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OXFORDSHIRE COUNTY COUNCIL

To: Members of the Planning & Regulation Committee

Notice of a Meeting of the Planning & Regulation Committee

Monday, 27 January 2020 at 2.00 pm

County Hall, New Road, Oxford

Yvonne Rees
Chief Executive

January 2020

Committee Officer: ***Graham Warrington***
Tel: 07393 001211; E-Mail:
graham.warrington@oxfordshire.gov.uk

Members are asked to contact the case officers in advance of the committee meeting if they have any issues/questions of a technical nature on any agenda item. This will enable officers to carry out any necessary research and provide members with an informed response.

Membership

Chairman – Councillor Jeannette Matelot
Deputy Chairman - Councillor Stefan Gawrysiak

Councillors

Mrs Anda Fitzgerald-O'Connor
Mike Fox-Davies
Pete Handley
Damian Haywood
Bob Johnston
G.A. Reynolds
Judy Roberts
Dan Sames
John Sanders
Alan Thompson
Richard Webber

Notes:

- ***A site visit is required for Item 6 (Faringdon Quarry)***
- ***Date of next meeting: 9 March 2020***

Declarations of Interest

The duty to declare…..

Under the Localism Act 2011 it is a criminal offence to

(a) fail to register a disclosable pecuniary interest within 28 days of election or co-option (or re-election or re-appointment), or

(b) provide false or misleading information on registration, or

(c) participate in discussion or voting in a meeting on a matter in which the member or co-opted member has a disclosable pecuniary interest.

Whose Interests must be included?

The Act provides that the interests which must be notified are those of a member or co-opted member of the authority, **or**

- those of a spouse or civil partner of the member or co-opted member;
- those of a person with whom the member or co-opted member is living as husband/wife
- those of a person with whom the member or co-opted member is living as if they were civil partners.

(in each case where the member or co-opted member is aware that the other person has the interest).

What if I remember that I have a Disclosable Pecuniary Interest during the Meeting?.

The Code requires that, at a meeting, where a member or co-opted member has a disclosable interest (of which they are aware) in any matter being considered, they disclose that interest to the meeting. The Council will continue to include an appropriate item on agendas for all meetings, to facilitate this.

Although not explicitly required by the legislation or by the code, it is recommended that in the interests of transparency and for the benefit of all in attendance at the meeting (including members of the public) the nature as well as the existence of the interest is disclosed.

A member or co-opted member who has disclosed a pecuniary interest at a meeting must not participate (or participate further) in any discussion of the matter; and must not participate in any vote or further vote taken; and must withdraw from the room.

Members are asked to continue to pay regard to the following provisions in the code that *"You must serve only the public interest and must never improperly confer an advantage or disadvantage on any person including yourself"* or *"You must not place yourself in situations where your honesty and integrity may be questioned…..".*

Please seek advice from the Monitoring Officer prior to the meeting should you have any doubt about your approach.

List of Disclosable Pecuniary Interests:

Employment (includes"*any employment, office, trade, profession or vocation carried on for profit or gain*".), **Sponsorship, Contracts, Land, Licences, Corporate Tenancies, Securities.**

For a full list of Disclosable Pecuniary Interests and further Guidance on this matter please see the Guide to the New Code of Conduct and Register of Interests at Members' conduct guidelines. http://intranet.oxfordshire.gov.uk/wps/wcm/connect/occ/Insite/Elected+members/ or contact Glenn Watson on **07776 997946** or glenn.watson@oxfordshire.gov.uk for a hard copy of the document.

If you have any special requirements (such as a large print version of these papers or special access facilities) please contact the officer named on the front page, but please give as much notice as possible before the meeting.

AGENDA

1. Apologies for Absence and Temporary Appointments

2. Declarations of Interest - see guidance note opposite

3. Minutes (Pages 1 - 6)

To approve the minutes of the meeting held on 9 December 2019 (**PN3**) and to receive information arising from them.

4. Petitions and Public Address

5. Chairman's Updates

6. Planning application under Section 73 of the Town and Country Planning Act 1990 (as amended) to Vary Condition 2 of the Prior Approval Letter (under Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), Part 17 Class B) for the Installation and Use of a Concrete Batching Plant to produce Ready-mixed Concrete for sale (OCC ref MW.0068/19), to amend HGV movements from 22 to 44 per day - Land at Faringdon Quarry, Fernham Road, Faringdon, Oxfordshire SN7 7LG - MW.0107/19 (Pages 7 - 28)

Report by Director for Planning & Place (PN6).

The report considers whether permission should be granted to vary condition 2 relating to permitted HGV movements in connection with planning permission MW.0068/19, for a concrete batching plant to produce ready-mixed concrete at Faringdon Quarry. This is a section 73 application to amend a Prior Approval letter, issued 07 October 2019.

The application is being reported to committee because the local County Councillor, Little Coxwell Parish Council and sixteen third party objections to the application have been received. The objections are to the number of HGV movements per day to be permitted and the need to increase this, the impacts of slow-moving vehicles on an already busy road network, increased risk to other users of Fernham Road and the safety implications of traffic turning onto the A420, including against the traffic flow.

The report outlines further comments received and the recommendation of the Director for Planning and Place.

The development accords with the Development Plan as a whole and with individual policies within it, as well as with the NPPF. The proposal would not increase the overall number of HGVs associated with the existing quarry site when at full operation where

the batching plant is located. The parity in movements between the quarry and concrete production operations will contribute to the processing of the extracted minerals, which will ensure the quarry is worked out and restored in a timely manner.

It is RECOMMENDED that subject to a routeing agreement being signed to require all HGVs to turn right onto Fernham Road and then left onto the A420 and the amendment of condition 2 of the Prior Approval (MW.0068/19) as set out in Annex 2 to this report that Application no. MW.0107/19 be approved.

7. Proposed retention and continued use of prefabricated units T1 and T3 for a further temporary period of five years - Church Cowley St James CE Primary School, Bartholomew Road, Cowley, Oxford - R3.0105/19 (Pages 29 - 44)

Report by Director for Planning & Place (PN7).

This report considers whether permission should be given to allow for the retention and continued re-use of temporary, prefabricated units T1 and T3 at Church Cowley St James CE Primary School, Oxford for a further period of five years. This is a renewal of temporary permission for the buildings, which was last granted 17 December 2012.

The application is being reported to committee because Oxford City Council has objected to the application. The objection is due to the application being contrary to policy CP25 of the Oxford Local Plan (2000-2016). This policy applies to temporary buildings, defined as 'short-term' of up to five years. As this is an application to renew a planning permission for a further temporary, five-year period, this cannot be supported by Oxford City Council.

The report outlines further comments received and the recommendation of the Director for Planning and Place.

The development accords with the Development Plan as a whole and with individual policies within it, as well as with the NPPF. It is in line with the Letter from the Communities and Local Government (CLG) to the Chief Planning Officers dated 15th August 2011, to support the development of sate funded schools via the planning system. There would not be an increase in the number of pupils and staff as a result of this application, above the projected pupil figures to 2025 and this application is based on policy and need.

It is RECOMMENDED that Application R3.0105/19 be approved subject to conditions to be determined by the Director of Planning and Place, to include the following:
i. Detailed compliance;
ii. Temporary 5 year consent.

8. Commons Act 2006: In the Matter of an Application to Register Land at Wilding Park Road, Wallingford as a Town or Village Green (Pages 45 - 90)

Report by the Interim Director for Community Operations (PN8).

This report concerns an application to register land at Wilding Park Road, Wallingford as a Town or Village Green (TVG) under section 15 of the Commons Act 2006. The County Council is required to process applications to register land as a TVG acting in its capacity as the Commons Registration Authority and must apply the legislative tests contained in section 15 (2) (a) and (b) of the Commons Act 2006. The Application was made by Mr Anthony Hurford of 1 Sinodun Road, Wallingford. The Application was accompanied by a supporting statement and 8 evidence questionnaires that had been completed by users of the Application Land.

The application was received in February 2018 and advertised in June 2019 in accordance with the applicable Regulations. One objection was received during the consultation period from the landowner, South Oxfordshire District Council. The report considers the evidence provided by both the applicant and the landowner in light of the legislative tests that have to be applied. Counsel’s opinion was also obtained on some of the matters raised in this case. The Council's Scheme of Delegation requires that decisions on applications where there is an outstanding objection are referred to the Planning and Regulation Committee for a decision.

The complete background papers are available for inspection on request.

The Planning & Regulation Committee is RECOMMENDED to reject the Application, for the reasons outlined in Counsel’s Opinion dated 29 November 2019 and included at Annex 3 to this report.

9. Relevant Development Plan and Other Policies (Pages 91 - 102)

Paper by the Director for Planning & Property Place (PN9).

The paper sets out policies in relation to Items 6 and 7 should be regarded as an Annex to each report.

Pre-Meeting Briefing

There will be a pre-meeting briefing in the Members’ Boardroom at County Hall on **Monday 27 January 2020** at **12 midday** for the Chairman, Deputy Chairman and Opposition Group Spokesman.

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PLANNING & REGULATION COMMITTEE

MINUTES of the meeting held on Monday, 9 December 2019 commencing at 2.00 pm and finishing at 2.36 pm

Present:

Voting Members: Councillor Jeannette Matelot – in the Chair

Councillor Stefan Gawrysiak (Deputy Chairman)
Councillor Mrs Anda Fitzgerald-O'Connor
Councillor Pete Handley
Councillor Damian Haywood
Councillor Bob Johnston
Councillor Judy Roberts
Councillor Dan Sames
Councillor John Sanders
Councillor Alan Thompson
Councillor Richard Webber

Officers:

Whole of meeting: G. Warrington & D. Mytton (Law & Governance); R. Wileman, D. Periam and Mrs M. Hudson (Planning & Place)

Part of meeting

Agenda Item	**Officer Attending**
7.	V. Ondruch (Planning & Place)

The Committee considered the matters, reports and recommendations contained or referred to in the agenda for the meeting and decided as set out below. Except as insofar as otherwise specified, the reasons for the decisions are contained in the agenda and reports, copies of which are attached to the signed Minutes.

43/19 APOLOGIES FOR ABSENCE AND TEMPORARY APPOINTMENTS

(Agenda No. 1)

Apology for Absence	*Temporary Appointment*
Councillor George Reynolds Councillor Mike Fox-Davies	_ _

44/19 DECLARATIONS OF INTEREST - SEE GUIDANCE NOTE OPPOSITE
(Agenda No. 2)

There were no declarations of interest.

45/19 MINUTES
(Agenda No. 3)

Approved and signed subject to recording Councillor Roberts as the seconder of the resolution in Minute 41/19.

Serving of the Prohibition Order for the Review of the Mineral Planning Permission (ROMP) at Thrupp Farm and Thrupp Farm, Radley

Note that the owners and operators of the site would be submitting further information.

46/19 CHAIRMAN'S UPDATES
(Agenda No. 5)

Shipton on Cherwell Quarry

As part of the planning permission granted earlier this year for application no. MW.0001/19 to extend of time for the completion of mineral extraction in the south-eastern part of Shipton on Cherwell Quarry to the end of September, an informative had been attached which advised that a monitoring report be provided in 6 months from the date of this permission to include progress on both extraction and restoration of the site and for that information to be reported to the next available Planning and Regulation Committee. A progress report had been received from the site operator which had been circulated to members. Officers had also carried out a further site monitoring visit on 29 October which identified that mineral working was continuing at the site contrary to the end date set out in the planning permission. Officers were also investigating whether mineral extraction and subsequent infilling had occurred beyond the area shown on the approved plan pursuant to this planning permission and also more generally beyond the depth permitted. The site operator was also contending that an old mineral permission, known as an interim development order permission, was still extant and could lawfully be implemented. Officers were currently looking at that but mineral extraction had clearly continued post the date permitted under the planning permission. The site operator had advised that they intend to make a further section 73 application seeking to extend the end date further and to make other changes to the planning permission.

Separately, an appeal had been lodged against the refusal of a separate planning permission (MW.0046/18) late last year for an extension to the south-east of the existing quarry. This appeal would be heard at a Public Hearing by a Planning Inspector appointed by the Secretary of State on a date yet to be set by the Planning Inspectorate. However, officers had prepared and submitted a written statement on behalf of the County Council supporting the reasons for the refusal of planning

permission which had been on Green Belt, amenity and locational grounds contrary to the Minerals and Waste Local Plan policies M3 and M5.

Controlled Reclamation Site

An appeal against service of an enforcement notice requiring the Controlled Reclamation Landfill site to be re-contoured and restoration, planting and grass-seeding carried out in accordance with the conditions of the relevant planning permission had been allowed by a planning inspector appointed by the Secretary of State. Essentially the land had been contoured to levels over two metres higher than those permitted in places. This appeal was allowed on the one ground, ground e) which had been that the council failed to serve the notice on all the landowners, specifically All Souls College, although All Souls College owned only a small part of the site and had no active responsibility for the breaches of planning control against which the enforcement action had been taken. The inspector has also awarded costs against the council. It had been disappointing that the inspector did not consider the other grounds for appeal and the council's response to them. However, a section 73 planning application seeking to regularise the unauthorised development which had been carried out had been received and this would be reported to the committee for determination in due course. It was the officer view that it would not be appropriate to consider re-service of the enforcement notice or other enforcement action pending the determination of the application.

Elm Farm Quarry, Stratton Audley

Elm Farm quarry had been granted planning permission for restoration by landfilling in 1998 and that permission had been accompanied by a unilateral undertaking that the site would be available for public access for 300 days per annum post-restoration. Unfortunately, the original site operator having imported a large amount of waste material then abandoned the restoration works after which the site remained inactive and effectively abandoned. The land was sold on into other ownership until it was acquired by the current owners in 2018 who expressed a wish to liaise with the council with regard to the future of the site. However, although a planning application seeking to extend the time period for completion of restoration of the site was submitted in October 2018, this could not be determined before the end of 2018 and as the ten year date for taking enforcement action would otherwise have passed there was a need to take enforcement action in order to protect the council's position. The enforcement notice was served in December 2018 and an appeal almost immediately lodged against it. As the site had been abandoned for many years and flora and fauna had colonised the site, initial ecological surveys carried out by the council identified that it was likely to contain important ecological habitats. Following completion of detailed ecological surveys by the applicant, it became apparent that the currently approved restoration scheme for the site could not now be complied with without having a detrimental impact on the ecology of the site, including protected species and this also meant that there would be a conflict with the terms of the unilateral undertaking in terms of public access. Officers have been liaising with the applicant to get a mutually acceptable solution. The chairman of the committee and local county councillor, Ian Corkin, are being kept apprised of the situation and support the negotiations currently being undertaken. The Head of Legal Services is liaising with the applicant's legal advisor in order to progress this matter.

47/19 UPDATE TO LOCAL LIST OF INFORMATION REQUIREMENTS FOR VALIDATION OF PLANNING AND RELATED APPLICATIONS
(Agenda No. 6)

The Committee considered a report (PN6) setting out the requirement to update the local list of validation requirements for planning applications determined by Oxfordshire county council, the proposed consultation on minor amendments to the text of the Local list and adoption of a revised version by March 2020

Councillor Roberts sought clarification about timing of environmental surveys suggesting, for example that biodiversity survey assessments should be done automatically before work started.

Officers undertook to take those points back to the county's biodiversity officer.

Officers confirmed arrangements with regard to aftercare of sites namely that the 5 year period was statutory and after that care would be negotiated as part of a S106 agreement. In the long term that responsibility would rest with the landowner.

With regard to routeing assessments officers also undertook to consider including the council's agreed lorry routeing protocol.

RESOLVED: (on a motion by Councillor Johnston, seconded by Councillor Webber and carried nem con) that:

(a) the draft revised Local List of Information Requirements as set out at Annex 1 to the report PN6 be subject to a three-week period of public consultation;

(b) if after that period and following further consultation with the Chairman and Deputy Chairman of the Planning & Regulation Committee, it was considered that no significant changes were required to the draft revised Local List of Information Requirements then the Director for Planning and Place be authorised to adopt and publish that list,

(c) if, however, after that period and following further consultation with the Chairman and Deputy Chairman of the Planning & Regulation Committee, it was considered that significant changes were required to the draft revised Local List of Information Requirements, the matter be reported back to the Planning & Regulation Committee for further consideration.

48/19 PROGRESS REPORT ON MINERALS AND WASTE SITE MONITORING AND ENFORCEMENT
(Agenda No. 7)

The Committee considered a report (PN7) on the regular monitoring of minerals and waste planning permissions for the period 1 April 2019 to 30 October 2019 and progress of planning enforcement cases.

Discussion on this item focussed on pressures currently being experienced following the death of Chris Hodgkinson who had led the enforcement team. Members expressed their regret over his loss and were keen to recognise and support staff in order to protect the Council from any delays in enforcement.

Officers in turn recognised the need to maintain an adequate level of enforcement but regrettably the loss of a key member of staff meant that there had been gaps in the current year. However, they were working to remedy that and noted suggestions from members to improve presentation for future reports including annual totals for visits and traffic lighting layout to indicate where targets had been met or not.

That effort could also be supported by members highlighting problems based on their local knowledge of a particular site and by targeting those sites which were known to be high risk.

RESOLVED: (on a motion by Councillor Johnston, seconded by Councillor Sanders and carried nem con) that the Schedule of Compliance Monitoring Visits in Annex 1 and the Schedule of Enforcement Cases in Annex 2 to the report PN7 be noted.

.... in the Chair

Date of signing ....

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For: PLANNING AND REGULATION COMMITTEE – 27 JANUARY 2020

By: DIRECTOR FOR PLANNING AND PLACE

Development Proposed:

Planning application under Section 73 of the Town and Country Planning Act 1990 (as amended) to Vary Condition 2 of the Prior Approval Letter (under Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), Part 17 Class B) for the Installation and Use of a Concrete Batching Plant to produce Ready-mixed Concrete for sale (OCC ref MW.0068/19), to amend HGV movements from 22 to 44 per day.

Division Affected: Faringdon

Contact Officer: Emma Bolster **Tel:** 07775 824954

Location: Land at Faringdon Quarry, Fernham Road, Faringdon, Oxfordshire SN7 7LG

Applicant: Grundon Sand and Gravel Ltd

Application No: MW.0107/19 **District Ref:** P19/V2603/CM

District Council Area: Vale of White Horse

Date Received: 10 October 2019

Consultation Period: 31 October – 21 November 2019

Recommendation: **Approval**

The report recommends that the applications be approved.

Contents:

• Part 1 – Facts and Background

• Part 2 – Other Viewpoints

• Part 3 – Relevant Planning Documents

• Part 4 – Analysis and Conclusions

• Part 1 – Facts and Background

Site and Setting (see site plan Annex 1)

1. The application site is located within Faringdon Quarry, in the south-west corner of the mineral workings, adjacent to the existing weighbridge and parking area. The application site lies wholly within the parish of Little Coxwell.

2. Faringdon Quarry is located approximately 0.2 mile (0.33 km) south-east of Faringdon and the same distance from Little Coxwell. The quarry straddles the administrative boundary between the parishes of Little Coxwell and Great Faringdon, to the north-east of the site. Faringdon Quarry lies adjacent to the western edge of the restored Wicklesham Quarry.

3. The access for Faringdon quarry is via Fernham Road. The site entrance is approximately 95 metres from the junction with the A420, which is designated as a link to a larger town on Oxfordshire's Lorry Route Map, as shown in the Oxfordshire Minerals and Waste Core Strategy (OMWCS) page 116.

4. The nearest residential properties to the application site location are all within the parish of Little Coxwell. These are Orchard House and Gorse Farm to the south, at approximately 240 metres and 280 metres respectively and Church House to the west, at approximately 220 metres. The closest residential properties in Faringdon, off Lower Greensands are approximately 330 metres to the north of the approved batching plant area.

5. The application site lies approximately 130 metres from bridleway 278/2/210 to the south and footpath 278/1/20, approximately 70 metres to the west and the other side of Fernham Road.

Planning History

6. Planning application GFA/3888/11-CM (MW.0126/10) was approved by the County Council and issued 24 June 2013. This application was for an extension to Wicklesham Quarry, to the east of the extension application site. The quarry was re-named Faringdon Quarry and has a cessation date of 31 December 2026 for extraction. Faringdon Quarry is required to be restored to agriculture by 31 December 2027, when a 5 year after care period commences until 31 December 2032. This permission has now been superseded.

7. As part of the approved permission GFA/3888/11-CM (MW.0126/10), a routeing agreement was signed (dated 11th June 2013), which requires all HGVs to use only the identified approved routes. For Faringdon Quarry, the approved HGV routes are the A420 and the A417.

8. Application P16/V2331/CM (MW.0117/16) was submitted in August 2016. This was a Section 73A application to implement various changes to the quarry extension, including the working in Phase 1a, the site's restoration, amend lighting details and formally change the site's signage and name to Faringdon Quarry. This application was approved and issued 21 December 2016. The time periods for cessation of extraction (31 December 2026), restoration (31 December 2027) and aftercare (until 31 December 2032) remain unchanged from the original permission. This is the consent under which Faringdon Quarry currently operates.

9. Application P19/V1857/CM (MW.0068/19) was submitted in July 2019. This was for Prior Approval for the installation and use of a Concrete Batching Plant at the application site within Faringdon Quarry, to produce ready-mixed concrete for building and construction operations in the general areas of Swindon, Faringdon, Wantage and the rural areas and villages between. It was considered that the proposal fell within the provisions of Part 17, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the GPDO"), and therefore benefited from "permitted development" rights.

10. The GPDO grants deemed planning permission for a number of different types of development, subject to certain provisions and it is not necessary for these types of development to be subject to an application for express planning permission. The application for the Prior Approval of the Mineral Planning Authority (MPA) was solely to judge if the proposed location, height and appearance of the proposed batching plant within the existing permitted quarry was considered acceptable. This application was considered by Planning and Regulation committee on 9th September 2019 and the committee resolved to issue the prior approval subject to 5 conditions relating to screen planting, HGV movements, noise and dust monitoring and mitigation and preventing mud being tracked onto the highway. The Prior Approval letter was issued 08 October 2019.

Details of the Development

11. This application seeks to amend the maximum number of HGV movements on the prior approval consent for the concrete batching plant at Faringdon Quarry (MW.0068/19). Condition 2 on the prior approval states that there shall be no more than 22 HGV movements per day (11 in and 11 out) in relation to the concrete batching plant operations. The reason given in the Prior Approval letter for the condition is to protect the amenities of the residents of Little Coxwell and Faringdon.

12. This application proposes amending the condition to allow a maximum of 44 HGV movements per day (22 in and 22 out), rather than a maximum of 22 HGV movements per day. There is no condition limiting HGV

movements in relation to the operation of the quarry per se. Information submitted with the original planning application in 2010 provides a breakdown of the movements and based on the HGV payload this equates to be a maximum of 44 HGV movements per day, although this is not explicitly stated.

13. In support of the application, the applicant has stated that the inclusion of a condition limiting the concrete batching plant to a maximum of 22 HGV movements per day was based on a misinterpretation of the information supplied with the prior approval application as above which was for a maximum of 44 HGV movements per day. This is not acceptable to the applicant because it restricts the ability of the batching plant to be operated fully.

14. The yearly production rate of the quarry operations was expected to be in the region of 50-60,000 tonnes per annum, in each of the 3 phases at the time the quarry permission was originally approved (2013). The most recent annual figures supplied to the MPA within the Aggregate Monitoring Survey (2018) confirms that the current production and sales figures are less than half of the expected production rate from when permission was originally granted. The amendment to the condition proposed would bring the site’s sales and overall extracted mineral volume closer to the original, intended production rates.

15. Prior-approval permission MW.0068/19 allows the operator to utilise the mineral available within Faringdon Quarry to feed the concrete batching plant, which is currently supplied to customers for concrete production elsewhere. The applicant has stated that by producing concrete on-site, sales exports could be increased from the existing to the expected tonnage with a marginal increase in HGV movements to supply the plant with cement, offset by not having the existing HGV movements that transport the mineral extracted elsewhere for concrete production. By packaging the materials extracted in a different form to that originally envisioned for sale by making ready-mix concrete would potentially require less HGV movements overall as the ready-mix concrete HGVs have a bigger payload than the traditional HGVs that serve the quarry operations. The HGV movements associated with the sale of concrete from the batching plant would therefore fall within the anticipated vehicle movements for the wider Faringdon Quarry associated with the sale of aggregate materials from site as currently approved.

16. On this basis, the only additional HGV movements associated with the concrete batching plant to those originally envisaged would be the cement deliveries specifically for the batching plant, which would be 1-2 deliveries per day, generating 2-4 HGV movements.

17. The cap of 22 HGV movements per day represents half of the predicted HGV movements for the quarry operations when running at full capacity which would be 44 movements per day . The HGV movements capped at 22 per day does not allow for full operation when the batching plant

would be in production. The installation of the concrete batching plant is to bring the existing site sales up to what is permitted for the quarry operations, which was the reasoning behind the Prior Approval submission.

18. This application has been made to amend the limit to HGV movements serving the batching plant operations, to be consistent with the wider mineral operations. Although there is no formal limitation on HGVs associated with the existing quarry, when the application was submitted and subsequently approved this was anticipated to be 44 HGV movements per day (22 in/ 22 out). Therefore, the applicant has requested that this is the figure included in the varied wording of condition 2 controlling the concrete batching plant.

• Part 2 – Other Viewpoints

Representations

19. There were 16 third party responses received during the consultation period for this application. These were all objections. Representations on matters such as dust and noise generation, impact on the Rights of Way, landscape and ecology, water usage and permanence of installation in relation to the batching plant that has now been approved cannot be taken into account in any decision on this application. These were taken into account in the consideration of the Prior Approval request (MW.0068/19). The summarised responses below are those that are **specifically related to HGV movements**:
    1. 44 truck movements a day at this dangerous junction is an accident waiting to happen
    2. There have been a number of road traffic accidents near misses and fatalities at the Fernham Road/ A420 junction, which is dangerous
    3. The A420 between Faringdon and Longcot should be 50mph with no overtaking enforced by average speed cameras
    4. Large, slow vehicles will increase the risk of accident on an increasingly busy road with local and commuter traffic
    5. More large, slow moving trucks turning left could be dangerous if other cars try to follow them
    6. Visibility will be impaired when turning right onto the A420 by large trucks
    7. A roundabout and/ or traffic lights would considerably mitigate dangers at the junction. In the absence of this, any HGVs exiting the Grundon site turning onto the A420 should be prohibited from turning right (ie towards Faringdon) and instead trucks should be compelled to turn left and use the roundabout at Watchfield to turn around and re-enter the A420 in the opposite direction
    8. An acceleration lane should also be considered for traffic joining the A420 from Fernham Road and heading towards Swindon.

9. The nature of the additional truck use is unclear – is the total per day or an average? How will this be enforced?
10. The numbers are 'averages' so would the full impact of the concrete mixing plant on the road network and community? Is the limit to truck movements per day a maximum or not?
11. Who or what is going to monitor the number of vehicles using the site?
12. It needs to be ensured the truck movements are for the site as a whole and not just the batching plant.
13. What is the justification for doubling the number of vehicles? Has there been a verifiable 100% increase in demand for concrete in the Faringdon area?
14. The sale of ready-mix concrete will increase imports and introduce concrete trucks that are not currently seen to a busy, dangerous junction onto the A420.
15. Is the application for a total number of movements daily or for the concrete batching plant only? What is the expected total vehicle movements daily in and out of the entire site? How will this be monitored and by whom?
16. Fernham Road is used by cyclists, horse riders and pedestrians. It would be preferable for a tarmac track (or similar) to be created adjacent to the road itself to keep HGV movements separated from vulnerable road users.
17. Doubling the number of HGV movements will clearly have a significant negative impact on the current challenges of traffic joining and exiting the A420 at the Fernham Road junction.
18. The increase in movements will result in a significant increase in nuisance from increased HGV movements and cause significant disturbance to residents of Little Coxwell, members of the public using the numerous footpaths adjacent to the site and horse riders from the nearby riding facility.
19. Existing traffic levels for rush hour and schools, including double decker buses and coaches using Fernham Road will be impacted.
20. Trucks to enter the site frequently park in the entrance to Grundons as the gate is shut. Should the truck movements double, then clearly the problem will increase. The current gates should be moved further back or additional parking provided. If this is not possible, trucks should be prohibited from parking on Fernham Road in order to minimise danger to other road users.
21. How will the increased traffic onto the A420 to and from site be monitored ?
22. There is already significant congestion and this will add to delays.
23. There will be an increased risk to life for other vehicle drivers, cyclists, pedestrians, horses and riders including children, which should be considered in relation to obesity endemic.
24. Agricultural traffic uses Fernham road, particularly at cultivation and harvest time

25. Local roads are already dangerous, traffic levels are very high and the small Fernham Road junction which provides access to the site is associated with accidents, including a fatal accident involving a pedestrian in recent years
26. Doubling the truck movements will magnify concerns over noise, dust and pollution, with significant increase in dust impacts on residents and local flora and fauna.
27. Mud and dust on the road
28. The previous planning committee meeting sensibility limited the number of truck movements where there would be no further increases to the overall truck movements. If Grundon immediately apply to double the number will they not frequently apply for small increases which may be hard to argue against?
29. How are noise, dust, traffic and environmental impacts to be monitored in an unbiased way
30. Local people challenged Grundon's claim that the plant would make concrete using material mainly extracted from the site as the local people are aware that the gravel and cement would have to be imported. The lasts application to double the number of vehicles using the site daily confirms the validity of our original objections
31. Grundon claims the concrete is for local use. There is insufficient demand locally for this volume of concrete and the number of proposed vehicle movements on local roads for transport distances of 10 to 25 miles at least is unsustainable and environmentally damaging
32. The site will not be economically viable without large imports of materials, hence the application to increase vehicle traffic
33. The original planning permission was granted based on 22 truck movements per day. Doubling this number before operations have even commenced sets a worrying precedent. The number should not be increased simply because of an administrative error made by the applicant combined with a lack of suitably robust procedures to review such applications prior to submission. Instead the number should only be reviewed after operations have commenced. This would allow the immediate impact of the planned 22 HGV movements per day to be monitored, as part of the which the impact of noise, dust, traffic etc could be accurately measured. Only once these measurements have been accurately recorded and their impact measured can affect the doubling of the HGV movements be accurately determined.

Consultations

20. Vale of White Horse District Council – No objection

21. Little Coxwell Parish Council – Objection
Summary of objection below:

- Doubling the proposed truck movements from 22 to 44 would have a major impact on the community, environment and be an unsustainable increase in traffic at a hazardous junction onto the A420
- Grundon's own admission is current business is in the order of 10-12 trips per day (5-6 in, 5-6 out) as the expected production is half that originally expected in 2013. The condition applied for 11 movements in and 11 movements out already increases the 2013 levels. This application doubles it and is submitted the day after permission is issued for the concrete mixing plant with conditions to limit the impact of truck movements on the local community.
- The grounds for installing the plant are now doubled in context as the impact of doubled truck movements will mean the concrete mixing plant will have to produce twice as much material to support the proposed increase.
- These increased impacts on neighbourhood amenity are noise, traffic, dust and pollution, impact on the rural countryside and water supply.

22. Faringdon Town Council – No response

23. OCC Highways – No objection subject to routeing agreement

Planning permission MW.0068/19 permitted 11 two-way daily HGV movements in connection with the concrete batching plant associated with Faringdon Quarry. The concrete batching plant was permitted for this site for through the 'Prior Approval' process, in this instance heavily restricting the level of consultee comments. This subsequent application is for a doubling of the daily two-way HGV movements, associated with the batching plant to 22 two-way movements has been submitted as a Section 73 application. The Highway Authority are able to make representations in this instance.

The current planning permission for the quarry permits materials to be imported as part of the operations. There are no specific planning conditions to limit the number of HGV movements associated with the quarry operations. The submission also indicates that the proposed ready-mix concrete movements are in the main effectively replacing existing material movements associated with the quarry site, together with an additional new 3 two-way daily movements. Whilst this is acceptable in principle, it is noted that the payload of such ready-mix concrete HGVs exporting concrete from the site are considerably higher than those HGVs associated with the previous export of quarry products.

Mindful of the introduction of heavier HGVs onto the highway network, the Highway Authority have significant concerns with regard to the introduction of such large and slow-moving vehicles at the junction of Fernham Lane and the A420.

There is a deceleration lane at the said junction for vehicles approaching from the east and a ghosted right-hand junction provision for vehicles

approaching from the west on the A420. There is no right turn provision for HGVs emerging from Fernham Lane onto the A420 heading in an easterly direction. As the A420 in the vicinity is only restricted to the national speed limit of 60mph, it can be described as a high speed road. The Highway Authority is of the opinion that the introduction of large slow-moving vehicles making this manoeuvre would be detrimental to the safety of all users on the A420 and do not wish to see any increase in the number of reported incidents at this junction.

The Highway Authority would require that the existing Routing Agreement for the quarry site, which stipulates that all HGV movements associated with the quarry site turn right out of the site onto Fernham Road, be amended to include all ready-mix concrete HGV movements too. In addition, ready-mix concrete HGV movements will be required to turn left only (west), regardless of destination. If the destination is Oxford direction, they will be required to turn at the Watchfield Roundabout, approx. 3 miles west of the junction and retrace.

24. OCC Biodiversity – No objection

25. OCC Landscape Specialist – No objection
The operational quarry is not within an Area of Outstanding Natural Beauty (AONB) or setting, or subject to any other landscape designations. The quarry is located adjacent to the A420, which is already subject to high traffic flows including HGVs. In this context, the potential increase in traffic movements is not expected to cause significant additional landscape or visual impacts.

26. County Councillor Judith Heathcoat – Objection
    - The day following the issue of approval for the Prior Approval request for a concrete batching plant to produce ready mixed concrete for sale (MW.0068/19) a subsequent application was made to double the amount of truck movements from the site and thus routing/ access and safety really do not ned to be discussed
    - This very sensitive site stands adjacent to the A420 which runs through the whole of my Division. My Division is both urban, rural and agricultural. I have advised that the site is adjacent to a bridle path. Production noise will startle and frighten horses with serious consequences to riders, joggers and walkers
    - The A420 bypasses Faringdon with its speed limit of 60mph. The A420 has a very poor reputation and this is recognised by OCC. There is a chapter dedicated entirely to the A420 in our LTP4 and it is mentioned in “Connecting Oxfordshire” papers of 2016. It is identified for inclusion in the Major Road Networks proposals. A420 Safety Meetings have been held with me, officers, Cllrs Constance and FitzGerald O’Connor whose Divisions straddle the A420 also. Traffic is constantly increasing with Swindon’s expansion and the development in the Vale. Traffic is heavy commercial, commuter, agricultural and industrial. Numerous “T” junctions line the A420 and

these are where the most RTC's occur. Many of the villages are "blind" villages and therefore have only one road in and out of them

- The A420's attraction to commercial and industrial traffic is increasing with the rail terminal located at South Marsden near junction 15 of the M4 – just off the A419 and its capacity is set to increase. Commercial traffic does not follow the advisory notices to use the A34 to the M4 it uses the A420!
- The A420 is a highway with contradictions, one minute single lane, and the next dualled with speed limits fluctuating from 50mph and 60mph. Commuter traffic is increasing with the housing development in Swindon and Oxfordshire.
- Little Coxwell is effectively a "closed village" with one junction onto the A420. The exit from the Fernham Road onto the A420 has traffic moving at 60mph and more as speed limits are ignored - there is a hill so traffic is unsighted, until a driver is already committed to turning onto the road!. Despite what was reported by officers on 9th September that the junction of Fernham Road and the A420 is deemed acceptable with sufficient splays and sightlines this is absolutely not so. This junction most definitely needs to be modified, there is no filter lane provision when joining the A420. This application introduces larger and therefore potentially slower moving HGV's both onto and off the existing network. There is no central reservation for pedestrians walking daily to the schools on Fernham Road on the other side of the A420. The HGVs coming from the site need to be instructed to turn right out of the Grundon's site on to the Fernham Road, and also need to be instructed to turn left onto the A420 regardless of destination and required to turn at the Watchfield Roundabout – these heavy and slow moving HGV's cannot be allowed to enter the A420 turning right towards Oxford.

Part 3 – Relevant Planning Documents

Relevant planning policies (see Policy Annex to the committee papers)

27. Planning applications should be decided in accordance with the Development Plan unless material considerations indicate otherwise.

The relevant development plan documents are:

- Oxfordshire Minerals and Waste Local Plan Core Strategy (OMWCS)
- Oxfordshire Minerals and Waste Local Plan 1996 (OMWLP) saved policies
- Vale of the White Horse Local Plan 2031 Part 1 (VLP1)
- Vale of the White Horse Local Plan 2031 Part 2 (VLP2)

28. The Government's National Planning Policy Framework (NPPF) 2019 is also a material consideration.

Relevant Policies

29. Oxfordshire Minerals and Waste Core Strategy (OMWCS):
    M10 Restoration of mineral workings
    C1 Sustainable development
    C5 Local environment, amenity and economy
    C10 Transport

30. Oxfordshire Minerals and Waste Local Plan 1996 (OMWLP):
    There are 16 'saved' polices relating to specific areas which remain saved pending the adoption of the adoption of the Oxfordshire Minerals and Waste Local Plan: Part 2 – Site Allocations Document. None of these saved policies relate to the Faringdon area.

31. Vale of the White Horse Local Plan 2031 Part 1 (VLP1):
    Core Policy 1 Presumption in favour of sustainable development
    Core Policy 33 Promoting Sustainable Transport and accessibility

32. Vale of the White Horse Local Plan 2031 Part 2 (VLP2):
    Development Policy 23: Impact of development on amenity
    Development Policy 25: Noise pollution

• Part 4 – Analysis and Conclusions

Comments of the Director for Planning and Place

33. This application is solely for the variation of the condition attached to the Prior Approval granted in 2019 for the concrete batching plant. The consideration of its acceptability therefore relates solely to the impacts of the 22 additional HGV movements proposed compared to the existing permitted situation. Therefore, any comments made on the application in relation to the principle of the concrete batching plant being located at the quarry and its impacts in any other respect are not relevant to the determination of this application.

Highways

34. Policy C10 of the OMWCS sets out that minerals and waste development will be expected to make provision for safe and suitable access to the advisory lorry routes shown on the Oxfordshire Lorry Route Map. The Lorry Route Map on page 116 of the plan identifies the A420 as a link to larger towns. It also identifies that the A420 runs past an environmentally sensitive area towards the south-west, which HGVS should avoid if at all possible. There is also a height restriction of 16ft (4.9m) that would need to be to be considered, on the very edge of the county's boundary with Swindon Borough Council's administrative area.

The policy also states that access should be provided in ways that maintain and, if possible, lead to improvements in the safety of all road users and the efficiency and quality of the road network, including residential and environmental amenity, including air quality.

35. Core policy 33 of the VLP1 sets out that effort will be made to ensure the impacts of new development on the strategic and local road network are minimised, measures identified in the Local Transport Plan for the district including local area strategies and ensuring transport movements are designed to minimise any effects on amenities, character and special character. Improvements to the transport network will be promoted and supported that increase safety, improve air quality and/or make towns and villages more attractive.

36. Paragraph 108 of the NPPF states that when considering specific applications for development, it should be ensured that safe and suitable access to the site can be achieved for all users and any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.

37. Paragraph 109 of the NPPF states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

38. This application is to amend the maximum number of HGV movements in relation to the batching plant (permitted under MW.0068/19), which is limited to 22 HGVs per day. The increase to 44 HGV movements per day is to allow for the potential for operation and sales to be met. The application is not to retrospectively limit the HGV movements associated with the quarry operations.

39. At present, all HGV traffic on exiting the site is obliged to turn right onto Fernham Road towards the A420, to avoid impacting on local villages. This is set out in the routeing agreement (June 2013) which is attached to the operations. The applicant has agreed in writing that the batching plant HGV traffic would adhere to the existing routing agreement. Once at the junction with the A420, HGV traffic can go either left towards Swindon (approximately 60%) or right towards Oxford (approximately 40%) to access the wider highways network. HGVs can also access the site from both directions from the A420 onto the Fernham Road as there is a ghost island/ deceleration lane.

40. The A420 in the main is a classified/ inter urban road, which links Oxford with Swindon and beyond, as well as carrying local traffic. As such, the traffic base flows are significant. The proposed doubling of HGV movements associated with the batching plant, from 22 to 44 would bring it in line with the total number of movements originally envisaged for the quarry operations. There would be no overall increase in HGV

movements in total for the site as a whole, as the HGV movements associated with the batching plant would be replacing movements that would be associated with the quarry, as the dug mineral would be exported as ready-mix concrete instead of as mineral to supply other sites. As such, the increase in the number of HGV movements as associated with the batching plant would be acceptable in principle.

41. Currently, all HGV movements associated with the site turn right onto Fernham Road towards the A420 and the applicant has confirmed that HGVs associated with the batching plant will do the same. However, it is noted that the payload of the ready-mix concrete HGVs, which are associated with the batching plant, are considerably higher than an HGV that would be exporting as-dug quarry material. The introduction of slower, heavier HGVs at the junction of Fernham Road with the A420 is a significant concern.

42. Slower, heavier HGVs would be able to access the site from the A420 either east (Oxford) or west (Swindon) due to the existing deceleration lane and ghosted right hand junction, respectively. However, there is no right-turn provision for HGVs emerging from Fernham Road to go east (Oxford) on the A420. Such vehicles, turning right from Fernham Road onto the A420 would impede the flow of traffic on a section of road which is restricted only to the national speed limit (60mph). This would be detrimental to the safety of all users on the A420, and the Highway Authority do not wish to see an increase in the number of reported incidents at this junction.

43. To mitigate the impact of slower and heavier HGVs associated with the batching plant, the existing routeing agreement should be amended to include all ready-mix concrete HGV movements, to turn right only from the site towards the A420. In addition, the routeing agreement should stipulate that any ready-mix concrete HGVs will be required to turn left only (west) onto the A420, regardless of the destination. If the destination is in the Oxford direction (east), then HGV traffic should be required to turn at the Watchfield Roundabout, approximately 3 miles west of the Fernham Road/ A420 junction and then retrace.

44. Subject to a new routeing agreement being entered into to address Highway's concerns on routeing and right-turn manoeuvres onto the A420, the development is considered to accord with relevant policies to provide safe and suitable highways access by Policy C10 of the OMWCS, Core Policy 33 of the VLP1 and Paragraphs 108 and 109 of the NPPF.

Environment and Amenity

45. Policy C5 of the OMWCS sets out that proposals for minerals and waste development shall demonstrate that there would be no adverse impact on the local environment, human health and safety or residential amenity

and the local economy, including from noise, dust, and traffic amongst other things.

46. Development Policy 23 of the VLP2 sets out that development proposals should demonstrate that they will not result in significant adverse impacts on the amenity of neighbouring uses. This includes dominance and visual intrusion, noise and dust and other emissions.

47. Development Policy 25 of the VLP2 requires noise-generating development that would have an impact on environmental amenity or biodiversity will be expected to provide an appropriate scheme of mitigation that should take into account location, design, layout, existing background noise, measures to reduce or contain generated noise and hours of operation and servicing.

48. As was previously acknowledged when permission P19/V1857/CM (MW.0068/19) was being considered, it was demonstrated that even the limited additional movements for the types of vehicles proposed would have an injury to amenity sufficient to justify refusing the request for Prior Approval. Members were of the view the additional types of vehicles and movements had the potential for adverse impacts on amenity and therefore a condition was added to ensure that HGV movements were no higher than that set out in the application. However, the condition restricted HGV movements to 22 per day which was a misunderstanding of the information provided in the application documents.

49. HGV movements exporting concrete from the batching plant would replace some HGV movements taking aggregate from site, as this aggregate would be used in on-site concrete manufacture. Therefore, the number of HGV movements in association with the batching plant were intended to replicate and replace the HGV movements that should have been required for the quarry operations but have not been associated with the mineral workings due to low production figures overall.

50. Although there would be an increase in HGVs to what are currently seen entering/ exiting the site, it would not be above what had been considered acceptable at the time the quarry application was determined. Overall, there would be no increased harm to visual amenity if HGV movements are amended from 22 to 44 per day.

51. There is an existing dust monitoring and action plan (DAP), which must be adhered to at all operational times. This proposal to amend the associated HGV movements for the batching plant from 22 to 44 per day would not increase the risk of dust generation. The DAP was put in place to include the number of HGVs envisioned at the time of the original quarry application, for which the batching plant movements would be a partial replacement.

52. The applicant supplied a noise assessment and an addendum as part of the Prior Approval application. This was largely concerned over the impacts of the installation and operation of the batching plant within the quarry, which is not a consideration of this application. The expected noise levels generated by the existing HGV movements would be part of the operational background noise. It is not considered that noise generated by the additional HGV movements for the batching plant would injure amenity to any greater extent than the existing workings where the impact is controlled through the planning conditions.

53. The development is considered to be in accordance with relevant policies protecting amenity, including Policy C5 of the OMWCS and Policies 23 and 25 of the VLP2.

Biodiversity

54. Policy C7 of the OMWCS sets out that proposals for minerals and waste development should conserve and, where possible, deliver a net gain in biodiversity. Development should not cause significant harm, except where the need for and benefits of development at that location clearly outweigh the harm.

55. Core Policy 46 of the VLP1 sets out that development will conserve, restore and enhance biodiversity. Opportunities for biodiversity gain, including connection of sites and habitat restoration and enhancement will be sought, with a net loss of biodiversity to be avoided.

56. The application is purely for the increase in HGV movements from 22 per day to 44 per day relating to the approved batching plant. There is no opportunity to deliver a net biodiversity gain with this application to vary the existing condition limiting HGV movements on P19/V1857/CM (MW.0068/19). Conversely, there is no net loss of biodiversity proposed that would need to be mitigated. Although there was concern raised that increased movements would disturb wildlife locally, the county ecologist does not object to the increased HGV movements on ecological grounds.

57. The proposed development is broadly in line with policy C7 of the OMWCS and Core Policy 46 of the VLP1.

Landscape

58. Policy C8 of the OMWCS sets out that proposals for minerals and waste development should demonstrate they respect and where possible enhance local character. Proposals shall include adequate and appropriate measures to mitigate adverse impacts on landscape.

59. Core Policy 44 of the VLP1 sets out that key features that contribute to the nature and quality of the district's landscape will be protected from harmful development and where possible enhanced, including features such as trees, hedgerows, woodland, field boundaries and watercourses. Where development is acceptable in principle, measures will be sought to integrate it into the landscape character.

60. The operational quarry lies adjacent to the A420. This road already carries a high volume of traffic, including HGVs and is a feature of the local landscape, which does not have any specific designation. The quarry operations are not situated in an Area of Outstanding Natural Beauty (AONB) or adjacent to an area so designated. The increased HGV movements would not cause a significant impact on the local landscape or affect the visual impact above what is existing.

61. The development is broadly in line with Landscape policy C8 of the OMWCS and Core Policy 44 of the VLP1.

Sustainable Development

62. The NPPF contains a presumption in favour of sustainable development which has environmental, economic and social roles. This is reflected in Policy C1 of the OMWCS and Core Policy 1 of the VLP1.

63. Policy C1 of the OMWCS states that a positive approach will be taken to minerals and waste development in Oxfordshire, reflecting the presumption in favour of sustainable development to improve economic, social and environmental conditions, unless other material considerations dictate otherwise.

64. Policy 1 of the VLP1 states that applications that accord with the Local Plan 2031 and subsequent, relevant Development Plan Documents or Neighbourhood Plans will be approved, unless material considerations indicate otherwise.

65. Policy M10 of the OMWCS seeks to see mineral workings restored to a high standard in a timely and phased manner.

66. This development is considered sustainable insofar as it will allow for the use of the mineral to be repackaged for sale to continue to support the economy and is in line with the existing, mineral development.

67. The proposal to amend the maximum permitted HGV movements set out in condition 2 of the batching plant permission to be in line with the HGV movements originally envisaged for the quarry operations would allow both operations to run concurrently enabling the operator to maintain production at a level more likely to ensure the timely working and restoration of the quarry. This is supported by Policies M10 and C1 of the OMWCS and Core Policy 1 of the VLP1.

Conclusion

68. The proposed amendment to the maximum HGV movements set out in condition 2 of the Prior Approval letter would allow for the batching plant to operate fully within the level of HGV movements anticipated for Faringdon Quarry, which it is sited within. As some of the HGV movements relating to the batching plant operations would utilise vehicles that have a bigger payload than the current quarry HGVs, any change to condition 2 should also be subject to an amended routeing agreement to be agreed to maintain highway flow and safety, and an additional condition to be attached, to also maintain highway safety. Subject to this, the development conforms to policy C10 of the OMWCS, Core Policy 33 of the VLP1 and paragraphs 108 and 109 of the NPPF.

69. The HGV movements proposed would not generate any further significant noise or dust impacts that would adversely affect local amenity and the local environment, as these are covered by existing conditions attached to the quarry consent and the Prior Approval. The proposal is therefore in line with policy C5 of the OMWCS and Development Policies 23 and 25 of the VLP2.

70. The proposed HGV movements do not directly impact any further on site biodiversity, so is therefore in line with policy C7 of the OMWCS, and Core Policy 46 of the VLP1.

71. The HGV movements proposed would not cause any further landscape or visual impact above what is already in existence along the A420 corridor. The proposal is therefore in line with policy C8 of the OMWCS and Core Policy 44 of the VLP1.

72. The proposal would allow for the indigenous material to be worked and repacked for sale as a product that supports the local economy and allows for the saleable product to be made onsite, reducing overall development impacts locally and contributing to the restoration of the quarry being achieved in a timely manner. This would be in line with policies M10 and C1 of the OMWCS and Core Policy 1 of the VLP1.

RECOMMENDATION

73. **It is RECOMMENDED that subject to a routeing agreement being signed to require all HGVs to turn right onto Fernham Road and then left onto the A420 and the amendment of condition 2 of the Prior Approval (MW.0068/19) as set out in Annex 2 to this report that Application no. MW.0107/19 be approved.**

SUSAN HALLIWELL
Director of Planning and Place

Compliance with National Planning Policy Framework

In accordance with paragraph 38 of the NPPF Oxfordshire County Council take a positive and proactive approach to decision making focused on solutions and fostering the delivery of sustainable development. We work with applicants in a positive and proactive manner by; offering a pre-application advice service. In this case it was considered that concerns raised in consultation with regard to the impacts of the additional HGV movements on highway safety could be addressed by an amended routeing agreement, which the applicant has agreed to.

Annex 1 - European Protected Species

The Local Planning Authority in exercising any of their functions, have a legal duty to have regard to the requirements of the Conservation of Species & Habitats Regulations 2017 which identifies 4 main offences for development affecting European Protected Species (EPS):

1. Deliberate capture or killing or injuring of an EPS

2. Deliberate taking or destroying of EPS eggs

3. Deliberate disturbance of a EPS including in particular any disturbance which is likely
   a) to impair their ability –
      i) to survive, to breed or reproduce, or to rear or nurture their young, or
      ii) in the case of animals of a hibernating or migratory species, to hibernate or migrate; or
   b) to affect significantly the local distribution or abundance of the species to which they belong.

4. Damage or destruction of an EPS breeding site or resting place.

Consideration of the proposals indicate that European Protected Species are unlikely to be harmed.

Annex 2 – Proposed changes to condition

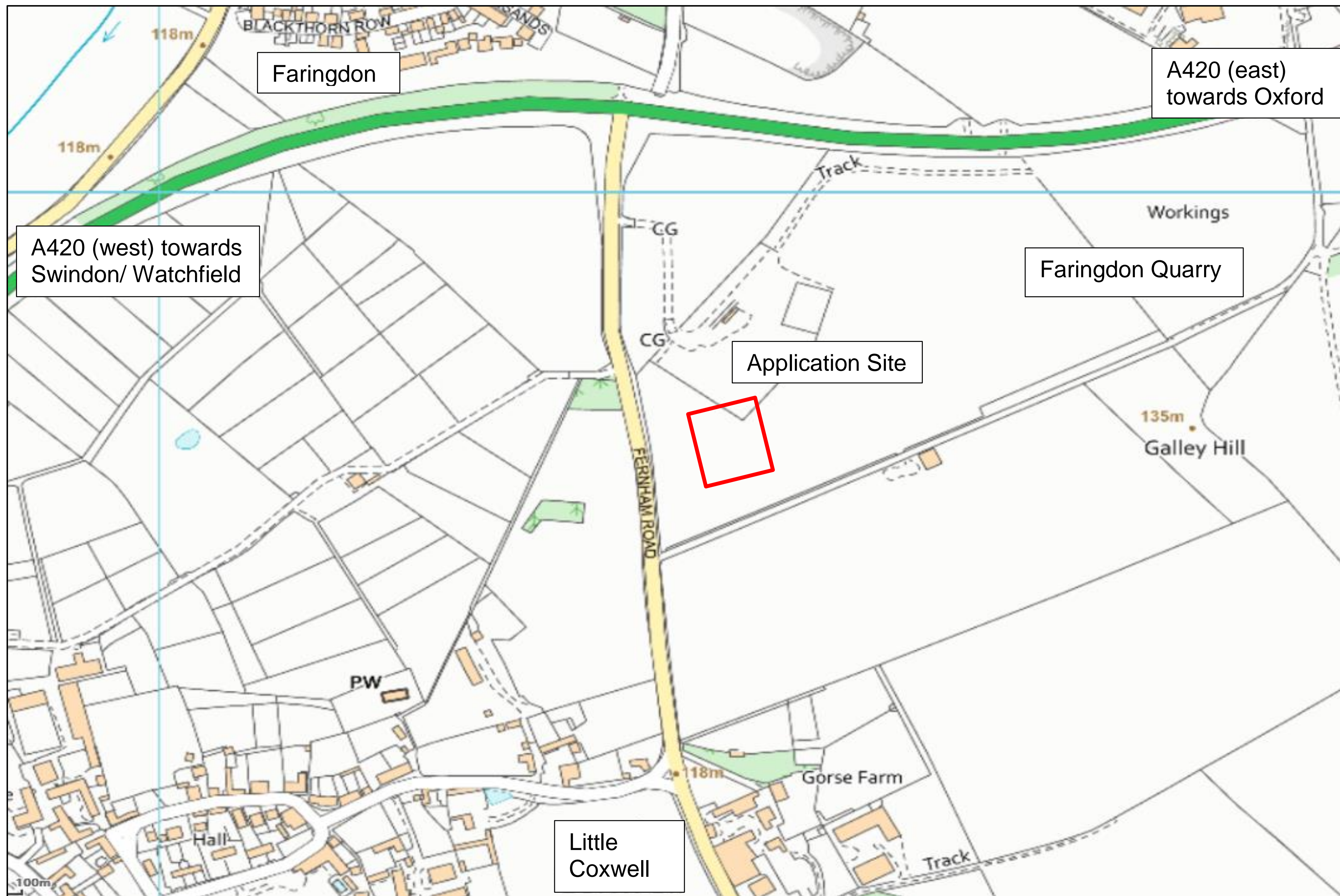
Condition 2 current wording:

The number of HGVs entering and leaving site, in connection with the mobile batching plant, shall be limited to 22 per day (11 movements in/ 11 movements out).

Condition 2 proposed wording:

The number of HGVs entering and leaving site, in connection with the mobile batching plant, shall be limited to 44 per day (22 movements in/ 22 movements out).

It is recommended that condition 2 is amended as proposed, with any necessary minor changes to the wording to ensure it is precise and enforceable.


Faringdon
BLACKTHORN ROW
A420 (east)
towards Oxford
118m
118m
A420 (west) towards
Swindon/ Watchfield
Track
Workings
CG
CG
Faringdon Quarry
Application Site
135m
Galley Hill
FERNHAM ROAD
PW
118m
Gorse Farm
Hall
Little
Coxwell
Track
100m

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For: PLANNING AND REGULATION COMMITTEE – 27 JANUARY 2020

By: DIRECTOR FOR PLANNING AND PLACE

Development Proposed:

Proposed retention and continued use of prefabricated units T1 and T3 for a further temporary period of five years.

Division Affected: Cowley

Contact Officer: Emma Bolster **Tel:** 07775 824954

Location: Church Cowley St James CE Primary School, Bartholomew Road, Cowley, Oxford, Oxfordshire, OX4 3QH

Applicant: Oxfordshire County Council

Application No: R3.0105/19 **District Ref:** 19/02666/CC3

District Council Area: Oxford City Council

Date Received: 7 October 2019

Consultation Period: 18 October – 8 November 2019

Recommendation: **Approval**

The report recommends that the application be approved.

Contents:

• Part 1 – Facts and Background

• Part 2 – Other Viewpoints

• Part 3 – Relevant Planning Documents

• Part 4 – Analysis and Conclusions

• Part 1 – Facts and Background

Site and Setting (see site plan Annex 1)

1. Church Cowley St James CE Primary School is located approximately 4 kilometres (2 miles) south west of Oxford City Centre and approximately 0.5 kilometres (0.3 miles) south west of Cowley commercial centre.

2. The school buildings comprise the main single-level brick building and two modular buildings. There are also several smaller sheds/play areas to the perimeter of the hard surface play areas.

3. The school is located to the south of Bartholomew Road in a residential area. There are residential properties to the south and west of the site and a private road runs between these and the school boundary, leading to allotments which are adjacent to the east edge of the school. Bartholomew Road forms the northern boundary.

4. The closet residential properties to the modular buildings are located in Van Diemans Lane. These are approximately 15 metres from both T1 (E223) and T3 (E237).

5. The whole school site lies within Flood Zone 1, which is the area of least flood risk.

Details of the Development

6. It is proposed to retain two existing modular buildings. T1 (E223) is a six-bay, double classroom unit immediately to the rear of the main school building, separated by a covered area. The two classrooms provide general teaching space for up to 30 pupils in each. The modular building is of standard steel and timber construction and has a floorspace of 142 sqm. Planning permission for T1 (E223) lapsed in December 2017.

7. The second modular building to be retained is T3 (E237), which is a standard steel and timber construction, three-bay single classroom unit with a floorspace of 63 sqm. The building is located to the back of the hard-play area to the rear of the main school building. The classroom provides the school library and SEN provision. Planning permission for T3 (E237) lapsed in December 2017.

8. There have been temporary buildings to increase the available teaching space since the first application was issued for a double classroom unit in September 1991. Modular building T1 (E223) was installed to replace modular building E059 after application 03/01046/CC3 (O.12/03) was issued 05 August 2003. This application was for a temporary period of 5 years, which included the condition that the building must be removed and the land left in a tidy and orderly state by 31 August 2008.

9. Planning application 08/01546/CC3 (O.05/08) was issued 07 November 2008 for renewal of consent and continued use of T1 (E223) for a further 5 years. This permission included the condition that the building must be removed and the land left in a tidy and orderly state by 31 October 2013.

10. Planning permission 07/00415/CC3 (O.04/07) for a single classroom modular building was issued 25 May 2007 to replace an existing modular classroom, for a temporary period of 5 years. This permission included a condition that the building be removed and the land left in a tidy and orderly state by 31 May 2012.

11. Planning permission 12/02496/CC3 (R3.0158/12) for renewal and continued use of modular building T1 (E223) and T3 (E237) was issued 17 December 2012. This was for a further temporary period of 5 years. This permission included a condition that the buildings be removed and the land left in a tidy and orderly state by 31 December 2017.

12. The submitted supporting information states that the classroom space provided by both modular buildings T1 (E223) and T3 (E237) is essential to provide sufficient capacity for the current and forecast pupil roll to teach the delivery of the National Curriculum. As of January 2019, when the last pupil census was carried out, the school roll for Reception through to Year 6 was 406 (4-11 years), with a net capacity for 420 pupils in total at the school. There is little change in pupil place demand across all years up to 2025.

13. As of 2010, the county council's cabinet, meeting as the Capital Investment Board, considered the implications of the anticipated reductions in capital funding, whilst there is a requirement to increase additional pupil places to meet 'Basic Need' within the county. As part of the considerations, a decision was made to provide temporary buildings, and to defer the replacement of existing temporary building stock except where deemed essential due to inadequate condition. There are no capital funds available to OCC or the school to provide replacement, permanent build school accommodation to meet 'Basic Need' at this site at the current time.

• Part 2 – Other Viewpoints

Representations

14. There were no third-party representations received

Consultations

15. Oxford City Council – Objection
Whilst a need has been demonstrated for the retention of the buildings, this need has been continuous for more than 5 years where, for the purpose of policy CP25 of the Oxford Local Plan 2001-2016, short term is defined as up to five years. The City Council cannot continue to support the retention of buildings as the proposal is contrary to policy CP25.

    The relevant policies which are relevant to this decision are CP1, CP8, CP10, CP25, TR4 of the Oxford Local Plan 2001-2016 and Policy CS11, CS12, CS16, CS18 of the Core Strategy.

16. OCC Transport Development Control – No objection
There will be no changes to the number of pupils or staff members; nor will there be any changes to the number of car and other parking spaces as a result of this application.

    The application proposals are acceptable from a highway safety and traffic movement point of view.

17. OCC Biodiversity – No comment

18. OCC Landscape – No objection
The application seeks the continuation of already existing temporary classrooms on the school grounds. No additional landscape or visual impacts are therefore expected.

Part 3 – Relevant Planning Documents

Relevant planning policies (see Policy Annex to the committee papers)

19. Planning applications should be decided in accordance with the Development Plan unless material considerations indicate otherwise.

    The relevant development plan documents are:

    - Oxford Core Strategy 2026 (OCS)
    - Oxford Local Plan 2001 – 16 (saved polices) (OLP)

20. There is also an emerging Oxford Local Plan 2036. This was submitted to the Planning Inspectorate 22 March 2019 for examination, which was heard from 03 December 2019 to finish by 19 December 2019. These policies have not yet been adopted but have some weight.

21. The Government's National Planning Policy Framework (NPPF). This was first published in 2012 and updated in 2018 and 2019. This is a material consideration in coming to a planning decision. Paragraph 94 states that Local Planning Authorities (LPAs) should give great weight to the need to create, expand or alter schools through decisions on applications, to meet the needs of existing new communities. LPAs should also work with school promoters to identify and resolve key planning issues prior to submission of applications.

22. There is no Neighbourhood Plan in this area.

Relevant Policies

23. Oxford Core Strategy 2026 (OCS):

CS11	Flooding
CS12	Biodiversity
CS16	Access to education facilities
CS18	Urban Design Principles

24. Oxford Local Plan 2001-16 (saved policies) (OLP):

CP.1	Standards of development
CP.8	Designing Development to relate to its context
CP.10	Siting of Development to meet functional needs
CP.13	Accessibility
CP.25	Temporary Buildings
TR4	Pedestrian and Cycle facilities

25. Policies of the Oxford Local Plan 2036 (Proposed Submission Draft) (DOLP)

Policy S1	Presumption in favour of sustainable development
Policy G1	Protection of the Green and Blue Infrastructure Network
Policy RE2	Efficient use of land
Policy RE7	Managing the impact of development

• Part 4 – Analysis and Conclusions

Comments of the Director for Planning and Place

26. The Communities and Local Government (CLG) letter to the Chief Planning Officers dated 15 August 2011 sets out the Government's commitment to support the development of state funded schools and their delivery through the planning system. The policy statement states that:
"The creation and development of state funded schools is strongly in the national interest and that planning decision-makers can and should support that objective, in a manner consistent with their statutory obligations." State funded schools include Academies and free schools as well as local authority maintained schools.

It further states that the following principles should apply with immediate effect:

- There should be a presumption in favour of the development of state-funded schools;
- Local Authorities should give full and thorough consideration to the importance of enabling the development of state funded schools in their planning decisions; Local Authorities should make full use of their planning powers to support state-funded schools applications;
- Local Authorities should only impose conditions that clearly and demonstrably meet the tests as set out in Circular 11/95;
- Local Authorities should ensure that the process for submitting and determining state-funded schools' applications is as streamlined as possible;
- A refusal of any application for a state-funded school or the imposition of conditions, will have to be clearly justified by the Local Planning Authority.

This was endorsed as part of the National Planning Policy Framework (NPPF) and has been retained in the revised NPPF (2019) which states that local planning authorities should *give great weight to the need to create, expand or alter schools*.

27. There are no changes to the number of pupils or staff as a result of this application, as the retention is to enable Basic Need educational provision in Oxford City to be met. There is no change to car or other parking space provision as part of this application. The CLG letter suggests that planning permission should be granted unless overriding policy or material considerations dictate otherwise. The main issues in relation to this application are design and amenity impacts and the need for the continued use of the temporary classrooms.

Design and Amenity

28. Policy CS18 of the OCS states that development should demonstrate high quality urban design, respect Oxford's unique historic environment and respond positively to the character and distinctiveness of the locality.

29. Saved policy CP.1 of the OLP states that development should show a high standard of design which respects the character and appearance of the area and has suitably inclusive access and arrangements for all members of the community. It also states that the materials used are of a quality and nature appropriate to the development with acceptable access and infrastructure links.

30. Saved policy CP.8 of the OLP states that development should relate to the setting to strengthen and enhance local character. This is to include being well-connected and integrated with the wider area and the design and visual impact respecting and enhancing the style and perception of the area.

31. Saved policy CP.10 of the OLP states that development should be sited to ensure access is practical, with priority given to pedestrians and cyclists. The outdoor needs should be properly accommodated with buildings orientated to provide satisfactory light outlook and privacy, with the use or amenity of other properties adequately safeguarded.

32. Saved policy CP.13 of the OLP states that development should include reasonable access for all members of the community, including children, elderly people and people with disabilities.

33. Policy RE2 of the DOLP states that planning permission will only be granted where development proposals make efficient use of land. Development proposals must make best use of site capacity, in a manner compatible with the site itself, the surrounding area and broader considerations of the needs of Oxford.

34. Modular building T1 (E223) is a six-bay building, which has a grey ‘Resitex’ coating to the external walls. Other than this, the building is relatively basic regarding form and construction materials, being a largely timber construction with a bitumen felt roof. Modular building T3 (E237) is a standard construction, with a red ‘Resitex’ coating to the external plywood walls with a bitumen felt roof. The building is basic in form and construction materials.

35. Neither building is considered to reflect high-quality design, so to this extent they are not supported by OCS policy CS18 or OLP policy CP.1. Modular building T1 (E223) relates to the school setting as being a functional, temporary teaching space. It cannot be said to strengthen or enhance local character, as the functional (grey) external decoration to the building is somewhat bland when compared to the rest of the school site. Modular building T3 (E237) also relates to the school setting as a functional, temporary teaching space. The external decoration to T3 (E237) does strengthen the character of the school site. The external decoration, which is dark red and has picture panels, could be said to make a positive contribution to the education environment where the use of colour has been used on the permanent school structures to good effect. The buildings partially meet the requirements of OLP saved policy CP.8.

36. Both buildings could be said to be supported by DOLP policy RE2 insofar that the school is a constrained area and the current siting of the modular buildings provides the required teaching space for the current and predicted pupil roll whilst still allowing for outdoor play areas.

37. Both modular buildings are visible to residential properties, immediately adjacent to the school site. Both buildings are viewed within the context of the school’s existing environment, with T1 (E223) being immediately behind the main school building and T3 (E237) being to the back of the school site to the edge of the school’s built up area adjacent to the

current hard-play area. There is some screening of the northern and southern boundaries by mature trees/ hedging. Therefore, there would be no change to the overall context of the school buildings' setting and the retention of the two temporary units is consistent with the existing built character.

38. There are no changes being proposed by this application as it proposes that existing buildings and associated uses are retained. Building T1 (E223) being located directly behind the main school building has practical, ramped access to the building itself from the adjacent outside space and hard play area. Building T3 (E237) is accessed across a level hard-standing play area and also has a ramped access. Both are also regulation compliant with the internal layout. Neither building impacts unduly on the neighbouring residential properties as there is mature planting along the southern boundary. I do not consider there to be conflict with the aims of OLP policies CP.10 and CP.13.

Biodiversity, Flooding and Surface Water

39. Policy CS11 of the OCS states that development will not be permitted in the functional flood plain except water-compatible uses and essential infrastructure. Unless it is not feasible, developments should incorporate sustainable drainage design. Development will not be permitted where there is an increased risk of flooding.

40. Policy CS12 of the OCS states that development will not be permitted that results in a net loss of sites and species of ecological value. Where there is opportunity, development will be expected to enhance Oxford's biodiversity, create links between natural habitats and a strategic Oxford habitat network and to include features beneficial to biodiversity.

41. Policy G1 of the DOLP states that Green and open spaces and waterways of the Green and Blue Infrastructure Network as defined on the policies map are protected for social, environmental and economic functions. Planning permission will not be granted for development that would result in harm to the Green and Blue network expect where that development cannot be provided elsewhere in a suitable location, there is no harm to biodiversity function and losses can be mitigated or replaced elsewhere

42. Modular buildings T1 (E223) and T3 (E237) have been on site for 16 years and 12 years respectively. There is no change to the siting or use of the buildings, which have been demonstrated as required to ensure sufficient pupil capacity at the school. There is no additional development proposed and the school site is within Flood Zone 1, the lowest area of risk. There is no impact on the adjacent tree planting and no change proposed to any of the existing tree or hedge planting to the site's boundary or internal areas. There is no objection or requirements from the county ecologist or Lead Local Flood Authority team to be

addressed. The application is not contrary to OCS policies CS11 and CS12 or DOLP policy G1.

Temporary Consent and Need

43. National Planning Practice Guidance[1] advises that temporary planning permission should rarely be justified to be granted for more than one period of time. Thereafter, permission should be either refused or granted permanently. However, it also states that temporary permission may be appropriate where it is expected that the planning circumstances will change in a particular way at the end of that period.

44. Policy CS16 of the OCS states that the City Council will work with the County Council and other agencies to improve access to all levels of education thorough new or improved facilities throughout Oxford. Community as well as education use will be sought.

45. Saved policy CP.25 of the OLP states that permission for temporary buildings will only be granted where there is a short-term need clearly identified, the building will not affect visual attractiveness, access, existing buildings or parking provision and if permission is granted, a condition is attached to require the building's removal within a specific period.

46. This is the third application for building T1 (E223), for a further temporary period of 5 years and the second application to retain building T3 (E237) for a further temporary period of 5 years. The Justification Statement in support of this application sets out that it is necessary to retain both buildings in order for the school to continue to provide the necessary space to meet the statutory requirements to teach and deliver the National Curriculum.

47. The school does not have sufficient permanent accommodation to meet these needs, nor available capital funding itself for the County Council to provide permanent accommodation at this time. Although it is concerning that there is a demonstrated on-going requirement for the space provided by these temporary buildings, it may be that after a further period of five years, circumstances may have changed, and provision can be made for permanent replacement of the space provided by both T1 (E223) and T3 (E237). Therefore, although there is an identified need, the ongoing retention of temporary buildings is contrary to policies OCS CS 16 and OLP saved policy CP.25.

48. Neither building is considered suitable for permanent retention due to their design and materials. The design and materials reflect that the buildings were intended to be temporary. The condition report provided for T1 (E223) demonstrates that there are some important maintenance and restoration required to maintain the building to an acceptable

[1] Paragraph 14 Reference ID: 21a-014-20140306

standard and if left, the works could become uneconomical to carry out. The report provided for T3 (E237) demonstrates that for the building's age (20 years), it is in a reasonably good condition. However, it will also require routine maintenance and repair to keep the building in a useable condition.

49. Although the buildings are not suitable for permanent retention, it is considered that there is sufficient justification for a renewed temporary consent for both buildings, despite the conflict with OCS CS policy 16 and OLP saved policy CP.25. This is due to the strong support given for applications at state schools in the NPPF (paragraph 94 and the 2011 ministerial letter). There is also the fact that circumstances may change by the end of a further 5-year period, to allow for the provision of permanent, alternative accommodation for the classrooms, library and SEN provision currently within the modular buildings.

Other Issues

50. Saved policy TR4 of the OLP states that permission will only be granted that provide good access and facilities for pedestrians and cyclists, complies with the minimum cycle parking standards. New non-residential development should provide shower and changing provision in accordance with thresholds and minimum standards.

51. Policy RE7 of the DOLP states that development should ensure that the amenity of communities, occupiers and neighbours are protected, there are no unaddressed transport impacts and mitigation measures are provided where necessary.

52. This application is a renewal of existing development rather than new development. This application is not proposing any change to the existing arrangements for cycle or other vehicle parking on site. There are no changes proposed to the cycle provision, as there is no proposed change to the pupil roll. There is existing pedestrian access with no change proposed to alter this in any way. The application is simply to retain the status quo of what is already existing and provided on site. The application is not contrary to OCS saved policy TR4 or DOLP policy RE7.

Conclusion

53. The NPPF sets out a presumption in favour of sustainable development. This is supported by policy S1 of the DOLP. This means taking a positive approach to development and approving those applications which accord with the development plan, unless material considerations indicate otherwise.

54. This application seeks to continue to provide necessary accommodation for school functions in two existing modular buildings. There would be no change to the existing situation and no harm to amenity or detraction

from the surrounding environment. Both buildings are of a basic design and construction. However, a further temporary period is justified for both buildings by the need to continue to provide the teaching space for the existing and forecast pupil intake.

55. Whilst I do consider that the approval of this application is in accordance with the guidance set out in the ministerial letter dated 15th August 2011 and paragraph 94 of the NPPF, I also consider it appropriate to attach an informative, advising that it is not considered satisfactory that provision which is required to meet an ongoing educational need continues to be provided in temporary accommodation, which would appear to be coming to the end of economic, operational life in both cases. The applicant should address this issue and work to bring forward a planning application for a permanent alternative to be considered prior to the expiry of the five years temporary permission.

Recommendation

56. It is RECOMMENDED that Application R3.0105/19 be approved subject to conditions to be determined by the Director of Planning and Place, to include the following:
i. Detailed compliance;
ii. Temporary 5 year consent.

SUSAN HALLIWELL
Director of Planning and Place

January 2020

Annex 1 – Informatives

Compliance with National Planning Policy Framework

In accordance with paragraph 38 of the NPPF Oxfordshire County Council takes a positive and creative approach and to this end seeks to work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. We seek to approve applications for sustainable development where possible.
We work with applicants in a positive and creative manner by;

- offering a pre-application advice service, and

- updating applicants and agents of any issues that may arise in the processing of their application and where possible suggesting solutions. In this instance, there was an objection from the City Council on the grounds of conflict with development plan policy with regard to the temporary planning permissions and the provision of improved educational facilities. A solution has not been found for this issue but the over-riding educational need for the development is considered to outweigh these policies in the planning balance.

Informative

National planning practice guidance paragraph: 14 Reference ID: 21a-014-20140306 does not support the ongoing grant of temporary planning permission and states that it will rarely be justifiable to grant a second temporary permission. It is not considered satisfactory that provision which is required to meet an ongoing educational need continues to be provided in temporary accommodation. The applicant should address this issue and work to bring forward a planning application for a permanent alternative to be considered prior to the expiry of the five years temporary permission.

Informative

Based on the conclusions of the General Condition Survey Report provided as part of this planning permission renewal for both T1 and T3, it is unlikely that the modular double classroom unit and modular single classroom unit would remain useable for the life of the permission hereby granted, if the proposals for identified replacement works and external areas maintenance are not possible to complete.

Annex 2 - European Protected Species

The Local Planning Authority in exercising any of their functions, have a legal duty to have regard to the requirements of the Conservation of Species & Habitats Regulations 2017 which identifies 4 main offences for development affecting European Protected Species (EPS).

1. Deliberate capture or killing or injuring of an EPS

2. Deliberate taking or destroying of EPS eggs

3. Deliberate disturbance of a EPS including in particular any disturbance which is likely

a) to impair their ability –

i) to survive, to breed or reproduce, or to rear or nurture their young, or

ii) in the case of animals of a hibernating or migratory species, to hibernate or migrate; or

b) to affect significantly the local distribution or abundance of the species to which they belong.

4. Damage or destruction of an EPS breeding site or resting place.

Our records and the habitat on and around the proposed development site indicate that European Protected Species may be present but are unlikely to be impacted by the proposed development. Therefore no further consideration of the Habitat Regulations is necessary.

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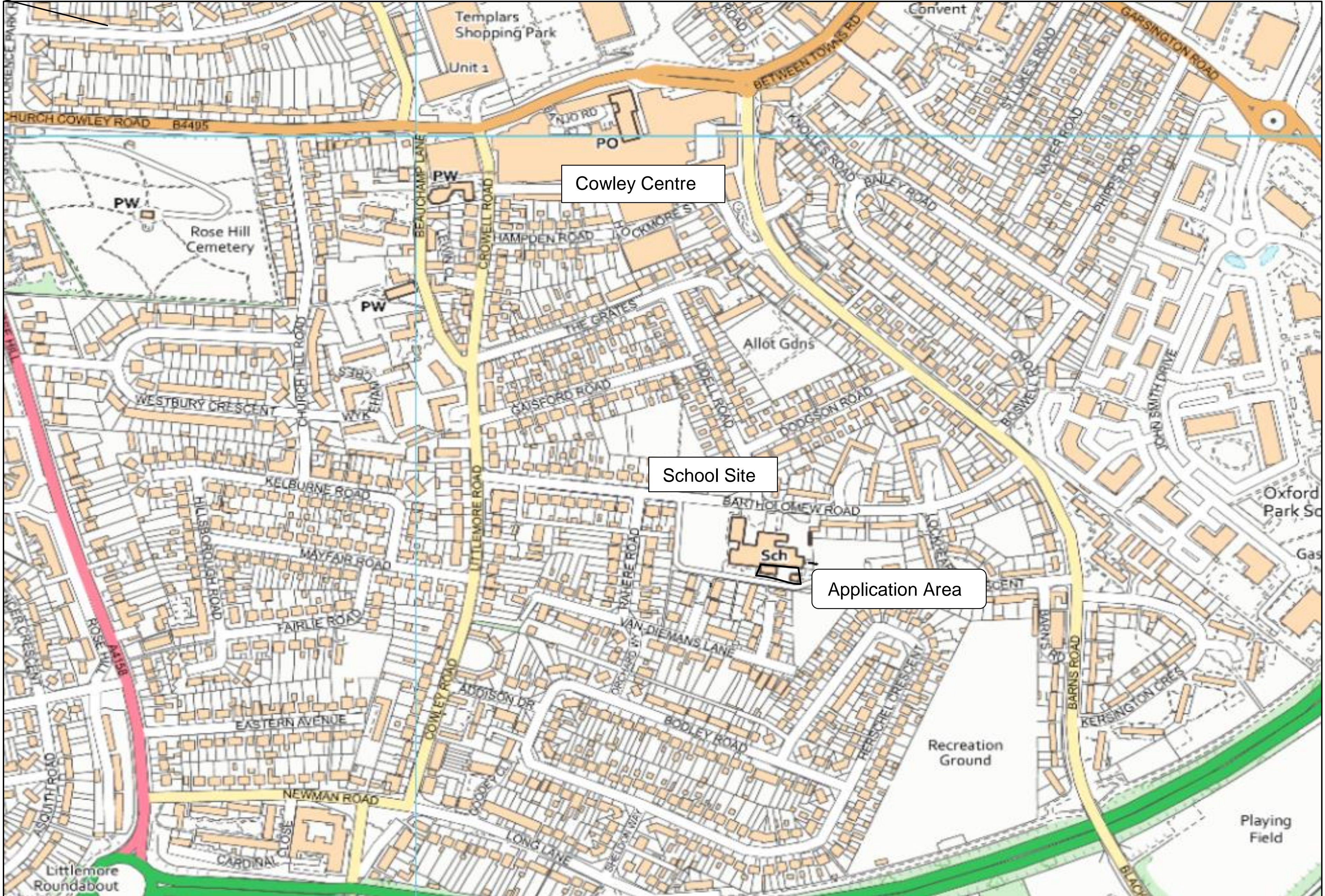
Oxford City Centre



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Division(s): Wallingford

PLANNING & REGULATION COMMITTEE – 27 JANUARY 2020

COMMONS ACT 2006:
IN THE MATTER OF AN APPLICATION TO REGISTER LAND AT WILDING PARK ROAD, WALLINGFORD AS A TOWN OR VILLAGE GREEN

Report by Interim Director for Community Operations

RECOMMENDATION

1. **The Planning & Regulation Committee is RECOMMENDED to reject the Application, for the reasons outlined in Counsel's Opinion dated 29 November 2019 and included at Annex 3 to this report.**

Executive Summary

2. An application was made to Oxfordshire County Council acting in its capacity as the Commons Registration Authority to register land off Wildling Road, Wallingford as a Town or Village Green on 12 February 2018. This was advertised in accordance with the statutory requirements on 20 June 2019. One objection was received from the landowner, South Oxfordshire District Council.

3. The objection was made on the basis that the public's use of the land had not been 'as of right' because it had been 'by right' due to the Application Land having been held and maintained by the District Council as a public recreation ground under the provisions of the Housing Act 1936 and the successive Housing Acts made in 1959 and 1985.

4. Counsel's opinion was obtained on whether the County Council is able to reject the application on the basis of the evidence submitted by the landowner. This opinion indicated that the application should be rejected on this basis without any further process being adopted to consider the evidence, such as a non-statutory public inquiry.

Introduction

5. On 12 February 2018, Mr Anthony Hurford of 1 Sinodun Road, Wallingford, OX10 8AA ("the Applicant") applied to the County Council as Commons Registration Authority under Section 15(1) of the Commons Act 2006 to register land known as Wilding Road Park/Green in Oxfordshire ("the Application Land") as a Town or Village Green. This application, a copy of which is attached at Annex 1, was submitted formally in pursuance of the Act and has now to be determined by the County Council.

6. The Planning & Regulation Committee have delegated powers to determine such applications, provided they are 'duly made'.

7. The application was considered objectively by the Countryside Records Team as to whether it was 'duly made'. The applicant was contacted in order to clarify or rectify certain technical points in the application. The application was accepted as 'duly made' on 10 June 2019 and was subsequently publicised in accordance with the statutory requirements on 20 June 2019, with a deadline of 2 August 2019 for responses.

8. An objection together with a bundle of supporting documents was received during the objection period from South Oxfordshire District Council ("the Objector"). The objection is dated 2 August 2019 and is included at Annex 2. The supporting documents are included as part of the background papers.

9. The objection and bundle of supporting documents were sent to the Applicant on 14 August 2019 and allowed 21 days within which he could submit any comments he wished to make on it. The Applicant did not submit any comments either during or after the 21 day period that was allowed for a response.

The Application

10. The application form describes the Application Land as Wilding Road Park/Green. The Application Land is shown edged red on the Application Map included as part of Annex **1**.

11. The whole of the Application Land is registered at HM Land Registry under title number ON280319. The registered proprietor of this title is South Oxfordshire District Council of Council Offices, Benson Lane, Crowmarsh Gifford, Wallingford, Oxfordshire, OX10 8QS.

12. The locality relevant to the application is described as 'Wallingford Parish'. No map was attached to show the extent of the claimed locality.

13. The application form was duly signed by the Applicant and supported by the prescribed Statutory Declaration. The Applicant submitted additional pieces of information in support of his application, including a supporting statement and 8 evidence questionnaires that had been completed by users of the Application Land.

14. The evidence questionnaires showed that 8 individuals had used the land, over a period spanning 54 years between 1965 and 2018. Two of those who provided evidence did not use the land during the twenty-year period preceding the making of the application in 2018. A bar chart summarising this use is at Annex 4.

15. Of those who used the land between 1998 and 2018, one used it on a daily basis, one used it more than once a week and four used it on a weekly basis. Those who provided evidence indicated which activities they had seen taking

place on the land. All of them had seen children playing, dog walking and football games taking place on the land. Five of those who provided evidence had also seen games of rounders, community celebrations, picnicking and people walking on the land. The evidence was provided on standard forms produced by the Open Spaces Society. Copies of the original forms are available for members to view if required as part of the background papers.

16. A consultation, checking whether any trigger and terminating events had occurred in relation to the Application Land was undertaken in May 2018. South Oxfordshire District Council, Oxfordshire County Council's Development Management Team and the Planning Inspectorate replied to say that no trigger or terminating events had occurred on the land.

17. The applicant was informed in writing that there had been no trigger events affecting the Application on 21 December 2018.

18. Having been received by the Commons Registration Authority and accepted as 'duly made', the Application was duly published in accordance with Regulation 5 of the Commons Registration (Registration of Town and Village Greens) (Interim Arrangements) (England) Regulations 2007 by publication in a local newspaper, posting notices on site and placing copies on public deposit. A copy of the statutory notice, application and plan was also served on the landowner, South Oxfordshire District Council.

19. The statutory objection period expired on 2 August 2019. An objection was delivered by hand to the County Council by the landowner on 2 August 2019.

20. The principal ground for objection was as follows:

    a). The use of the land has not been "as of right", because the land concerned was held pursuant to the powers contained in the Housing Act 1936 and successive Housing Acts of 1957 and 1985. This meant that use of the land could not have been "as of right", which was held to be the case in the case of *R (on the application of Barkas) (Appellant) v North Yorkshire County Council and another (Respondents),* [2014] UKSC31 which concerned the holding of land under the same Act. A copy of this case is included in the background papers.

The Legislative Tests

21. The application was made under section 15(2) of the Commons Act 2006. This applies where 'as of right' use of the land continues at the time of the application.

22. In this case, there is no record of any actions being taken on the part of the landowner that would have had the effect of stopping as of right public use of the land, such as the deposition of a Landowner Statement under section 15A(1) of the Commons Act 2006 at any time before the application was submitted.

23. Section 15 of the Commons Act 2006 allows that: -

(1) any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies.

(2) This subsection applies where –

(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and

(b) they continue to do so at the time of the application.

24. The evidence provided by the Applicant and the Objector has been examined to establish whether the application meets the legal tests set out above as follows:

(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years

25. It is necessary for each constituent part of this test to be considered individually as follows: -

A significant number…

26. The applicant supplied 8 user questionnaires that had each been completed by different people who resided within the claimed locality of the parish of Wallingford during the time that they had used the Application Land.

27. Six of those who provided evidence used the Application Land during the whole of the period of twenty years leading up to the submission of the application in 2018.

28. It is questionable whether six users constitute a significant number of the inhabitants of the claimed locality of the parish of Wallingford. It is, therefore, unclear whether this element of the legislative test has been made out.

…of the inhabitants of any locality, or any neighbourhood within a locality…

29. In this case, the applicant is relying on the parish of Wallingford as the locality. 6 of the 8 individuals who completed user questionnaires in support of the application have addresses that are situated within this locality. Of the remaining two users, one used the route between 1966 and 1973 and lived within the locality during that period but has since moved away. The other used the route between 1969 and 1985 when they lived in the locality but had also moved away since that time.

30. All those who provided evidence of use lived within the claimed locality of the parish of Wallingford at the time when they were using the land. It would therefore appear that this element of the legislative test has been made out.

…indulged as of right…

31. For public use to have been 'as of right', use must have been without force, secrecy or permission. This test is broken down into these three elements below: -

Without force

32. The use of the Application Land would appear not to have been by force, because there is a clear public entry point to the land adjacent to Wildling Road. A litter bin and dog waste bin are also situated on the land which has the outward appearance of being public. This element of the 'as of right' test would therefore appear to have been made out.

Without secrecy

33. There is no evidence that use of the land has taken place in secret, for example during the hours of darkness so that the landowner would not be aware of it. Use of the land is not, therefore, considered to have taken place in secret. This element of the 'as of right' test would therefore appear to have been made out.

Without permission

34. The landowner states that the land was acquired by the Wallingford Borough Council in 1945 from the previous landowner who had farmed the land. A copy of the Conveyance has been provided by the Objector. The conveyance itself does not include any information about the purpose for which the land was being acquired.

35. A planning application was subsequently made by the Wallingford Borough Council to develop the land for housing in 1952. The plans that accompanied the Planning Application documents described the Application Land as 'Children's Playing Field'. The Objector states that the land would have been developed pursuant to section 73(a) of the Housing Act 1936, which also contained a section (80) which gave a supplementary power to local authorities to provide and maintain a recreation ground.

36. The South Oxfordshire District Council inherited the land from Wallingford Borough Council on local government reorganisation in 1974. The Objector states that it has continued to hold the land as a space for public recreation and maintained it in a manner to facilitate such use. It, therefore, asserts that use has not been "as of right" as a result.

37. The Supreme Court case of *R (on the application of Barkas) (Appellant) v North Yorkshire County Council and another (Respondents),* [2014] UKSC31

concerned land which was owned by the local authority and in use as a playing field. It was held in this case that if land is held under a provision such as section 12(1) of the 1985 Housing Act, the public have a statutory right to use it for recreational purposes and, therefore, use it 'by right' rather than 'as of right'.[1]

38. It is, therefore, clear that this element of the 'as of right' test has not been made out in this case.

…in lawful sports and pastimes…

39. The individuals who completed evidence questionnaires in support of the application, quoted activities they had undertaken on the land from a tick-box list included on the standard evidence form which is produced by the Open Spaces Society. All 8 of those who completed evidence questionnaires indicated that they had indulged in lawful sports and pastimes.

40. This element of the 'as of right' test would therefore appear to have been made out.

…on the land…

41. There is no reason to believe that any of the witness evidence that has been submitted in support of this application was not on the land to which the application relates. This element of the test would, therefore, appear to have been made out.

…for a period of at least 20 years.

42. 6 of those who provided evidence of their use of the land indicated that they had used it during the whole of the relevant period of 20 years which precedes the making of the application.

43. This element of the legislative test would, therefore, appear to have been made out.

(b) they continue to do so at the time of the application.

44. The Application Land is open and available for public use and no evidence has been provided to show that public access to the land has been challenged or prevented. At the time when site notices were erected on the Application Land for the consultation in July 2019, the land was freely accessible.

45. This element of the legislative test would, therefore, appear to have been made out.

46. Part of the legislative test contained in section 15 of the Commons Act 2006 has not been met in that use of the land has not been "as of right", as it has

[1] See paragraph 21 of the judgment at Annex 4 for the actual wording used by Lord Neuberger

been pursuant to a right conferred by the provisions of the Housing Act 1936 and its successor Acts of 1957 and 1985.

Financial and Staff Implications

47. There are no financial or staff implications associated with this decision.

Equalities Implications

48. There are no equalities implications associated with this decision.

JASON RUSSELL
Interim Director for Community Operations

Annexes to Report:

1. Copy of Application including plan showing claimed TVG and locality
2. Objection from landowner
3. Counsel's Opinion – Mr Alan Evans, King's Chambers, Manchester
4. User Evidence Bar Chart showing details of use of the land

The following Background Papers are available for Members to view if desired:

1. User Evidence Questionnaires submitted with application
2. Supporting evidence bundle submitted with landowner objection
3. Case Law: *R (on the application of Barkas) (Appellant) v North Yorkshire County Council and another (Respondents),* [2014] UKSC31.

Contact Officer: Laurence Smith
January 2020

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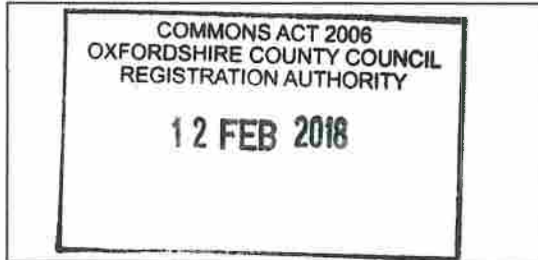
FORM 44

Commons Act 2006: Section 15

Application for the registration of land as a Town or Village Green

Official stamp of registration authority indicating valid date of receipt:


COMMONS ACT 2006
OXFORDSHIRE COUNTY COUNCIL
REGISTRATION AUTHORITY

12 FEB 2018

Application number: NLREG42

Register unit No(s):

VG number allocated at registration:

(CRA to complete only if application is successful)

Applicants are advised to read the 'Guidance Notes for the completion of an Application for the Registration of land as a Town or Village Green' and to note the following:

- All applicants should complete questions 1–6 and 10–11.
- Applicants applying for registration under section 15(1) of the 2006 Act should, in addition, complete questions 7–8. Section 15(1) enables any person to apply to register land as a green where the criteria for registration in section 15(2), (3) or (4) apply.
- Applicants applying for voluntary registration under section 15(8) should, in addition, complete question 9.

Note 1
Insert name of registration authority.

1. Registration Authority

To the

OXFORDSHIRE COUNTY COUNCIL

Note 2
If there is more than one applicant, list all names. Please use a separate sheet if necessary. State the full title of the organisation if a body corporate or unincorporate.

If question 3 is not completed all correspondence and notices will be sent to the first named applicant.

2. Name and address of the applicant

Name: ANTHONY HURFORD

Full postal address:
1 SINODUN ROAD
WALLINGFORD
Postcode OX10 8AA

Telephone number:
(incl. national dialling code)

Fax number: N/A
(incl. national dialling code)

E-mail address:

Note 3
This question should be completed if a solicitor is instructed for the purposes of the application. If so all correspondence and notices will be sent to the person or firm named here.

3. Name and address of solicitor, if any

Name:

Firm:

Full postal address:

Post code

Telephone number:
(incl. national dialling code)

Fax number:
(incl. national dialling code)

E-mail address:

Note 4
For further advice on the criteria and qualifying dates for registration please see section 4 of the Guidance Notes.

** Section 15(6) enables any period of statutory closure where access to the land is denied to be disregarded in determining the 20 year period.*

4. Basis of application for registration and qualifying criteria

If you are the landowner and are seeking voluntarily to register your land please tick this box and move to question 5.

Application made under **section 15(8)**: ☐

If the application is made under **section 15(1)** of the Act, please **tick one** of the following boxes to indicate which particular subsection and qualifying criterion applies to the case.

Section 15(2) applies: ☑

Section 15(3) applies: ☐

Section 15(4) applies: ☐

If **section 15(3) or (4)** applies please indicate the date on which you consider that use as of right ended.

If **section 15(6)*** applies please indicate the period of statutory closure (if any) which needs to be disregarded.

Note 5
The accompanying map must be at a scale of at least 1:2,500 and show the land by distinctive colouring to enable to it to be clearly identified.

5. Description and particulars of the area of land in respect of which application for registration is made

Name by which usually known:

WILDING ROAD PARK / GREEN

Location:

ON WILDING ROAD OPPOSITE ITS JUNCTION WITH ANDREW ROAD IN WALLINGFORD, AS SHOWN IN MAP EXHIBIT 'A'

** Only complete if the land is already registered as common land.*

Shown in colour on the map which is marked and attached to the statutory declaration.

Common land register unit number (if relevant) *

Note 6
It may be possible to indicate the locality of the green by reference to an administrative area, such as a parish or electoral ward, or other area sufficiently defined by name (such as a village or street). If this is not possible a map should be provided on which a locality or neighbourhood is marked clearly.

6. Locality or neighbourhood within a locality in respect of which the application is made

Please show the locality or neighbourhood within the locality to which the claimed green relates, either by writing the administrative area or geographical area by name below, or by attaching a map on which the area is clearly marked:

~~SEE MAP EXHIBIT 'B' SHOWING THE NEIGHBOURHOOD~~
~~WITHIN~~ WALLINGFORD PARISH ~~LOCALITY~~ AH SLT

Tick here if map attached: AH SLT

Note 7
Applicants should provide a summary of the case for registration here and enclose a separate full statement and all other evidence including any witness statements in support of the application.

This information is not needed if a landowner is applying to register the land as a green under section 15(8).

7. Justification for application to register the land as a town or village green

THE GREEN HAS BEEN USED FREELY FOR AS LONG AS PEOPLE CAN REMEMBER. IT HAS BEEN POSSIBLE TO IDENTIFY A NUMBER OF LOCAL RESIDENTS WHO HAVE LIVED WITHIN THE LOCALITY FOR OVER 20 YEARS AND WHO WERE HAPPY TO PROVIDE AN EVIDENCE STATEMENT ATTESTING TO THE LONG-TERM USE OF THE LAND BY LOCAL PEOPLE. THE GREEN IN EARLIER TIMES IS SAID TO HAVE CONTAINED A PLAYGROUND FOR CHILDREN AND THE HARD-STANDING FOR THAT EQUIPMENT COULD BE STILL SEEN UNTIL RECENTLY WHEN SOME GAS NETWORK MAINTENANCE CREWS SET UP AN AREA FOR THEIR MACHINERY WHICH DAMAGED THE HARD-STANDING. THE PLAYGROUND WAS WELL USED BY LOCAL CHILDREN AND THERE IS STRONG FEELING WITHIN THE COMMUNITY FOR A PLAYGROUND TO BE RE-ESTABLISHED. THE NEAREST ALTERNATIVE PLAYGROUND IS CURRENTLY OVER ONE KILOMETRE AWAY SO TOO FAR FOR CHILDREN TO GO INDEPENDENTLY. RE-ESTABLISHMENT OF A PLAYGROUND WILL REQUIRE INVESTMENT WHICH WILL BE MORE ATTRACTIVE ONCE THE GREEN IS PROTECTED BY REGISTRATION. THE GREEN HAS ALSO BEEN USED EXTENSIVELY BY CHILDREN FOR BALL GAMES AND OTHER PLAY ACTIVITIES. IT IS DIFFICULT TO ESTIMATE NUMBERS OWING TO FLUCTUATION IN NUMBERS OF CHILDREN LIVING WITHIN THE LOCALITY, BUT WITH AROUND 160 HOUSES THERE IS LIKELY TO HAVE BEEN AROUND 50 CHILDREN ON AVERAGE OVER THE YEARS. THE GREEN IS ALSO USED FOR COMMUNITY EVENTS SUCH AS THE QUEEN'S JUBILEE AND OTHERS OF NATIONAL IMPORTANCE WHERE IT IS AVAILABLE AS A MORE ATTRACTIVE SPACE FOR A 'STREET PARTY'. SUCH EVENTS ALSO ATTRACTED 50-100 PEOPLE. TODAY THE GREEN IS FREQUENTED BY DOG WALKERS, WHICH CAN CAUSE CONCERN AMONGST OTHER USERS ABOUT FOULING. MOST RECENTLY AN EVENT WAS HELD FOR THE 'GREAT GET TOGETHER' IN MEMORY OF MP JO COX AND IN THE SPIRIT OF BUILDING COMMUNITY, FOR WHICH THE GREEN IS AN IDEAL FOCAL POINT.

Note 8
Please use a separate sheet if necessary.

Where relevant include reference to title numbers in the register of title held by the Land Registry.

If no one has been identified in this section you should write "none"

This information is not needed if a landowner is applying to register the land as a green under section 15(8).

8. Name and address of every person whom the applicant believes to be an owner, lessee, tenant or occupier of any part of the land claimed to be a town or village green

NONE

9. Voluntary registration – declarations of consent from 'relevant leaseholder', and of the proprietor of any 'relevant charge' over the land

Note 9
List all such declarations that accompany the application. If none is required, write "none".

This information is not needed if an application is being made to register the land as a green under section 15(1).

NONE

10. Supporting documentation

Note 10
List all supporting documents and maps accompanying the application. If none, write "none"

Please use a separate sheet if necessary.

MAP 1:1250 SCALE OF LAND BOUNDARY

~~MAP OF NEIGHBOURHOOD MOST CLOSELY RELATED TO/AFFECTED BY APPLICATION~~

~~LETTER OF EVIDENCE FROM~~

~~LETTER OF~~ EVIDENCE FROM AMY GARDNER, 10 WILDING ROAD

~~LETTER OF EVIDENCE FROM~~

LETTER OF EVIDENCE FROM NATHAN GRAY, 22 SINODUN ROAD

~~LETTER OF EVIDENCE (EMAIL) FROM~~

~~LETTER OF EVIDENCE (EMAIL) FROM~~

CONTINUED OVERLEAF

SECTION 10 CONTINUED

EVIDENCE FROM CLAIRE GAUGHAN
EVIDENCE FROM
EVIDENCE FROM ROBERT CALCUTT
EVIDENCE FROM SARAH WADDINGTON
EVIDENCE FROM J. RHODES
EVIDENCE FROM RYAN WHITE

AH
SCT

Note 11
If there are any other matters which should be brought to the attention of the registration authority (in particular if a person interested in the land is expected to challenge the application for registration). Full details should be given here or on a separate sheet if necessary.

11. Any other information relating to the application

EACH OF THE EVIDENCE QUESTIONNAIRES PROVIDED HAS MAPS ATTACHED TO THE REAR FOR RESPONDENTS TO SIGN/MARK AS APPROPRIATE

AH

JCT

Note 12
The application must be signed by each individual applicant, or by the authorised officer of an applicant which is a body corporate or unincorporate.

Date: 01/02/18

Signatures:

REMINDER TO APPLICANT

You are advised to keep a copy of the application and all associated documentation. Applicants should be aware that signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence. The making of a false statement for the purposes of this application may render the maker liable to prosecution.

Data Protection Act 1998

The application and any representations made cannot be treated as confidential. To determine the application it will be necessary for the registration authority to disclose information received from you to others, which may include other local authorities, Government Departments, public bodies, other organisations and members of the public.

Statutory Declaration In Support

To be made by the applicant, or by one of the applicants, or by his or their solicitor, or, if the applicant is a body corporate or unincorporate, by its solicitor, or by the person who signed the application.

[1] Insert full name (and address if not given in the application form).

I ANTHONY...HURFORD....,[1] solemnly and sincerely declare as follows:—

[2] Delete and adapt as necessary.

[3] Insert name if Applicable

1.[2] I am ((the person (~~one of the persons~~) who (has) (~~have~~) signed the foregoing application)) ((~~the solicitor to (the applicant) ([3] one of the applicants~~)).

2. The facts set out in the application form are to the best of my knowledge and belief fully and truly stated and I am not aware of any other fact which should be brought to the attention of the registration authority as likely to affect its decision on this application, nor of any document relating to the matter other than those (if any) mentioned in parts 10 and 11 of the application.

3. The map now produced as part of this declaration is the map referred to in part 5 of the application.

[4] Complete only in the case of voluntary registration (strike through if this is not relevant)

4.[4] I hereby apply under section 15(8) of the Commons Act 2006 to register as a green the land indicated on the map and that is in my ownership. I have provided the following necessary declarations of consent:

(i) a declaration of ownership of the land;
(ii) a declaration that all necessary consents from the relevant leaseholder or proprietor of any relevant charge over the land have

Cont/

[4] *Continued*

been received and are exhibited with this declaration; or
(iii) where no such consents are required, a declaration to that effect.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act 1835.

Declared by the said)
ANTHONY HURFORD)
at Slade Legal)
7 St. Martin's Street)
Wallingford)
Oxfordshire)
this 23rd day of May 2019)

Signature of Declarant

Before me *

Signature:

SUSANNAH TRAHERNE

Address: SLADE LEGAL
7 ST. MARTIN'S STREET
WALLINGFORD, OXFORDSHIRE OX10 0AN

Qualification: Solicitor

Slade Legal
Solicitors
7 St Martins Street
Wallingford
Oxon OX10 0AN

*** The statutory declaration must be made before a justice of the peace, practising solicitor, commissioner for oaths or notary public.**

Signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence.

REMINDER TO OFFICER TAKING DECLARATION:

Please initial all alterations and mark any map as an exhibit

'A'

This Plan includes the following Licensed Data: OS MasterMap Colour PDF Location Plan by the Ordnance Survey National Geographic Database and incorporating surveyed revision available at the date of production. Reproduction in whole or in part is prohibited without the prior permission of Ordnance Survey. The representation of a road, track or path is no evidence of a right of way. The representation of features, as lines is no evidence of a property boundary. © Crown copyright and database rights, 2018. Ordnance Survey 0100031673

0m 20m 40m 60m 80m 100m

Scale: 1:1250, paper size: A4

plans ahead by emapsite™

Prepared by: Anthony Hurford, 12-01-2018

THIS IS THE EXHIBIT MARKED 'A'

REFERRED TO IN THE STATUTORY DECLARATION

OF ANTHONY HURFORD

Made this 1st day of February 2018

Before Me :

SUSANNAH TREHEARNE

Solicitor

Slade Legal
Solicitors
7 St Martins Street
Wallingford
Oxon OX10 0AN

Annex 2 - Objection from Landowner

Legal & Democratic
HEAD OF SERVICE: MARGARET REED

Listening Learning Leading

Principal Officer (Countryside Records)
Oxfordshire County Council
Countryside Records
County Hall
Oxford OX1 1ND

CONTACT OFFICER: Ian Price
ian.price@southandvale.gov.uk
Tel: 01235 422541
Text phone 18001 before you dial

Your reference:
Our reference: ITP/ 007915

BY HAND and BY EMAIL
countrysiderecords@oxfordshire.gov.uk

2 August 2019

Dear Sir/Madam

Commons Act 2006, Section 15(1)
Application for Registration as a Town Green
Land at Wilding Road, Wallingford

Please accept this letter and the accompanying statement (with attachments) as comprising the council's objection to the proposed registration of land at Wilding Road, Wallingford as a town green.

The council is objecting to the registration of the land as a town green in its capacity as the freehold owner of the land, and the accompanying statement (with attachments) sets out the relevant background to the acquisition of the land by the council, and how the land has subsequently been held, used and maintained under the council's continuing ownership.

On the basis of the facts set out in the statement that accompanies this letter, Oxfordshire County Council is invited and requested to conclude that the circumstances of this case fall fairly and squarely within the clear parameters and principles established by the Supreme Court in the case of *R (on the application of Barkas) v North Yorkshire County Council and another, 21 May 2014*; and to therefore decide that the application for the registration as a town green of the land at Wilding Road must be refused.

For ease of reference, I have enclosed with this letter a copy of the judgment of the Supreme Court in the *Barkas* case. I do not propose in this letter to rehearse the facts of that case, or to quote from it at length. However, in noting the very clear similarities between the facts in *Barkas* and those relating to the land at Wilding Road, as they have been described in the statement accompanying this letter, I draw

attention to the following straightforward principles set out by Lord Neuberger in the *Barkas* judgment, under the sub-heading *Was the public use in this case "as of right"?*

20. In the present case, the council's argument is that it acquired and has always held the Field pursuant to section 12(1) of the 1985 Act and its statutory predecessors, so the Field has been held for public recreational purposes; consequently, members of the public have always had the statutory right to use the Field for recreational purposes, and, accordingly, there can be no question of any "inhabitants of the locality" having indulged in "lawful sports and pastimes" "as of right", as they have done so "of right" or "by right". In other words, the argument is that members of the public have been using the Field for recreational purposes lawfully or precario, and the 20 year period referred to in section 15(2) of the 2006 Act has not even started to run – and indeed it could not do so unless and until the Council lawfully ceased to hold the Field under section 12(1) of the 1985 Act.

21. In my judgment, this argument is as compelling as it is simple. So long as land is held under a provision such as section 12(1) of the 1985 Act, it appears to me that members of the public have a statutory right to use the land for recreational purposes, and therefore they use the land "by right" and not as trespassers, so that no question of user "as of right" can arise. In Sunningwell at pp 352H-353A, Lord Hoffman indicated that whether user was "as of right" should be judged by "how the matter would have appeared to the owner of the land", a question which must, I should add, be assessed objectively. In the present case, it is, I think, plain that a reasonable local authority in the position of the Council would have regarded the presence of members of the public on the Field, walking with or without dogs, taking part in sports, or letting their children play, as being pursuant to their statutory right to be on the land and to use it for these activities, given that the Field was being held and maintained by the Council for public recreation pursuant to section 12(1) of the 1985 Act and its statutory predecessors.

24. I agree with Lord Carnwath that, where the owner of the land is a local, or other public, authority which has lawfully allocated the land for public use (whether for a limited period or an indefinite period), it is impossible to see how, at least in the absence of unusual additional facts, it could be appropriate to infer that members of the public have been using the land "as of right", simply because the authority has not objected to their using the land. It seems very unlikely that, in such a case, the legislature could have intended that such land would become a village green after the public had used it for twenty years. It would not merely be understandable why the local authority had not objected to the public use: it would be positively inconsistent with their allocation decision if they had done so. The position is very different from that of a private owner, with no legal duty and no statutory power to allocate land for public use, with no ability to allocate land as a village green, and who would be expected to protect his or her legal rights.

Drawing together the essential facts in Barkas and the clear principles established in that case, with the essential facts set out in the statement enclosed with this letter regarding the council's land at Wilding Road, Wallingford, the two cases are essentially indistinguishable. In brief summary, such use as there has been of the

council's land at Wilding Road by local inhabitants has not been "as of right" within the meaning of and as required by section 15(2)(a) of the Commons Act 2006. In such circumstances therefore, it is respectfully submitted that the only decision that is properly available to the county council is to refuse to register the land as a town green.

Yours faithfully

Ian Price
Senior Litigation & Planning Lawyer
Solicitor

Annex 3 - Counsels Opinion

APPLICATION FOR REGISTRATION OF A TOWN OR VILLAGE GREEN AT
WILDING ROAD, WALLINGFORD, OXFORDSHIRE
APPLICATION NUMBER NLREG42

ADVICE

Introduction

1. I am instructed in this case to advise Oxfordshire County Council in its capacity as the commons registration authority for its area ("the Council").

2. The advice I am asked to provide concerns an application (number NLREG42) ("the Application") made to the Council for the registration of a town or village green at Wilding Road, Wallingford.

3. The Application was made by a local resident, Anthony Hurford ("the Applicant") of 1 Sinodun Road, Wallingford and was stamped as received by the Council on 12th February 2018 but only deemed to be duly made on 10th June 2019.

4. The Application was made in respect of a relatively small (approximately 0.3ha) rectangular plot of land which lies to the north of Wilding Road in Wallingford between numbers 15 and 17 Wilding Road ("the Application Land"). Wilding Road is part of a post-war housing estate which lies on the north side of Wallingford to the east of Wantage Road. The estate is made up of several streets which include Sinodun Road where the Applicant lives.

5. The Application was made on the basis that section 15(2) of the Commons Act 2006 applied. Section 15(2) applies *"where (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and (b) they continue to do so at the time of the application."*

6. As I will come on to in due course below, the key issue in the present case is the requirement that use is *"as of right"*.

7. The Application Land has a grass surface and is level. Its southern boundary is marked by a dwarf brick wall which demarcates the Application Land from the Wilding Road footway (and its associated verge). There is a central gap in the wall at which point there is a narrow, metalled access stub off Wilding Road. The western and eastern boundaries of the Application Land are marked by the boundaries of the adjoining dwellings (numbers 15 and 17 Wilding Road) and their plots. The northern boundary of the Application Land is formed by a steel palisade fence beyond which (to the north) is agricultural land. The Application Land extends in depth (south to north) back from Wilding Road to the same extent as the gardens of numbers 15 and 17 Wilding Road.

8. Photographs of the Application Land reveal that a litter bin and a dog waste bin are stationed on it close to Wilding Road. There is also some remnant hardstanding where there had previously been play equipment. There is a small, tight grouping of two or three trees near the northern boundary of the Application Land.

9. The Application was supported by several completed evidence questionnaires. It is not necessary to rehearse their content for the purposes of this advice.

<u>The objection of South Oxfordshire District Council</u>

10. Upon notification and publication of the Application the Council received an objection dated 2nd August 2019 from South Oxfordshire District Council ("SODC"). SODC own the Application Land. Their objection ("SODC's Objection") was made on the single basis that the circumstances of the Application were indistinguishable from those considered in the Supreme Court case of *Barkas v North Yorkshire County Council*[1] and that use of the Application Land had not been *"as of right"*.

11. *Barkas* was a case where a local authority owner of a playing field had acquired the field and thereafter held it pursuant to powers contained in the Housing Acts (latterly

[1] [2014] UKSC 31.

section 12(1) of the Housing Act 1985) which enabled it to provide and maintain recreation grounds. The Supreme Court held that (per Lord Neuberger[2]) *"[s]o long as land is held under a provision such as section 12(1) of the 1985 Act ... members of the public have a statutory right to use the land for recreational purposes, and therefore they use the land 'by right' and not as trespassers, so that no question of user 'as of right' can arise."*[3]

12. In a wider formulation of the principle involved the Supreme Court also held that (again per Lord Neuberger) *"where the owner of the land is a local, or other public, authority which has lawfully allocated the land for public use (whether for a limited period or an indefinite period), it is impossible to see how, at least in the absence of unusual additional facts, it could be appropriate to infer that members of the public have been using the land 'as of right', simply because the authority has not objected to their using the land. It seems very unlikely that, in such a case, the legislature could have intended that such land would become a village green after the public had used it for 20 years. It would not merely be understandable why the local authority had not objected to the public use: it would be positively inconsistent with their allocation decision if they had done so. The position is very different from that of a private owner, with no legal duty and no statutory power to allocate land for public use, with no ability to allocate land as a village green, and who would be expected to protect his or her legal rights."*[4]

13. To similar effect was the reasoning of Lord Carnwath[5] who stated that where *"land is owned by a public authority with power to dedicate it for public recreation, and is laid out as such, there may be no reason to attribute subsequent public use to the assertion of a distinct village green right"*[6] and that *"where the owner is a public authority, no adverse inference can sensibly be drawn from its failure to 'warn off' the users as trespassers, if it has validly and visibly committed the land for public recreation, under powers that have nothing to do with the acquisition of village green rights."*[7]

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[2] Baroness Hale, Lord Reed and Lord Hughes agreed with Lord Neuberger.
[3] At paragraph 21.
[4] At paragraph 24.
[5] Who agreed with Lord Neuberger and with whom Baroness Hale, Lord Reed and Lord Hughes agreed.
[6] At paragraph 64.
[7] At paragraph 65.

14. SODC's Objection was supported by a witness statement (dated 30th July 2019) of a property surveyor (Melissa Jones) employed by SODC (SODC's Witness Statement") which adduced (as appendices) a number of documents. The documents comprised:
    (a) an official copy of the register of title in respect of the Application Land showing that it is owned by SODC;
    (b) an original conveyance of 12th September 1945 of a larger area of land, which included the Application Land, to SODC's statutory predecessor, Wallingford Borough Council ("the 1945 Conveyance");
    (c) two planning applications by Wallingford Borough Council in 1952 for the development of housing on parts of the land acquired in 1945 ("the 1952 Planning Applications") together with the respective plans for each application which labelled the Application Land as a "children's playing field";
    (d) a transfer document dated 7th July 1997 between SODC and South Oxfordshire Housing Association Limited ("SOHA") ("the 1997 Transfer") of numerous properties on the housing estate referred to in paragraph 4 above but which also identified "retained land" to remain in the ownership of SODC, which "retained land" included the Application Land as shown on a plan attached to the transfer document which labelled the Application Land as a "playground".

    SODC's Witness Statement also included various photographs of the Application Land.

15. The documents were linked in SODC's Witness Statement by a supporting narrative which also provided further factual information. The following points were made.
    (a) Although the 1945 Conveyance recited neither the statutory power under which Wallingford Borough Council acquired the land in question nor the purpose of the acquisition, it was clear that the purpose was for new housing.
    (b) At the time of the acquisition, the Housing Act 1936 ("the HA 1936") was in force and section 73(a) of this act permitted a local authority *"to acquire any land … as a site for the erection of houses"*.
    (c) Section 80 of the HA 1936 provided a supplementary power for a local authority (with the consent of the minister) to provide and maintain a recreation ground.
    (d) Hence it was that Wallingford Borough Council laid out and thereafter maintained the Application Land for recreational use in association with and/or as part of the development of the adjoining housing estate.

(e) Sections 73 and 80 of the HA 1936 were in turn repealed and substantially re-enacted in the Housing Act 1957 ("the HA 1957"), the provisions of which were later repealed and re-enacted (albeit with more amendments) in the Housing Act 1985 ("the HA 1985").

(f) The 1952 Planning Applications made by Wallingford Borough Council were for the development of housing on part of the land it had acquired and the Application Land was shown and identified as a "children's playing field".

(g) Following local government re-organisation in 1974 the Application Land was transferred into the ownership of SODC along with such of the adjoining land as had remained in public ownership since the initial acquisition in 1945.

(h) The Application Land was retained by SODC when the surrounding houses were transferred to SOHA in 1997. The Application Land was confirmed as "retained land" and was identified on the plan accompanying the transfer document as a "playground".

(i) Since having acquired the Application Land following local government reorganisation in 1974 SODC had continued to hold it for public recreation and had maintained it in a manner to facilitate such use. There was a litter bin and a dog waste bin (both marked clearly as the property of SODC) that were both provided, and emptied, by SODC. The grass was mown regularly by SODC. The trees on the Application Land were inspected and maintained by SODC.

(j) The evidence questionnaires submitted in support of the Application told of informal recreational activities on the Application Land of the type that SODC would expect to see taking place on it. As such, SODC would have had no general cause to prevent or discourage such activities and nor would local residents have expected SODC to do so while the Application Land was retained for such use.

<u>The further progress of the Application</u>

16. The Applicant has had the opportunity to deal with the matters contained in SODC's Objection and Witness Statement as required by regulation 6(4) of the Commons

(Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 ("the 2007 Regulations") but has not provided any response [8].

17. For its part the Council sought further information from SODC in a letter dated 23rd September 2019. The Council asked:
    (a) what the original purpose was of the Application Land being retained and not developed for housing and whether that retention was for a possible access point for future development on land situated immediately to the north;
    (b) whether SODC was able to supply any records dating from 1950 to the present that explicitly recorded the intention of SODC or its predecessor authorities to manage the Application Land as a recreation ground;
    (c) whether, given that the Application Land had no signage to indicate that the Application Land was a SODC controlled and run recreation ground, there were any other recreation grounds that were managed by SODC and signed as such or unsigned like the Application Land.

18. SODC replied by a letter dated 11th October 2019. The letter stated the following.
    (a) The purpose of the Application Land being retained and not developed for housing was in order to provide a space for recreational use, explicitly described on the plans that formed part of the 1952 Planning Applications as a "children's playing field". SODC's Witness Statement had explained the statutory power under which a council could acquire land on which to build housing and then put an amount of that land to some useful ancillary purpose other than the direct provision of housing accommodation (such as a recreation ground). Hence it was that post-war housing estates (such as the one at Wilding Road) could be found the length and breadth of the country with small pieces of land (such as the one at Wilding Road) set aside for local community use for recreation.
    (b) As explained and evidenced in SODC's Witness Statement, the plans that formed part of the 1952 Planning Applications for housing development recorded the intention of SODC's predecessor authority to use the Application Land as a recreation ground (explicitly as a "children's playing field"). Also as explained and

[8] I take this from the Council's letter to SODC of 23rd September 2019 which states that *"[f]urther to the expiry of the consultation period within which the Applicant could make representations in relation to SODC's objection to the above application, no response has been received from the Applicant."*

evidenced in SODC's Witness Statement, the Application Land was retained by the Council when the surrounding houses (or at least those that were still in public ownership) were transferred to SOHA in 1997. As seen on the plan that accompanied the 1997 Transfer, the Application Land was shown as a "playground". In essence, the position was plain and straightforward: while in public ownership the Application Land had been maintained and managed for no purpose other than the one broadly stated by SODC, i.e., as a space for informal recreation provided essentially for the benefit of the adjacent post-war housing development.

(c) Commensurate with the location, size, nature and level of use of the Application Land SODC had not chosen to display on the Wilding Road recreation ground a plethora of signs designed for the purpose of advertising the Application Land as a recreation ground controlled and run by SODC or to direct local people as to how the Application Land might or might not be used although there were a couple of basic functional features on the Wilding Road site that did bear the name of SODC (i.e., the litter bin and the dog waste bin). Specifically answering the Council's question about signage at other recreation grounds, there were other recreation grounds and facilities elsewhere in SODC's district that were owned and/or controlled by SODC where signs were displayed bearing SODC's name and logo along with other useful visitor information. Riverside Splash Park at Wallingford and the Ladygrove Loop at Didcot were two such examples. SODC's play area at Radnor Road, Wallingford was an example of a recreation space that, like Wilding Road, was sign free.

19. The letter concluded by stating that it was trusted that the point had now been reached whereby the Council could make the decision to refuse the registration of the Application Land as a new green.

20. Before turning to the matters on which my advice is sought, I need to record one other item of evidence. This item of evidence is one which the Council has discovered itself in processing the Application. It has not been submitted to the Council by either the Applicant or SODC. It consists of a notice of refusal of a planning application dated 11th November 1960 ("the 1960 Decision Notice"). The planning application was made by a WJ Curtis (of a firm of surveyors and land agents) and sought permission for the

development of some 51 acres of land north of Wantage Road, Wallingford for residential use. The 51 acres includes land to the immediate north of the Application Land. Wallingford Borough Council (acting on behalf of Berkshire County Council) refused the application on the basis that (1) it would involve an excessive and unnecessary expansion of the urban area and was contrary to the local planning authority's proposal for the development of Wallingford as shown on the outline plan for the development of Wallingford and (2) it involved the loss of good agricultural land to which the Ministry of Agriculture objected.

<u>My instructions</u>

21. My instructions state that my Instructing Solicitor considers that SODC's objection depends on it being established that the Application Land was appropriated for recreational purposes. The following concerns are expressed in that respect.
    (a) The documentary evidence produced by SODC for the appropriation of the Application Land for recreational purposes is considered to be limited consisting simply of the plans forming part of the 1952 Planning Applications showing the Application Land as a "children's playing field" and the plan accompanying the 1997 Transfer on which the Application Land is marked as a "playground".
    (b) The evidence of SODC's practice that would show that the Application Land had been appropriated for recreational purposes is also considered to be similarly limited. My instructions state that, while the grass on the Application Land appears to have been mown, and the trees there pruned, by SODC, who have also placed some rubbish bins on the Application Land, there never seems to have been any signage marking out the Application Land as a public park, any creation or maintenance of sports pitches by SODC on the Application Land or any lighting provided. My instructions recognise that historically there was some play equipment on the Application Land but say that it is not known who installed or removed the same and no evidence has been produced that SODC maintained it.
    (c) Immediately behind the Application Land is a large field which was subject to a failed planning application in 1960 for residential development. This is evidenced by the 1960 Decision Notice which I have referred to in the preceding paragraph. My instructions state that the Application Land appears to provide the only means of accessing the field from public highways and that the Application Land would

therefore "unlock" the field for development. I am told that my Instructing Solicitor suspects that SODC may, in reality, have appropriated the Application Land for purposes connected with the development of the field. My instructions stress that no representations on this point have been received from the parties.

22. My Instructions surmise that the inability of SODC to produce further documentation arises from the fact their offices were destroyed in an arson attack in 2015 and that large numbers of non-digitised records were lost. It is said that, although SODC have not relied on the arson attack by way of explanation, it might explain the fact that SODC have not produced, for example, appropriation resolutions, ministerial consents or maintenance records.

23. My instructions also state that the Council's Countryside Records Team (who, I understand, are responsible for handling the Application) believe that it would be inappropriate to further probe SODC in case such conduct could be interpreted as "feeding" a case to SODC, which would be unfair to the Applicant.

24. Against the background I have described above the matters which I am instructed to deal with in my advice are as follows.
    (a) I am asked to confirm as a preliminary point that the Council is entitled to consider the evidence regarding the field behind the Application Land at this stage despite the fact that this evidence was not submitted by either party.
    (b) I am asked to advise generally on the issues raised in my instructions.
    (c) I am asked to advise specifically whether the current evidence from SODC is sufficient to justify the Council in rejecting the Application on *Barkas* grounds.
    (d) If not, I am asked to advise on what further action should be taken by the Council to manage the Application.

<u>My advice</u>

Matter (a)

25. My advice in relation to matter (a) above is that, in principle, the Council is entitled to consider the evidence regarding the field behind the Application Land (that is, the 1960

Decision Notice) at this stage despite the fact that this evidence was not submitted by either party. In *Naylor v Essex County*[9] John Howell QC, sitting as deputy judge of the High Court, said that *"an authority can rely to reject an application on matters, however obtained, not contained in written statements from objectors received following notification of it to the public and to those interested in (or occupying) the land to which it relates: see regs 5 and 6 of the 2007 Regulations."*[10] The deputy judge went on to instance a public inquiry as *"one means by which, if it decides to do so, a registration authority may obtain evidence other than from the applicant and any objector or by which it may test or supplement that which it has received from them in written form. There is nothing in the relevant regulations which precludes it from doing so, or which precludes it from otherwise obtaining evidence, if it decides to do so, provided always that it acts fairly."*[11]

26. The qualification in the last sentence of the italicised quote above – *"provided always that it acts fairly"* – is important. Were the Council to think of relying on the 1960 Decision Notice to help it in reaching a decision in this case it would be incumbent on the Council to give each of the parties an opportunity to comment on it. Fairness dictates as much. Neither party has seen this document. I also think that it would be necessary for the Council in providing any such opportunity to explain to the parties what it considers to be the potential relevance of the 1960 Decision Notice because, so it seems to me, it is far from self-evident on the face of the document what that potential relevance is.

27. As it is, I do not think that the 1960 Decision Notice is a document which should play any role in reaching a decision on the Application. First, the 1960 Decision Notice has nothing to say about the Application Land. Secondly, the concern expressed in my instructions – a suspicion that SODC may in reality have appropriated the Application Land for purposes connected with the development of the field behind the Application Land – is speculation with no evidential support. Appropriate inferences can be drawn from documentary material but that must be distinguished from speculation or suspicion. In my view it would be quite impossible to draw the inference from the 1960

[9] [2014] EWHC 2560 (Admin).
[10] At paragraph 62.
[11] Ibid.

Decision Notice that SODC or its predecessor authority had appropriated the Application Land for some kind of purpose connected with the development of adjoining land. Thirdly, it seems to me that the premise on which the Council has based its speculation is not factually correct in any event. That premise is (see paragraph 21(c) above) that the Application Land appeared to be the only means of accessing the development site which was the subject of the 1960 Decision Notice. However, the land which was to be developed was described as land north of Wantage Road and the plan which was submitted as part of the application clearly showed that access to the development site was to be taken off Wantage Road. Fourthly, the suggestion that the Application Land might have been appropriated for purposes connected with the development of adjoining land is not only unsupported by any evidence, it is also contradicted by the evidence (whatever weight is placed on it) that SODC has produced. Fifthly, from the answer that I give below in relation to matter (c), the question of the 1960 Decision Notice is irrelevant in any event.

Matter (b)

28. The critical matter in this case is matter (c) and it is a little artificial to separate general advice from the specific advice sought on whether the current evidence from SODC is sufficient to justify the Council in rejecting the Application on *Barkas* grounds. It is, however, convenient to say something at this stage in relation to the issue of "appropriation" which is raised in the questions which I am asked. I think that it is necessary to approach this issue with some care. The word "appropriation" may be used in a narrow sense relating to the situation where land held by a (principal) council for one purpose is then appropriated to another purpose: see section 122 of the Local Government Act 1972 ("the LGA 1972"). Such an "appropriation" cannot be inferred from conduct alone or simply from the way in which a local authority has managed or treated land: see *Goodman v Secretary of State for Environment, Food and Rural Affairs*[12].

29. However, the word "appropriation" can be used to convey a wider meaning in the context of town and village greens. Its use in this context stems from the decision,

[12] [2015] EWHC 2576 (Admin).

subsequently disapproved in *Barkas*, of *Sunderland City Council v Beresford*[13] in which Lord Walker concluded that it was a critical failing in an objection to the registration of a new green on public authority owned land that there was absence of evidence of *"formal appropriation"*[14] of the land as recreational open space In *Barkas* Lord Neuberger said that Lord Walker had plainly not been limiting the word "appropriate" to a case covered by section 122 of the LGA 1972[15] and that, in *Barkas* itself, the field in question *"was, as I see it, 'appropriated', in the sense of allocated or designated, as public recreational space, in that it had been acquired, and was subsequently maintained, as recreation grounds with the consent of the relevant minister, in accordance with section 80(1) of the 1936 Act: public recreation was the intended use of the field from the inception."*[16] Lord Carnwath made similar observations and went somewhat further. He agreed that Lord Walker had not been using the word "appropriation" in any specific statutory sense[17], pointed out that, if the word was used in a wider sense, the land in *Beresford* should have been regarded as appropriated to recreational open space[18] but also opined that it was unnecessary to deploy analysis in terms of "appropriation" where a public authority made land available for public recreation under statutory powers which it enabled to do that[19].

30. In the light of the above, and given that the case advanced by SODC is that the Application Land has always been made available for public recreation under statutory powers which enabled that to be done, it is not, in my view, necessary in the present case for there to be evidence in the form of an appropriation resolution such as might be required to establish an appropriation under section 122 of the LGA 1972.

Matter (c)

31. My advice is that the current evidence from SODC is sufficient to justify the Council in rejecting the Application on *Barkas* grounds. My reasons for that advice follow.

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[13] [2003] UKHL 60.
[14] At paragraph 90.
[15] [2014] UKSC 31 at paragraph 42.
[16] At paragraph 46.
[17] At paragraph 79.
[18] At paragraph 85.
[19] Ibid and at paragraph 79.

32. I turn first to consider the question of the statutory purpose for which the larger area of land within which the Application Land is included was originally acquired by Wallingford Borough Council as SODC's statutory predecessor. This question is relevant to the issue of the available statutory powers which, in turn, is relevant to the issue of whether use was *"as of right"*. I will come to analysis of the relevant statutory powers in due course but consider at this point the factual question of the statutory purpose of the acquisition as shown by the documentary evidence. I consider that SODC's evidence (albeit it is limited) clearly establishes that the land in question was acquired for housing purposes.

33. It is true that the 1945 Conveyance does not record the statutory purpose(s) for which the 16 or so acres of land (including the Application Land) which were then acquired by Wallingford Borough Council were so acquired. Nevertheless the 1952 Planning Applications make it clear that the land must have been acquired for housing purposes. Each of the applications was made by Wallingford Borough Council (as landowner) to Berkshire County Council to construct council houses on part of the land acquired in 1945 and each application described the purpose for which the land was used as "housing"[20]. The acquisition of the land for housing purposes by a local authority as part of a post-war council house building programme is exactly as might be expected. It would also, in my view, be fanciful to think that the land which was acquired by Wallingford Borough Council in 1945 had been acquired for some purpose other than housing but was later appropriated to housing purposes in 1952[21].

34. There is nothing in the evidence to suggest that the Application Land was, or could have been, acquired for a separate purpose different from the housing purposes for which the whole area of land was acquired. At the time of acquisition in 1945 the Application Land was no more than an undifferentiated part of a larger whole.

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[20] The first application (number 688) was made on 23rd September 1952 and proposed the erection of 34 houses consisting of seven pairs of semi-detached houses to the north of Wilding Road and five blocks, each of four houses, on the south side of Wilding Road. The second application (number 689) was made on 24th September 1952 and proposed the erection of one pair of semi-detached houses on the corner of Wilding Road and two blocks of flats, each block containing four flats, on Andrew Road (which leads south from Wilding Road).

[21] But, even in that highly unlikely circumstance, the acquired land was held for housing purposes in 1952 as the 1952 Planning Applications demonstrate.

35. I note that the 1945 Conveyance referred to the land to the north of the acquired land as being the site of a proposed bypass and required the boundary in this location to be fenced. However, there is no evidence that the Application Land was, at some point after acquisition in 1945, ever appropriated by Wallingford Borough Council for any purpose connected with the provision of access to the (then) proposed bypass. The fact that the layout plan for each of the 1952 Planning Applications marked the Application Land as a "children's playing field" is evidence to the contrary. And, to the extent that the bypass proposal was still current at the time of the 1952 Planning Applications and any access to it was to be provided from Wilding Road, the layout plan for application number 688 shows, further east along Wilding Road from the Application Land, a short length of road heading north from Wilding Road hard up to the northern boundary of the land acquired in 1945. This road, which is now known as Doyley Road, would have been the obvious access to the bypass[22]. By contrast with the way in which Doyley Road is shown on the layout plan, the access shown into the "children's playing field" is the narrow stub access exactly as it exists to this day.

36. Wallingford Borough Council's power to acquire land for housing in 1945 is to be sourced, as SODC's Witness Statement contended, to section 73(a) of the HA 1936 which provided (largely as set out in SODC's Witness Statement) that *"[a] local authority shall have power ... (a) to acquire any land ... as a site for the erection of houses for the working classes"*. Its power to build houses can be found, initially, in section 72(1)(a) of the HA 1936 which provided that *"[a] local authority may provide housing accommodation for the working classes – (a) by the erection of houses on any land acquired or appropriated by them"*. The same power was then continued in the HA 1957 which provided in section 92(1)(a) that *"[a] local authority may provide housing accommodation — (a) by the erection of houses on any land acquired or appropriated by them"*.

37. Wilding Road and the estate of which it forms part make up, from what I have seen on the photographs produced by SODC, an archetypal post-war council housing estate. Over the years many individual properties on the estate were sold off into private

[22] This point might therefore be added to what I say in paragraph 27 above questioning the Council's suggestion that the Application Land would have provided the only means of access to development land to the north.

ownership (under Housing Act powers[23]) as the list of conveyances following on from the 1945 Conveyance shows[24]. So much of the estate as then remained in public ownership in 1974 would, as SODC's Witness Statement explained, have been transferred from Wallingford Borough Council to SODC upon local government reorganisation in that year. Eventually, those properties which had not then been sold off into private ownership were transferred under Housing Act powers by SODC to SOHA via the 1997 Transfer (but ownership of the Application Land was retained by SODC). In short, Housing Act powers have been engaged throughout.

38. Turning more specifically to the Application Land, I do not think that there can be any real doubt on the evidence that, as a matter of fact, it has been available to the local population for recreational purposes throughout the period from the construction of the housing estate to the present. The evidence questionnaires, which are not contentious in this respect, speak of recreational use of the Application Land for a period from 1960 to the present day (and also confirm that there were previously swings and a roundabout on the Application Land[25]). The documentary evidence (albeit that it is limited) is consistent with this. The plans to the 1952 Planning Applications show the Application Land as a "children's playing field". The plan accompanying the 1997 Transfer shows the Application Land as a "playground".

39. I also think that the plans that formed part of the 1952 Planning Applications show that it was the intention of Wallingford Borough Council to make the Application Land available to local people as a recreational facility in the form of a "children's playing field" or to allocate it for, or commit it to, such use (to use the terminology of *Barkas*). For my part I do not see what other construction could reasonably be put on these plans which showed the proposed layout of the development. The provision of such a play facility in connection with new housing is, again, very much what one might expect. Similarly, the plan attached to the 1997 Transfer demonstrates, to my mind, that, at this point in time, SODC regarded the Application Land to be a public recreational facility as a "playground". The evidence "on the ground", as it were, reinforces the picture of

[23] To be found variously in Part V of the Housing Act 1957, Chapter 1 of Part 1 of the Housing Act 1980 and Part V of the Housing Act 1985 as referred to in the 1997 Transfer.
[24] The list of conveyances forms part of appendix 3 to SODC's Witness Statement.
[25] One evidence questionnaire suggests that these were removed in the late 1980s.

the provision of a public recreational facility. It is correct that there has been no documentary material to support the evidence provided in SODC's Witness Statement that the Application Land has been mowed by SODC but there is nothing which suggests that this evidence is unreliable and good reason to think that it is reliable. It would be entirely to be expected that SODC would mow the grass on a piece of land that they owned and that they treated as available for public recreation. It is also wholly consistent with this state of affairs that SODC have provided a litter bin and a dog waste bin on the Application Land[26]. In *Barkas* Lord Carnwath said that, where a public authority had undertaken acts of maintenance of its land during a period of public use of that land, the reasonable inference was that the land had been committed to the public's use under the authority's powers[27].

40. The next task is to identify the relevant power under which Wallingford Borough Council and SODC were able to do what they have done in providing a public recreational facility. I have already explained why I think that the evidence demonstrates that the Application Land, as part of a larger area of land, was acquired by Wallingford Borough Council for housing purposes acting under the power to do so contained in section 73(a) of the HA 1936 and that council housing was thereafter constructed on the estate under the powers contained in section 72(1)(a) of the HA 1936 and section 92(1)(a) of the HA 1957. One then turns to see what other powers were associated with those that I have just mentioned. SODC point to section 80(1) of the HA 1936 which contained supplementary powers in connection with the provision of housing accommodation by local authorities. This included a power of a local authority *"to provide and maintain with the consent of the Minister ... in connection with any such housing accommodation ... any recreation grounds"*. The same power is then found in section 93(1) of the HA 1957 and continues to this day in section 12(1)(b) of the HA 1985.

41. In the present case it seems to me that Wallingford Borough Council was clearly empowered to provide and maintain the Application Land as a recreation ground in the

[26] And while there is, again, an absence of documentary evidence in relation to the play equipment which used to be found on the Application Land, the fact that there was such equipment is also entirely consistent with the Application Land having been made available by its local authority owner to the public for the purpose of recreation.
[27] [2014] UKSC 31 at paragraph 84.

form of a "children's playing field" under section 80(1) of the HA 1936 (and/or section 93(1) of the HA 1957 if the playing field was not provided until after this later statute came into force). Similarly, SODC have always been empowered to provide and maintain the Application Land as a recreation ground (or "playground") under section 93(1) of the HA 1957 and section 12(1)(b) of the HA 1957[28]. It is not an impediment to the conclusions above that there is no evidence that Wallingford Borough Council ever obtained ministerial consent. Unless there is evidence to the contrary (which there is not) it is to be presumed, in accordance with the presumption of regularity, that they did obtain that consent: see *Naylor v Essex County Council*[29] and *Calder Gravel Ltd v Kirklees Metropolitan Borough Council*[30].

42. The above analysis is sufficient to locate the statutory power which covers the facts of the present case, and it also reflects SODC's Objection. It further shows that the present case is indistinguishable from *Barkas*, as SODC contend. On that basis the Application cannot succeed. Use of the Application Land by local residents for informal recreation has been the use of a recreation ground provided and maintained successively by Wallingford Borough Council and SODC under Housing Act powers. Users of the Application Land could not have been trespassers on it. Their use of it was pursuant to a public right or a publicly based licence and thus use *"by right"* and not *"as of right"*.

43. It follows that my view is that the Council should now reject the Application on paper without any further process being adopted. I consider that the evidence produced by SODC is sufficient to eliminate any question of a serious dispute about the "as of right" issue and that there is, accordingly, no need for any non-statutory inquiry to be held[31].

44. I perhaps should add, although my Instructing Solicitor will well appreciate this already, that my role can, of course, only be advisory. The Council will ultimately have to form its own view on whether the evidence adduced by SODC is sufficient to defeat the Application although it will need to carefully consider my advice in coming to its

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[28] The continuity of the law throughout is provided for in section 191 of the HA 1957 and the Housing (Consequential Provisions) Act 1985.
[29] [2014] EWHC 2560 (Admin) at paragraph 27.
[30] (1990) 60 P & CR 322 at pages 338-339.
[31] See *Whitmey v Commons Commissioners* [2004] EWCA Civ 951.

judgment. It might be helpful at this point if I say a few more words on some of those potential items of evidence which are not available in this case, or features which are missing on the ground, and summarise points I have already made. I acknowledge that one often sees more by way of documentary evidence in a case of this nature than SODC have produced but that does not mean that what they have produced is insufficient. As to an appropriation resolution, I have already explained in paragraphs 28-30 above that it is not necessary in the present case for there to be evidence in the form of an appropriation resolution such as might be required to establish an appropriation under section 122 of the LGA 1972. Insofar as "appropriation" is used in the wider sense of an allocation or designation of land by a public authority for public recreational purposes under statutory powers, then my view is that the evidence establishes that the Application Land has been so appropriated (although, as Lord Carnwath stated in *Barkas*, this is not a necessary part of any analysis in the present type of case[32]). The absence of evidence of ministerial consent (for the purposes of section 80(1)(a) of the HA 1936) does not, in my view, undermine SODC's case because the presumption of regularity applies here: see paragraph 41 above. I have also already explained (see paragraph 39 above) the approach which the Council can take to the issue of maintenance, notwithstanding the absence of maintenance records (which would commonly be present, rather than absent, in a case of this nature).

45. Turning to missing features on the ground, I would not be inclined to place any particular weight on the absence of signage. It seems to me that SODC's point that the absence of signage is commensurate with the location, nature and size of the Application Land as a relatively small piece of recreational open space incidental to a local housing estate is a fair one. Similarly, I do not think that the fact that the Application Land is not lit or that it has never had any sports pitch(es) laid out on it is of any real significance.

46. Before leaving matter (c), there one final point I mention for the sake of completeness and really by way of no more than a postscript. This is that I think that there is an alternative source of statutory power (albeit not one referred to by SODC) by which Wallingford Borough Council and SODC were able to provide the Application Land

[32] See paragraph 29 above.

for public recreation. I refer here to section 79(1)(a) of the HA 1936. This provided that, where a local authority had acquired any land for the provision of accommodation, it could then, without prejudice to any of its other powers, *"(a) lay out and construct public streets or roads and open spaces on the land"*. The same power was re-enacted in section 107 of the HA 1957 and continues in force as section 13(1) of the HA 1985.

47. It seems to me that the reference to *"open space"* which is contained in the above provisions should be construed to be a reference to *"public open space"*. While there is no definition of *"open space"* in the HAs 1936, 1957 and 1985, there does not appear to be any good reason of principle why the word *"public"* which appears before the word *"streets"* should not be read across to the later words *"or roads and open spaces"*. In terms of statutory purpose, it is difficult to see what would justify limiting the meaning of *"open spaces"* to those which were not public or not for public use[33]. Moreover, the view of the inspector who reported in the decision which became the subject of the *Barkas* litigation was that the words *"open spaces"* in section 79(1)(a) of the HA 1936 enabled the laying out of public open space[34]. This view was endorsed in the first instance decision in the case[35]. The judge also took the view that the emphasis in the relevant provisions of the HA 1936 was on public provision[36]. These views were not affected by the subsequent proceedings in the Court of Appeal and Supreme Court. I would add only that, in my view, the power to maintain land laid out as open space under Housing Act powers is either necessarily implicit in those powers or may be seen as a subsidiary power authorised under section 111 of the LGA 1972.

48. I stress again that the last two paragraphs are intended simply to complete the overall picture. It would not be necessary for the Council to rely on the points I have made in them to reject the Application (were it to take that course).

[33] I do not regard the fact that ministerial consent was required in order for a recreation ground to be provided under other provisions in the Housing Acts should in some way be regarded as a factor which should be taken to narrow the meaning of what could be done under the alternative power to do something different (albeit potentially similar) – lay out open spaces – under the powers presently under discussion.

[34] See paragraph 122 of the inspector's report as quoted in the first instance decision in *Barkas* [2011] EWHC 3653 (Admin) at paragraph 7.

[35] [2011] EWHC 3653 (Admin) at paragraph 27.

[36] At paragraph 31.

Matter (d)

49. In the light of my advice above, matter (d) does not arise. The only further observation I would make is that, if the Council were not to reject the Application on paper at this stage (and not thereby follow my advice to do so), I would see no real alternative to proceeding to a public inquiry (or some form of hearing) with appropriate directions being set to manage the preparation for, and conduct, of the same. I am not sure what suitable further written process could be devised to conclude the case as an alternative to following the normal approach when an application is not rejected on paper of proceeding thereafter to an oral process.

50. I trust that I have now dealt with the matters raised in my instructions. If I can assist further, my Instructing Solicitor should not hesitate to contact me.

Kings Chambers
36 Young Street
Manchester M3 3FT

Alan Evans

29th November 2019

APPLICATION FOR REGISTRATION OF A TOWN OR VILLAGE GREEN AT WILDING ROAD, WALLINGFORD, OXFORDSHIRE
APPLICATION NUMBER NLREG42

ADVICE

Richard Hodby
Solicitor
For and behalf of Nick Graham
Director of Law & Governance and Monitoring Officer
Legal Services Resources Directorate
Oxfordshire County Council
County Hall
New Road
Oxford
OX1 1ND

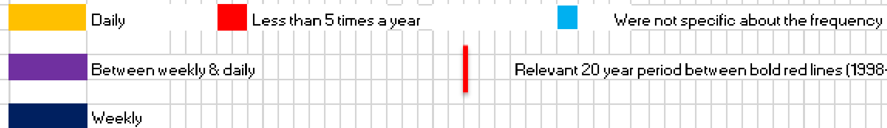
Annex 4 - User Evidence Bar Chart

User No.	Name	Address	Land uses	From	To	1960s	1970s	1980s	1990s	2000s	2010s
1	Robert Calcutt	31 Westfield Road, Long Wittenham, Abingdon	CP, DW, FB	1969	1985						
2	Amy Gardner	10 Wilding Road, Wallingford	CP, R, DP, DW, CC, FB, P, KF	1989	2019						
3	Claire Gaughan	21 St Nicholas Road, Wallingford	CP, R, DW, TG, CC, FB, PW, BR	1979	2019						
4	Nathan Gray	22 Sinodun Road	CP, R, DW, CC, FB, P, KF, PW	1979	2019						
5	J Rhodes	24 Wilding Road	CP, R, DW, TG, FB, C, P, KF, PW	1965	2019						
6	Gillian Sawyer	9 Waller Court, Caversham, Reading	CP, DW, FB, C	1966	1973						
7	Sarah Waddington	9 Wilding Road, Wallingford	CP, DW, CC, FB, P, PW	1986	2019						
8	Ryan White	15 Wilding Road, Wallingford	CP, R, DP, DW, CC, FB, C, P, KF, PW, BR, O	1987	2019						

Key to activities seen on land

Code	Activity	Number
CP	Children playing	8
R	Rounders	5
F	Fishing	0
DP	Drawing and painting	2
DW	Dog walking	8
TG	Team games	2
PB	Picking blackberries	0
CC	Community celebratio	5
F	Fetes	0
FB	Football	8
C	Cricket	3
BW	Bird watching	0
P	Picnicking	5
KF	Kite flying	4
PW	People walking	5
BP	Bonfire parties	0
BR	Bicycle riding	2
CS	Carol singing	0
O	Other	1

FREQUENCY OF USE:



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PLANNING & REGULATION COMMITTEE – 27 JANUARY 2020

Policy Annex (Relevant Development Plan and other Policies)

Oxfordshire Minerals and Waste Core Strategy 2017 (OMWCS)

POLICY C1: SUSTAINABLE DEVELOPMENT

A positive approach will be taken to minerals and waste development in Oxfordshire, reflecting the presumption in favour of sustainable development contained in the National Planning Policy Framework and the aim to improve economic, social and environmental conditions of the area.

Planning applications that accord with the policies in this plan will be approved, unless material considerations indicate otherwise. Where there are no policies relevant to the application, or relevant plan policies are out of date, planning permission will be granted unless material considerations indicate otherwise, taking into account whether:

- any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits of the proposed development when assessed against the National Planning Policy Framework; or specific policies in the National Planning Policy Framework indicate that the development should be restricted.

POLICY C5: LOCAL ENVIRONMENT, AMENITY AND ECONOMY

Proposals for minerals and waste development shall demonstrate that they will not have an unacceptable adverse impact on:

- the local environment;
- human health and safety;
- residential amenity and other sensitive receptors; and
- the local economy;

  including from:
  - noise;
  - dust;
  - visual intrusion;
  - light pollution;
  - traffic;
  - air quality;
  - odour;
  - vermin;
  - birds;
  - litter;
  - mud on the road;
  - vibration;
  - surface or ground contamination;
  - tip and quarry-slope stability;
  - differential settlement of quarry backfill;

- subsidence; and
- the cumulative impact of development.

Where necessary, appropriate separation distances or buffer zones between minerals and waste developments and occupied residential property or other sensitive receptors and/or other mitigation measures will be required, as determined on a site-specific, case-by-case basis.

POLICY C10: TRANSPORT

Minerals and waste development will be expected to make provision for safe and suitable access to the advisory lorry routes shown on the Oxfordshire Lorry Route Maps in ways that maintain and, if possible, lead to improvements in:

- the safety of all road users including pedestrians;
- the efficiency and quality of the road network; and
- residential and environmental amenity, including air quality.

Where development leads to a need for improvement to the transport network to achieve this, developers will be expected to provide such improvement or make an appropriate financial contribution.

Where practicable minerals and waste developments should be located, designed and operated to enable the transport of minerals and/or waste by rail, water, pipeline or conveyor.

Where minerals and/or waste will be transported by road:

a) mineral workings should as far as practicable be in locations that minimise the road distance to locations of demand for the mineral, using roads suitable for lorries, taking into account the distribution of potentially workable mineral resources; and

b) waste management and recycled aggregate facilities should as far as practicable be in locations that minimise the road distance from the main source(s) of waste, using roads suitable for lorries, taking into account that some facilities are not economic or practical below a certain size and may need to serve a wider than local area.

Proposals for minerals and waste development that would generate significant amounts of traffic will be expected to be supported by a transport assessment or transport statement, as appropriate, including mitigation measures where applicable.

POLICY M10: RESTORATION OF MINERAL WORKINGS

Mineral workings shall be restored to a high standard and in a timely and phased manner to an after-use that is appropriate to the location and delivers a net gain in biodiversity. The restoration and after-use of mineral workings must take into account:

- the characteristics of the site prior to mineral working;

- the character of the surrounding landscape and the enhancement of local landscape character;
- the amenity of local communities, including opportunities to enhance green infrastructure provision and provide for local amenity uses and recreation;
- the capacity of the local transport network;
- the quality of any agricultural land affected, including the restoration of best and most versatile agricultural land;
- the conservation of soil resources
- flood risk and opportunities for increased flood storage capacity;
- the impacts on flooding and water quality of any use of imported material in the proposed restoration;
- bird strike risk and aviation safety;
- any environmental enhancement objectives for the area;
- the conservation and enhancement of biodiversity appropriate to the local area, supporting the establishment of a coherent and resilient ecological network through the landscape-scale creation of priority habitat;
- the conservation and enhancement of geodiversity;
- the conservation and enhancement of the historic environment; and
- consultation with local communities on options for after-use.

Planning permission will not be granted for mineral working unless satisfactory proposals have been made for the restoration, aftercare and after-use of the site, including where necessary the means of securing them in the longer term.

Proposals for restoration must not be likely to lead to any increase in recreational pressure on a Special Area of Conservation.

Vale Local Plan 2031 Part 1 (VLP1)

CORE POLICY 1: PRESUMPTION IN FAVOUR OF SUSTAINABLE DEVELOPMENT

Planning applications that accord with this Local Plan 2031 (and where relevant, with any subsequent Development Plan Documents or Neighbourhood Plans) will be approved, unless material considerations indicate otherwise.

Where there are no policies relevant to the application or relevant policies are out of date at the time of making the decision then the Council will grant permission unless material considerations indicate otherwise, and unless:

i. any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework taken as a whole, or
ii. specific policies in that Framework indicate that development should be restricted.

CORE POLICY 33: PROMOTING SUSTAINABLE TRANSPORT AND ACCESSIBILITY

The Council will work with Oxfordshire County Council and others to:

i. actively seek to ensure that the impacts of new development on the strategic and local road network are minimised
ii. ensure that developments are designed in a way to promote sustainable transport access both within new sites, and linking with surrounding facilities and employment
iii. support measures identified in the Local Transport Plan for the district, including within the relevant local area strategies
iv. support improvements for accessing Oxford
v. ensure that transport improvements are designed to minimise any effects on the amenities, character and special qualities of the surrounding area, and
vi. promote and support improvements to the transport network that increase safety, improve air quality and/or make our towns and villages more attractive.

Vale of the White Horse Local Plan 2031 Part 2 (VLP2)

DEVELOPMENT POLICY 23: IMPACT OF DEVELOPMENT ON AMENITY

Development proposals should demonstrate that they will not result in significant adverse impacts on the amenity of neighbouring uses when considering both individual and cumulative impacts in relation to the following factors:

i. loss of privacy, daylight or sunlight
ii. dominance or visual intrusion
iii. noise or vibration
iv. dust, heat, odour, gases or other emissions
v. pollution, contamination or the use of/or storage of hazardous substances; and
vi. external lighting.

DEVELOPMENT POLICY 25: NOISE POLLUTION

Noise-Generating Development

Noise-generating development that would have an impact on environmental amenity or biodiversity will be expected to provide an appropriate scheme of mitigation that should take account of:

i. the location, design and layout of the proposed development
ii. existing levels of background noise
iii. measures to reduce or contain generated noise, and
iv. hours of operation and servicing.

Development will not be permitted if mitigation cannot be provided within an appropriate design or standard[a].

Noise-sensitive Development

Noise-sensitive development in locations likely to be affected by existing sources of noise[b] will be expected to provide an appropriate scheme of mitigation to ensure appropriate standards of amenity are achieved for future occupiers of the proposed development, taking account of:

i. the location, design and layout of the proposed development
ii. measures to reduce noise within the development to acceptable levels, including external areas, and
iii. the need to maintain adequate levels of natural light and ventilation to habitable areas of the development.

In areas of existing noise, proposals for noise-sensitive development should be accompanied by an assessment of environmental noise and an appropriate scheme of mitigation measures.

Development will not be permitted if mitigation cannot be provided to an appropriate standard with an acceptable design.

[a]Currently set out in British Standards 4142:2014 and 8233:2014. The Council is currently developing guidance relating to noise mitigation.
[b]Busy roads, railway lines, aerodromes, industrial/commercial developments, waste, recycling and energy plant, and sporting, recreation and leisure facilities.
Development Policy 24: Noise Pollution.

Oxford Core Strategy 2026 (OCS)

POLICY CS11: FLOODING

Planning permission will not be granted for any development in the functional flood plain (Flood Zone 3b) except water-compatible uses and essential infrastructure. The suitability of developments proposed in other flood zones will be assessed according to the PPS25 sequential approach and exceptions test.

For all developments over 1 hectare and/or development in any area of flood risk from rivers (Flood Zone 2 or above) or other sources* developers must carry out a full Flood Risk Assessment (FRA), which includes information to show how the proposed development will not increase flood risk. Necessary mitigation measures must be implemented.

Unless it is shown not to be feasible, all developments will be expected to incorporate sustainable drainage systems or techniques to limit run-off from new development, and preferably reduce the existing rate of run-off.

Development will not be permitted that will lead to increased flood risk elsewhere, or where the occupants will not be safe from flooding.

*Note: “Other sources” of flood risk include those arising from groundwater, sewerage overflow and surface run-off.

POLICY CS12: BIODIVERSITY

Development will not be permitted that results in a net loss of sites and species of ecological value. Where there is opportunity, development will be expected to enhance Oxford's biodiversity.

Site and species important for biodiversity will be protected:

- International and national sites (the SAC and SSSIs: These must be protected from any development that will have an adverse impact.
- Local sites: No development should have a significant adverse effect upon a site that is designated as having local importance for nature conservation or as a wildlife corridor, save in exceptional circumstances where the importance of the development outweighs the harm, and where it is possible to compensate for the damage caused by providing adequate replacement habitat.
- Species and habitats of importance for biodiversity are found across Oxford. These will be expected to be protected from harm, unless the harm can be appropriately mitigated.

Opportunities will be taken (including through planning conditions or obligations) to:

- maintain, restore and add to the network of unimproved flood meadows within the Thames and Cherwell flood plains;
- deliver Biodiversity Action Plan targets and meet the objectives of Conservation Target Areas;
- create links between natural habitats and identify a strategic Oxford habitat network; and
- ensure the inclusion of features beneficial to biodiversity (or geological conservation) within new developments throughout Oxford.

POLICY CS16: ACCESS TO EDUCATION

The City Council will work with the County Council and other agencies to improve access to all levels of education, through new or improved facilities, throughout Oxford, but particularly in areas of population growth.

The strategic development areas at Barton and West End, and potentially Summertown, will identify suitable provision for primary school(s). Funding to enable the timely provision of the necessary education facilities will be sought from the developments that generate that need.

Planning permission will only be granted for new education facilities in locations accessible by walking, cycling and public transport. Provision for community as well as educational use will be sought.

POLICY CS18: URBAN DESIGN PRINCIPLES

Planning permission will only be granted for development that demonstrates high-quality urban design through:

- responding appropriately to the site and its surroundings;
- creating a strong sense of place;
- being easy to understand and to move through;
- being adaptable, in terms of providing buildings and spaces that could have alternative uses in future;
- contributing to an attractive public realm;
- high quality architecture.

Development proposals should respect and draw inspiration from Oxford's unique historic environment (above and below ground), responding positively to the character and distinctiveness of the locality. Development must not result in loss or damage to important historic features, or their settings, particularly those of national importance and, where appropriate, should include proposals for enhancement of the historic environment, particularly where these address local issues identified in, or example, conservation area character appraisal or management plans. Views of the skyline of the historic centre will be protected.

Saved Policies of the Oxford Local Plan 2001-2016 (saved policies) (OLP)

POLICY CP1: STANDARDS OF DEVELOPMENT

Planning permission will only be granted for development which:

a. shows a high standard of design, including landscape treatment, that respects the character and appearance of the area; and
b. uses materials of a quality appropriate to the nature of the development, the site and its surroundings; and
c. is acceptable in respect of access, parking, highway safety, traffic generation, pedestrian and cycle movements including, where appropriate, links to adjoining land; and
d. provides buildings and spaces with suitable access arrangements and facilities for use by all members of the community with special access needs.

Where relevant, development proposals must also:

e. retain and protect important landscape and ecological features, and provide for further landscape treatment where appropriate to the nature of the area or to safeguard the local amenity; and
f. retain important open spaces of recreational or amenity value or both; and
g. preserve or enhance the special character and setting of listed buildings and conservation areas; and
h. preserve the site and setting of Scheduled Ancient Monuments or sites of special local archaeological significance; and
i. safeguard public rights of way and the amenities of adjoining land users and occupiers, including the provision of alternative rights of way of equal or enhanced quality.

POLICY CP8: DESIGNING DEVELOPMENT TO RELATE TO ITS CONTEXT

All new and extended buildings should relate to their setting to strengthen, enhance and protect local character. Planning permission will only be granted where:

a. new development is well connected to, and integrated with, the wider area;
b. the siting, massing and design of proposed development creates an appropriate visual relationship with the form, grain, scale, materials and details of the surrounding area;
c. building design is specific to the site and its context and should respect, without necessarily replicating, local characteristics, and should not rule out innovative design; and
d. proposed development on sites with a high public visibility enhances the style and perception of the area, particularly by retaining features which are important to, and remove features which detract from, the character of the local area.

POLICY CP10: SITING OF DEVELOPMENT TO MEET FUNCTIONAL NEEDS

Planning permission will only be granted where proposed developments are sited to ensure that:

a. access to the site is practicable, with priority given to pedestrians and cyclists;
b. circulation within the site, and site entrances, give priority to pedestrians and cyclists;
c. outdoor needs are properly accommodated, including private amenity space, screened refuse and recycling storage, servicing and parking;
d. street frontage and streetscape are maintained or enhanced or created;
e. buildings are orientated to provide satisfactory light, outlook, and privacy; and
f. the use or amenity of other properties is adequately safeguarded.

POLICY CP13: ACCESSIBILITY

Planning permission will only be granted for development which makes reasonable provision for access by all members of the community, including people and children, elderly people and people with disabilities. The City Council will require proposals to ensure that the particular needs of different groups are incorporated into the design of new buildings, facilities and the layout of sites.

POLICY CP25: TEMPORARY BUILDINGS

Planning permission will only be granted for temporary or portable buildings where short-term need has been clearly demonstrated, such as on sites already allocated for permanent development, buildings to house short-term or trial projects, to meet seasonal or peak demands, for urgent operational requirements, or in connection with major site development work.

Planning permission for temporary or portable buildings will not be granted where:

a. buildings would adversely affect visual attractiveness, trees or parking provision; and

b. proposals do not adequately address, where appropriate: landscaping; noise insulation; access for people with disabilities; relationship to existing buildings; prejudice future developments; access points; or provide a suitable external appearance.

Planning permissions for temporary buildings will be subject to a planning condition that requires the removal of the buildings within a specified time period.

POLICY TR4: PEDESTRIAN & CYCLE FACILITIES

The City Council will only grant planning permission for development that:

a) provides good access and facilities for pedestrians and for cyclists, and
b) complies with the minimum cycle parking standards shown in Appendix 4.

For new non-residential development, the City Council will seek the provision of showers and changing facilities in accordance with the thresholds and minimum standards set out in Appendix 4.

Where appropriate, the City Council will seek contributions towards, or provision of, off-site measures that create safer, more attractive and convenient access for pedestrians and for cyclists, and secured by a planning obligation.

Oxford Local Plan 2036 (Proposed Submission Draft) (DOLP)

POLICY S1: PRESUMPTION IN FAVOUR OF SUSTAINABLE DEVELOPMENT

When considering development proposals the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the national Planning Policy Framework. It will work proactively with applicants to find solutions jointly which mean that applications for sustainable development can be approved where possible, and to secure development that improves the economic, social and environmental conditions in the area.

Planning applications that accord with Oxford’s Local Plan (and, where relevant, with neighbourhood plans) will be approved without delay, unless material considerations indicate otherwise.

Where there are no policies relevant to the application or relevant policies are out of date at the time of making the decision then the Council will grant permission unless material considerations indicate otherwise, and unless:

a) any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework taken as a whole; or

b) specific policies in that Framework indicate that development should be restricted.

POLICY G1: PROTECTION OF GREEN AND BLUE INFRASTRUCTURE NETWORK

Green and open spaces and waterways of the Green and Blue Infrastructure Network are protected for their social, environmental and economic functions and are defined on the Policies Map.

Planning permission will not be granted for development that would result in harm to the Green and Blue Infrastructure network except where:

a) the loss resulting from the proposed development would be replaced by equivalent or better provision elsewhere in a suitable location; and

b) it can be demonstrated that there will be no harm to any biodiversity network function; and

c) any loss of water-based recreation facilities, support services for boat users or other facilities that enable the enjoyment of the blue infrastructure network, is to be replaced by a facility in another equally accessible and suitable location; and

d) adequate mitigation measures to achieve a net improvement in green infrastructure provision in the locality are proposed; and

e) any relevant criteria of the policies G2-G5 are met.

POLICY RE2: EFFICIENT USE OF LAND

Planning permission will only be granted where development proposals make efficient use of land.

Development proposals must make best use of site capacity, in a manner compatible with the site itself, the surrounding area and broader considerations of the needs of Oxford, as well as addressing the following criteria:

a) the density must be appropriate for the use proposed;

b) the scale of development, including building heights and massing, should conform to other policies in the plan. It is expected that sites at transportation hubs, and within the city and district centres in particular will be capable of accommodating development at an increased scale and density, although this will also be encouraged in all other appropriate locations where the impact of so doing is shown to be acceptable;

c) opportunities for developing at the maximum appropriate density must be fully explored; and

d) built form and site layout must be appropriate for the capacity of the site.

High-density development (for residential development this will indicatively be taken as 100dph) is expected in the city centre and district centres.

POLICY RE7: MANAGING THE IMPACT OF DEVELOPMENT

Planning permission will only be granted for development that:

a) ensures that the amenity of communities, occupiers and neighbours is protected; and

b) does not have unaddressed transport impacts affecting communities, occupiers, neighbours and the existing transport network; and

c) provides mitigation measures where necessary;

The factors the City Council will consider in determining compliance with the above elements of this policy include:

d) visual privacy, outlook;

e) sunlight, daylight and overshadowing;

f) artificial lighting levels;

g) transport impacts, including the assessment of these impacts within the Transport Assessments, Travel Plans and Delivery and Servicing Management Plans Policy T2;

h) impacts of the construction phase, including the assessment of these impacts within the Construction Management Plans;

i) odour, fumes and dust;

j) microclimate;

k) contaminated land; and

l) impact upon water and wastewater infrastructure.

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