

Planning Appeal

Appellant: WA Adams Partnership

**Property: Glebe Farm, Boddington Road, Claydon, Banbury, Oxon,
OX17 1TD**

Planning Application Reference: 20/02446/F

Local Planning Authority: Cherwell District Council

Formation of Inland Waterways Marina with Ancillary Facilities Building,
Car Parking, Access and Associated Landscaping including Construction
of a New Lake – Resubmission of 18/00904/F

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

Response to Council’s Statement of Case dated January 2022

Prepared by:

**SB Rice Ltd
February 2022**

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1.0 INTRODUCTION

- 1.1 This report is submitted in support of the Appellant’s case and in response to the Council’s Statement of Case dated January 2022.
- 1.2 This report should be read in conjunction with the Appellant’s Statement of Case dated August 2021 and associated appendices, as copies of these documents have already been received by the Inspector we have not included further copies with this report.
- 1.3 We have restricted our responses in this report to those matters that have not been previously dealt with in the application documents or the Appellant’s Statement of Case and appendices.
- 1.4 The headings in this report correspond to the same headings in the Council’s Statement of Case.

2.0 SECTION 4 – DEVELOPMENT PLAN AND OTHER MATERIAL CONSIDERATIONS

- 2.1 Policy SLE1 of the Adopted Local Plan is quoted in the first reason for refusal but does not apply to the development proposed. Paragraph B.48 of the explanatory text confirms that the policy applies to B Use Class Employment Development.
- 2.2 A copy of the policy as found in the Local Plan can be found in **Appendix A**. We also refer to paragraph B.47 in the explanatory text. This confirms that Part 2 of the Local Plan will consider where further smaller allocations for employment use need to be made in the urban and rural areas to support the delivery of a flexible supply of employment land. The policy, therefore, even if it applied, is incomplete as Part 2 of the Local Plan has not been published.
- 2.3 The proposed marina development would fall under Use Class *Suis Generis*. We therefore believe that this policy carries no weight when considering the proposed development as it is.
- 2.4 Policy ESD16 provides policy guidance relating to development that has the potential to affect the Oxford Canal.
- 2.5 A copy of the policy can be found in **Appendix B**.
- 2.6 We refer to the final sentence of paragraph B.273 in the explanatory text.
- 2.7 It confirms that

- *The approach to residential canal moorings and boater’s facilities on the Oxford Canal will be set out in the Local Plan Part 2.*

2.8 As confirmed above, the Local Plan Part 2 has not been published. As such we believe that policy ESD16 is incomplete since it does not purport to deal with facilities such as that proposed.

2.9 The Council in paragraph 4.8 of their Statement confirm that the Local Plan Part 1 relevant policies are up to date and as such paragraph 11 d) of the Framework which places a presumption in favour of sustainable development is not engaged. We disagree with this statement. Policy ESD16 which is a key policy as it relates to the Oxford Canal is incomplete as the Local Plan Part 2 referred to in the text accompanying the policy has not been published and so the policy specifically relating to boater’s facilities does not yet exist .

3.0 **SECTION 5 – COUNCIL’S CASE ON EACH OF THE REASONS FOR REFUSAL**

3.1 **Refusal Reason 1 – Nature, Scale and Sustainability**

3.2 **Unsustainable Location**

3.3 We have referred above to policy SLE1 which is heavily relied upon by the Council and yet does not apply to this development

3.4 We have also referred to policy ESD16 of Local Plan Part 1 which we believe is also incomplete for the reasons detailed above.

3.5 The Local Plan Part 1 does not include policies that relate to rural employment. As the proposed development is not only located in the rural area but also an important farm diversification scheme, one of its objectives is to safeguard existing agricultural employment and provide new rural employment. Whilst the Council refer to some of the Strategic Objectives in the Local Plan they do not refer to SO 2 which relates to rural diversification and states.

- SO2 – To support the diversification of Cherwell’s rural economy.

3.6 The Local Plan has rural diversification as one of its strategic objectives (see para 3.33 below) however there is no related specific policy and therefore we refer to the National Planning Policy Framework 2021.

- 3.7 Section 6 of the Framework relates to economic development and employment.
- 3.8 Paragraph 84 confirms that planning policies and decisions should enable
- The sustainable growth and expansion of all types of business in rural areas; and
 - The development and diversification of agricultural and other land based rural businesses.
 - Sustainable rural tourism and leisure developments which respect the character of the countryside.
- 3.9 We also note that paragraph 85 of the Framework confirms that some forms of rural development may occur in more remote locations beyond existing settlements and in locations that are not well served by public transport. In such cases the development could be acceptable where it is sensitive to its surroundings and does not have an unacceptable impact on local roads or exploits opportunities to make the location more sustainable.
- 3.10 The reports submitted with the original planning application and the Appellant’s Appeal Statement set out in some detail why the proposal meets the requirements of paragraphs 84 and 85.
- 3.11 Paragraph 5.15 and Figure 8 of the Council’s Statement are slightly misleading.
- 3.12 The application site totals 17.79 hectares. However, within the site a total of 5.52 hectares of new water bodies will be created including the new basin of 3.2 hectares and the lake and reed beds of 2.32 hectares.
- 3.13 The building has a footprint of 281m² representing 0.15% of the application site with hardstanding comprising the access roads and footpaths totaling a further 1.65 hectares representing approximately 9% of the site area.
- 3.14 Therefore, whilst approximately 40% of the total site area is developed in the form of either water bodies, hardstanding, access roads and footpaths and small building, 60% of the site is dedicated to ecological biodiversity and enhancement.

3.15 It is therefore somewhat misleading and mischievous to describe the development as considerably larger than the physical extent of the village of Claydon.

3.16 **Need**

3.17 In paragraph 5.19 we note that the Council acknowledge that it is not necessary to demonstrate need or demand for a development if all other considerations regarding its impact are acceptable.

3.18 We refer the Inspector to section 2 of the Appellant’s Statement of Case. The Statement of Case and this report have been prepared by Stephen Rice who is a Chartered Surveyor and an Affiliate Member of the RTPI who specialises in inland marina development.

3.19 He has worked closely with the Appellants to assess the potential for an inland marina located at the site, these assessments have considered not only the physical constraints relating to the construction of a marina but also the commercial viability.

3.20 The Canal and River Trust who are the body responsible for managing the canal network no longer provide data regarding demand for moorings on the canal or river network.

3.21 However, it is possible when working within the industry to determine whether there are sections of the canal network that are deficient in high quality recreational moorings.

3.22 Whilst much of the Grand Union Canal to the north of Northamptonshire is now well served and in some areas over supplied with recreational moorings, certain canal networks including the Kennet and Avon and the Oxford Canal are deficient.

3.23 This is largely due to the fact that these canals have not traditionally attracted boaters, however an increase in UK population, particularly in the South East and a significant increase in property prices, which makes purchase of holiday homes more prohibitive, has led to a significant increase in demand for recreational moorings on canals in the South East.

3.24 We refer to the Council’s Report to Committee dated 27 October 2016 relating to planning permission 16/01119/F.

3.25 This application related to a proposal for a 100-boat mooring extension to an existing marina

located at Cropredy.

3.26 In paragraph 7.3 the report refers to the Design and Access Statement submitted in support of the application which stated there was a need for additional moorings at the site. The current marina had been successful since it opened in 2014 and was running at capacity with a need for additional moorings.

3.27 In paragraph 7.7 the report refers to the Design and Access Statement confirming that the marina was running at near capacity and there was a strong demand for more berths.

3.28 Whilst the Council noted this information they did not require further clarification regarding need as presumably they accepted this was not a planning issue.

3.29 The statements therefore included in the Council’s Statement of Case relating to the requirement to demonstrate need are not relevant as they have previously demonstrated when determining a previous application for similar development.

3.30 **Not Within or Immediately Adjacent to a Settlement**

3.31 We have referred above to policy ESD16 in the Adopted Local Plan Part 1 and the fact that the policy is incomplete as Part 2 has not been published.

3.32 The Council have referred to the 15 strategic objectives set out in the Local Plan Part 1.

3.33 We would like to draw attention to those strategic objectives which apply to the proposed development which are omitted from the Council’s report, these include

- SO2 – To support the diversification of Cherwell’s rural economy
- SO5 – To encourage sustainable tourism
- SO10 – To provide sufficient accessible, good quality services, facilities and infrastructure including green infrastructure, to meet health, education, transport, open space, sport, recreation, cultural, social and other community needs, reducing social exclusion and poverty, addressing inequalities in health and maximising wellbeing.

3.34 The proposed development meets all of the above strategic objectives, it would deliver an

essential diversification opportunity for an existing family farming business, in doing so it provides much needed rural employment, delivers significant biodiversity and enhancement, provides high quality moorings for recreational use on the Oxford Canal and in doing so provides valuable facilities for not only local people wishing to moor their boats close to where they live but also tourists who will be attracted to the facility and the development itself provides a significant amount of green infrastructure, providing opportunities for outdoor recreation with associated health benefits.

- 3.35 The Council refer in paragraph 5.35 to an appeal decision issued in 2007 relating to a proposed marina at Marston Doles, a copy of the appeal decision can be found in Appendix 6 to the Council’s Statement.
- 3.36 We have considered the appeal decision. We noted that the original planning application was refused on two grounds, the first related to the potential impact of the marina on the Special Landscape Area and the second related to sustainability.
- 3.37 In considering the planning balance it would appear that the Inspector attributed significant weight to the impact of the proposed development on the Special Landscape Area. This agreed with the Council who had maintained an objection to the potential impact on landscape and indeed this was the first reason for refusal.
- 3.38 The Council has no such objection to the proposed development that is the subject of this appeal and impact on the countryside and landscape features was not included in the Council’s reasons for refusal.
- 3.39 With regard to sustainability we also believe that there are differences between the refused development at Marston Doles and the proposed development at Claydon.
- 3.40 The proposed Claydon scheme is proposed as a farm diversification scheme. Reference has already been made to those policies in the Framework that encourage the diversification of existing agricultural and rural businesses. The Framework also acknowledges that such diversification opportunities are likely to occur in rural locations that are not well served by public transport.

- 3.41 The Appellants have also submitted evidence in their Appeal Statement to demonstrate that users of the marina can gain access to local facilities without the need to use their car as they have access to their boat which they can use to access facilities within a short cruising distance. Please refer to paragraphs 4.2 to 4.58 in the Appellant’s Statement of Case.
- 3.42 The Council in paragraph 5.41 appear to allege that the proposed development would constitute ‘significant development’ as described in paragraph 105 of the Framework.
- 3.43 We dispute this description; the development could not be described as significant in terms of vehicle movements. Oxfordshire County Council Highways confirmed in their response dated 16 October 2020, a copy of which can be found in **Appendix C**, that
- *‘It is not expected for such a development to generate significant movements during the local network peak hours. Although this would still be additional movements on the network, in view of the nature of the development and location, this is not likely to result in a significant detriment to highway safety and/or traffic flow.’*
- 3.44 In paragraph 5.43 the Council state that policy ESD16 is intended to protect the character of the canal and the open countryside. This is not correct; the policy is focused on protecting the Oxford Canal corridor not the open countryside.
- 3.45 **Reason for Refusal No. 2 – Detriment to Local Highway Safety**
- 3.46 The Council confirm in their paragraph 5.46 that Oxfordshire County Council as the Highway Authority have no objection to the proposed development subject to a Section 106 agreement that secures a contribution of £10,000 towards public footpath improvements and an obligation to enter into a Section 278 agreement to secure three new passing bays on the Boddington Road.
- 3.47 They also request a Construction Management Plan which would normally form part of a Construction Environment Management Plan under planning conditions.
- 3.48 The Appellants have agreed with the County Council’s request and a completed Unilateral Undertaking relating to the £10,000 contribution to public footpath improvement works and the Section 278 agreement for highways improvements has been submitted.

- 3.49 The Appellants have also previously provided confirmation that all traffic leaving the marina will turn right on exiting the site and drive to the north on the Boddington Road for approximately 1.75km before joining the Banbury Road which then provides them with a number of different options, they can either travel to the north west via the A423 via Southam or to the north east via the A361 via Daventry or to the south via the A361 which then provides a number of different options as it joins the M40 and the A422.
- 3.50 The objections received from local residents and comments made by councillors during the Planning Committee mostly centred on moorers arriving and leaving the development via the village of Claydon on the basis that this would be the preferred route.
- 3.51 The Appellants disagree with this assumption which assumes that all drivers arriving and leaving wish to do so via the Claydon to A423 road towards Mollington, i.e. arrive or leave to the south.
- 3.52 This assumption is incorrect. If users of the marina are arriving from the north either via the A423 or the A361 they will gain access to the proposed site quicker if they take the Banbury then Boddington Road and arrive from the north.
- 3.53 Similarly if users of the marina are arriving from the south, either via the M40 or the A422 it is easier to drive to the site via the A361 and Banbury/Boddington Road rather than the A423 which requires them to drive into and then out of Banbury via a road that is often congested.
- 3.54 The objectors and the Council have also assumed that the proposal to manage vehicles arriving and leaving the site will not be effective.
- 3.55 It will be relatively straightforward for the Appellants who will be managing the marina themselves as their farm diversification scheme to ensure that all users comply with the voluntary routing requirement.
- 3.56 CCTV cameras mounted at the entrance will monitor vehicle movements and any users observed either leaving or arriving from the south through the village of Claydon will be instructed to cease doing so, persistent breach of this rule will result in their removal from the site.

3.57 **Highway Context**

3.58 In this section of their report the Council focus on the Boddington Road to the south of the proposed entrance towards the village of Claydon.

3.59 As we have explained above, the Appellants have confirmed in all information submitted to the Council that users of the marina will gain access from the north.

3.60 We have explained above how this would be managed on site via the use of CCTV cameras.

3.61 The users of the marina will not be transient, it is likely that most marina users will enter into at least 12-month recreational mooring contract and in many cases will extend these to periods of three or five years in order to secure their mooring.

3.62 There will therefore be a direct relationship between the Appellants as operators of the marina and their customers.

3.63 The management rules of the site will ensure that the marina users do not gain access from the south through Claydon village.

3.64 The Appellants engaged with Claydon and Clattercote Parish Council prior to preparation and submission of the application. The voluntary routing agreement was presented to the Parish Council at the outset; however the Parish Council and local residents maintained their objections largely on highways grounds.

3.65 Although marina users will not be taking access to the marina from the south through the village of Claydon we would also like to point out that it is not unusual for rural roads to be narrow with passing bays. The Appellant’s Transport Statement submitted in support of the planning application included an assessment of accident statistics relating to the road network in proximity to the site including the Boddington Road through Claydon.

3.66 The statistics confirmed that there is no history of accidents on this road suggesting that, although narrow with passing bays, users adjust their driving accordingly as is common on the vast majority of the rural road network including tourist hotspots elsewhere in the country such as Cornwall, Devon, the Lake District, Norfolk, etc.

- 3.67 Farm diversification and rural development will take place in the countryside and will therefore need to be accessed via the rural road network.
- 3.68 Oxfordshire County Council acting as the Local Highways Authority assessed the proposed development in the context of its potential impact on the road network and concluded that it would not have an adverse impact.
- 3.69 The Appellants have agreed via the Unilateral Undertaking to provide a further three passing bays on the Boddington Road to the north of the site which will improve this section of road not only for users of the marina but all other local residents who use this road.
- 3.70 **Reason for Refusal No. 3 – Harm to Character and Appearance of the Oxford Canal Conservation Area**
- 3.71 The Council in paragraph 5.86 confirm correctly that the Canal Conservation Area is tightly drawn to correspond to the canal and its related features. It does not include its broader setting to include the highways, public rights of way, the surrounding landscape, etc.
- 3.72 We would also like to refer the Inspector to the Council’s report recommending approval of the proposed 100 berth development at Cropredy.
- 3.73 The Council’s Conservation Officer objected to the proposed development commenting that
- *‘mooring basins have a better visual relationship with the canal if the access point is from the canal directly rather than the proposed arrangement with the basin lying somewhat randomly not quite alongside the canal leaving an irregular spit of bank separating the two. Much engineering and precision has historically gone into the building of canals, the proposal put forward here seems anything but. There is a distinct impression that this is an opportunistic development and that the latest basin has simply been shoehorned in. The proposal is harmful to both the character and appearance of the Canal Conservation Area in this location and furthermore undermines the visual aesthetic of what has already been built as well as the significance of the canal.’*
- 3.74 The Council in their report to committee however disagreed with the Conservation Officer’s view and confirmed that the proposal was considered to conserve the significance of the Canal

Conservation Area and the proposed development and landscaping would conserve the local character and distinctiveness in accordance with the NPPF and Local Plan policy ESD15.

- 3.75 The Conservation Officer referred to the impact as ‘harmful’. They did not clarify whether this would be substantial or less than substantial.
- 3.76 If however we were to assume that the harm was less than substantial the Council should have considered whether the public benefits of the proposal outweighed the less than substantial harm.
- 3.77 The Conservation Officer in their response to the Appellant’s application dated 23 November 2020, a copy of which can be found in **Appendix F**, confirmed that the development is considered to result in less than substantial harm to the significance of the Conservation Area and this harm should be weighed against the public benefit in line with the guidance contained in the Framework.
- 3.78 The Appellants provided substantive evidence of public benefit both within the application documents themselves and in their response to reason 3 of refusal in their Appeal Statement, please see paragraphs 4.77 to 4.124 and also the information provided under the heading Additional Material Considerations in paragraphs 4.125 to 4.166.
- 3.79 The Council refer to the Canal and River Trust in paragraph 5.90. We would like to draw the Inspector’s attention to the Canal and River Trust’s response to the application dated 29 October 2020, a copy of which can be found in **Appendix G**.
- 3.80 The CRT confirm (as was confirmed by the Appellant’s own heritage consultant) that the development would undoubtedly have an impact, although they agreed with the Council’s Conservation Officer that it would be less than substantial.
- 3.81 However, the CRT also confirmed the following
- *The proposed marina layout has been broken up into a series of ‘lagoon bays’ housing a number of boats and separated by landscaped peninsulas. This breaks up the water space, ensuring it is not a large and featureless waterbody and aids in retaining the landscaped character of the canal corridor. The design of the proposed club house is*

acceptable and resembles a converted barn, or other agricultural building.

3.82 The CRT therefore do not raise any objection on grounds of adverse impact on the heritage, character and appearance of the waterway corridor, having clearly considered it.

3.83 We also dispute the statement in paragraph 5.98. The clubhouse building has been designed in close consultation with the Council and the design of the building was approved by the Council’s Officer during consideration of the previous planning application 18/00904/F which was recommended for approval and withdrawn prior to the Planning Committee meeting in order to solely address an outstanding objection from the Environment Agency regarding flood risk.

3.84 We would like to draw the Inspector’s attention to the Council’s assessment of this proposed building in their Report to Committee recommending approval of the proposed development dated 14 January 2021.

- *The clubhouse/facilities building amounts to 281.40 square metres and is traditionally designed to replicate a two-storey barn with a single storey wing/extension. The main elevations consist of horizontal timber cladding and local stone. Detailing features red brick quoins and red brick soldier course detailing. External glazing and openings are traditionally styled to reflect features typically associated with agricultural barns and buildings. The windows and doors would be stained hardwood and the pitched roofs will be finished in slate. The proposed facilities building has been positioned to provide the marina office with an unrestricted view of the marina, canal entrance and a new road access to ensure maximum visibility of the main key operational areas in the interests of site safety and security.*
- *The principle of taking this traditional approach is supported (including by the CRT), although conditions are recommended to secure appropriate detailing. The scale of the building is not considered to be inappropriate, nor its location given the security and surveillance function of the building.*

3.85 As detailed above, substantive information has been already provided by the Appellants regarding the public benefits of the scheme and we do not therefore intend to repeat this information.

- 3.86 We do believe, however, that Strategic Objective 2 referred to earlier in this report should carry weight when considering the planning balance along with a recognition that the proposal forms an important farm diversification scheme which is supported by the Framework.
- 3.87 We are unsure what the Council is attempting to demonstrate in Figure 19 comparing the marina at Cropredy with their proposal. We assume they are attempting to demonstrate that the Cropredy Marina has less of an impact on the Conservation Area than the proposal.
- 3.88 One of the greatest concerns regarding the Cropredy marina proposal which was approved by the Council was the lack of soft landscaping, sensitive design and little or no benefit to the landscape or wildlife.
- 3.89 Their Figure 19 demonstrates the vast difference between the Appellant’s proposal which has been designed to blend in with the landscape reducing its impact on the wider landscape and the Conservation Area whilst providing high quality moorings for recreational purposes and a substantial amount of new habitat for biodiversity enhancement.
- 3.90 This includes substantial works to improve an existing County Wildlife Site that runs immediately to the north of the proposed development site along the line of the former railway line.
- 3.91 Cropredy Marina is designed purely as a functional boat park. It does not provide an attractive setting for recreational moorings. This type of design is normally used for residential berths rather than recreational. We note that the Council’s in their Report to Committee for the 100-berth extension scheme (**Appendix E**), referred to an investigation of residential occupation and found evidence of this occurring albeit at low levels. However, some of the objections levelled at the Appellant’s scheme have included reference to residential occupancy at the Cropredy Marina with allegations of users registering at local doctor’s surgeries which would indicate that this is possibly an ongoing problem.
- 3.92 The Appellant’s scheme which has been designed by specialists in the design and operation of recreational marinas has been designed for this very purpose, which is why it includes significant amounts of soft landscaping, which results in a much more attractive design.
- 3.93 The 2.1 hectare lake that will form part of the Appellant’s development will also, as detailed in

the application reports, function as an irrigation lake to provide a valuable source of irrigation for the Appellants who would be able to adapt their crop rotations to include crops such as potatoes and sugar beet which require irrigation and which are also likely to be more profitable as subsidies are withdrawn for combinable crops.

4.0 SUMMARY

4.1 The Council have relied heavily on policy SLE1 in their Statement, yet this policy does not apply to this development.

4.2 Strategic Objectives SO2, relating to the diversification of the rural economy, SO5 relating to sustainable tourism and SO10 relating to a range of provisions including recreational facilities and green infrastructure have been ignored by the Council.

4.3 Policy ESD16 which is a key policy as it relates to the Oxford Canal is incomplete as the Local Plan Part 2 referred to in the text accompanying the policy has not been published and so the policy specifically relating to boater’s facilities does not yet exist.

4.4 It is not necessary to demonstrate need or demand for a development if all other considerations regarding its impact are acceptable.

4.5 Oxfordshire County Council as the Local Highway Authority had no objection to the proposed development on highways grounds. Paragraph 111 of the Framework confirms.

- *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.*

4.6 The Appellants have confirmed that all traffic arriving and leaving the marina will do so from the north and will not drive through the village of Claydon. This will be managed by the Appellants via the implementation of a management plan and the use of CCTV cameras to ensure the traffic routing is enforced.

4.7 The Council appear to be inconsistent in their approach to the application of policy. In a previous decision for a marina extension at Cropredy, their Conservation Officer objected, yet the Council

disagreed with their Officer and determined that a marina development that was not sympathetic in design ‘conserved’ the significance of the Canal Conservation Area.

- 4.8 In considering the planning balance the compliance with policies relating to rural farm diversification and development of appropriate rural businesses should be given considerable weight.