

Our ref – 13/DN/DY00121

Your ref –

Date 24 April 2019

Clare O'Hanlon  
Cherwell District Council

By email

Dear Sirs

**18/00904/F - Glebe Farm, Boddington Road, Claydon, Banbury - Marina and Ancillary Facilities plus New Lake**

We remain instructed by Mr Dykes of Fenny Marina, Station Fields, Southam CV47 2XD and refer to our letter and enclosures dated 26/6/18 which must still be taken into account.

As stated before, our client (like Braunston Marina) knows this area both geographically and in terms of the boating industry on the Oxford Canal better than most, including the LPA. He has already provided insight to the Canal water levels, over supply of moorings, alternative sites, and practical matters that are all material planning considerations. Another Note, plus Mapping and annotated comment against the applicant's sequential alternative site analysis (given under flooding).

The applicant's submissions assert all concerns are overcome. They are not, for the reasons set out below. The primary concern remains that this proposal is fundamentally at odds with the Development Plan and the 2018 Framework [F18] and there are no (or not adequate) material considerations that outweigh, so it must be refused, being unsustainable development as defined.

Discussion

Policy R9 is clear and unambiguous. Policy ESD16 in the Cherwell Plan 2011 – 2031 is entirely consistent with R9. The key text is support for proposals that "use the Canal", but that "**new facilities for Canal users be located within or immediately adjacent to settlements**". The policy position clearly distinguishes using the canal and new facilities, which the applicant's submissions have still not grasped. It is not as if the Plan fails to make this clear, repeatedly throughout, as to what is "sustainable". The applicant now argues there are no alternative sites but its analysis is flawed (see below).

ESD16 states the canal is "*an iconic structure*" – a good image then appears on pg 121. The Plan "vision" A.9 refers to *improving vitality of settlements as hubs and protection of distinctive natural and built environment and rich heritage – that Cherwell will maintain its rural character where its landscapes, its **vast range of natural and built heritage and***

market towns define its distinctiveness. (our underlining). We note the applicant's arguments, and landscapes submissions, but again, despite this, the conservation officer maintains objection and it is key the requirement to maintain or enhance, is neither met, nor can the cumulative effect overall be anything less than adverse, particularly given the loss of other landscape close by to HS2 (which is considerable).

A.11 shows *focus* for new development is not this remote rural land but those places identified – towns, with good reason – then directing the rest towards the larger more sustainable villages. In sequential terms, the application site performs badly. We note the arguments now since our last letter in 2018, but the assertion as to Banbury site is not credible. The scoping should be limited to a particular parcel but the land adjacent to the Canal. Banbury is an obvious alternative, very well served by public transport, high PTAL and other factors heavily directing a new marina here, not the applicant's remote site. There are no respectable arguments to contradict our client's previous submissions, the attached Note from client demonstrating the assertions regarding "need" are clear – there is no such demand, the scheme is so speculative that the LPA must disregard the misconceived claims otherwise, which proverbially holes the applicant's case below the water line .

A.21 refers to *improving social cohesion in towns and villages*, and A.25 to *cherishing distinctive natural and built environment*, and to *improving functioning of towns and villages*. This scheme fails on all counts and the applicant's arguments are flawed. It is not credible to assert any improvement will arise, as policy requires. The development will be private, there is no public benefit – it amounts to the equivalent of a private car park in the open countryside with major land raising with buildings on top of that.

To put it beyond any doubt, the Plan at SO12/13/14 & 15 is explicit as to what sustainability means and why development is directed away from remote countryside. B.44/45 and B.47 explain why this scheme is at direct odds with the Plan and F18 that directs new employment sites to those identified, so even the few new jobs mentioned (3Ft/3Pt) are not where the Plan directs them to be created. Departing from this undermines the Dynamic Town Centre policy SLE2 and tourism SLE3. It is antagonistic to ESD1.

The above policies are all consistent with F18. The applicant's arguments that it needs this development financially are also unjustified. In terms of growing crops that do not require subsidy, this is nothing to the point. TB is compensated and again, hardly a special circumstance at this farm. Assertions as to Brexit, HS2 and viability are also unjustified as Brexit is now by no means certain, a second referendum seems likely rendering the arguments on this footing premature. In any event no weight can be given to politics. Neither is there any proof from the applicant's that it would make any true difference as all business has to adapt. HS2 assertion regarding delayed compensation is unjustified – 90% advance payment is mandatory, paid on entry. As to more land to be acquired to replenish, this argument is the same for every landowner. The applicant has no special case, and has not provided any evidence it has been unable to acquire more land, or even tried. As for it needing to be adjacent, this is also unjustified – it is common place for holdings to be spread.

Members will be advised by officers regarding financial/personal circumstance being irrelevant. If diversification means “any” land use or buildings the applicant might propose, anywhere under its control, on that basis they could build anything at all here – e.g. a power station or factory. Diversification does not change the simple point that planning permission has to be in accordance with adopted Plan policy, and assertion of unmet need is not made out.

It is a concern that the applicant could (and our client predicts would need to) sell/lease the site on to a marina developer for a significant profit, there is nothing that can be done to prevent that. Our client’s attached note confirms C&RT have just sold all 18 marinas and why, demonstrating the applicant’s assertions as to viability are not made out. Such site disposal will leave the local community to look back as to why profit came at the expense of the public’s prized environment that should be preserved or enhanced according to policy. The definition of sustainability is to protect valued landscapes for this and future generations. Marinas are struggling in this region and more specifically, this locality. What will the LPA do if as our client predicts, a developer seeks change of use of the land having spent out on the engineering works? The danger is all too obvious. The application has to be considered on its own merits, for a hypothetical operator on the land edged red.

The scheme raises ground levels considerably, constituting significant irreversible development within open intrinsically beautiful countryside, a diminishing resource exemplified by HS2 adverse impacts. Additional harm to the setting of an “iconic” heritage asset that itself relies upon open undeveloped countryside for its intrinsic value backdrop, surely adds imperative to protect what remains?

The applicant, in order to satisfy the heritage test, would need to either prove that the development has neutral impact and therefore is harmless, or the degree of harm is offset by public benefit. Whilst the creation of a modest 3ft/3pt jobs may carry some limited weight, the assertions as to potential to boost tourism are contrived and miss the point – in this location F18 does not give unfettered encouragement to development. Nothing like. It is not previously developed land. It is virgin farm land. It is not well related to settlements. There is no real scope to make the site more sustainable avoiding use of cars – hence 150 car spaces. The scheme is not sensitive to its environment. It is highly insensitive, an unsustainable location, a worse choice than Banbury even if “need” is demonstrated (which it is not). The location choice is because the applicant owns it, no different to any other owner e.g. seeking green field site homes, car park or a factory. To dismiss adjacent to Banbury the applicant fails to engage with the starting point that, in a search sequence one commences with towns, adjacent towns, then settlements – this remote spot is at the other end of the spectrum. Our client’s Mapping and commentary upon the applicant’s assertions as to alternative site show a very different picture in reality.

Good planning is about sensitive and sensible land use, applying well established policy principle of using green field last, striking a fair balance – and the adopted plan and F18 do not encourage new buildings car parks and land raising in open countryside side, as this scheme does not fall within a confined list of policy exceptions.

Alternative sites as client explains would have far greater community benefits. The scale of the development in the undeveloped setting, bigger than the nearby village, would not be other than significant adverse impact on canal users not just during construction, but for years after with HS2 behind, already a blight, on the applicant's own case. The search area in the flood risk assessment is still limited and inappropriate geographically, thus remaining flawed analysis as we set out in our last letter. The entire 78 mile Canal is a single structure, an icon from Coventry to Oxford. With the Cherwell river, the scoping for "alternative site" best located to be sustainable is not fixed by flood risk scoping or being dismissive of more sustainable sites. Our client's analysis attached suggested land south of Kidlington identified on his map page 24 – in fact the 5<sup>th</sup> page as it is an extracted document). There is no demand but it is still sustainable. Banbury is 'the' obvious nearby district location, being a highly sustainable town to which the Plan directs focus for development (see above).

It is crucial to assess all alternatives regardless of plan policy map areas, since the search sequence must be applied to the Canal "structure" (see above). It would be irrational to do otherwise, since if a canal straddles 3 LPA areas, it is the canal that is scoped in terms of demand and supply for mooring/tourism etc. It would otherwise mean that is one ignores canal in other plan areas, it would result not just in duplication but triplication of facilities (if 3 areas) when the demand is single. By limiting the search the applicant has ignored alternative sites such as Thrupp in the south, Kidlington right down to Oxford – as to the north, about 20 miles of relevant search area has been ignored, not least Rugby, Coventry and Wormleighton. It is striking the application site is in the far northern extremity of the district area, presumably in the belief the Council will not be bothered as it is far flung.

The applicant argues that the new building and facilities would be for non-residential boaters only. Whilst the planning authority could impose a condition or seek a legal agreement dealing with that, still no Section 106 Agreement has been submitted. This is a clear signal there must real risk that such a condition would either be unenforceable (failing the tests set out in NPPG) or the Council would face a very likely application to vary this condition in due course, perhaps based on viability concerns of the Applicant to boost turnover by visitors that would be overwhelmingly still be car-borne. At Cropredy the Council is investigating live-aboard/residential boating use, a sure sign the need is not present, that marina is struggling, a fate the application site is likely to face.

It is not difficult to look further afield to marinas elsewhere. The Council will be familiar with restaurant facilities in marinas being a substantial source of income for both the marina operator and franchises. Once a marina is approved here, in what is by any definition a remote rural site, the Council will find it very difficult to resist an open market facility, and indeed further buildings given it is such a large site e.g. as a tourist attraction, backed up by viability problems. The fact that the scheme is scaled down now demonstrates how easy it will be to revert to larger, later. It is also not hard to predict that a development of this scale and the investment would be a struggle to be viable except over a far longer term than 28 years as now submitted. It is noted that enlargements elsewhere as our client identifies attached have still not transpired and Braunston Marina verify this fact. Whilst there is clearly interest in leisure boating upon and thus use of Oxford Canal, even the applicant admits that it would only make a "small" contribution at best, assuming that the

scheme is eventually viable, for which there is in fact, no demonstration sufficient to justify the grant of planning permission.

The local roads are narrow and potholed, in a beautiful countryside location, so whilst the highway policy position is one thing, the impacts of the scheme overall must be weighed in the balance and since the facilities are for boaters only a realistic view must be taken by the Council now when assessing the principle of sustainable development.

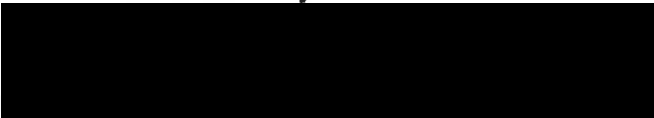
The construction of this development is 'major', and will have a fundamentally adverse impact. It is irrational to argue that because part of the development will involve water, that that makes wide areas of concrete, roads, parking and manmade features, raising the ground levels anything other than extremely harmful to the setting of the heritage asset and the intrinsic beauty of this countryside.

There is limited public transport hence 150 car spaces. The issue is not speed but again, the fundamental problem of unsustainable location. Better access design and less hard surfacing in some places does not offset the harm from raising ground levels and high build floor plates plus a prominent bridge. The holistic flaw of unsustainability is key.

## **Conclusion**

The development is, very obviously, still in fundamental conflict with the long held development plan policy to protect, enhance and conserve both the heritage asset Canal and its setting from inappropriate development, and not to develop remote beautiful open countryside, already threatened by HS2. It is misconceived to argue that this proposal is anything other than a speculative money scheme with no evidence of unmet demand. The benefits are just 3ft/3pt jobs, at best, in a remote countryside location away from any sustainable settlement where policy commands it be located. Having to raise structural heights just makes its impact worse than when first submitted. This is not truly diversification of the kind F18 encourages, the claims made amounting to no more than illusion to cloak a very substantial marina incongruous within this beautiful countryside. Any benefits are of such limited weight to fall a long way short of successfully overcoming the fundamental policy conflicts identified; so, in accordance PSD1 and Section 38(6) PCPA 2004, planning permission must be refused. The Council's position is copper-bottomed by the development being "unsustainable" as defined by F18.

Yours faithfully

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For and on behalf of Kingsley Smith Solicitors LLP