

Our ref – 13/DN/DY00121

Your ref –

Date 26 June 2018

Mr B Duxbury  
Cherwell District Council

Dear Sirs

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

We are instructed by Mr Dykes of Fenny Marina, Station Fields, Southam CV47 2XD.

Our client is obviously experienced in this area both geographically and in terms of the boating industry, so his attached comments provide insight to the Canal water levels, over supply of moorings, alternative site, and practical matters that are all material planning considerations.

Whilst there are a number of claims made by the applicant that are queried separately below, the primary concern is that this proposal is fundamentally at odds with the development plan and the Framework, and there are no material considerations that outweigh, so it must be refused.

Discussion

The Applicant acknowledges that the key issue is whether the proposal complies with the development plan. It both concedes that it does not and also asserts that it complies. Our analysis demonstrates below that the Applicant's case is flawed, but to an even greater extent than perhaps may seem obvious.

Here is a brief summary of the local plan position (with emphasis):

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 not grasped. It is not as if the Plan fails to make this clear, repeatedly throughout, as to what is "sustainable".

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)*

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 fails very badly indeed.

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.

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. A.28 is direct NPPF text. B.44/45 and B.47 explain why this scheme is at direct odds with the Plan and Framework. SLE1 directs new employment sites to those identified, so even the few new jobs mentioned 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.

These policies are all consistent with the Framework. The Applicant's arguments that it needs this development to provide solutions in respect of growing crops that do not require subsidy, are irrelevant in planning terms. The application has to be considered on its own merits, which constitute significant irreversible built form development within open intrinsically beautiful countryside. It additionally forms the setting to an "iconic" heritage asset. 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 (in terms of the scale of the development which is huge) number of jobs may carry some weight, and potential to boost tourism, the same could be said of any other alternative sites or scheme - indeed alternative sites will have far greater benefits. The search area in the flood risk assessment is limited and inappropriate geographically and is flawed analysis.

The entire 78 mile Canal is a single structure, an icon. With the Cherwell river the scoping for "alternative site" best located to be sustainable is not fixed by flood risk scoping. Our client's analysis attached suggests land south of Kidlington identified on his map page 24 – in fact the 5<sup>th</sup> page as it is an extracted document). The scoped land to comply with area policy is much greater area than the Applicant considered, unsurprisingly perhaps. We are confident the LPA will have 'clocked' this flaw. Banbury is also an obvious nearby location, being a highly sustainable town to which the Plan directs focus for development.

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.



The Applicant argues that the new building and facilities would be for boaters only, and whilst the planning authority could impose a condition or seek a legal agreement dealing with that, no Section 106 Agreement has been submitted, and there must be a 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 car-borne. 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 franchisees. 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. 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 an extremely long term basis. No evidence has been submitted as to viability of the scheme. It is noted that enlargements elsewhere as our client identifies attached have not transpired. Whilst there is clearly interest in 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 viable. There must be serious doubt and no objective analysis of supply and demand has been presented by the applicant, our client's submissions attached undermining the credibility of what is stated.

There are some factual matters to which we now turn, before Conclusions.

The planning statement at 3.3 says no materials other than construction of buildings will be required to be brought to site - but this is clearly wrong. At 4.7 concrete is referred to for the yard, and whilst the car park requires gravel, there is none of this on site and will all have to be imported (the soil test confirms it is a clay site, there is no aggregate available). Whilst construction traffic and impacts do not usually warrant refusal, there are matters which, in this case, justify a different view. The roads are narrow; this is a beautiful countryside location; the impacts that are assessed in transport terms are predicated upon the facilities being for boaters only, but as stated above, that is an illusion - a realistic view must be taken by the LPA now when assessing the principle of the development.

The construction of this development is 'major', and will have a fundamentally adverse impact upon the intrinsic beauty of this countryside, and heritage setting. 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, anything other than extremely harmful to the setting of the heritage asset and the intrinsic beauty of this countryside.

At 6.5, the Applicant admits there is limited public transport, but dismisses this as unimportant *because most boaters will need cars*. Quite so. The suggestion that traffic will approach from the north (6.7) is a matter of aspiration rather than something that the Applicant can deliver.

## Conclusion

The development is, very obviously, 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, plus countryside. It is misconceived to argue that this proposal is anything else.

The benefits which might arise, are modest. A handful of jobs in a remote countryside location away from a settlement where policy commands it be located. On close inspection the Applicant's case really amounts to no more than a very substantial marina incongruous to this beautiful countryside, landscape highly protected both in terms of national and local policy. Any benefits are of limited weight, falling 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 the Framework.

Yours faithfully



For and on behalf of Kingsley Smith Solicitors LLP