

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

**Our ref:** WA/2023/130393/03-L01  
**Your ref:** 22/03883/F  
**Date:** 01 August 2025

Dear Cherwell District Council

**Development of 96 dwellings (50% affordable housing), extension to Bicester Road Cemetery with associated access (from Bicester Road), open space, landscaping and infrastructure**

**Land north of 66 and adjacent, Water Eaton Lane, Gosford**

Further to your recent query in relation to our recommended planning condition 1 as set out in our previous response dated 2 February 2024, we have re-visited the details of the application and the supporting information submitted with it.

The wider site where housing is planned has been considered in the desk studies and intrusive site investigations. However, there is no site-specific data collected for the proposed cemetery extension as no intrusive site investigation was carried out on this part of the site.

Environment Agency guidance on cemeteries and burials referred to in previous investigations was withdrawn in April 2022 and replaced with [Protecting groundwater from human burials](#)

New cemetery developments must do one of the following:

- meet all the criteria in the exemptions for low environmental risk cemeteries;
- operate under a standard rules permit;
- operate under a bespoke permit.

The conditions which are required to be met in order to operate without an environmental permit is set out in government guidance [exemptions for low environmental risk cemeteries](#).

We are concerned about the depth of groundwater at the site and the proposed double

burial depth 2.1m below ground level and that there is a surface water drain within 10m at the southern boundary of the cemetery. Additionally, we have concerns with the drainage from the proposed extension. The location of the cemetery extension does not meet the low environmental risk exemption conditions.

Furthermore, the cemetery guidance stipulates that there must be at least 1 metre clearance between the base of a grave and the top of the water table. This requirements must be met at all times of the year, including when groundwater levels are seasonally high. For example, after winter rainfall.

The applicant's submitted groundwater risk assessment (reference CRM.1027.052 GE.R.002A T1/T2) identifies that subsoils are mottled. This indicates that groundwater levels fluctuate in response to rainfall (point 4.8 in the report) whereas it later identifies perched groundwater table is in the uppermost weathered bedrock and is 'ephemeral' in that it will not be present under summer conditions except after intense or prolonged rainfall (point 6.3 in the report).

This confirms that groundwater is found to be shallow and fluctuates due to rainfall. For this reason, we are uncertain that burials will be the required level above the highest anticipated annual groundwater level as required by government guidance.

We also noted that point 4.7 says 'site investigations across the larger field undertaken by Enzygo in December 2022 found groundwater in the uppermost subsoils and weathered zone of the bedrock at 1.3 to 2.0m bgl. Whereas groundwater was encountered in wet sand and gravel deposits at shallow depth (0.8 m and 1.4m) over clay bedrock at three locations TP8, TP6 and W2'. W2 is closest to the cemetery extension, which proves that groundwater is shallow and found at upper alluvium layer.

Alluvium is considered a secondary aquifer which should have been taken into account when assessing risk to the receptor and the proposed number of burials per year/burial rate, rather than considering the location as unproductive.

However, we have noted that the superficial cover thickness is up to 2m deep above Oxford Clay bedrock, which can be excavated and is therefore not considered to be a constraint to development (maximum 2.1m for a double grave) as per existing cemetery. Nevertheless, the risk to shallow groundwater from the single or double burials should not be discounted due to shallow and perched groundwater present at the site.

In addition, any field drain or dry ditch should be at least 10 m away. There is a risk of groundwater contamination from the proposed land drain network across the extension and the attenuation basin. The presence of perched water and additional contributing factors (e.g. rainwater infiltration, inter-grave seepage) may necessitate pumping to maintain dry conditions. The management and disposal of grey water must be addressed in detail.

We therefore wish to revise our response to this application and the planning conditions we previously recommended.

### **Environment Agency position**

The proposed development will be acceptable if the following conditions are included on the planning permission's decision notice. Without these conditions we would object to the proposal due to its adverse impact on the environment.

As you are aware, the discharge and enforcement of planning conditions rests with your authority. You must therefore be satisfied that the proposed conditions meet the requirements of the 6 tests in paragraph 57 of the National Planning Policy Framework.

Please notify us immediately if you are unable to apply our suggested conditions, to allow further consideration and advice.

### **Condition 1**

The cemetery extension hereby permitted may not commence until such time as an updated Groundwater Risk Assessment has been submitted to and approved in writing by the planning authority. The assessment must demonstrate that the environmental risks posed by the cemetery extension have been assessed and can be satisfactorily managed.

### **Reason**

To ensure that the proposed development is accompanied by site specific details so as to satisfy the LPA that it does not harm the water environment in line with paragraph 187 of the NPPF and policy ESD8 of the local plan.

Note – the information required through this condition must satisfy government guidance on [groundwater protection](#) and [protecting groundwater from human burials](#).

### **Condition 2**

If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until a remediation strategy detailing how this contamination will be dealt with has been submitted to, and approved in writing by, the local planning authority. The remediation strategy shall be implemented as approved.

### **Reason**

To ensure that the development does not contribute to and is not put at unacceptable risk from or adversely affected by unacceptable levels of water pollution from previously unidentified contamination sources at the development site. This is in line with paragraph 187 of the National Planning Policy Framework and policy ESD8 of the local plan.

### **Condition 3**

A scheme for managing any borehole installed for the investigation of soils, groundwater or geotechnical purposes shall be submitted to and approved in writing by the local planning authority. The scheme shall provide details of how redundant boreholes are to be decommissioned and how any boreholes that need to be retained, post-development, for monitoring purposes, will be secured, protected, and inspected. The scheme as approved shall be implemented prior to the occupation of any part of the permitted development.

## **Reason**

To ensure that redundant boreholes are safe and secure, and do not cause groundwater pollution or loss of water supplies in line with paragraph 187 of the National Planning Policy Framework and Position Statement A8 - Building and decommissioning of structures of [‘The Environment Agency’s approach to groundwater protection’](#). To ensure development is accordance with policy ESD8 of the local plan.

The submitted planning application indicates that boreholes have been installed and a few more will need to be installed at the development site to investigate groundwater resources/carry out soakage tests. If these boreholes are not decommissioned correctly, they can provide preferential pathways for contaminant movement which poses a risk to groundwater quality. Groundwater is particularly sensitive in this location because part of the proposed development site is located upon a secondary aquifer.

## **Condition 4**

The development shall be carried out in accordance with the submitted flood risk assessment (ref Land West of Water Eaton Lane, Flood Risk Assessment & Drainage Strategy by Phoenix Design revision C dated 12-12-2022) and plan reference 571-P-010 Rev C – drainage strategy and the following mitigation measures it details:

- All residential development to be located in flood zone 1.
- Finished floor levels of all properties shall be set no lower than 61.5 metres above Ordnance Datum

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.

## **Reason**

To ensure the development is safe without increasing flood risk elsewhere in accordance with paragraph 181 of the National Planning Policy Framework and policy ESD6 of the local plan.

## **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 (paragraphs 175), 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.

The only developments exempt from the sequential test in flood risk areas are:

- Householder developments such as residential extensions, conservatories or loft conversions

- Small non-residential extensions with a footprint of less than 250sqm
- Changes of use (except changes of use to a caravan, camping or chalet site, or to a mobile home or park home site)
- Applications for development on sites allocated in the development plan through the sequential test and:
  - the proposed development is consistent with the use for which the site was allocated; and
  - there have been no significant changes to the known level of flood risk to the site, now or in the future, which would have affected the outcome of the test.
  - Developments where no built development within the site boundary, including access or escape routes, land raising or other potentially vulnerable elements, would be located on an area that would be at risk of flooding from any source, now and in the future.

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 determine an appropriate area of search and to decide whether the sequential test has been passed, with reference to the information you hold on land availability. You may also ask the applicant to identify any other 'reasonably available' sites which are on the open market and to check on the current status of identified sites to determine if they can be considered 'reasonably available'. Further guidance on the area of search can be found in paragraphs 027-030 of 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: [Flood risk and coastal change - GOV.UK \(www.gov.uk\)](http://www.gov.uk).

#### **Advice to applicant**

The potential for shallow groundwater should be considered during the construction phase of the development. Where groundwater is encountered, an appropriate dewatering strategy must be developed. If the proposed abstraction volume exceeds the exemption threshold, the requirement for an abstraction licence must be addressed with the Environment Agency.

Dewatering is the removal/abstraction of water (predominantly, but not confined to, groundwater) in order to locally lower water levels near the excavation. This can allow operations to take place, such as mining, quarrying, building, engineering works or other operations, whether underground or on the surface.

The dewatering activities on-site could have an impact upon local wells, water supplies and/or nearby watercourses and environmental interests.

This activity was previously exempt from requiring an abstraction licence. Since 1 January 2018, most cases of new planned dewatering operations above 20 cubic metres a day will require a water abstraction licence from us prior to the commencement of dewatering activities at the site.

More information is available on gov.uk: <https://www.gov.uk/guidance/water-management-apply-for-a-water-abstraction-or-impoundment-licence#apply-for-a-licence-for-a-previously-exempt-abstraction>.

### **Closing comment**

In accordance with the planning practice guidance (determining a planning application, paragraph 019), please notify us by email within two weeks of a decision being made or application withdrawn. Please provide us with a URL of the decision notice, or an electronic copy of the decision notice or outcome.

Should you require any additional information, or wish to discuss these matters further, please do not hesitate to contact me on the number below.

Yours sincerely

**Miss Sarah Green**  
**Sustainable Places - Planning Advisor**

Direct e-mail [planning\\_THM@environment-agency.gov.uk](mailto:planning_THM@environment-agency.gov.uk)