% allowance for climate change as shown in Appendix 14 of the modelling report August 2020

These mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the scheme's timing/phasing arrangements. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

Bin Storage/Furniture

21. Full details of the following structures shall be submitted to and approved in writing by the Local Planning Authority before their installation in the development;

- Refuse and recycling bin storage including location and compound enclosure details;
- Permanent Outdoor Seating;
- Permanent Outdoor Tables.

Thereafter the structures shall only be provided in accordance with the approved details.

Enclosures

22. No enclosures along any of the site boundaries or within the site (including any walls, fences or gates) shall be erected unless details of those enclosures have previously been submitted to and approved in writing by the Local Planning Authority.

External Lighting

23. Details of all external lighting including the design and specification, position, orientation, illumination levels and any screening of the lighting alongside their operation, management and maintenance regime shall be

submitted to and approved in writing by the Local Planning Authority prior to commencement of those works. The lighting shall be installed and operated in accordance with the approved scheme at all times thereafter.

ONGOING REGULATORY CONDITIONS TO BE COMPLIED WITH AT ALL TIMES

Site Clearance

24. All site clearance (including the removal of any vegetation or works to hedgerows) should be timed so as to avoid the bird nesting season, this being during the months of March until July inclusive unless alternative provisions have been previously agreed in writing by the Local Planning Authority

Occupancy and Use Restrictions

25. All boats moored at the marina hereby approved shall be occupied at all times only for the purposes of recreational moorings and not for any permanent residential or hire fleet purposes or any other purpose whatsoever. None of the 192 boats moored at the marina shall be occupied for more than 60 consecutive days or nights and for no more than a total of 150 days or nights in any one calendar year.

26. No more than 192 boats shall be moored at any one time in the marina basin hereby approved and no boats, other than those on the water, shall be stored on the site.

27. A register of all boats moored at the marina, shall be provided annually to the Local Planning Authority, on or before the 30th April of every calendar year, and shall also be made available to the Local Planning Authority on request. The register shall include details of the previous 12 months of boat moorings (1st April to 31st March) at the marina and the following information: i. boat owners names and permanent addresses - for all boats moored at the marina in that year; ii. boat names and moorings occupied - for all boats moored at the marina in that year; and iii. The arrival date and departure date of each boat

moored at the marina in that year, stating the period of time that each boat is moored at the marina, including any periods in which any boat is occupied overnight within the marina.

28. The living accommodation hereby approved shall be occupied as a manager's residence solely in conjunction with and ancillary to the operation of the marina and shall not be sold, leased or occupied as a separate unit of accommodation or for any other purpose.

29. The irrigation lake hereby approved shall be used for the purposes of agriculture only and not for any other use (including recreational) unless planning permission has otherwise been granted. The lake shall at no time be stocked with fish.