

Cherwell District Council  
Planning & Development Services  
Bodicote House White Post Road  
Bodicote  
Banbury  
OX15 4AA

**Our ref:** WA/2022/129968/02-L01

**Your ref:** 22/01653/F

**Date:** 15 May 2023

Dear Sir/Madam

**Proposed Village Parking Area For 8 Vehicles To Relieve On-Street Parking Issues, With New Footbridge Over Stream And Footpath Formed Along Wroxton Lane**

**Land South Of The Old Council Houses Opposite Brook Cottage, Wroxton Lane, Horley, OX15 6BB**

Thank you for re-consulting us on the proposed development noted above on 12 December 2022, following the submission of proposed site plan revision D dated 18 November 2022 prepared by Cliford Essex Associates, and thank you for agreeing an additional timeframe for the provision of our comments.

According to our Flood Map for Planning, the application site partially lies within Flood Zones 2 and 3, which is land defined by the Planning Practice Guidance (PPG) as having a medium and high probability of flooding respectively. The proposed development no longer includes works over of a main river but does involve works within 8 metres of a main river, the Hornton Stream Branch which is a tributary of the Sor Brook.

**Environment Agency position**

We welcome the use of native species for the hedge, however; hard standing within 1.5 metres of the main river is not a sufficient buffer zone. The additional information does not address our earlier concerns. We therefore **maintain our objection** set out in our response dated 10 November 2022 (ref: WA/2022/129968/01-L01). We recommend that planning permission should be refused on this basis.

**Objection**

We do not have enough information to know if the proposed development can meet our requirements for ecology and physical habitats because no assessment of the risks has been provided. Therefore, in accordance with paragraphs 174 and 180 of the National Planning Policy Framework (NPPF) and Policies ESD9 and ESD10 of the Cherwell Local Plan 2011 – 2031 (adopted July 2015), we **object** to the proposal and

recommend that the planning application is refused. In addition, the proposed works within 8 metres of the tributary of the Sor Brook will require a flood risk activity permit under the Environmental Permitting (England and Wales) Regulations 2016 which is unlikely to be granted for the current proposal.

### **Reasons**

In determining the flood risk activity permit for this development, we will assess its compliance with the Thames River Basin Management Plan (RBMP). We'll also consider how the development will affect water Biodiversity and the wetland environment. The RBMP states that the water environment should be protected and enhanced to prevent deterioration and promote the recovery of water bodies.

An ecological assessment is required to assess how the proposal will affect species/habitats along the watercourse, particularly with reference to the watercourse corridor and its function of connectivity. This is particularly important as a Local Wildlife Site and Deciduous Woodland are within the vicinity of the site. This assessment will need to demonstrate how the risks will be controlled. Where possible, it should identify opportunities for environmental improvements and should include a minimum 8 metre ecological buffer zone along the watercourse. However, as the bridge has been removed from the proposals and given the length of river affected, we would accept a minimum 5 metre buffer zone in this case. Buffer zones to watercourses are required for a number of reasons, including to provide a "wildlife corridor" bringing more general benefits by linking a number of habitats and affording species a wider and therefore more robust and sustainable range of linked habitats.

Development that encroaches on watercourses has a potentially severe impact on their ecological value. Land alongside watercourses is particularly valuable for wildlife and it is essential this is protected. Until this is provided the risk posed by the proposed development is unacceptable. This objection is supported by paragraphs 174 and 180 of the NPPF and Policy ESD10 of the Cherwell Local Plan 2011 – 2031 (adopted July 2015) which recognise that the planning system should conserve and enhance the environment by minimising impacts on and providing net gains for biodiversity. If significant harm resulting from a development cannot be avoided, adequately mitigated, or as a last resort compensated for, planning permission should be refused. Opportunities to incorporate biodiversity in and around developments should be encouraged.

In addition, Policy ESD9 recognises the importance of river corridors as linear features through urban areas, paragraph B.236 states that "developers will be expected to incorporate and enhance such feature within a site wherever possible". Also, paragraph B.237 states that "surveys should include consideration of the site's value as a wildlife corridor and the contribution it makes to ecological networks".

### **Overcoming our objection**

To overcome our objection, the applicant will need to carry out and submit an ecological assessment prior to the development of any detailed plans. In particular, this should detail the existing vegetation and trees on site and any changes that will need to be made such as tree removal. In addition, the proposal should include a minimum 5 metre ecological buffer planted with native species and free from infrastructure, hard standing and lighting.

The survey and ecological assessment should:

- Identify the impacts to the ecological/physical elements of the watercourse and the corridor and determine if there may be at risk of deterioration

- Identify any trees or vegetation which will need to be removed or could be affected by the development, and the impact of this on the ecology of the watercourse corridor
- Demonstrate how the development will avoid adverse impacts
- Propose mitigation for any adverse ecological impacts or compensation for loss
- Propose wildlife/habitat enhancement measures which should include an ecological buffer (5 metres minimum) free from development, hard-standing, lighting or any other infrastructure. Suggested native species planting for this buffer should be included
- Details demonstrating how the buffer zone will be protected during development and managed over the longer term including adequate financial provision and named body responsible for management plus production of detailed management plan

Please reconsult us any surveys and assessments submitted in connection with this application and any design changes/additional mitigation//enhancement measures that might subsequently be proposed.

### **Sequential test – advice to Planning Authority**

#### What is the sequential test and does it apply to this application?

In accordance with the National Planning Policy Framework (paragraph 162), development in flood risk areas should not be permitted if there are reasonably available alternative sites, appropriate for the proposed development, in areas with a lower risk of flooding. The sequential test establishes if this is the case.

Development is in a flood risk area if it is in Flood Zone 2 or 3, or it is within Flood Zone 1 and your strategic flood risk assessment shows it to be at future flood risk or at risk from other sources of flooding such as surface water or groundwater.

Avoiding flood risk through the sequential test is the most effective way of addressing flood risk because it places the least reliance on measures such as flood defences, flood warnings and property level resilience.

#### Who undertakes the sequential test?

It is for you, as the local planning authority, to decide whether the sequential test has been satisfied, but the applicant should demonstrate to you, with evidence, what area of search has been used. Further guidance on the area of search can be found in the planning practice guidance [here](#).

#### What is our role in the sequential test?

We can advise on the relative flood risk between the proposed site and any alternative sites identified - although your strategic flood risk assessment should allow you to do this yourself in most cases. We won't advise on whether alternative sites are reasonably available or whether they would be suitable for the proposed development. We also won't advise on whether there are sustainable development objectives that mean steering the development to any alternative sites would be inappropriate. Further guidance on how to apply the sequential test to site specific applications can be found in the planning practice guidance [here](#).

### **Exception test – advice to Planning Authority**

In accordance with the National Planning Policy Framework (paragraphs 164 and 165), the proposed development is appropriate provided that the site meets the requirements of the exception test. Our comments on the proposals relate to the part of the exception test that demonstrates the development is safe. The local planning authority must decide whether or not the proposal provides wider sustainability benefits to the community that outweigh flood risk.

The exception test should only be applied as set out in flood risk table 3 of the Planning Practice Guidance (PPG) following application of the sequential test. The exception test should not be used to justify the grant of planning permission in flood risk areas when the sequential test has shown that there are reasonably available, lower risk sites, appropriate for the proposed development.

In those circumstances, planning permission should be refused, unless you consider that sustainable development objectives make steering development to these lower risk sites inappropriate as outlined in PPG (ref ID: 7-033-20140306).

#### Our role in the exception test

The exception test is in two parts, described in the NPPF (paragraph 164). In order for the test to be passed it must be demonstrated that

1. The development would provide wider sustainability benefits to the community that outweigh flood risk; and
2. The development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.

Paragraph 165 of the NPPF makes clear that both parts need to be met for the test to be satisfied. It is for the applicant to demonstrate this.

We provide advice on the second part of the test, but it is for you, as the local planning authority, to consider the first part of the test, accounting for the findings of the flood risk assessment and our flood risk advice, and to determine whether the test, overall, has been satisfied. Development that does not satisfy both parts of the exception test should be refused.

#### Where the flood risk assessment shows the development will be safe throughout its lifetime without increasing flood risk elsewhere

Even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, there will always be some remaining risk that the development will be affected either directly or indirectly by flooding. You will need to weigh these risks against any wider sustainability benefits to the community.

#### **Environmental permit - advice to applicant**

The Environmental Permitting (England and Wales) Regulations 2016 require a permit or exemption to be obtained for any activities which will take place:

- on or within 8 metres of a main river (16 metres if tidal)
- on or within 8 metres of a flood defence structure or culverted main river (16 metres if tidal)
- on or within 16 metres of a sea defence
- involving quarrying or excavation within 16 metres of any main river, flood defence (including a remote defence) or culvert
- in a floodplain more than 8 metres from the river bank, culvert or flood defence structure (16 metres if it's a tidal main river) and you don't already have planning permission

For further guidance please visit <https://www.gov.uk/guidance/flood-risk-activities-environmental-permits> or contact our National Customer Contact Centre on 03708 506 506 (Monday to Friday, 8am to 6pm) or by emailing [enquiries@environment-agency.gov.uk](mailto:enquiries@environment-agency.gov.uk).

The applicant should not assume that a permit will automatically be forthcoming once planning permission has been granted, and we advise them to consult with us at the earliest opportunity.

Any application for a flood risk activity permit would need to consider the following in a method statement:

- Details of any temporary structures and machinery management to be used in construction within Flood Zone 3 and to riverbank
- Contingency measures to protect the river during construction of the footbridge and footpath to prevent likely blockage, negative impact on geomorphology, water quality and downstream conveyance
- Materials management, removal, and storage in Flood Zone 3 and near riverbank
- No land raising to create footpath and parking
- Detail of restoration of natural state after construction preferably by planting and Water Framework Directive measures

### **Other Consents – advice to applicant**

As you are aware we also have a regulatory role in issuing legally required consents, permits or licences for various activities. We have not assessed whether consent will be required under our regulatory role and therefore this letter does not indicate that permission will be given by the Environment Agency as a regulatory body.

The applicant should contact 03708 506 506 or consult our website to establish if consent will be required for the works they are proposing. Please see <http://www.environment-agency.gov.uk/business/topics/permitting/default.aspx>

### **Final Comments**

Thank you again for consulting us on this application. Our comments are based on the best available data and the information as presented to us. **Subject to our biodiversity objection being overcome, we have planning conditions we would recommend in regards to flood risk.**

**If you are minded to approve this planning application, contrary to our advice please contact us prior to doing so, to explain why material considerations outweigh our objection. This will allow us to make further representations. Should our objection be removed, it is likely we will recommend the inclusion of condition(s) on any subsequent approval.**

Should you require any additional information, or wish to discuss these matters further, please do not hesitate to contact me. Please quote our reference number in any future correspondence.

Yours faithfully

**Miss Chloe Alma-Daykin  
Planning Advisor**

Direct dial 0203 025 9872  
E-mail [Planning\\_THM@environment-agency.gov.uk](mailto:Planning_THM@environment-agency.gov.uk)