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From: Planning
Sent: 31 May 2022 08:47
To: DC Support
Subject: FW: Planning Application: Development Land West of Yarnton - Ref: 21/03522/OUT

From: Yarnton Flood Defence <yarntonflooddefence@gmail.com>
Sent: 30 May 2022 19:44
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Subject: Planning Application: Development Land West of Yarnton - Ref: 21/03522/OUT

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Re: Planning Application: Development Land West of Yarnton - Ref: 21/03522/OUT

Dear Dave, Amy and Phoebe,

Thank you for meeting recently and bringing us up to date on your proposals for the protection and mitigation of flood risk on the PR9 development. There were no minutes taken so we think it prudent to set out some ongoing points of concern.

We feel the meeting ranged over a number of issues outside our original purpose which was to discuss flooding of the existing village and specifically the potential impact PR9 could have on the existing 1 in 30 year flood risk envelope in Aysgarth Road and other connected areas of the village.

We appreciate you have made some changes to the design since we met initially prior to Christmas 2021, however it is apparent that the drainage strategy is still partly reliant upon the continued exceedance flow at Headwall C.

We were glad to hear that you have had the surface water drain between the surgery and its outfall on the A44 camera surveyed and from the results you have seen that it is generally in a very good condition with the exception of some minor root infestation. We would appreciate seeing the results at some point soon.

As you know there are two main flood corridors into the village. One is the south corridor along the Cassington Road and the second is from PR9 via the existing surgery site. There are other flood corridors that run into the village through the existing ribbon development along the west side of Rutten Lane, but they are more dispersed and not so well documented or understood. As we stated in the meeting, the PR9 site is the only remaining undeveloped land on the west side of Rutten Lane and the A44 and probably the last opportunity to mitigate flooding at the north end of the village from the high ground overlooking the village – Spring Hill.

We appreciate the difficulty the Planning Authority may have in considering flooding in the south corridor as relevant to the current application due to its location on the reverse slope of Spring Hill. We understand it to be University land, and therefore the University in conjunction with the Country Council have control of the southern part of the catchment. However, this note primarily focuses on the northern flood route.

We would appreciate responses to the following 7 points:

1. Re: surface water drain at headwall C:

It is reassuring to hear that the pipe is in good condition both structurally and free of obstructions. However, that would confirm that the exceedance flows are due to a lack of capacity. Having completed your investigation of the drain from headwall C to its outfall on the A44 corridor, I presume you now have sufficient information with regards to levels and gradient to determine the maximum capacity for the drain - the drain that part of the site will rely upon. From that you will have a better understanding of the exceedance flows of a 1 in 100 return period and the return period at which exceedance will commence onto the local road network.

We would appreciate it if you could share the aforementioned calculations with us – please confirm if you are able to do this.

2. Pipework ownership and discharge rights:

We were surprised to learn that the Highway Authority have determined that the piped drain under the highway is *not* a highway drain and remains a *private* drain even though it connects the Rutten Lane highway ditch/drain to the A44 outfall. We would question the wisdom of this and hoped they would take a more pragmatic view. Their decision leaves a rather unclear picture as to the ownership, rights, responsibilities and liabilities for the pipe.

As you know, while there is a right to discharge to a public sewer we don't think there is the equivalent right to discharge to a private drain. That would be subject to an agreement with the land owner. The Highway Authority certainly would not allow a private landowner to discharge to a highway drain without an agreement. It also casts doubts on who the private owners are, of which there is likely to be more than one. Part of the drain is under highway and part is under private land.

The normal presumption is that in the absence of evidence to the contrary the landowner is presumed to own pipework under their land. We presume that Aysgarth Road became highway via an adoption agreement between the developer and the Highway Authority thus conferring land ownership on the Highway Authority. Perhaps one could start by getting sight of the original agreement to determine if or what it says about drainage responsibilities. Those sections under private land could be even more problematic...

Should there not be a wayleave agreement in place to access the pipe from the surface, it would be entirely at the discretion of the landowners and on their terms. It's not clear to us whether the owner of a private drain couldn't therefore levy charges on surface water discharges to their pipe. There would also be a question about controlling rights to build over the pipe in the future.

As you said at the meeting the pipe is in good condition and ownership might not be an issue in the medium term. We believe However, that might change in the longer term - 100 years plus. If the Highway Authority were to find that replacing the pipe with one of larger diameter were the only alternative remedy available to tackle the existing flooding from PR9, then ownership could very well prove to be a problem.

The Highway Authority seems to be determining the status of linear drainage assets based up "riparian right and responsibilities" which are rooted in ancient common law. This generally only holds true where there is no evidence to the contrary. We believe that the ditch on the west side of Rutten Lane was originally dug for the benefit of the roadway, by those responsible for maintaining the highway at that time.

The name Rutten Lane would suggest it was often very rutted and impassible in winter – being located within the clay band just above the old marsh. The typical high bank cross-sectional profile would also support this argument. The ditch would have been dug to intercept the surface water runoff from Spring Hill in order to dry the road surface and enable it to be paved to create an all-weather roadway. That would determine it as part of the highway. We consider this is important because headwall C connects to the now piped section of the old highway ditch.

3. Re: Inlet works at A and B:

You similarly may want to consider the Highway Authority's response to you (copy submitted with the planning application) regarding the ditch on the PR9 and A44 site boundary and the Inlet works at A and B. The A44 was originally the 1718 turnpike road and the the ditch on the west side would have, similar to Rutten Lane, been dug to intercept surface water from higher ground. The land for the ditch would have been purchased by or donated to the Turnpike Trust. Since then the road has been duelled and additional space would have been acquired by compulsory purchase order.

You may want to make enquires about the original order as it doesn't seem likely that the landowners would have wanted to retain ownership as it was an excavation that principally benefited the highway. The line of the ditch would have been moved sideways to accommodate the extra carriageway, the cycleway and the verges.

4. Regarding the PR9 site runoff:

During our meeting there were different views expressed as to the definition of green field runoff. We understand that you have calculated a runoff based upon a simple calculation using the general topography which falls towards headwall C and a rainfall hydrograph as prescribed in National guidance. However, we maintain that this does not adequately represent the nature of the real greenfield runoff specific to the site.

The underlying premise of riparian rights and duties is that water running off higher land should be in its natural state and quality. The ribbon development has already altered that state by obstructing and altering the runoff pattern from the field behind it. This could have the effect of directing more surface water and groundwater towards headwall C and reducing the volume that would have been naturally intercepted by the highway drain in front of the existing ribbon development. In this case we think it's unreasonable to rely on the greenfield formula given in National planning guidelines.

After review, we consider the best way for the University to overcome many of the hurdles is to mitigate down to the capacity of the existing outfall – figures for which we believe you now have - and not to a greenfield runoff volume which we don't think fairly reflect the specific local circumstances.

This may require an increase in the volume of the on-site attenuation tanks and a corresponding reduction in the number of new houses to make space - the application does say up to 540 units. However, as the development is very likely to get permission, tailoring the development to the existing available off-site drainage capacity seems both logical, simple and fair to the greater village.

Should the development get permission there seems to be very little opportunity for the Flood Authorities to mitigate off-site. During the meeting Amy said it would not be desirable to upsize the pipe running out to the A44. It does not fit with the principles underpinning flood attenuation and might only serve to move the problem downstream onto the A44. Should the development be approved as it stands we consider it necessary for the Flood Authorities to have a plan in place to mitigate the existing flooding.

5. Re: The proposed groundwater cutoff drain

Based on the drawing you brought to the meeting we understand the cutoff drain and associated

attenuation pond seems to be mainly aimed at reducing risk to the new housing and directing the attenuated flow to headwall C at the surgery. Some of that greenfield flow currently finds a natural path to the southern part of the A44 site boundary. This again, could put more pressure on headwall C. This part of the scheme currently seems to be based on best estimations and on little field data.

The current WSP report available on the Cherwell planning portal refers to groundwater being absent based on a single trial-hole dug in the Oxford Clay. Yet during the on-site archeological phase we understand the archeologists had difficulty keeping their excavations dry. We also note that there still seem to be no integration of the groundwater and surface runoff to headwall C.

With the above in mind, how will you arrive at a workable design for the cutoff drain and pond, and what contingency will there be if it should prove insufficient?

We also have concerns that this pond and the other SUDS ponds will simply serve as stilling ponds for silt eroded from the upper slopes and become a constant problem for the management company. Eroded soils being brought down into the village in significant quantities has been a feature of previous floods.

6. Re: The proposal to set up a management company for the development:

As you know, employing the services of a management company has become typical for new development sites as local authorities and Thames Water have declined to take on these new assets. Management companies, of which there are now many, are like any private company – some good and some incompetent. How will they be regulated and by whom? What would happen if the company went into liquidation?

We would like to know with whom would the residual risk in the design ultimately sit and would it be insurable – not just risk on site but also off-site. During the construction phase the developer would normally acquire third party all-risk cover. Will that third party all-risk cover be continued for the life of the development?

At close of the meeting a question about what would YFDG do if the University were to pull out of the development at this stage was raised. Certainly the village would not benefit in term of flood risk reduction if they were to withdraw, but as the scheme currently stands, for the greater part neither would the village benefit.

As the outcome of having/not having the proposed development would therefore be more or less neutral the flood risk to the village would *remain* at risk either way – however the site would still be open for a more sympathetic development proposal. If the current development were to proceed as it stands, it would finally block the opportunity for a positive flood risk mitigation outcome for the village.

7. Re: Missing items:

During the meeting we noted that there were items missing from your drawings, and questions were raised that you told us you would respond to with accurate information.

We would be grateful if you can send us complete copies of your drawings, including:

- The proposed cutoff drain and pond adjacent to the Sanctuary care home, showing the outfall connection and exceedance route in your design for this area.
- Drawings of your planned foul connection locations to the Thames Water system.
- Follow up concerning the investigation of the 2' diameter cast iron pipe running under the railway that could be used to divert flows around Yarnton rather than through it.

We will look forward to hearing from you in response to each of the above points raised.

Best regards,

Dave, Steve and Colin



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