

Mr Bob Duxbury  
Cherwell District Council  
Planning & Development Services  
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OX15 4AA

**Our ref:** WA/2018/125260/01-L01  
**Your ref:** 18/00904/F  
**Date:** 13 July 2018

Dear Mr Duxbury

**Formation of Inland Waterways Marina with ancillary facilities building, car parking, access and associated landscaping including the construction of a new lake.**

**Glebe Farm, Claydon, Banbury, OX17 1TD.**

Thank you for your consultation on the above planning application.

The site lies with Flood Zones 1, 2 and 3 in accordance with our flood risk mapping. However the Cherwell District Council Strategic Flood Risk Assessment (SFRA) Level 1 update dated May 2017 section 4.3.5.1 states that:

*“Due to the limited extent of detailed modelling of the 5% AEP event in the District, where detailed modelled outlines for the 5% AEP event are unavailable, as a precautionary approach Flood Zone 3a ( $\geq 1\%$  AEP) should be used as a proxy for Flood Zone 3b for the purposes of the sites included within this Level 1 SFRA Update.*

There is no modelled flood data available. Therefore according to the Cherwell SFRA this site lies within Flood Zone 3b. Flood Zone 3b is defined as land where water has to flow or be stored in times of flood. In accordance with Table1 ‘Flood Risk’ of the Planning Practice Guidance.

This site has an ordinary watercourse running along the northern boundary. This becomes the main river the Wormleighton Brook towards the south east of the site. There is also a potential presence of protected species for environmental permits within the site, the European Water Vole.

### **Environment Agency position**

We have **four objections** to the proposed development.

These are:

Cont/d..

## **1) Proposed development incompatible with Flood Zone**

## **2) Inadequate FRA**

## **3) Assessment and mitigation of the risks to nature conservation and fisheries are inadequate**

## **4) Use of non-mains foul drainage system in a publicly sewered area**

I have detailed each one of these objections in turn.

### **1) Proposed development incompatible with Flood Zone**

We **object** to this application because the proposed development falls into a flood risk vulnerability category that is inappropriate to the Flood Zone in which the application site is located. We recommend that the application should be refused planning permission on this basis.

#### **Reasons**

The Planning Practice Guidance classifies development types according to their vulnerability to flood risk and gives guidance on which developments are appropriate in each Flood Zone. In this case the site falls within Flood Zone 3b (functional floodplain) in accordance with the Cherwell Level 1 SFRA.

The development type in the proposed application is classified as 'more vulnerable' in accordance with table 2 of the Planning Practice Guidance. Tables 1 and 3 of the Planning Practice Guidance make clear that this type of development is not compatible with this Flood Zone and should not therefore be permitted.

#### **Overcoming our objection**

Where possible the applicant should propose an alternative location for this development, which ensures that any of the works being undertaken, are outside of Flood Zone 3b. Alternatively the applicant should provide their own modelling and or site specific details such as a topographical survey, which show that the proposed development, does not fall within Flood Zone 3b.

### **2) Inadequate FRA**

In the absence of an acceptable Flood Risk Assessment (FRA) we **object** to the grant of planning permission and recommend refusal on this basis for the following reasons:

#### **Reason**

The FRA submitted with this application does not comply with the requirements set out in paragraph 103 of the National Planning Policy Framework or Cherwell Local Plan Policy ESD 6 (Sustainable Flood Risk Management). The submitted FRA does not therefore, provide a suitable basis for assessment to be made of the flood risks arising from the proposed development.

In particular, the submitted FRA fails to demonstrate:

1. The loss of flood plain storage within the 1% annual probability (1 in 100) flood extent with an appropriate allowance for climate change caused by the proposed development can be mitigated for.
2. Absence of detailed modelling.

## Explanation

Cherwell District Council SFRA section 4.3.5.1 states that:

*“Due to the limited extent of detailed modelling of the 5% AEP event in the District, where detailed modelled outlines for the 5% AEP event are unavailable, as a precautionary approach Flood Zone 3a ( $\geq 1\%$  AEP) should be used as a proxy for Flood Zone 3b for the purposes of the sites included within this Level 1 SFRA Update.*

*Where development pressure creates the need to build in Flood Zone 3a and no detailed modelling outlines are available for Flood Zone 3b, further detailed modelling would need to be undertaken as part of a Level 3 FRA to define the extent of Flood Zone 3b. Approval by the Environment Agency of the new modelled outline would be needed to challenge the use of Flood Zone 3a as a proxy for Flood Zone 3b.”*

As such we would expect the applicant to carry out detailed modelling of the site, including appropriate allowances for climate change, and then submit the modelling to us for peer review.

The new modelled extent and climate change allowances should be used to inform the layout and proposed mitigation measures for the site.

While we accept the idea that the proposed ground raising is mitigated for in the excavation of the lake the applicant needs to demonstrate that the lake will compensate the loss of flood plain, including an allowance for climate change.

## Overcoming our Objection

The applicant can overcome our objection by submitting an FRA which covers the deficiencies highlighted above and demonstrates that the development will not increase flood risk elsewhere and where possible reduces flood risk overall. If this cannot be achieved we are likely to maintain our objection to the application.

### Loss of Floodplain Storage

Any loss of floodplain storage, as a result of development, within the 1% annual probability flood extent with an appropriate allowance for climate change (1% plus climate change) must be directly compensated for. This is necessary to prevent the new development reducing flood plain storage and displacing flood waters, thereby increasing flood risk elsewhere.

The FRA does not assess whether there will be a loss of floodplain storage as a result of creation of the inland waterways marina and infill lake. In this case, referring to the photographs within the Design & Access Statement, we advise that the existing buildings proposed to be converted should be considered floodable. Therefore, this development may result in a loss of flood plain storage and mitigation should be provided.

Level for level flood plain compensation is the preferred method of mitigation. This method is the matching of volumes lost to the flood plain with new flood plain volume through the reduction of ground levels. For this to be achievable it requires land to be available to the applicant on the edge of the flood plain and above the 1% plus climate change flood level. Comparing the flood level with a topographical survey will show the availability of suitable land.

If it is clearly demonstrated that this method of compensation cannot be provided, the use of voids within the design could be considered. These will need to be floodable with the underside of the void above the 1% plus climate change flood level.

Your Authority should be satisfied that they can be enforced through a condition to maintain the voids as designed and that an adequate maintenance plan is in place to ensure the voids remain open for the life time of the development. If this is not the case then the applicant should amend the development to ensure that there will be no increase in built footprint on site.

#### Climate Change Allowances

Our climate change allowances for planning were updated on 19 February 2016 and should be used to assess proposed development within flood risk areas. This guidance is available through the following link:

<https://www.gov.uk/guidance/flood-risk-assessments-climate-change-allowances>

Please refer to this to determine which allowances should be used for this development.

#### Detailed Modelling

Submission of detailed modelling for the proposed marina and adjacent lake will be required to be peer reviewed and submission in itself may not remove the objection.

### **3) Assessment and mitigation of the risks to nature conservation and fisheries are inadequate.**

We **object** to the proposed development as submitted because the assessment and mitigation of the risks to nature conservation and fisheries are inadequate. We therefore recommend that the planning application is refused. We will maintain our objection until the applicant has supplied information to demonstrate that the risks posed by the development can be satisfactorily addressed.

We wish to be consulted on the results of any survey submitted in connection with this application, on any design changes, additional mitigation, compensation or enhancement measures that might be subsequently proposed.

#### **Reasons**

We welcome and are encouraged by the applicant's commitment to encourage biodiversity and ecological enhancement, however it is not clear from the reports and drawings submitted that all of the aspects of the proposals have been considered in terms of fisheries and biodiversity and we are disappointed that a number of opportunities for meaningful enhancements have not been explored. We have reviewed the following reports and in particular, we object for the following reasons:

In the Preliminary Ecological Assessment, reference 856968 dated April 2018 (PEA).

(Design and Access Statement 3.19)

Specifically:

- Cherwell Policy ESD 10 states that *"a net gain in biodiversity will be sought by protecting, managing, enhancing and extending existing resources, and by creating new resources"* but without a proper assessment of all of the impacts, it cannot be shown that a net gain will be achieved. Furthermore, Government policy on minimising impacts on biodiversity set out in the National Planning Policy Framework (NPPF) paragraph 118, requires local planning authorities to aim to conserve and

enhance biodiversity when determining planning applications. This has not been demonstrated in the present application.

- Policy ESD 8: Water Resources states that *“The Council will seek to maintain water quality”* and *“Water quality will be maintained and enhanced by avoiding adverse effects of development on the water environment”* but the proposals do not give enough information to show how this will be achieved. Very little detail has been given about the irrigation lake, what form it will take and how any interaction with the Wormleighton Brook will be managed to prevent water quality deterioration. 4.6 of the Flood Risk Assessment (FRA) indicates that there is anticipated to be some sort of interaction between the two, but little information has been given.
- 3.5 of the FRA states that the lake will have an average depth of 2.5 metres which will limit its value for biodiversity, but the finish bed profile and lake edges could provide some gains. In addition to the lake itself, there is also no indication as to how the land between the proposed marina and Brook, and the proposed lake and Brook will be treated during and after construction.
- Currently the site is bordered by the Wormleighton Brook which is classified as a small calcareous watercourse and, under the Water Framework Directive, is in ‘Poor Ecological Status’. The potential impact of the proposals on the watercourse have not been addressed in the PEA and no mitigation has been put forward.
- 6.12 of the Design and Access Statement (DAS) proposes to discharge road and surface water runoff from the development into the brook after flowing through swales and a petrol interceptor, but the location for this infrastructure has not been given and neither have details of the proposed outfall
- The surveys carried out in the PEA have identified otters using both the canal and Brook but no enhancements or mitigation have been proposed for this species. A marina would introduce anthropogenic activities to a relatively undisturbed area and careful planting and site management could help mitigate this.
- The North Claydon Disused Railway Local Wildlife Site is located along the north boundary of the site but the PEA and Landscape and Planting Spec have not explored how the development could improve this area through either habitat improvements or creating complimentary habitat on site to improve habitat connectivity.
- There are references to a light strategy but site specific details have been given and therefore the potential impact on site biodiversity cannot be assessed. Lighting can have an adverse impact on species including otters and bats by altering their behaviour, but without more detail, the potential impact cannot be assessed and mitigated.
- There is no map to accompany the target notes so it is not clear where they apply to. There are notes for a wet ditch (Target Notes 9 in the PEA) which do not appear to be mentioned in any of the reports and its ecological value has not been noted.
- Drawing SK02 Rev B shows a headwall along the Brook but this has not been mentioned in PEA so it is unclear as to whether this is existing or proposed.
- Our maps indicate that there is a culverted watercourse beneath the site but this has not been mentioned in any of the reports.

### **Overcoming our objection**

The PEA should be updated to incorporate the above information so that a proper assessment of the potential impact of the proposals can be made. We would like it to include recommendations for how the development could provide a meaningful net gain in the long term and:

- Identify the impacts of the scheme on ecological features in the short and long term, and identify steps which should be taken;
- Demonstrate how the development will avoid adverse impacts;

- Propose wildlife/ habitat enhancement measures; and
- Propose post-project appraisal, management plans and management responsibilities with details of how biodiversity enhancement will be incorporated into the development and maintained over the long term.

#### **4) Use of non-mains foul drainage system in a publicly sewerred area**

We **object** to the proposed development as submitted because it involves the use of a non-mains foul drainage system in a publicly sewerred area but no justification has been provided for this method of foul sewage disposal. We recommend that the application should be refused on this basis.

#### **Reasons**

The installation of private sewage treatment facilities within publicly sewerred areas is not normally considered environmentally acceptable because of the greater risk of failures leading to pollution of the water environment compared to public sewerage.

We consider it reasonable to connect to the public sewer if the distance to the site is **less than** the number of properties x 30 metres (which in this case is 250 x 30 = 7500 metres). Our records suggest there are public sewers in Claydon (870 metres), Lower Boddington (1750 metres), and Aston Walls (3100 metres) which we think a development of this size should connect to.

Only where having taken into account the cost and/or practicability it can be shown to the satisfaction of the local planning authority that connection to a public sewer is not feasible, should non-mains foul sewage disposal solutions be considered.

In addition, the Thames River Basin Management Plan requires the restoration and enhancement of water bodies to prevent deterioration and promote recovery of water bodies. The proposal would prevent the recovery of the Clayton and Wormleighton Brook, (Source to Highfurlong Brook) water body. Even if it was shown to be unfeasible to connect to the public sewer, we would have serious concerns about the amount of treated effluent that would be discharged into this small waterbody.

#### **Overcoming our objection**

To overcome our objection the applicant should thoroughly investigate the possibility of connecting to the foul sewer by taking the following steps:

1. Formally approach the sewerage undertaker or serve notice regarding a connection under section 98, section 104 or section 106 of the Water Industry Act (WIA) 1991, as appropriate.
2. Provide details of the undertakings, security and payment required by the sewerage undertaker under section 98 of the Water Industry Act 1991. They must provide these together with confirmation that the applicant considers these to be reasonable and does not intend to appeal against them;
3. Provide details of the reasons given by the sewerage undertaker if it has refused connection under section 106 of the WIA 1991 and confirmation that they have appealed against this decision; OR
4. Demonstrate that it is not reasonable to connect to the public foul sewer.
5. Where it is not reasonable to connect to the public foul sewer, demonstrate that they have considered requesting that the sewerage undertaker adopt their

proposed system.

Lack of capacity or plans to improve capacity in the sewer is not a valid reason for a sewerage undertaker to refuse connection under Section 106 of the Water Industry Act 1991. In these cases, if an applicant decides to apply for a water discharge permit for private treatment facilities, in such circumstances and we may refuse to issue the permit.

### **Notes to local planning authority regarding decision**

If the Local Authority are minded to grant permission against our recommendation, we request the Local Authority reconsult us for further representation. Please note we may have comments and conditions in other areas of remit following reconsultation.

In accordance with the Planning Practice Guidance (Reference ID: 7-043-20140306), please notify us by email within 2 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.

### **Informatives**

#### Environmental permitting regulations (EPR) - main rivers

This development may require an Environmental Permit from the Environment Agency under the terms of the Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2016 for any proposed works or structures, in, under, over or within 8 metres of the top of the bank of designated 'main rivers'. This was formerly called a Flood Defence Consent. Some activities are also now [excluded](#) or [exempt](#). An environmental permit is in addition to and a separate process from obtaining planning permission. Further details and guidance are available on the GOV.UK website: <https://www.gov.uk/guidance/flood-risk-activities-environmental-permits>.

#### Environmental permit – Foul drainage

The foul drainage associated with this development will require an Environmental Permit under the Environmental Permitting Regulations 2010, from the Environment Agency, unless an exemption applies. The applicant is advised to contact the Environment Agency on **08708 506 506** for further advice and to discuss the issues likely to be raised. You should be aware that the permit may not be granted. Additional 'Environmental Permitting Guidance' can be accessed via our main website (<https://www.gov.uk/government/publications/environmental-permitting-guidance>).

### **Advice to Local Authority – Flood Risk**

#### Safe access and Egress

Part of the proposed development and is located within the 1% annual exceedance probability (AEP) plus an appropriate allowance for climate change flood extent.

In accordance with paragraphs 101 to 104 of the National Planning Policy Framework (NPPF), you must ensure that the 'development is appropriately flood resilient and resistant, including safe access and escape routes where required...' (NPPF paragraph

103). This is on the understanding that you have concluded that the proposed development has passed the flood risk sequential test.

Within the application documents the applicant should clearly demonstrate to you that a satisfactory route of safe access and egress is achievable. **It is for you to assess and determine if this is acceptable.**

We enclose a copy of our safe access and egress guidance statement to assist you with your assessment. **Please note we have not assessed the proposed access and egress route.**

### **Advice to Applicant and LPA – Flood Risk**

#### Fencing design

Walls and fences can have a significant impact on the flow and storage of flood water, especially if they are constructed across a flood flow route. This can lead to higher levels of flood water on the upstream side of the fence or wall which will potentially increase the flood risk to nearby areas. Therefore walls and fences should be permeable to flood water.

We recommend the use of post and rail fencing, hit and miss fencing (vertical slats fixed alternately on each side of horizontal posts) or hedging. If a solid wall is proposed there must be openings below the 1% annual probability (1 in 100) flood level with an appropriate allowance for climate change to allow the movement of flood water. The openings should be at least 1 metre wide by the depth of flooding and there should be one opening in every 5-metre length of wall.

#### **Final Comments**

Once again, thank you for contacting us. Our comments are based on our available records and the information as submitted to us.

Please quote our reference number in any future correspondence.

If you have any queries please contact me.

Yours sincerely

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