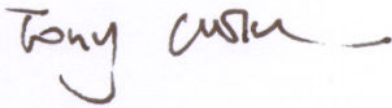


To: **Members of the Planning & Regulation Committee**

***Notice of a Meeting of the Planning & Regulation  
Committee***

**Monday, 13 September 2010 at 2.00 pm**

**County Hall**



Tony Cloke  
Assistant Head of Legal & Democratic Services

September 2010

Contact Officer: **Graham Warrington**  
Tel: (01865) 815321; E-Mail:  
graham.warrington@oxfordshire.gov.uk

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*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.*

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**Membership**

Chairman – Councillor Steve Hayward  
Deputy Chairman - Councillor Mrs Catherine Fulljames

**Councillors**

Alan Armitage	Peter Jones	John Sanders
Tony Crabbe	Lorraine Lindsay-Gale	Don Seale
Anda Fitzgerald-O'Connor	David Nimmo-Smith	John Tanner
Jenny Hannaby	Neil Owen	
Ray Jelf	G.A. Reynolds	

**Notes:**

- ***A site visit is required for Item 9 (The Soldiers of Oxfordshire) Members are asked to meet on site at 10.30 am.***
- ***Date of next meeting: 25 October 2010***

## Declarations of Interest

This note briefly summarises the position on interests which you must declare at the meeting. Please refer to the Members' Code of Conduct in Part 9.1 of the Constitution for a fuller description.

### **The duty to declare ...**

You must always declare any "personal interest" in a matter under consideration, i.e. where the matter affects (either positively or negatively):

- (i) any of the financial and other interests which you are required to notify for inclusion in the statutory Register of Members' Interests; or
- (ii) your own well-being or financial position or that of any member of your family or any person with whom you have a close association more than it would affect other people in the County.

### **Whose interests are included ...**

"Member of your family" in (ii) above includes spouses and partners and other relatives' spouses and partners, and extends to the employment and investment interests of relatives and friends and their involvement in other bodies of various descriptions. For a full list of what "relative" covers, please see the Code of Conduct.

### **When and what to declare ...**

The best time to make any declaration is under the agenda item "Declarations of Interest". Under the Code you must declare not later than at the start of the item concerned or (if different) as soon as the interest "becomes apparent".

In making a declaration you must state the nature of the interest.

### **Taking part if you have an interest ...**

Having made a declaration you may still take part in the debate and vote on the matter unless your personal interest is also a "prejudicial" interest.

### **"Prejudicial" interests ...**

A prejudicial interest is one which a member of the public knowing the relevant facts would think so significant as to be likely to affect your judgment of the public interest.

### **What to do if your interest is prejudicial ...**

If you have a prejudicial interest in any matter under consideration, you may remain in the room but only for the purpose of making representations, answering questions or giving evidence relating to the matter under consideration, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

### **Exceptions ...**

There are a few circumstances where you may regard yourself as not having a prejudicial interest or may participate even though you may have one. These, together with other rules about participation in the case of a prejudicial interest, are set out in paragraphs 10 – 12 of the Code.

### **Seeking Advice ...**

It is your responsibility to decide whether any of these provisions apply to you in particular circumstances, but you may wish to seek the advice of the Monitoring Officer before the meeting.

**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 27 July 2010 and to receive for information any matters arising therefrom.

4. **Petitions and Public Address**
5. **Installation of a modular classroom building for a temporary period of 5 years at St Christopher's Church of England Primary School, Temple Road, Oxford OX4 2ET - Application No R3.0081/10** (Pages 7 - 14)

Report by Interim Head of Sustainable Development (**PN5**)

*See also separate Policy Annex at Item 12*

This application is for the installation of a double modular classroom building at St Christopher's C of E Primary School, Oxford, for a temporary period of five years. The report describes the development and outlines the consultation replies, objections and other responses to the application. Relevant planning policies are included along with the comments and recommendation of the Interim Head of Sustainable Development on the proposal.

***The Committee is RECOMMENDED that subject to a unilateral undertaking being agreed as part of this permission to ensure that a contribution is made towards the provision of improved pedestrian and cycle facilities in the local area that Application No. R3.0081/10 be approved subject to conditions to be determined by the Head of Sustainable Development to include the following matters:***

1. ***The development must be carried out strictly in accordance with the particulars contained in the application and the plans.***
2. ***Commencement of the development within 3 years.***
3. ***Temporary building to be removed by 30 September 2015.***
4. ***Update the School Travel Plan to take account of the new development.***
5. ***Provision of additional secure and covered cycle parking.***
6. ***Submission and agreement of a construction traffic management plan (to include contractors working hours, delivery times of materials and site compound, routing details and a banks person for deliveries).***
7. ***External walls to be dark green in colour.***
8. ***Retained trees to be protected during construction works.***

***Informatives covering the following matters:***

***School Travel Plan informative – The school is requested to consult with Travel Plans team.***

***School Accommodation - The school is advised that investigations should be carried out into the provision of a permanent solution to their long-term accommodation needs before this consent expires.***

***Archaeology– If archaeological finds do occur during development, the County Archaeologist shall be notified in order that he may visit the site and advise as necessary.***

***Ecology - If any protected species not initially surveyed for are found at any point, all work should cease immediately. Work should not recommence until a full survey has been carried out, a mitigation strategy prepared and licence obtained (if necessary) in discussion and agreement with Natural England.***

- 6. Construction of a 91.4m x 55m all-weather astroturf pitch to include: installation of 6 x 15m high steel floodlight columns; associated run-off and warm up areas; erection of 3m high pitch perimeter fencing; temporary storage container and associated works. Temporary contractor's access is proposed via Castle Street. (Application amended to provide further information on the extent of the development proposed) - Wallingford School, St George's Road, Wallingford OX10 8HH - Application No R3.0176 (Pages 15 - 38)**

Report by Interim Head of Sustainable Development (PN6)

*See also separate Policy Annex at Item 12*

This application is for the construction of an all-weather astroturf pitch on the playing fields of Wallingford secondary school for use by both the school and the wider local community. The application also proposes the erection of six floodlighting columns, perimeter fencing around the pitch and the placing of a storage container on the site. Contractors access for the development is proposed via a temporary vehicle entrance on Castle Street and the laying of a temporary haul road across the school playing fields. Objections to the application have been received in relation to the need for the development and the impact on neighbouring residents from light pollution, noise and disturbance, increased traffic and other highways matters. Other issues such as the impact on the historic environment and wildlife and the increased risk of floodrisk have been raised. These objections are summarised in the report along with the responses from other consultees.

***The Committee is RECOMMENDED that Application No. R3.0076/10 be approved subject to conditions to be determined by the Head of Sustainable Development to include the following matters:***

- 1. That the development must be carried out strictly in accordance with the**

- particulars contained in the application and the plans accompanying (as amended) subject to conditions covering matters below.*
2. *That the development shall commence within 3 years of the date of the permission.*
  3. *That no development shall take place until the trees on the site which are to be retained and which are adjacent to or within the development area, have been protected during building operations by means of a protective fence around the edge of the canopy of the trees.*
  4. *Prior to the commencement of the development a Construction Traffic Management Plan must be submitted and approved. This shall include details of the routes used by Heavy Goods Vehicles accessing the site and final details of visibility splays to be provided for the temporary vehicular access.*
  5. *Prior to the commencement of the development written consent must be obtained from the relevant Highways Area Office for works to the temporary vehicular access.*
  6. *On completion of the development the temporary vehicular access shall be reinstated to the satisfaction of the Local Highway Authority.*
  7. *Within six months of the first use of the all-weather pitch the school shall review and update their Travel Plan to take account of the proposed development.*
  8. *On the completion of the development the temporary contractor's access road and ancillary construction works shall be removed and the playing field land shall be reinstated to a playing field to a quality at least equivalent (or better) than the current quality.*
  9. *On the completion of the development details of the layout of all winter and summer sports pitches to be laid out on the schools playing fields shall be submitted and approved.*
  10. *The construction of the pitch should only take place between September and February.*
  11. *Prior to the commencement of the development the final location, size and colour of the temporary storage container shall be submitted and agreed.*
  12. *The development permitted shall only be carried out in accordance with the Flood Risk Assessment submitted with the application.*
  13. *The applicant shall be responsible for organising and implementing an archaeological watching brief, to be maintained during the period of construction/during any groundworks taking place on the site.*
  14. *No development shall commence on site without an appointed archaeologist being present. Once the watching brief has been completed its findings shall be reported to the Local Planning Authority.*
  15. *Prior to the use of the floodlights a lighting assessment shall be submitted which demonstrates that lighting sources (i.e. bulbs and reflectors) shall not be visible from beyond the boundary of any adjacent residential properties and light trespass into the windows of any light sensitive premises (e.g. residential premises) shall not have vertical illuminance greater than 5 lux.*
  16. *Prior to the first use of the floodlights details of automatic timing equipment shall be submitted and agreed. The timing equipment shall ensure that the floodlights are automatically switched off no later than 9pm.*
  17. *The height of the floodlights shall not exceed 13 metres.*
  18. *The hours of use of the all-weather pitch for school purposes shall be*

- between 8.30am and 6.00pm Monday to Friday (including school holidays).*
19. *The hours of use of the all-weather pitch for community purposes shall be between 6.00pm and 9.00pm Monday to Friday and between 9.00am and 3.00pm Saturdays (including school holidays). No use during Sundays.*
  20. *There shall be no use of the floodlights during Saturdays and Sundays.*
  21. *Submission, agreement and implementation of a community use management agreement plan prior to the first use of the all-weather pitch.*

***Informatives:***

***The lighting column to be relocated on Castle Street shall be done so at the applicant's expense.***

7. **Conversion of an existing modular building with the addition of another bay section to provide a childcare base at Barley Hill County Primary School, Ludsden Grove, Thame OX9 3DH - Application No R3.0076/10 (Pages 39 - 48)**

Report by Interim Head of Sustainable Development (PN7).

*See also separate Policy Annex at Item 12*

This application is for the erection of a single storey extension to an existing temporary building in order to provide a pre-school facility on the Barley Hill Primary School site. The development would also include the erection of a freestanding canopy, new footpath link to an existing pedestrian entrance and new fencing and gates around the existing temporary building. Objections to the application have been received in relation to traffic and highway matters and the principle of retaining temporary buildings on the site. These objections are summarised in the report, along with the responses from other consultees.

***It is RECOMMENDED that Application No. R3.0076/10 be approved subject to conditions to be determined by the Head of Sustainable Development to include the following matters:***

1. ***That the development must be carried out strictly in accordance with the particulars contained in the application and the plans accompanying subject to conditions covering matters below.***
2. ***That the development shall commence within 3 years of the date of the permission.***
3. ***That the hours of use of the building for pre-school use shall be between 9am – 3.30pm, Monday to Friday only.***
4. ***That no development shall take place until the trees on the site which are to be retained and which are adjacent to or within the development area, have been protected during building operations by means of a protective fence around the edge of the canopy of the trees.***
5. ***Prior to the commencement of the development a Construction Traffic Management Plan shall be submitted and approved. No contractors access via Ludsden Grove.***
6. ***Prior to the commencement of the development the external colour of the***

*extension and a scheme for repainting the existing temporary building shall be submitted and agreed. The extension and the existing temporary building shall be painted prior to its first use.*

7. *Prior to the commencement of the development the final details of the free-standing canopy shall be submitted and agreed.*
8. *Prior to the commencement of the development the final details of new fencing and gates shall be submitted and agreed.*
9. *Within six months of the use of the extension the school shall review and update their Travel Plan to take account of the proposed development.*
10. *That the adjacent covered cycle parking shall be retained in its current position.*

**Highways Informative:**

*The school are encouraged to, in consultation with the Local Highway Authority, investigate the possibility of providing additional and/or clearer signage at the entrance to Denbigh Road. Any agreed additional signage shall be implemented prior to the use of the extension.*

8. **Erection of 2 single storey extensions to provide additional youth centre and community facilities. Creation of 6 additional car parking spaces (including 1 disabled space); demolition of an existing wall; erection of new 1.8 metre high fencing; creation of new footpath and internal alterations at Community Centre, Church View, Bampton OX18 2NE - Application No. R3.0103/10 (Pages 49 - 62)**

Report by Interim Head of Sustainable Development (PN8)

*See also separate Policy Annex at Item 12*

This application is for the construction of two single storey extensions to the existing community building (one to the front and one to the rear) to provide new and improved facilities at Bampton Community centre. The proposals will compliment refurbishment and internal alterations to the existing building. Outside, a new footpath and relocation of six parking spaces is proposed along with the demolition of a wall, and erection of a 1.8 metre fence to the west of the community centre building. The community centre is a listed building, and so a separate application for listed building consent has also been submitted. This will be determined by the Secretary of State for Communities and Local Government. The application is being reported to this Committee as objections have been received to the proposal. The report describes the development and outlines the consultation replies and objections and other responses to the application. Relevant planning policies are included along with the comments of the Interim Head of Sustainable Development on the proposal.

***The Committee is RECOMMENDED to approve Application Number R3.0103/10 subject to conditions to be determined by the Head of Sustainable Development to include the following matters:***

1. ***The development must be carried out strictly in accordance with the***

- particulars contained in the application and the plans.*
2. *Commencement of the development within 3 years.*
  3. *Submission and agreement of external materials.*
  4. *Submission of fencing details.*
  5. *Submission of full details of external doors and windows and sample of paint/stain colour.*
  6. *Submission and agreement of stonework to the proposed plinth.*
  7. *Refurbishment and internal alterations to be carried out as shown on approved plans.*
  8. *New works to be carried out in materials to match adjoining fabric unless shown on approved plans.*
  9. *Submission of tree root protection zone details*
  10. *Submission of hard and soft landscaping scheme.*
  11. *Implement landscaping*
  12. *If any bats are found at any point, all work should cease immediately and the Protected Species Officer contacted immediately.*
  13. *If any contamination is found at any point, all work should cease immediately and a remediation strategy shall be submitted, agreed and implemented.*
  14. *Submission and agreement of a construction management plan.*
  15. *Submission and agreement of a car park management scheme. Any scheme approved to be implemented for functions and events at the centre.*
  16. *Manoeuvring and parking areas to be constructed, laid out, surfaced and drained in accordance with sustainable drainage details (SUDS).*
  17. *Submission, approval and implementation of cycle parking details*
  18. *Submission and approval of full lay-by details.*
  19. *Undertaking of an archaeological watching brief.*
  20. *Hours of use of users to be restricted to the following: i) Day centre – 9.30am – 2.30pm, ii) Youth centre – 6.00pm – 10.00pm, and iii) weightlifters club – 6.00am – 12.00pm (midnight).*

**Vegetation removal informative – No trees or vegetation are to be removed during the bird breeding season.**

**Contamination informative – Any visibly contaminated or odorous materials are to be investigated.**

9. **Demolition of the pratten building and erection of a building, including a basement, to provide a new museum for 'The Soldiers of Oxfordshire' at Fletcher's House, Park Street, Woodstock - Application No R3.0058/10 (Pages 63 - 74)**

Report by Interim Head of Sustainable Development (PN9)

See also separate Policy Annex at Item 12

The report outlines an application to construct a new two storey building (with a basement) in the grounds of the Oxfordshire Museum in Woodstock to create a new museum building for the Soldiers of Oxfordshire. The building would also be made

available for use by the Oxfordshire Museum. The proposal involves the removal of the 'temporary' Pratten Building from the site. The site is within the Woodstock Conservation Area and there are a number of listed buildings in the locality, including Fletchers House (which houses the Oxfordshire Museum). The proposal is for a modern well designed building but objections have been received from the District and Town Councils and from English Heritage. The objections are referred to in the report along with objections from neighbouring residents, other comments received and the views of the Interim Head of Sustainable Development.

***The Committee is RECOMMENDED to approve Application No. R3.0058/10 for the demolition of the Pratten Building and erection of a building, including a basement, to provide a new museum for the Soldiers of Oxfordshire; at Fletchers House, Park Street, Woodstock subject to conditions to be determined by the Head of Sustainable Development, but to include the following matters:***

- (1) ***Detailed compliance – amended plans submitted.***
- (2) ***Development to commence in 3 years.***
- (3) ***Samples of all external materials to be agreed.***
- (4) ***Landscaping scheme (including tree replacement) to be submitted.***
- (5) ***Landscaping scheme to be implemented.***
- (6) ***Tree/hedgerow protection during construction works.***
- (7) ***Impact on walnut tree to be established, with mitigation measures to reduce impact, to be agreed.***
- (8) ***Archaeological watching brief to be undertaken.***
- (9) ***Any trees to be felled to be removed outside bird breeding season.***
- (10) ***If any protected species are found, all work to cease and mitigation strategy agreed before work recommences.***
- (11) ***Construction management plan to be submitted, agreed and implemented for duration of works.***
- (12) ***Glazing details (to include, extent of obscure glazing) to be submitted for north elevation of first floor gallery.***

**10. Erection and operation of an anaerobic digestion facility at Crowmarsh Battle Farm, Preston Crowmarsh, Wallingford by Agrivert Limited - Application P10/W0877/CC (Pages 75 - 90)**

Report by Interim Head of Sustainable Development (**PN10**).

*See also separate Policy Annex at Item 12*

The report describes an application for a permanent Anaerobic Digestion (AD) facility for the processing of food waste at Crowmarsh Battle Farm in South Oxfordshire. The AD plant would mix food waste with energy crop silage to produce biogas. The process would generate renewable energy (in the form of heat and electricity) and produce fertiliser. The facility proposes to process maximum of 45,000 tonnes of waste per year. The application site would cover an area of 2.5 hectares and would comprise three digestion and two storage tanks, a waste reception building, office and welfare facilities, biofilter, weighbridge, gas engine units, transformer, accelerator tank, energy crop silage area, energy crop silage feeder, access roads, car parking area, a wood chip

dryer and ancillary plant.

The report outlines the consultation responses received, comments from third parties, relevant development plan and other policies and the views of the Interim Head of the Sustainable Development. The main issues are whether there is a need for the development which overrides policy to restrict built development in the countryside, whether the proposal has an unacceptable environmental impact on the open countryside, whether the proposed location is acceptable, the transport impacts, whether potential local environmental impacts can be dealt with satisfactorily. There is a need for AD facilities nationally and locally to improve recycling efficiency, and meet recycling and composting targets. The site has a number of benefits that are not available in alternative sites. Potential local environmental impacts such as odour and noise would not be significant and could be adequately mitigated against and controlled through conditions. The report concludes that there are sufficient reasons, not least the need for waste management facilities, to override countryside protection policy.

***It is RECOMMENDED that subject to a routeing agreement to ensure that vehicles turn left out of and into the site that planning permission for Application P10/W0877/CC be approved subject to conditions to be determined by the Head of the Sustainable Development dealing with matters including those set out below.***

1. ***Compliance condition***
2. ***Commencement date – 3 years***
3. ***Operating hours to be agreed***
4. ***Organic waste only to be treated***
5. ***Fertiliser to be used on surrounding fields only as proposed in application***
6. ***Lighting details to be submitted***
7. ***Existing vegetation to be protected and retained***
8. ***Planting scheme to be implemented***
9. ***Effective silencers to be provided on plant, machineries and vehicles***
10. ***External building materials to be agreed***
11. ***Movement Access plan within the site to be submitted***
12. ***Travel Plan to be submitted***
13. ***Parking and Manoeuvring Areas to be retained***
14. ***Vehicles access design onto the A4074 to be submitted and agreed.***
15. ***Site signage to be agreed and displayed***
16. ***Noise control measures to be implemented***
17. ***Mitigation measures detailed within the Flood Risk Assessment (FRA) to be carried out.***
18. ***Scheme to dispose of surface and foul drainage to be submitted and agreed.***
19. ***Elevations of gas engine building to be submitted***
20. ***No mud on the public highway***
20. ***A water bowser to be used***
21. ***Maintenance of screening bunds***
22. ***Odour control scheme to be submitted in the event of any complaints.***
23. ***Clearance of any vegetation in accordance with time agreed***
24. ***Organising and implementing an archaeological watching brief***

**EA Informative:**

***Issues of odour control, pest and vermin control and gas safety to be dealt with through the Waste Management Licence.***

**11. Progress report on Minerals and Waste Site Monitoring and Enforcement (Pages 91 - 120)**

Report by Interim Head of Sustainable Development (PN11)

The report updates the Committee on the regular monitoring of minerals and waste planning permissions and progress on enforcement cases.

***It is RECOMMENDED that the Schedule of Compliance Monitoring Visits in Annex 1 and Schedule of Enforcement Cases in Annex 2 to the report be noted.***

**12. Relevant Development Plan and other Policies . (Pages 121 - 138)**

Report by Interim Head of Sustainable Development (PN12)

This report sets out policies for each of the applications above and should be regarded as an Annex to each report.

**13. Commons Act 2006: In The Matter of an Application to Register the Witney Meadows Country Park, Farm Mill Lane, Witney as a Town or Village Green (Pages 139 - 214)**

In February 2009 an application was made by Mr Owen Edwards for registration of land known as the Witney Meadows Country Park, Farm Mill Lane, Witney in Oxfordshire as a Town or Village Green under the Commons Act 2006. The land is owned by the Witney Town Council.

The County Council is the Commons Registration authority with statutory responsibility for determining such applications.

Objections were received by the Commons Registration Authority to the application and a public inquiry was held to consider the application and make a report with recommendations to the Council.

There are no delegated powers to officers to determine such an application and therefore the Members are requested to determine the application.

***Having received the Opinion of the Inspector set out in Annex 4 to this report, the Committee is RECOMMENDED to REJECT the application for registration as a new Town or Village Green that plot of land known as Witney Meadows Country Park, Farm Mill Lane, Witney in Oxfordshire that site being indicated clearly on "Application Map A" of the application submitted by Mr Owen Edwards and dated***

*5 February 2009.*

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**Pre-Meeting Briefing**

There will be a pre-meeting briefing at County Hall on **Monday 13 September 2010** at **12.00 midday** for the Chairman, Deputy Chairman and Opposition Group Spokesman.

# Agenda Item 3

## PLANNING & REGULATION COMMITTEE

**MINUTES** of the meeting held on Tuesday, 27 July 2010 commencing at 9.00 am and finishing at 9.35 am

**Present:**

**Voting Members:**

Councillor Steve Hayward – in the Chair

Councillor Mrs Anda Fitzgerald-O'Connor

Councillor Mrs Catherine Fulljames

Councillor Tim Hallchurch MBE (In place of Councillor Tony Crabbe)

Councillor Jenny Hannaby

Councillor Ray Jelf

Councillor Peter Jones

Councillor Lorraine Lindsay-Gale

Councillor David Nimmo-Smith

Councillor Neil Owen

Councillor John Sanders

Councillor Don Seale

Councillor Roz Smith (In place of Councillor Alan Armitage)

Councillor John Tanner

**Other Members in Attendance:**

Councillor David Turner (for Agenda Item 5)

**Officers:**

Whole of meeting

G. Warrington and J. Crouch (Corporate Core)

R. Dance, J. Hamilton and M. Deadman (Environment & Economy)

*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.*

### 8/10 APOLOGIES FOR ABSENCE AND TEMPORARY APPOINTMENTS

(Agenda No. 1)

*Apology*

Councillor Alan Armitage  
Councillor Tony Crabbe  
Councillor George Reynolds

*Temporary Appointment*

Councillor Roz Smith  
Councillor Tim Hallchurch  
-

**9/10 MINUTES**  
(Agenda No. 3)

The minutes of the meeting held on 12 July 2010 were approved and signed.

**10/10 PETITIONS AND PUBLIC ADDRESS**  
(Agenda No. 4)

The following requests to address the meeting had been agreed:

<i>Speaker</i>	<i>Item</i>
Nick Belcher	)
Michael Tyce	) 5. Great Milton C of E School
Amanda Powell	)
Sue Mathews	)
Councillor David Turner	)

**11/10 DEMOLITION OF DETACHED TEMPORARY CLASSROOM/COMMUNITY RESOURCES BUILDING AND BRICK BUILT STORE AND THE ERECTION OF A SINGLE STOREY BUILDING TO PROVIDE A CHILDREN'S CENTRE, AND THE ERECTION OF EXTENSIONS TO THE EXISTING SCHOOL TO PROVIDE A REPLACEMENT CLASSROOM AND COMMUNITY RESOURCES FACILITY, A READING ROOM AND A REPLACEMENT STORE ALONG WITH ASSOCIATED EXTERNAL WORKS - GREAT MILTON C OF E SCHOOL, THE GREEN GREAT MILTON - APPLICATION R3.0188/09**  
(Agenda No. 5)

In February 2010 the Planning & Regulation resolved to grant planning permission for a development at Great Milton Primary School for a Children's Centre and extensions to the existing school subject to before granting permission the applicant securing suitable alternative temporary parking arrangements for use by the school during the construction period. The Committee were now reviewing that decision in the light of difficulties experienced in resolving that pre-condition and further advice from the Head of Transport Development Control that additional on-street parking that might take place would not significantly increase risk to the safety of users of the public highway.

Mr Belcher reinforced the Parish Council's support for the principle of Children Centres but in the right location and supported by suitable infrastructure. This one was not and showed a disregard for sustainable development and the green belt. He was not a member of the Parish Council but had been a resident of Great Milton for 26 years and had witnessed the gradual changes in the village through increased traffic and the impact of large building projects. The County Council now appeared to be taking a completely opposite view with regard to the parking pre-condition to the one taken in February when a clear statement had been made at that time that such provision was required. Parking at the school was unlikely to be restricted to 8 cars. The objection for many local residents was based on suitable location for the Centre

and there was a willingness on their part to work with the County Council to find a more suitable alternative site.

Responding to Councillor Sanders Mr Belcher confirmed that not all residents of Great Milton were opposed to the development of a Children's Centre but that he was speaking on behalf of those that did.

Endorsing the comments made by Mr Belcher Mr Tyce supported the view that the proposed Children's Centre would be better placed nearer larger centres of population. The current proposal to site it at Great Milton was unsustainable on transport grounds and contrary to green belt policy and he was at a loss to explain why County officers had now formed a view contrary to the one taken in February when provision for alternative parking was clearly required. Great Milton had been the only site to offer itself for this development but that was no reason to blindly accept the proposal when the site was obviously not suitable. The government were sponsoring localism insofar as local people were the best custodians and in the light of local opposition he urged the Committee to reject the application.

Amanda Powell reiterated the support of the County Council's Children, Young People & Families Directorate for the proposed development at Great Milton which would enable the school to deliver improved services for families throughout the catchment area. School governors in spite of the disruption that the building project would bring to school life and the continuing opposition of some villagers remained fully supportive of the joint solution. Since February the centre had continued to deliver services under difficult circumstances with inadequate infrastructure. The Great Milton Children's Centre design team had hired a consultant to conduct a search for temporary parking solutions within the village which had resulted in an application to provide temporary parking facilities at Coombe Farm, which the Committee had recently approved. However, as that was unlikely to go ahead she asked the Committee to progress the original application in the knowledge that work would continue to find temporary parking solutions for the duration of construction.

Sue Mathews advised that the school's firm intention was to prevent disruption to the local community and avoid exacerbating any current parking difficulties or local opposition to building works through a commitment to manage temporary parking by staff carefully and closely and presented a comprehensive travel plan to members setting out various proposals for staff to travel to the school site and for visitors to the site. Arrangements would be monitored and reviewed on a weekly basis. The Children's Centre administrative staff would probably work off site until March 2011 when the first phase of building would be completed and access to the lower playground restored. That could be used for staff car parking with no need for staff to park off site. Overall, by these methods it was hoped to reduce cars on site to approximately 6, or however many can be accommodated safely, rather than the current average 18. Arrangements had also been secured for perhaps another 6 cars to park on private land elsewhere in the village. However, she hoped that the Committee would understand why details had been withheld in view of the pressure already applied to individuals and organisations previously approached for help. Staff were committed to these measures in order to achieve the very best educational outcomes for present and future children in our area.

Responding to:

Councillor Hannaby - she confirmed that there was support in the village for the development as well as opposition but it had been felt necessary to withhold names of those that had offered to help.

Councillor Turner supported the development of a Children's Centre which he felt would be of great benefit to this area and congratulated the school on its travel plan. Referring to the level of local opposition which still remained he advised that there would still be parking issues, which would need to be resolved even if the school development only went ahead. He also accepted the argument that Wheatley would have been a more suitable site but they had not put themselves forward for consideration.

Mr Hamilton advised that the Head of Sustainable Development wished to amend Condition 20 to read as follows:

"Details of a construction management plan (to include details of times of delivery of materials) together with a plan to manage staff travel (during the construction period) to minimise the impact of staff parking on the highway in the immediate vicinity of the school shall be submitted and agreed by the Head of Sustainable Development before development commences."

Mr Dance reminded the Committee that the South East Plan had now been revoked and that the original report to Committee in February had stated that the development did not accord with green belt policy.

Congratulating the school on their travel plan arrangements Councillor Hannaby highlighted the point that following the completion of stage 1 (March 2011) the likelihood was that the impact on parking levels at the site would diminish. She moved, and Councillor Sanders seconded that the officer recommendation as set out in report together with the amendment to Condition 20 be approved. The motion was put to the Committee and –

**RESOLVED:** (unanimously) to grant permission for Application No. R3.0188/09 for the demolition of a temporary classroom/ community resources building and brick built store and the erection of a single storey building to provide a children's centre, and the erection of extensions to provide replacement classroom and community resources facility, reading room and replacement store, along with associated external works at Great Milton C of E School subject to conditions to be determined by the Head of Sustainable Development to include the following matters:

1. That the development must be carried out strictly in accordance with the particulars contained in the application and the plans accompanying subject to conditions below.
2. That the development should commence within 3 years of the date of the permission.
3. That samples of the external materials proposed to be used should be submitted to and approved in writing by the Head of Sustainable Development prior to the commencement of development.

4. That no development should take place until the trees on the site which were to be retained and which were adjacent to or within the development area, had been protected during building operations by means of a protective fence around the edge of the canopy of the trees.
5. That the site be landscaped and planted with trees (including replacement trees) and shrubs in accordance with a comprehensive planting and landscaping scheme first approved by the Head of Sustainable Development.
6. That all planting, seeding or turfing comprised in the approved details of landscaping should be carried out in the first planting season following the occupation of the buildings or the completion of the development, whichever was the sooner.
7. The hours of operation of the children's centre for use by the public should not allow use between 8.00 to 9.15 am and 2.45 to 3.30 pm Monday to Friday during term time.
8. The hours of use of the children's centre at other times (including outside school hours) should be submitted for agreement by the Head of Sustainable Development before any use of the Centre commenced.
9. That the high split level windows on the western elevation of the proposed children's centre building should be frosted or glazed with obscure glass.
10. That prior to the commencement of the development full details of any additional proposed lighting, should be submitted to and approved by the Head of Sustainable Development.
11. That prior to the first occupation of the children's centre building the existing school Travel Plan for the site (and particularly for the period of construction) should be updated and submitted to the Head of Sustainable Development for approval.
12. That prior to the commencement of the development details of a sustainable drainage scheme for the proposed site should be submitted to and approved in writing by the Head of Sustainable Development.
13. Vegetation removal should not take place during the bird breeding season, which is March-August inclusive. If any trees and/or bushes needed to be removed during this time, they would need to be checked over by an ecological consultant immediately prior to removal to ensure there were no nesting birds present. If nesting birds were present, the vegetation could be removed until the birds had fledged.
14. If any protected species not initially surveyed for were found at any point, all work should cease immediately. Work should not recommence until a full survey had been carried out, a mitigation strategy prepared and licence obtained (if necessary) in discussion and agreement with Natural England.
15. The existing pond should not be removed until a new pond had been created in a position to be agreed by the Head of Sustainable Development.
16. The existing pond should not be removed except in the months of August, September and October. The pond should be drained gradually and plant material removed from it be stacked by the side of the pond for at least 24 hours to allow any animals trapped to escape before the vegetation was removed.
17. Details of the proposals to create habitats for bats in the new buildings should be submitted for agreement by the Head of Sustainable Development.
18. If any works were planned to occur later than April 2010, the submitted protected species survey must be updated.

19. Details of proposals for the formation of 3 additional on site parking spaces should be submitted and agreed by the Head of Sustainable Development before development commenced.
20. Details of a construction management plan (to include details of times of delivery of materials) together with a plan to manage staff travel (during the construction period) to minimise the impact of staff parking on the highway in the immediate vicinity of the school should be submitted to and agreed by the Head of Sustainable Development before development commenced.

Archaeological Informative – if archaeological finds did occur during development the County Archaeologist should be notified in order that he might visit the site and advise as necessary.

..... in the Chair

Date of signing .....

Contact Officer: Naomi Woodcock Tel: Oxford 815708

Division(s): East Oxford

## **PLANNING & REGULATION COMMITTEE – 13 SEPTEMBER 2010**

### **INSTALLATION OF A MODULAR CLASSROOM BUILDING FOR A TEMPORARY PERIOD OF FIVE YEARS**

#### **Report by Interim Head of Sustainable Development**

**Location:** St Christopher's Church of England Primary School, Temple Road, Oxford, Oxfordshire, OX4 2ET.

**Application No:** R3.0081/10

**District Council Area:** Oxford City

#### **Introduction**

1. This application is for the installation of a double modular classroom building at St Christopher's C of E Primary School, Oxford, for a temporary period of five years.

#### **Location (see site plan)**

2. St Christopher's C of E Primary School is located on Temple Road about 3.5 miles east of Oxford city centre.

#### **Site and Setting (see site plan)**

3. The school site is surrounded by housing except for the public swimming pool, library and car park to the south east corner. Temple Road runs to the north and east of the school from which there are two access points to the school site. The main vehicular and pedestrian entrance is located at the northern end of the school site with a second pedestrian access on the south east site boundary.
4. The school site comprises the school buildings and car park (situated towards the north east corner) and playing field and hard play areas to the west and south.
5. The nearest dwellings to the proposed development are located about 90 metres to the east on Temple Road. There are a number of trees and hedges within the school site immediately adjacent to the north east and eastern site boundaries.

#### **Background and Details of the Development**

6. The demand for primary school places in Oxford is rising and schools in this area do not currently have sufficient accommodation to cope with demand.

The Children Young People & Family (CYP&F) directorate has carried out a detailed school review of schools across the city to identify schools where extensions to accommodation may be possible. St Christopher's School has been identified as one such school. This proposal involves increasing the school's annual admission number from 45 to 60 children as from September 2010.

7. A prefabricated double modular classroom unit is proposed to meet the increased accommodation needs as of September 2010 as there is insufficient space within the existing school buildings to accommodate the extra pupils. CYP&F explain that there is currently no funding available to provide a permanent building to meet increased accommodation requirements.
8. The double temporary classroom building would be of a standard prefabricated functional design with a mineral felt flat roof, textured painted plywood walls and white pvcu windows. The development would be located on the school's hard play area just south of the existing school buildings. The play area would be relocated immediately west of the new temporary building. A new tarmac path would be created from the existing school buildings to the entrance of the new classrooms. No trees would be removed or affected by the development.
9. Although the development would result in additional pupils on the school site, the school advise that there would be no change in staff numbers. The school expect that the majority of the new pupils would walk to and from the site.
10. As part of the consultation process Transport Development Control requested the submission of a transport statement (to include details such as the projected increase in vehicular trips to the site). This has been provided and confirms that the development would generate on average 2-3 vehicular trips to the school site. It also confirms that the increase in admission rate could result in an additional 61 pupils attending the school by 2016 which could generate an additional 11-12 vehicular trips to the site by 2016. The transport statement concludes that the school travel plan would be updated by further developing initiatives to promote walking and cycling reducing the need to travel to and from the school site by car.

## **Consultations**

11. Oxford City Council – No objection. The development is acceptable in terms of its impact on visual and residential amenity. Consideration should be given to the need for contributions to improve pedestrian and cycle facilities to encourage non-car modes of transport. Suggest the following conditions: i) permission being limited for a period of three years, ii) materials to be used for the development being in accordance with the approved plans and iii) submission and approval of a travel plan.

County Archaeologist – The site is located in an area of archaeological potential and medieval remains. However, previous archaeological work

around the school has recorded layers of made ground close to the school and as this application is for a modular classroom it is likely that the groundworks, if any, are going to be fairly minor. Request an informative advising of appropriate action that should be taken in the event of archaeological finds.

County Forester – The application should not directly affect any trees. Comments that trees adjacent to the development site should be protected from damage by plant and machinery during the construction works.

Transport Development Control – No objection subject to the following conditions: i) submission and approval of a construction traffic management plan (to include operational hours, a banksperson for deliveries and details of the construction traffic route); ii) provision of additional secure and covered cycle parking; and iii) the school travel plan should be updated and agreed prior to the occupation of the proposed classrooms. Updating the school travel plan cannot be relied upon as the only mitigation measure for the forecasted additional trips generated by the development so suggest the applicant enters into a unilateral undertaking for the payment of a contribution for pedestrian and cycling improvements in the vicinity.

**Third Party Representations** (copies of each letter are available in the members resource centre)

12. 4 responses from individual residents have been received. The key points made in the representations are:
- The current school travel plan is not effective and it is doubtful whether an updated plan would be anymore effective.
  - Local residents are currently affected by parking and traffic generated by the Primary School (particularly as the yellow zig zag lines are not enforceable, Local Traffic Orders are not enforced and there is no Control Plus in the area). Additional vehicular trips to the school would exacerbate the situation.
  - The safety of pedestrians is put at risk by vehicles that park on pavements forcing pedestrians into the road.
  - A transport assessment and parking survey should be undertaken to fully understand the impact that additional vehicular trips will have on the local highway network.
  - The school bins are located close to the site boundary and rubbish often overflows into a neighbouring property.

### **Relevant Development Plan and other Policies**

13. All relevant planning policies are set out in the Policy Annex at Item 12 on this Agenda.
14. Planning applications should be decided in accordance with the Development Plan unless material considerations indicate otherwise.

15. The relevant Development Plan document is the Oxford Local Plan 2016 (OLP). The relevant policies are as follows:-

Oxford Local Plan – CP.1, CP.8, CP.11, CP.21, CP.25, ED.3, TR.2, TR.4 and TR.5.

### **Comments of the Head of Sustainable Development**

16. In my view the main issues to be considered in assessing the merits of this application relate to:

- (i) Need for and acceptability of a temporary development.
- (ii) Potential impacts on neighbouring residents and the surrounding area.

- (i) The need and acceptability of a temporary development:

17. There is significant pressure on schools in Oxford to provide additional child spaces. This school has been identified as a school that could provide such spaces. However, at present there is no funding available to provide this additional accommodation in the form of a permanent building.

18. This application therefore seeks permission for a double temporary classroom building at the school site for a temporary period of 5 years. Policy CP.25 of the OLP requires temporary buildings to be subject to a planning condition requiring removal of the building within a specified time period. In this case the City Council has commented that permission should be limited to a period of 3 years. CYP&F have explained that, given the current capital funding pressures, it is not yet known when permanent accommodation can be provided at the school and to obtain permission for a period of 5 years would be preferable. Given the current funding pressures and the continuing pressures to provide additional accommodation for increased numbers of children I am of the view that provided the development is acceptable in all other respects, a five year temporary period in this instance is acceptable and should allow CYP&F and the school adequate time to consider how best to meet their permanent accommodation needs.

- (ii) Potential impact on neighbouring residents and the surrounding area

#### *Parking and the local highway network*

19. Parking in the immediate area of the school and the additional traffic that this proposal might generate is the main concern of local people. The school expect that this development would initially generate 2-3 additional vehicular trips to the school rising to 11-12 additional trips by 2016 due to the increase in the admission rate. The school has explained that the majority of the additional pupils would walk to the school and the school travel plan would be updated to take account of this new development. The applicant is willing to enter into a unilateral agreement to commit to a financial contribution towards pedestrian and cycling improvements in the local area should the development proceed.

20. Policy TR.2 of the OLP seeks to ensure that adequate and appropriate transport measures are put in place for new proposals; Policy TR.4 requires development to comply with the minimum cycle parking standards and Policy TR.5 seeks to secure contributions towards the provision of new or more attractive pedestrian and cycle routes and facilities.
21. 3 Residents have expressed concern about the impact that the proposed development may have on the local highway network (in particular the blocking of domestic driveways, turning in the road and extra traffic, parking in Temple Road and the unacceptable behaviour of parents parking on the pavements and being abusive to local residents). It has been suggested that a traffic assessment and a parking survey should be undertaken and the effectiveness of an updated School Travel Plan has been questioned.
22. Both Oxford City Council and Transport Development Control consider that contributions should be sought to improve pedestrian and cycle facilities in the locality (e.g a new zebra crossing on Oxford Road close to Clive Road) and that an updated comprehensive travel plan should also be submitted to manage the predicted increase in pupils. Secure and covered parking should also be provided on the school site itself. Transport Development Control have indicated that the transport statement submitted during the consultation period (as they requested) is sufficient to determine the impact which the proposed development would have on the local highway network, and that a detailed transport assessment or parking survey is not necessary.
23. The issues raised by local residents about parking difficulties are typical of many schools within Oxfordshire at the beginning and end of the school day. I do not believe an increase of up to 11-12 vehicles will be significant but nevertheless suggest that a school travel plan condition should be applied to ensure that as much as possible is done to manage parking and encourage walking and cycling to school. A contribution by the school, as requested by Oxford City Council and Transport Development Control, for new and improved walking and cycling facilities would compliment the travel plan, incentivise parents and children to travel sustainably to school and go some way towards addressing the transport issues raised by local residents. A condition could also be imposed requiring the school to provide additional secure and covered cycle parking. Subject to these provisos, I am satisfied that the proposed development would not have a significant effect on the local highway network or parking and consider that the proposed development would be consistent with policies TR.2, TR.4 and TR.5 of the OLP.

*Location of classroom within the site*

24. The temporary classroom building is proposed to be sited south of the existing school buildings, 90 metres from the nearest dwellings which are east of the school site. Policy CP.8 of the OLP requires the siting of new development to create an appropriate visual relationship with the surrounding area. Given the distance of the development from the nearest residential dwellings and the screening provided by the trees and hedgerows within the north east corner of

the site and along the eastern boundary, the proposed development should not have a significant effect on the surrounding area.

*Siting of existing school bins*

25. Although concerns have been raised by 1 resident about bins, this is not a planning matter but rather a management issue for the school to resolve.

Conclusion

26. The proposal would enable St Christopher's School to help meet the increasing demand for primary school places in Oxford city. There is concern about the development becoming permanent and that the development should only be granted for a period of 3 years. However, a 5 year period would allow the school and CYP&F sufficient time to consider how best to meet their longer term accommodation needs. Concerns have been raised by local residents about the impact that the development would have on parking and the local highway network. I have concluded that provided conditions are imposed to provide measures to encourage walking and cycling and manage parking, the development would not have a significant impact on the local highway. Furthermore, given the distance from the development to the nearest residential dwellings and the existence of trees and hedgerows along the eastern site boundary and in the north eastern corner of the school site, I consider the development would not have a significant adverse impact on the surrounding area. Permission is therefore recommended.

**RECOMMENDATION**

27. **The Committee is RECOMMENDED that subject to a unilateral undertaking being agreed as part of this permission to ensure that a contribution is made towards the provision of improved pedestrian and cycle facilities in the local area that Application No. R3.0081/10 be approved subject to conditions to be determined by the Head of Sustainable Development to include the following matters:**

1. **The development must be carried out strictly in accordance with the particulars contained in the application and the plans.**
2. **Commencement of the development within 3 years.**
3. **Temporary building to be removed by 30 September 2015.**
4. **Update the School Travel Plan to take account of the new development.**
5. **Provision of additional secure and covered cycle parking.**
6. **Submission and agreement of a construction traffic management plan (to include contractors working hours, delivery times of materials and site compound, routing details and a banks person for deliveries).**
7. **External walls to be dark green in colour.**
8. **Retained trees to be protected during construction works.**

**Informatives covering the following matters:**

**School Travel Plan informative – The school is requested to consult with Travel Plans team.**

**School Accommodation - The school is advised that investigations should be carried out into the provision of a permanent solution to their long-term accommodation needs before this consent expires.**

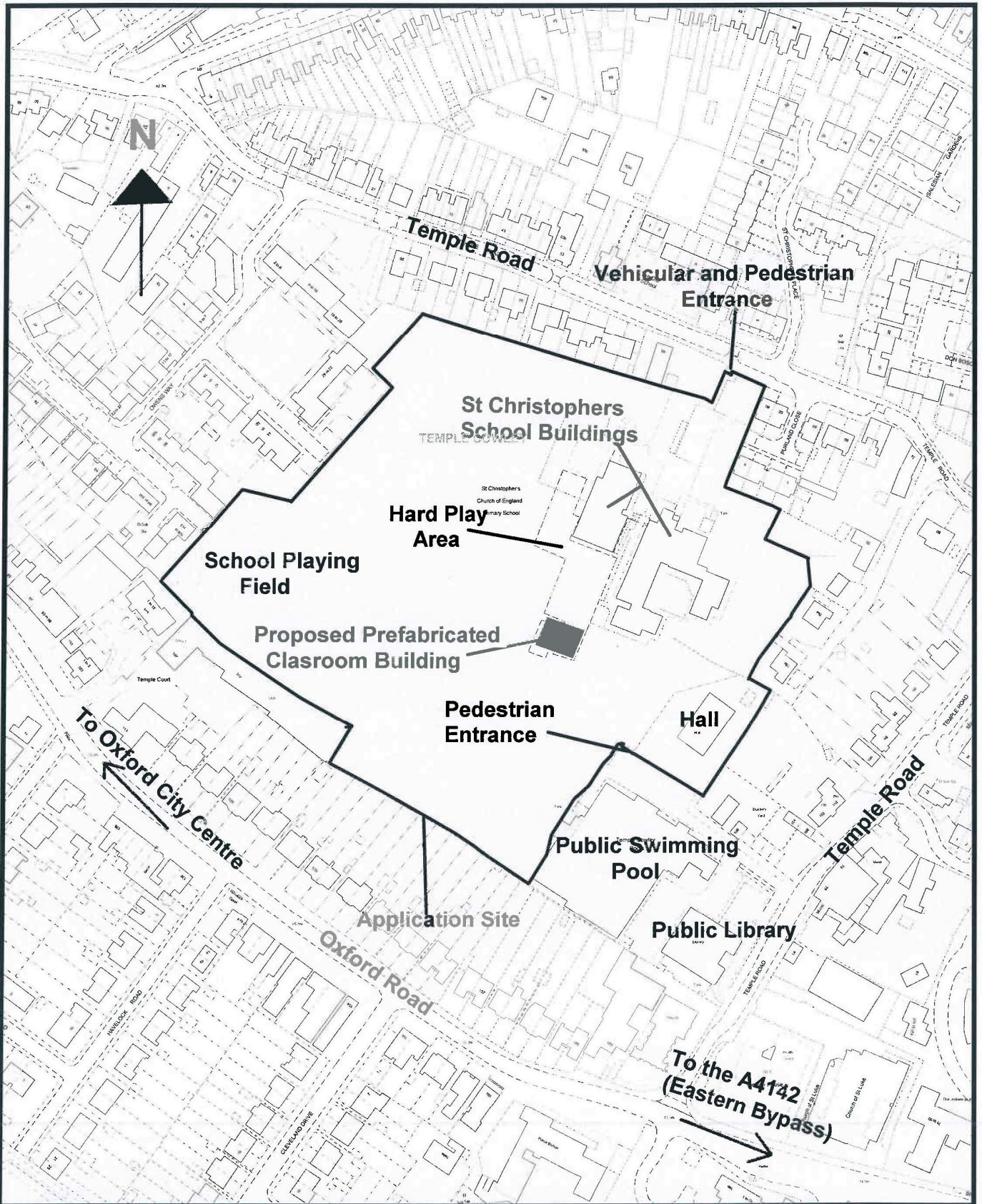
**Archaeology– If archaeological finds do occur during development, the County Archaeologist shall be notified in order that he may visit the site and advise as necessary.**

**Ecology - If any protected species not initially surveyed for are found at any point, all work should cease immediately. Work should not recommence until a full survey has been carried out, a mitigation strategy prepared and licence obtained (if necessary) in discussion and agreement with Natural England.**

MARTIN TUGWELL  
Interim Head of Sustainable Development

Background Papers:      File Ref: R3.0037/10    8.5/3909/10

September 2010



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Scale:1:2206  
Plot Date:12/8/2010  
By: tphilp  
Dept:

Contact Officer: Alan Divall Tel: Oxford 815886

Division(s): Wallingford

## **PLANNING & REGULATION COMMITTEE – 13 SEPTEMBER 2010**

**PLANNING APPLICATION FOR THE CONSTRUCTION OF A 91.4M X 55M ALL-WEATHER ASTROTURF PITCH, TO INCLUDE: INSTALLATION OF 6 X 15M HIGH STEEL FLOODLIGHT COLUMNS; ASSOCIATED RUN-OFF AND WARM UP AREAS; ERECTION OF 3M HIGH PITCH PERIMETER FENCING; TEMPORARY STORAGE CONTAINER AND ASSOCIATED WORKS. TEMPORARY CONTRACTOR'S ACCESS IS PROPOSED VIA CASTLE STREET. (APPLICATION AMENDED TO PROVIDE FURTHER INFORMATION ON THE EXTENT OF THE DEVELOPMENT PROPOSED)**

### **Report by Interim Head of Sustainable Development**

**Location:** Wallingford School, St Georges Road, Wallingford, Oxfordshire, OX10 8HH.

**Application No:** R3.0176/09

**District Council Area:** South Oxfordshire

### **Introduction**

1. This application is for the construction of an all-weather astroturf pitch on the playing fields of the Wallingford secondary school site. The application also proposes the erection of six floodlighting columns, perimeter fencing around the pitch and the placing of a storage container on site for a temporary period. Contractor's access for the development is proposed via a temporary vehicle entrance on Castle Street and the laying of a temporary haul road across the school playing fields.

### **Location (see site plans)**

2. Wallingford School is located towards the northern edge of Wallingford, approximately 600 metres to the north of the town centre. The site is located off St Georges Road which joins Blackstone Road to the north; Castle Street abuts the schools eastern boundary.

### **Site and Setting (see site plans)**

3. The school site is located in a predominately residential area of the town with residential dwellings and their gardens abutting the school's boundaries to the north and south. To the west and east are roads – St Georges Road and Castle Street. Further to the east of the site, separated by Castle Street is a cemetery. The Castle Leisure Centre, adult learning facilities and a nursery building are also situated on the school site. The main vehicle and pedestrian

accesses into the site are located off St Georges Road, parking areas are on the sites western side.

4. The Wallingford Conservation Area is situated to the south of the school and includes the south west corner of the school site, but not the area proposed for the all-weather pitch. There are a number of Scheduled Ancient Monuments to the south of the school; none cover the school site or the location of the all-weather pitch.
5. The all-weather pitch would be located on an area of open playing field in the south west corner of the site, which is currently used for formal and informal sporting activities. Immediately to the west and south west are the school's tennis courts and Castle Leisure Centre. There are two residential properties to the south of the proposed pitch location. The school's southern boundary which abuts the gardens of these properties would be some 18 metres to the all-weather pitch at its closest point. The school's northern boundary is some 80 metres to the pitch at its closest point. Within the neighbouring properties and along the site's southern boundary is a line of trees and other planting. This varies in thickness and incorporates both evergreen and deciduous species, the highest of which rise to approximately 25 metres. Along the northern boundary of the site are fences, hedges and other planting of various styles, heights and species. This is not as substantial as the screening along the southern boundary of the site.

## **Background and Details of the Development**

### **Justification for the development**

6. The school consider that the development is required for the following reasons:
  - The school has been designated as a sports college and is keen to develop its facilities for hockey and football to the highest standard;
  - The teaching of football and hockey has been identified as an area for future curriculum development;
  - It would allow for the teaching of/playing football and hockey in all weather and all year round;
  - The school would like a facility such as this for educational use on the existing site. The school has considered the use of the Hithercroft Sports Park but consider the logistics of taking children to the site to be unworkable;
  - The school would seek to make the facility available for community use outside of school hours (see paragraph 10). The school would seek to prioritise the use of the pitch outside of school hours to partner schools, rather than the general public.

### **Design of the all-weather pitch**

7. The all-weather pitch would be constructed of sand-filled synthetic turf. The actual playing pitch surface would cover an area of 91.4m x 55m. Taking into account areas for run-off the total synthetic area of the all-weather surface inside it's perimeter fencing would be 101.4m x 63m. A 10.8m x 20m synthetic area to be used as cricket nets is also proposed adjoining the pitch to the east. For storage of equipment a container is proposed to be located in the south west corner of the school site.
8. Six 13m high galvanised steel floodlighting columns would be erected on the northern and southern boundaries of the all weather pitch, each column would contain 3 lamps. The floodlighting would be 350 Lux<sup>1</sup> (the maximum Lux required for hockey would be 350, football could be played at a lower Lux level with some lamps turned off). The light assessment submitted with the application indicates that there may be a light spillage of up to 5 Lux into the residential gardens to the south of the all-weather pitch. The light assessment indicates there would be no spillage into the gardens to the north.
9. The all-weather pitch would be enclosed by 3m high weld mesh fencing rising to 4.5m in height at each end behind the goals.

### **Hours and levels of use**

10. The school propose to use the all-weather pitch for their own educational purposes during the school day, Monday to Friday, 8.30am until 6pm (including school holidays). Between 6pm and 9pm, Monday to Friday, the school would make the facility available for community use. At weekends the application proposes that the facility would be available for school and community use on Saturdays between 9am and 6pm and on Sundays between 10am and 6pm. The floodlights would be used within the above times as and when required.
11. The principle use of the all-weather pitch would be for hockey and football, both for school and community use. The school would seek to give priority for use of the pitch to partner schools over the general public. The management of the pitch would be by the school's sports college (not the adjacent leisure centre). Only groups with a responsible supervisor would be allowed to hire out the facility. The school states that the pitch would be monitored by CCTV.
12. The school state that a maximum number of around 25 people could use the facility at any one time. Parking for community use would be provided by the school's existing parking areas.

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<sup>1</sup> Lux is measurement of light intensity. A deep twilight is 1.08 Lux, a very dark day is 107 Lux and an overcast day is 1075 Lux (Engineering Toolbox 2005).

### **Construction arrangements**

13. For the period of construction a new access for heavy goods vehicles and contractors is proposed to the school playing fields from Castle Street through an existing widened gate. A haul road would be laid from this access to the site of the all-weather pitch with a contractor's compound located to the east. The application states that the build time of the development would be 12 weeks with 2 weeks needed to bring in the required levels of hardcore as a base for the pitch. The application states that a routing agreement would be entered into to keep heavy good vehicles (HGV's) away from the town centre. Access via Castle Street would instead be reached via Shillingford Bridge.
14. To enable construction of the all-weather pitch 200mm of top soil would be excavated from the playing field. It's proposed to redistribute it across areas of the existing playing fields. As the playing fields slope towards the south east corner of the site and areas undulate the intention is to make the existing playing fields more usable by adding this topsoil. Nevertheless, there would still be differences of levels across the playing field.

### **Open space**

15. The existing summer and winter sports pitches on the school playing field would be realigned to satisfy Sport England's requirements. The school's cricket square would be relocated to another playing field to the south west of the school site off St Georges Road (see site Plan B).

### **Amended information**

16. The application was originally submitted to the Council in July 2009. However, as a result of responses received from ecologists, the Environment Agency and archaeology further information was required from the applicant before the application could be determined. Specifically this further information included an archaeological field evaluation; a flood risk assessment and bat survey.
17. In addition the application has also been amended to provide:
  - an amended floodlight scheme which shows the height of the floodlights reduced from 15m to 13m and revised light spillage information;
  - further information on how HGV's would access the development site;
  - adjustment of the pitch by moving it 4m north of the southern boundary and 3m to the east;
  - removal of the proposed warm up area to the south of the all-weather pitch;
  - further information on where the school's cricket square would be relocated (see site plan B);
  - Further information on where excavated soil would be redistributed.

18. The amended application did not change the proposed hours of use of the all-weather pitch, these remain the same as set out in paragraph 10. The amended information set out above was the subject of a further period of public consultation.

## **Consultations**

### **19. South Oxfordshire District Council (SODC)**

*(Planning Development Control)* – The District Council originally submitted a holding objection to the application on the basis that insufficient consideration had been given to the impact on bats and archaeological remains. They do however support the principle of the proposal as the need for an additional synthetic sports pitch in the Wallingford area has been identified in their core strategy preferred options stage. They also commented that subject to conditions to control the hours of use of the pitch and light intensity the proposal would be acceptable in terms of neighbour impact. SODC also considered that it would be difficult to argue a harmful impact to the conservation area as the site is a town centre location where there is street lighting and other forms of light pollution.

*(Environmental Health)* – No objection to the proposal but recommend conditions to control the glare and trespass of light to surrounding residential properties.

**Wallingford Town Council** – The Town Council originally objected due to light pollution to surrounding housing; impact on the abutting Conservation Area and its wildlife; noise pollution; risk to security; excessive hours of public use and increased traffic. The Town Council has now confirmed that, following the submission of the amended information they recommend approval of the application.

**Sport England** – Sport England originally objected to the application on the basis that information had not been provided to demonstrate that a suitable cricket square could be provided on the existing playing field once the development had been completed. On receipt of further information the objection has been withdrawn and they consider that the provision of the all-weather pitch would be of sufficient benefit to outweigh the loss of part of the playing field.

**Oxfordshire Playing Fields Association** – No objection.

**Campaign to Protect Rural England (CPRE)** – Concerned about light pollution. Any permission should be conditioned so that the lights are focused to the playing pitch with minimum spill to the surrounding areas.

**Environment Agency (EA)** – The EA originally objected to the development on the grounds that a Flood Risk Assessment (FRA) was not submitted with the application. An FRA was required due to the scale of the development and

the risks of increased surface water run off. The EA have now withdrawn their objection (subject to conditions) as an FRA has been produced.

**Archaeology** – As the development site lies within an area of some archaeological interest, located immediately north of the Saxon defended town and the Medieval Castle, the County Archaeologist requested that prior to the determination of the application an archaeological field evaluation should be carried out. On receipt of this field evaluation they have recommended that should permission be granted conditions be attached requiring implementation of an archaeological watching brief to be maintained during the period of construction.

**Transport Development Control (TDC)** – TDC originally objected to the application on the grounds that further information was needed to demonstrate that vehicles could safely access/egress the site from Castle Street. They also commented that floodlighting should not have a detrimental impact on the public highway but recommended that a night time assessment of the lights be carried out to confirm they were acceptable. With receipt of additional information on how HGV's would access the development site TDC have no objection to the development subject to conditions.

**County Ecologist** – The County Ecologist (in consultation with the SODC Countryside Officer) originally submitted an objection as a detailed survey had not been carried out to assess the potential impact of the development on foraging/commuting bats. On receipt of a full survey the County Ecologist is satisfied that the consultants findings are an accurate reflection of the situation and that the impact of the proposals on bats is likely to be minimal. They do not have concerns about the impact of the floodlighting on nearby nesting red kites but recommend conditions restricting works on site to between certain times of year and restrict use of the floodlights until 9pm.

**Third Party Representations** (Copies of these letters are available in the Member's Resource Centre)

20. 47 letters have been received from neighbouring residents and other third parties objecting or expressing concern to the application. They make the following points:

*General comments:*

- the proposal is contrary to policies in the South Oxfordshire Local Plan 2011;
- the amended application differs little from the originally submitted one and has not addressed original concerns;
- no objection to a pitch provided it is for use by the school only and during school hours only;
- concerned that the hours of use of the pitch may be extended in the future by further planning applications;
- the school have not been upfront about the proposed community use of the pitch.

*Provision of education facilities:*

- pupils should make use of the existing facilities at Hithercroft; they are within close enough distance to be used for lessons;
- there is already a pitch at Hithercroft which is underused, has good transport links and parking, this should be developed first. A town the size of Wallingford does not need another pitch, if it does the existing one should be expanded;
- a new all weather pitch will impact on the viability of the Hithercroft facility.

*Potential impacts on local people:*

- consideration not given to the close proximity of residential areas and the disruption it will cause, including quality of life for local residents;
- there will be noise from activities on the pitch and light pollution from the floodlights, including late into the evenings (up to 9pm) and at weekends;
- at present the site is peaceful and quiet outside of school hours, noise will travel a great distance from activities on the new pitch;
- an acoustic fence should be erected along the southern boundary of the site to reduce noise;
- the floodlights are not needed if the use of the pitch is for the school only, they should be controlled with automatic timing equipment;
- concerns over unsupervised community use and management of the pitch and security to neighbouring residential properties. Danger that the pitch could be used without any restrictions at any time;
- the reduction in the height and glare of the lights will make little difference;
- the amendments will still have an impact on residential amenity during evenings and weekends;
- the application will increase traffic in Barncroft, St Georges Road, surrounding residential roads and estates and the schools existing car park could not cope with additional traffic;
- construction traffic, including 32 ton lorries, will go through roads with weight limits, these may also damage road surfaces, services and pavements.

*Potential impacts on the environment:*

- the visual impact of the pitch, floodlights and perimeter fencing on an open playing field, including on the adjacent Conservation Area and the general setting, character and appearance of the surrounding area;
- other developments on the site have been in keeping with the surrounding area, this will not be;
- the loss of open grassed playing fields;
- the floodlights will not be screened during the winter months when the leaves of adjacent trees have shed. Also not clear how high the lights will be in relation to surrounding trees and buildings;

- the landscaping on the southern boundary is not as dense as suggested and the northern boundary has no screening at all;
- the floodlighting is unsustainable in terms of increasing carbon emissions;
- re-using soil elsewhere may cause drainage and flooding issues for the site and surrounding residential properties/areas;
- there will be an impact on birdlife, protected bats and other wildlife.

### **Development Plan and other Policies (see Policy Annex)**

21. All relevant policies are set out in the Policy Annex at Item 12 on this Agenda.
22. Planning applications should be decided in accordance with the development plan unless material considerations indicate otherwise. The relevant development plan document is:

South Oxfordshire Local Plan 2011 (SOLP). The relevant policies are as follows: G2, G3, G5, G6, EP2, D1, D2, CF1, CF2, T1, T2, T3.

(The South Oxfordshire Core Strategy Preferred Options document and The Institute of Lighting Engineers Guidance for the reduction of obtrusive light are material to consideration of the proposal.)

23. The Institute of Lighting Engineers Guidance is also annexed.

### **Comments of the Head of Sustainable Development**

24. The key planning issues to be considered with this application are:

- (i) provision of educational and community facilities;
- (ii) potential impacts on local people;
- (iii) potential impacts on the environment.

- (i) Provision of educational and community facilities

25. The application proposes the use of the all-weather pitch for both the school and the wider community. Policy R1 of the SOLP is supportive, in principle, of new facilities for outdoor sport serving local needs and provided there are no overriding amenity, environmental or transport objections. Policy CF2 also permits additional community facilities, again provided there are no overriding objections or conflicts with those criteria listed for policy R1 or other policies in the plan. Policy CF1 of the SOLP does not permit development that would result in the loss of recreational facilities.
26. Amenity, environmental and transport concerns are discussed later in this report. The remaining consideration is therefore whether the development serves local need as set out in policy R1 of the SOLP. Local people consider that Wallingford already has a similar facility at the Hithercroft Sports Centre located to the north of the town. This facility has an all-weather pitch used by both the local community and occasionally local schools. The school consider

that due to limited time for lessons it is impractical to transport children to and from Hithercroft, they also consider that as a specialist sports college a facility such as this on the school site is essential.

27. In their response South Oxfordshire District Council have highlighted that their emerging core strategy preferred options stage document (being produced as part of their Local Development Framework) recognises the need for an additional all-weather pitch within Wallingford. This need is based on the findings of the South Oxfordshire '*Open Space and Recreation Facility Assessment*' produced in 2008 which identified that there was a deficiency of one multi-use games area in Wallingford. The core strategy preferred options stage document is an emerging document that is yet to be adopted. Due to recent changes to the planning system the district council is reviewing work on its core strategy so that it can continue to be progressed.
28. I consider that the open space assessment and the core strategy are material to the consideration of this application. The open space assessment identified a need for a facility of this type in Wallingford and the proposal by the school to allow community use of it would enable this need to be met. This would satisfy the requirements of policy R1 of the SOLP as the development would serve an identified local need.
29. The all-weather pitch would be located on the school's existing grassed playing field, policy CF1 of the SOLP seeks to ensure that new development does not result in the loss of recreational facilities. The school states that the playing field is used occasionally by the community but there is no detailed evidence provided as to the intensity of this. Sport England originally objected to the development on the grounds that existing sporting pitches on the school playing fields could not be adequately re-provided. They had no objection to the all-weather pitch in principle as they considered the benefits of the facility would outweigh the loss of the playing field. As the school are now proposing to relocate their cricket pitch to another of their playing fields off St Georges Road (see site plan B) Sport England have withdrawn their objection. Given that Sport England have no objection to the proposal and it would allow the playing field land to be more formally used for sporting activities I consider that the development accords with policy CF1 as there would be no loss of recreational facilities to either the school or the local community.

(ii) Potential impacts on local people

30. The school is within a predominantly residential area. The site of the proposed all-weather pitch is close on two boundaries to residential properties with potential for impact on local people from floodlighting, noise or other associated issues such as increased traffic. SOLP policies G3, EP2, EP3, D2, T1 and in particular CF2 and R1 require that new development such as this does not impact on amenity or give rise to environmental, traffic or highway safety concerns.
31. The application has generated considerable concern and objection from local residents. There is some support for the provision of an all-weather pitch without floodlights for school use only. The majority of concerns however stem from proposed community use of the pitch during evenings and weekends

and the impact that floodlights, increased noise, general disturbance, and increased traffic could have on people's lives.

### Floodlighting

32. The all-weather pitch would be lit with 6 x 13m high floodlight columns, they would generate up to 350 Lux – see paragraph 8. Residents have expressed concern about potential light pollution into their homes and gardens. Policy EP3 of the SOLP states that proposals for floodlighting that would have an adverse impact on neighbouring residents will not be permitted unless mitigation measures are implemented. In addition the Institute of Lighting Engineers guidance note recommends a maximum amount of light trespass into windows of residential properties of 5 Lux up to 11.00pm in 'relatively dark urban locations' and a maximum of 10 Lux in 'small town centre or urban locations' up to 11.00pm. The guidance note also recommends that light spillage outside of the area being lit, in a potentially obtrusive direction, be kept to a maximum of 7.5 Lux up to 11.00pm in 'relatively dark urban locations' and a maximum of 25 Lux in 'small town centre or urban locations' up to 11.00pm.
33. The lighting assessment submitted with the application indicates that the majority of light spillage outside of the area being lit would be onto the schools playing field and would be up to a maximum of 50 Lux. There would be no direct light spillage to the houses and gardens to the north although it is accepted that the lights would be visible. Some light spillage (up to 5 Lux) would cross the southern boundary of the school site into the neighbouring garden. However, this would only be into the property's garden and not directly onto/into any dwelling. There would therefore be no conflict with the above criteria in terms of light trespass into the 'windows of residential properties'.
34. The guidance highlighted in paragraph 31 also recommends limits for light spillage outside of the area being lit into potentially obtrusive directions. I consider that the only obstructive direction would be the gardens to the south. These are shown in the lighting assessment as being affected by up to 5 Lux only which is within the guidance recommended in paragraph 31. There is also a tree and planting screen along this boundary which would help to further break up the light spillage although I do concede that the screening is varied in its height and thickness and during the winter months when the lights would be used most frequently it would not be as dense as in the summer months.
35. Overall I consider that the floodlights proposed are acceptable. Environmental Health Officers have no objection to proposal and the school have moved the pitch and lights 4m to the north of the original location in order to reduce spillage to the houses and gardens to the south. The height of the columns have also been reduced from 15m to 13m to lessen their visual impact. It is important that once erected the floodlights demonstrate that they would not omit more light spillage than as shown in the submitted lighting assessment. I therefore recommend a condition that requires the submission and agreement of the final details of the floodlighting and a further assessment of their light

spillage once installed and prior to their first use. I also recommend a condition requiring details of automatic timing equipment for the lights to protect against nuisance after hours of use. Subject to these conditions I consider that the lighting assessment submitted demonstrates that there would be no adverse impact on neighbouring residents and as such the development accords with policy EP3 of the SOLP.

#### Noise

36. Residents have expressed concern that the use of the all-weather pitch during evenings and weekends would harm their amenity because of noise (shouting, etc) generated from sporting activities. Policy EP2 of the SOLP seeks to protect existing occupiers from adverse noise. Environmental Health Officers have no objection to the development in terms of noise impact. The area is already used during school hours as a playing field so I do not consider the impact of noise to be an issue during the school day. The site currently operates outside school hours for various public activities and the hours of use can be limited by condition. The school states that the community use of the pitch would be managed by the sports college and would only be hired out to responsible groups. It is not clear how this would be managed so I recommend that a community use management agreement plan between the school and external users be produced and implemented. This plan should ensure that the facility is properly managed, controlled and a code of practice adopted by users of the facility. This plan could also include security of the site, which has been raised as a concern by local residents.

#### Increased traffic and parking problems

37. The community use of the facility would attract additional trips to the school. Concerns have been raised by local residents that these would increase traffic on local roads and lead to parking in surrounding residential streets. The school consider that the total number of people using the all-weather pitch at any one time for hockey or football would be about 25 people. Spectators may be present for hockey matches but these are not likely to be large in number, football use would mainly be for training rather than competitive matches so again large numbers of spectators are not expected.
38. Policies G3 and T1 of the SOLP require new development to be well located close to public transport and be accessible by walking or cycling. The site is within a central location to the town centre and in close proximity of large residential areas. Transport Development Control Officers have not raised any concern in relation to this aspect of the development.
39. The school has parking areas on the site (off St Georges Road) which can accommodate up to 100 cars. Although there are other uses on the site which use these spaces outside school hours there are likely to be plenty of spaces to accommodate the additional users. Despite the availability of parking, I do not consider that the development would give rise to excessive levels of additional traffic on the local highway network. It also meets the criteria of policies G3 and T1 as it is well located to encourage trips by other means than the private car.

## Construction traffic and access

40. Construction traffic for the development would access the schools playing field via Castle Street; this would be through a widened existing gateway. A temporary haul road would be constructed across the playing fields to the site of the all-weather pitch. In their original response Transport Development Control officers requested that further information be provided in relation to the acceptability of the proposed temporary access. This further information has been provided and Transport Development Control officers are satisfied in principle that the access can be safely used for construction traffic. They have requested that final details of the visibility splays be provided prior to the commencement of development. Concerns have been raised about HGV's accessing the site via unsuitable residential roads. A construction travel management plan has been requested by Transport Development Control officers to be submitted before any works begin which will need to demonstrate that the routes HGV's are taking to access the site are acceptable for that purpose. This can be secured through a suitable condition. The Plan will also require times of contractors working hours and when deliveries would be made to the site.
41. In light of the above comments my view is that the development can be safely accessed by construction traffic in accordance with policy T1 of the SOLP. I also consider that subject to an agreement for the routes of HGV's accessing the site there is no conflict with policies R1 and CF2 of the SOLP.
42. To conclude in relation to the potential impacts on local people; the proposed location of the all-weather pitch is acceptable given that it is located away from the northern boundary of the site and the houses and gardens to the south are screened by a line of trees and other planting. Whilst use of the pitch by the school is inherently acceptable, I suggest that there needs to be a balance between maximising the community benefit and protecting the amenity of neighbours. In principle I do not consider that there would be overriding harm to neighbours amenity, particularly from noise or light spillage. However, the proposed hours of use for community purposes are quite extensive for a residential area given that community use could be seven days a week and in the winter months the floodlights could be used every day.
43. Although the lighting assessment shows that light spillage would not penetrate the windows of nearby houses and would be within other guidelines, the lights would still be visible from the surrounding area. Although within an urban location the playing fields are in an area of the town that is currently not highly lit. I therefore recommend that the use of the pitch be restricted to 9pm at the latest Monday to Friday with restricted hours on a Saturday (9am to 3pm) and no use at all during Sundays. This would ensure there is no use of the floodlights during the weekends and ensure that noise and disturbance is kept to reasonable hours at weekends. A management agreement plan would help to further control this.

44. Reducing the hours of use would also ease fears relating to increased traffic and parking problems, particularly at the weekends. The above measures would ensure that substantial community use is allowed but also the amenity of neighbouring residents is protected; this meets the requirements of policies CF2 and R1 of the SOLP.

(iii) Potential impacts on the environment

Conservation Area

45. The all-weather pitch and its floodlighting would be located adjacent to the northern boundary of the Wallingford Conservation Area. Although the actual development would not be within the conservation area light spillage would cross its boundary. Policy CON7 of the SOLP states that planning permission should not be granted for development which would harm the character and appearance of a conservation area, including development outside of a conservation area.
46. Third parties have expressed concern about the impact of the pitch and its lighting on the adjacent conservation area. However, the District Council have not raised this as an issue and consider that given the town centre location of the development it would be difficult to demonstrate harm to the conservation area.
47. I do not consider that the development would harm the character and appearance of the conservation area. No physical works are proposed within it and the amount of light spillage crossing its boundary would be minimal and for limited time periods. Screening between the site of the all-weather pitch and the conservation area would help to reduce the impact of lighting. I agree with the comments of South Oxfordshire District Council and do not believe there is conflict with policy CON7 of the SOLP.

Archaeology

48. The development site lies within an area of archaeological interest with Scheduled Ancient Monuments (the Saxon defended town and a medieval castle) to the south. The construction of the temporary haul road and excavation required for the all-weather pitch may have implications for archaeology. Policies CON12 and 13 of the SOLP seek to protect archaeological remains and where a development may affect a site of archaeological importance appropriate field evaluations should be carried out.
49. The proposed development site is within an area of archaeological importance. A field evaluation has been carried out which identified evidence of 12<sup>th</sup> and 13<sup>th</sup> century sand and gravel extraction. Previous excavations in the vicinity of the site have also uncovered evidence of medieval pits and road and a Neolithic pit. However, the County Archaeologist considers that the development is acceptable provided there is an archaeological watching brief during any ground works on the site. Given the Archaeologists view, I consider that subject to the implementation of the required archaeological

watching brief the development would be acceptable in archaeological terms and would not conflict with policy CON13 of the SOLP.

#### Biodiversity

50. The proposed all-weather pitch is to the north of a strip of woodland and mature gardens linking Castle Meadows and the River Thames to the east and the Bullcroft playing fields to the south of the school (see site plans). There are a number of bat colonies in the area and previous bat surveys have identified the area as being used for bats feeding, commuting and roosting. A Red Kite nest has been identified in the area. Policy C6 of the SOLP seeks to ensure that development proposals do not result in the loss of biodiversity resources whilst policy C8 seeks to ensure that development does not have an adverse impact on protected species, including bats.
51. Ecologists at both the County Council and South Oxfordshire District Council originally objected to the application on the grounds that the impact of the proposed floodlights on foraging and commuting bats had not been fully considered. Neighbouring residents have also raised this as an issue. Both County and District Ecologists requested that a full bat survey of the area was carried out before the application was determined. This survey was undertaken by the school during late spring 2010.
52. The report highlighted that the tree line corridor to the south of the site is considered to have value for bats foraging and commuting and provides part of a network of wider bat habitat. No bat roosting in the survey area was recorded. County and District Ecologists are satisfied with the findings of the report and consider the impact of the proposals on bats is likely to be minimal. They recommend that the hours of use of the floodlights should not run beyond 9pm so that the foraging and commuting woodland corridor remains dark for the majority of the night. They also consider that in order to avoid disturbance or damage to red kite nests, works to construct the pitch should only be carried out between September and February.
53. In my view the applicant has carried out the necessary surveys in order to demonstrate that protected species would not be unduly affected. Conditions are proposed restricting the use of the lights to 9pm at the latest which will allow the woodland to be in darkness for the majority of the night, thus allowing bats to forage and commute without disturbance. Given the advice of the County and District Ecologists and the conditions proposed I do not consider that the development would cause harm to wildlife and protected species and therefore there is no conflict with policies C6 and C8 of the SOLP.

#### Flooding

54. Because of the nature of the development the Environment Agency (EA) required that a Flood Risk Assessment (FRA) should be submitted with the application demonstrating that surface water run-off would not increase on the site or in the surrounding area. Policy EP6 of the SOLP requires development proposals to demonstrate this. The EA originally objected to the application on

the grounds that an FRA had not been provided. The applicant subsequently carried out a FRA which the EA are now satisfied with – subject to a condition requiring the development to be carried out in accordance with mitigation measures proposed within the FRA. A comment has also been received that the re-distribution of excavated soil may cause drainage and surface water run-off problems. The EA have not raised any issues with this aspect of the proposal. It appears to me that the proposed pitch would not increase the risk of surface water run-off and this is confirmed by the EA. The pitch would be constructed of porous materials and would not increase impermeable areas on the site. Given the views of the EA and the conditions they have recommended I am satisfied that the issue of surface water drainage on the site has been fully addressed and the application does not conflict with policy EP6 of the SOLP.

### Conclusion

55. The application has generated a great deal of interest and concern locally. The school has sought to rectify some of these concerns and provide further information on the extent and potential impacts of the development as requested by the District Council and other consultees. In planning terms I consider that the development is acceptable subject to the conditions set out in the recommendation which seek to ensure that the impact on both local people and the local environment is acceptable. In principle I also consider that the development is justified given that a need for such a facility has been identified for this area.

### **RECOMMENDATION**

56. **The Committee is RECOMMENDED that Application No. R3.0076/10 be approved subject to conditions to be determined by the Head of Sustainable Development to include the following matters:**
1. **That the development must be carried out strictly in accordance with the particulars contained in the application and the plans accompanying (as amended) subject to conditions covering matters below.**
  2. **That the development shall commence within 3 years of the date of the permission.**
  3. **That no development shall take place until the trees on the site which are to be retained and which are adjacent to or within the development area, have been protected during building operations by means of a protective fence around the edge of the canopy of the trees.**
  4. **Prior to the commencement of the development a Construction Traffic Management Plan must be submitted and approved. This shall include details of the routes used by Heavy Goods Vehicles accessing the site and final details of visibility splays to be provided for the temporary vehicular access.**

5. Prior to the commencement of the development written consent must be obtained from the relevant Highways Area Office for works to the temporary vehicular access.
6. On completion of the development the temporary vehicular access shall be reinstated to the satisfaction of the Local Highway Authority.
7. Within six months of the first use of the all-weather pitch the school shall review and update their Travel Plan to take account of the proposed development.
8. On the completion of the development the temporary contractor's access road and ancillary construction works shall be removed and the playing field land shall be reinstated to a playing field to a quality at least equivalent (or better) than the current quality.
9. On the completion of the development details of the layout of all winter and summer sports pitches to be laid out on the schools playing fields shall be submitted and approved.
10. The construction of the pitch should only take place between September and February.
11. Prior to the commencement of the development the final location, size and colour of the temporary storage container shall be submitted and agreed.
12. The development permitted shall only be carried out in accordance with the Flood Risk Assessment submitted with the application.
13. The applicant shall be responsible for organising and implementing an archaeological watching brief, to be maintained during the period of construction/during any groundworks taking place on the site.
14. No development shall commence on site without an appointed archaeologist being present. Once the watching brief has been completed its findings shall be reported to the Local Planning Authority.
15. Prior to the use of the floodlights a lighting assessment shall be submitted which demonstrates that lighting sources (i.e. bulbs and reflectors) shall not be visible from beyond the boundary of any adjacent residential properties and light trespass into the windows of any light sensitive premises (e.g. residential premises) shall not have vertical illuminance greater than 5 lux.
16. Prior to the first use of the floodlights details of automatic timing equipment shall be submitted and agreed. The timing equipment shall ensure that the floodlights are automatically switched off no later than 9pm.
17. The height of the floodlights shall not exceed 13 metres.
18. The hours of use of the all-weather pitch for school purposes shall be between 8.30am and 6.00pm Monday to Friday (including school holidays).
19. The hours of use of the all-weather pitch for community purposes shall be between 6.00pm and 9.00pm Monday to Friday and between 9.00am and 3.00pm Saturdays (including school holidays). No use during Sundays.

20. **There shall be no use of the floodlights during Saturdays and Sundays.**
21. **Submission, agreement and implementation of a community use management agreement plan prior to the first use of the all-weather pitch.**

**Informatives:**

**The lighting column to be relocated on Castle Street shall be done so at the applicant's expense.**

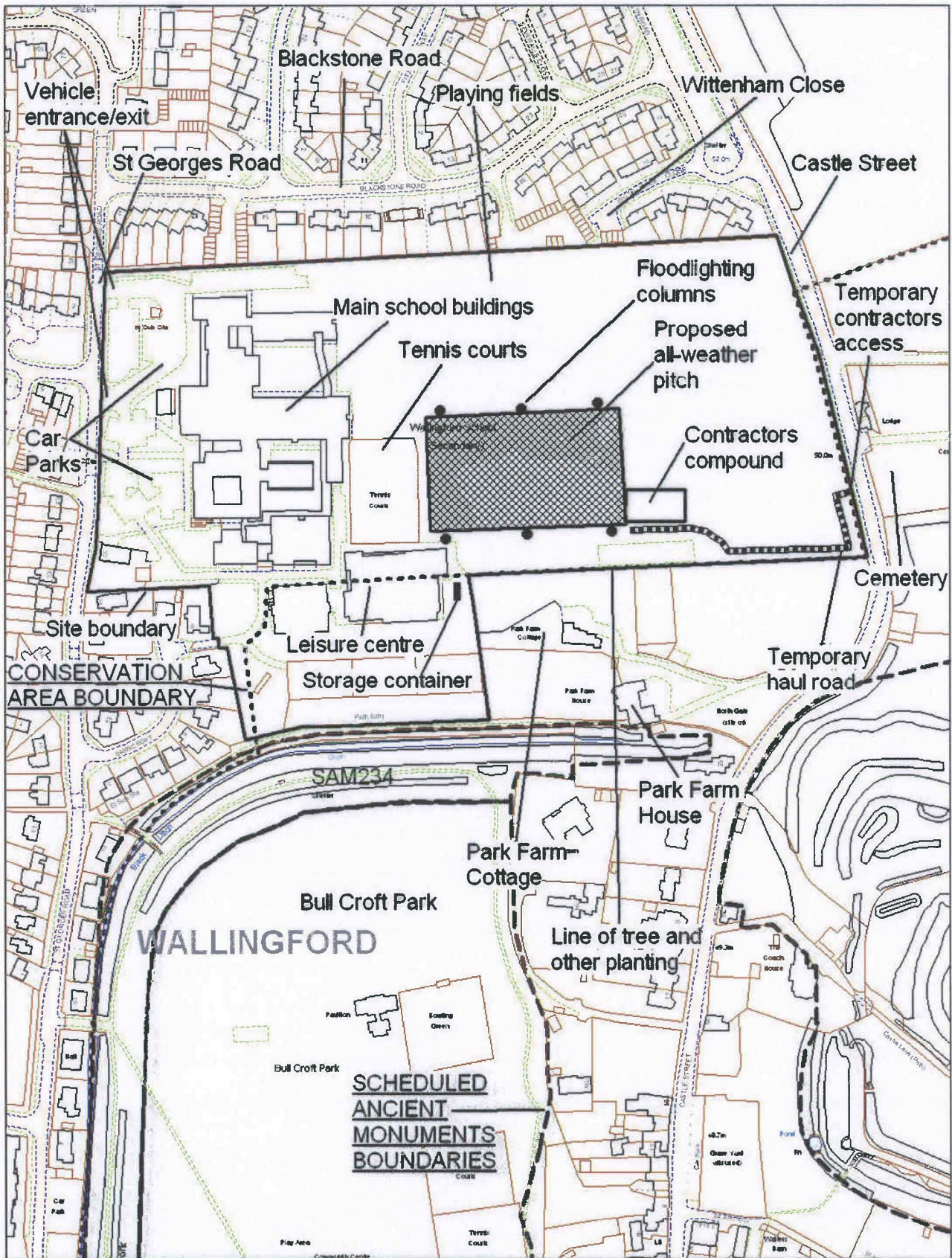
MARTIN TUGWELL  
Interim Head of Sustainable Development

Background Papers:           File Ref: R3.0176/09 8.3/6089/6

September 2010

Wallingford School - Plan A

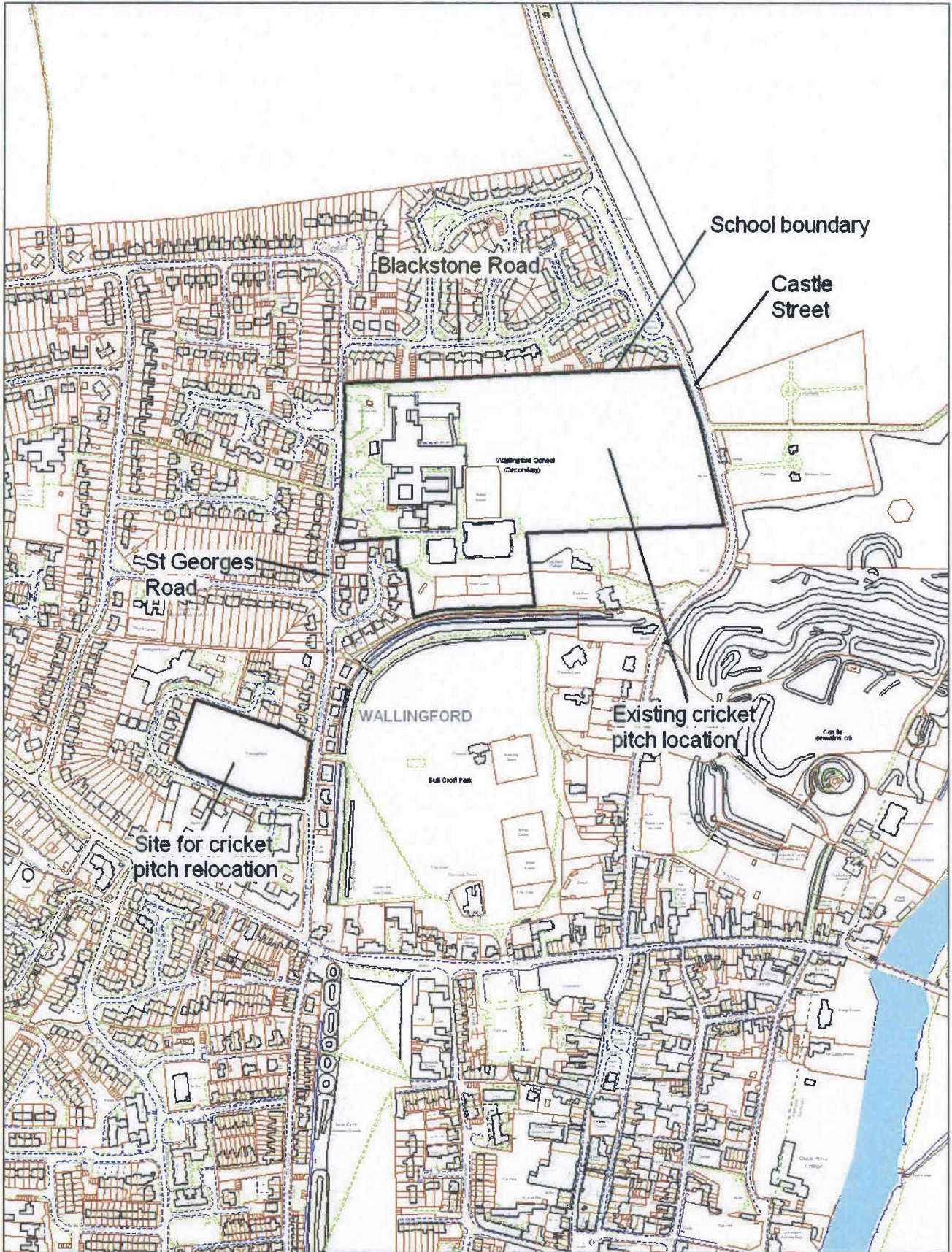
App. No. R3.0176/09



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 Plot Date: 23/08/10  
 By: PF

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Scale: 1:5000  
Plot Date: 23/08/10  
By: PF

This plan shows only an indication of the proposed development and should not be scaled from.

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## The Institution of Lighting Engineers

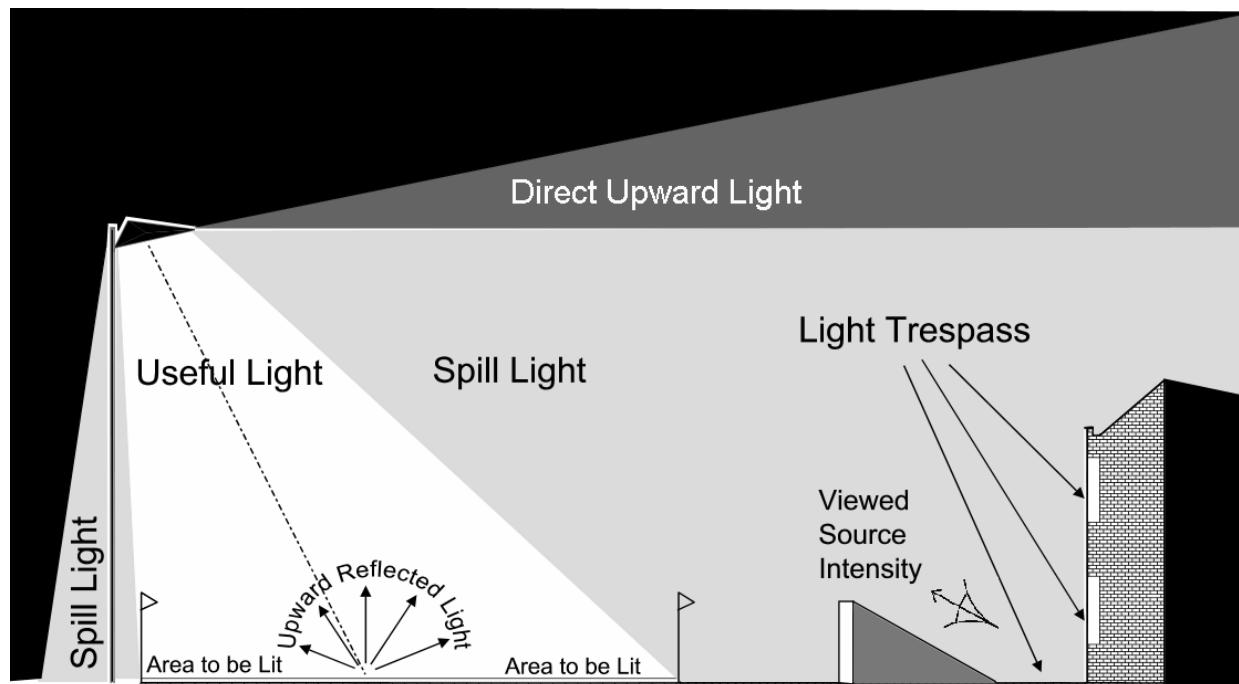
E-mail [ile@ile.org.uk](mailto:ile@ile.org.uk) Website [www.ile.org.uk](http://www.ile.org.uk)

### GUIDANCE NOTES FOR THE REDUCTION OF OBTRUSIVE LIGHT

ALL LIVING THINGS adjust their behaviour according to natural light. Man's invention of artificial light has done much to enhance our night-time environment but, if not properly controlled, **obtrusive light** (commonly referred to as light pollution) can present serious physiological and ecological problems.

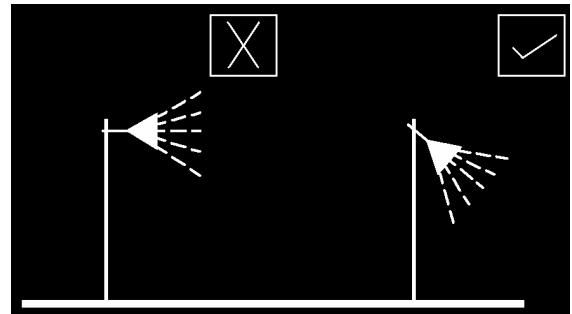
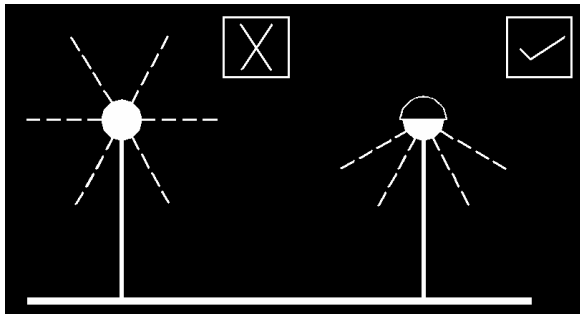
**Obtrusive Light**, whether it keeps you awake through a bedroom window or impedes your view of the night sky, is a form of pollution and can be substantially reduced without detriment to the lighting task.

**Sky glow**, the brightening of the night sky above our towns, cities and countryside, **Glare** the uncomfortable brightness of a light source when viewed against a dark background, and **Light Trespass**, the spilling of light beyond the boundary of the property or area being lit, are all forms of obtrusive light which may cause nuisance to others, waste money and electricity and result in the unnecessary emissions of greenhouse gases. Think before you light. Is it necessary? What effect will it have on others? Will it cause a nuisance? How can I minimise the problem?



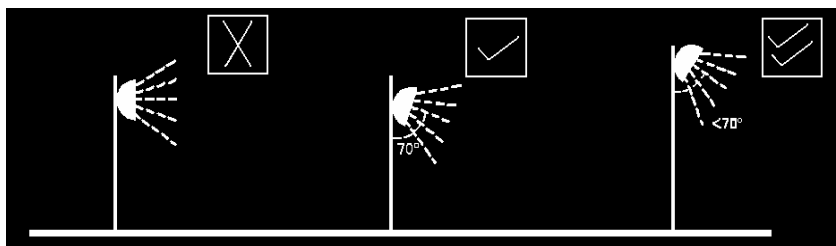
Do not "over" light. This is a major cause of obtrusive light and is a waste of energy. There are published standards for most lighting tasks, adherence to which will help minimise upward reflected light. Organisations from which full details of these standards can be obtained are given on the last page of this leaflet.

Dim or switch off lights when the task is finished. Generally a lower level of lighting will suffice to enhance the night time scene than that required for safety and security.



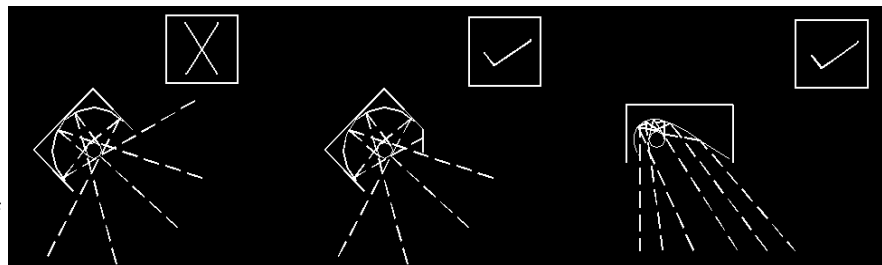
Use specifically designed lighting equipment that minimises the upward spread of light near to and above the horizontal. Care should be taken when selecting luminaires to ensure that appropriate units are chosen and that their location will reduce spill light and glare to a minimum. Remember that lamp light output in LUMENS is not the same as lamp wattage and that it is the former that is important in combating the problems of obtrusive light

Keep glare to a minimum by ensuring that the main beam angle of all lights directed towards any potential observer is not more than 70°. Higher mounting heights allow lower main beam angles, which can assist in reducing glare. In areas with low ambient lighting levels, glare can be very obtrusive and extra care should be taken when positioning and aiming lighting equipment. With regard to domestic security lighting the ILE produces an information leaflet GN02 that is freely available from its web site.

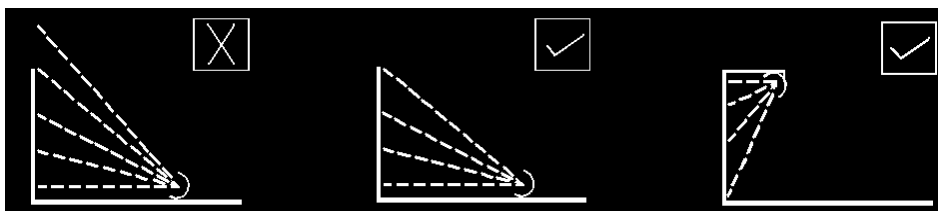


The UK Government will be providing an annex to PPS23 Planning and Pollution Control, specifically on obtrusive light. However many Local Planning Authorities (LPA's) have already produced, or are producing, policies that within the new planning system will become part of the local development framework. For new developments there is an opportunity for LPA's to impose planning conditions related to external lighting, including curfew hours.

For sports lighting installations (see also design standards listed on Page 4) the use of luminaires with double-asymmetric beams designed so that the front glazing is kept at or near parallel to the surface being lit should, if correctly aimed, ensure minimum obtrusive light. In most cases it



will also be beneficial to use as high a mounting height as possible, giving due regard to the daytime appearance of the installation. The requirements to control glare for the safety of road users are given in Table 2.



When lighting vertical structures such as advertising signs direct light downwards, wherever possible. If there is no alternative to up-lighting, as with much decorative

lighting of buildings, then the use of shields, baffles and louvres will help reduce spill light around and over the structure to a minimum.

For road and amenity lighting installations, (see also design standards listed on Page 4) light near to and above the horizontal should normally be minimised to reduce glare and sky glow (Note ULRs in Table 1). In sensitive rural areas the use of full horizontal cut off luminaires installed at 0° uplift will, in addition to reducing sky glow, also help to minimise visual intrusion within the open landscape. However in many urban locations, luminaires fitted with a more decorative bowl and good optical control of light should be acceptable and may be more appropriate.

**ENVIRONMENTAL ZONES:**

It is recommended that Local Planning Authorities specify the following environmental zones for exterior lighting control within their Development Plans.

Category	Examples
E1:	Intrinsically dark landscapes National Parks, Areas of Outstanding Natural Beauty, etc
E2:	Low district brightness areas Rural, small village, or relatively dark urban locations
E3:	Medium district brightness areas Small town centres or urban locations
E4:	High district brightness areas Town/city centres with high levels of night-time activity

Where an area to be lit lies on the boundary of two zones the obtrusive light limitation values used should be those applicable to the most rigorous zone.

**DESIGN GUIDANCE**

The following limitations may be supplemented or replaced by a LPA's own planning guidance for exterior lighting installations. As lighting design is not as simple as it may seem, you are advised to consult and/or work with a professional lighting designer before installing any exterior lighting.

Environmental Zone	Sky Glow ULR [Max %] <sup>(1)</sup>	Light Trespass (into Windows) Ev [Lux] <sup>(2)</sup>		Source Intensity I [kcd] <sup>(3)</sup>		Building Luminance Pre-curfew <sup>(4)</sup>
		Pre- curfew	Post- curfew	Pre- curfew	Post- curfew	Average, L <sub>[cd/m<sup>2</sup>]</sub>
E1	0	2	1*	2.5	0	0
E2	2.5	5	1	7.5	0.5	5
E3	5.0	10	2	10	1.0	10
E4	15.0	25	5	25	2.5	25

ULR = Upward Light Ratio of the Installation is the maximum permitted percentage of luminaire flux for the total installation that goes directly into the sky.

Ev = Vertical Illuminance in Lux and is measured flat on the glazing at the centre of the window

I = Light Intensity in Cd

L = Luminance in Cd/m<sup>2</sup>

Curfew = The time after which stricter requirements (for the control of obtrusive light) will apply; often a condition of use of lighting applied by the local planning authority. If not otherwise stated - 23.00hrs is suggested.

\* = From Public road lighting installations only

(1) **Upward Light Ratio** – Some lighting schemes will require the deliberate and careful use of upward light – e.g. ground recessed luminaires, ground mounted floodlights, festive lighting – to which these limits cannot apply. However, care should always be taken to minimise any upward waste light by the proper application of suitably directional luminaires and light controlling attachments.

(2) **Light Trespass (into Windows)** – These values are suggested maxima and need to take account of existing light trespass at the point of measurement. In the case of road lighting on public highways where building facades are adjacent to the lit highway, these levels may not be obtainable. In such cases where a specific complaint has been received, the Highway Authority should endeavour to reduce the light trespass into the window down to the after curfew value by fitting a shield, replacing the luminaire, or by varying the lighting level.

(3) **Source Intensity** – This applies to each source in the potentially obtrusive direction, outside of the area being lit. The figures given are for general guidance only and for some sports lighting applications with limited mounting heights, may be difficult to achieve.

(4) **Building Luminance** – This should be limited to avoid over lighting, and related to the general district brightness. In this reference building luminance is applicable to buildings directly illuminated as a night-time feature as against the illumination of a building caused by spill light from adjacent luminaires or luminaires fixed to the building but used to light an adjacent area.

Light Technical Parameter	Road Classification <sup>(5)</sup>			
	No road lighting	ME5	ME4/ ME3	ME2 / ME1
TI	15% based on adaptation luminance of 0.1cd/m <sup>2</sup>	15% based on adaptation luminance of 1cd/m <sup>2</sup>	15% based on adaptation luminance of 2 cd/m <sup>2</sup>	15% based on adaptation luminance of 5 cd/m <sup>2</sup>

TI = Threshold Increment is a measure of the loss of visibility caused by the disability glare from the obtrusive light installation

(5) Road Classifications as given in BS EN 13201 – 2: 2003 Road lighting Performance requirements  
Limits apply where users of transport systems are subject to a reduction in the ability to see essential information. Values given are for relevant positions and for viewing directions in path of travel. See CIE Publication 150:2003, Section 5.4 for methods of determination. For a more detailed description and methods for calculating and measuring the above parameters see CIE Publication 150:2003.

#### RELEVANT PUBLICATIONS AND STANDARDS:

British Standards: www.bsi.org.uk	BS 5489-1: 2003 Code of practice for the design of road lighting – Part 1: Lighting of roads and public amenity areas BS EN 13201-2:2003 Road lighting – Part 2: Performance requirements BS EN 13201-3:2003 Road lighting – Part 3: Calculation of performance BS EN 13201-4:2003 Road lighting – Part 4: Methods of measuring lighting performance. BS EN 12193: 2003 Light and lighting – Sports lighting
Countryside Commission/DOE www.odpm.gov.uk	Lighting in the Countryside: Towards good practice (1997) ( <i>Out of Print</i> )
CIBSE/SLL Publications: www.cibse.org	CoL Code for Lighting (2002) LG1 The Industrial Environment (1989) LG4 Sports (1990+Addendum 2000) LG6 The Exterior Environment (1992) FF7 Environmental Considerations for Exterior Lighting (2003)
CIE Publications: www.cie.co.at	01 Guide lines for minimizing Urban Sky Glow near Astronomical Observatories (1980) 83 Guide for the lighting of sports events for colour television and film systems (1989) 92 Guide for floodlighting (1992) 115 Recommendations for the lighting of roads for motor and pedestrian traffic (1995) 126 Guidelines for minimizing Sky glow (1997) 129 Guide for lighting exterior work areas (1998) 136 Guide to the lighting of urban areas (2000) 150 Guide on the limitations of the effect of obtrusive light from outdoor lighting installations (2003) 154 The Maintenance of outdoor lighting systems (2003)
Department of Transport www.defra.gov.uk	Road Lighting and the Environment (1993) ( <i>Out of Print</i> )
ILE Publications: www.ile.org	TR 5 Brightness of Illuminated Advertisements (2001) TR24 A Practical Guide to the Development of a Public Lighting Policy for Local Authorities (1999) GN02 Domestic Security Lighting, Friend or Foe
ILE/CIBSE Joint Publications ILE/CSS Joint Publications	Lighting the Environment – A guide to good urban lighting (1995) Seasonal Decorations – Code of Practice (2005)
Campaign for Dark Skies (CfDS) www.dark-skies.org	

**NB:** These notes are intended as guidance only and the application of the values given in Tables 1 & 2 should be given due consideration along with all other factors in the lighting design. Lighting is a complex subject with both objective and subjective criteria to be considered. The notes are therefore no substitute for professionally assessed and designed lighting, where the various and maybe conflicting visual requirements need to be balanced.

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Contact Officer: Alan Divall Tel: Oxford 815886

Division(s): Thame & Chinnor

## **PLANNING & REGULATION COMMITTEE – 13 SEPTEMBER 2010**

### **CONVERSION OF AN EXISTING MODULAR BUILDING WITH THE ADDITION OF ANOTHER BAY SECTION TO PROVIDE A CHILDCARE BASE**

#### **Report by Interim Head of Sustainable Development**

**Location:** Barley Hill County Primary School, Ludsen Grove, Thame, Oxfordshire, OX9 3DH.

**Application No:** R3.0076/10

**District Council Area:** South Oxfordshire

#### **Introduction**

1. This application is for the erection of a single storey extension to an existing temporary building in order to provide a pre-school facility on the Barley Hill Primary School site. The application also proposes the erection of a freestanding canopy, new footpath link to an existing pedestrian entrance and new fencing and gates around the existing temporary building.

#### **Location (see site plans)**

2. Barley Hill Primary School is the largest primary school in Oxfordshire and is located to the north east of Thame town centre. The site is located off Ludsen Grove (to the east), Denbigh Road (to the north) and Thame Cattle Market (to the west).

#### **Site and Setting (see site plans)**

3. The school is surrounded on three sides by, in the majority, two storey residential properties. On the western side immediately abutting the site is Thame Cattle Market. The main vehicle and pedestrian access into the site is from Ludsen Grove with other pedestrian entrances from the Cattle Market and Denbigh Road.
4. The existing school buildings on the site are 1970's brick built and of single storey construction. There have been a number of recent extensions and alterations to the existing buildings; these are generally in keeping with the original design. Planning permission was granted in June 2009 for the erection of a six classroom two storey extension, this development (at the time of writing not completed) is to replace existing classrooms accommodated in three temporary buildings. On completion of this extension one temporary building (subject of this application) would remain on site.
5. The temporary building is located in the north east corner of the site, approximately 12 metres to the south of the northern boundary. The building

is immediately surrounded by grassed play areas, a footpath, cycle parking and a permanent brick building to the west. The pedestrian entrance to the site from Denbigh Road is approximately 30 metres to the north east. The building currently has temporary planning permission, expiring in 2013. It is single storey, with a flat roof and constructed of plywood with a magnolia finish.

## **Background and Details of the Development**

### **Aim of the development**

6. This development seeks to provide a new pre-school facility in an existing temporary building on the Barley Hill Primary School site. Funding has been identified in order to support the improved delivery of early years educational provision with the aim of:
  - extending the hours of free early years entitlement;
  - improving the quality of early years accommodation, and;
  - ensuring that all children, including disabled, can access early years provision.
7. At present the pre-school operates from rented accommodation within Thame Town Cricket Club, on Church Road to the north west of the town centre (see Site Plan B). By moving the pre-school to the primary school site it is envisaged that children would be better integrated with the school environment and the above aims can be achieved. Staff and children who currently work at/attend the pre-school live within close proximity of the school site so it is anticipated that they would walk to the facility once relocated. The primary school serves (in part) the Lea Park estate and acts as a focal point for this community and other immediately surrounding parts of Thame.

### **Extension of the existing building**

8. The temporary building would be extended by adding an extra prefabricated bay to its existing central section. This would create an additional 24 square metres of floorspace and result in the building being 3 metres longer. The area of land where the extension would be located is currently amenity grassland. The additional prefabricated bay would be constructed to match the existing structure in terms of materials and height. Internal alterations would also take place in order to improve the existing building. A new access door and disabled ramp would be provided in the northern elevation of the building to provide access to a new pedestrian footpath.

### **Hours and levels of use**

9. At present the temporary building is used before 9am and after 3pm (Monday to Friday during term time only) for the school's extended childcare provision, this use would remain unchanged. The new pre-school facility would operate within the extended building between 9am and 3.30pm (Monday to Friday including school holidays).

10. The new pre-school facility could accommodate up to a maximum of 16 children and a maximum of 4 staff. These would be additional to numbers of staff and children who currently attend the site.

**Other associated works**

11. A new 1.5 metre wide footpath link is proposed to be constructed from the existing pedestrian access at the north east corner of the school site to the new doorway in the northern elevation of the temporary building. New fencing and gates would also be erected around the temporary building in order to improve security. A new freestanding canopy (6 metres in length by 4 metres in width) would be constructed on the north west corner of the existing building. No details of the canopies design have been submitted with the application.

**Consultations**

12. South Oxfordshire District Council (SODC)

*(Planning Development Control)* – No objection.

*(Environmental Health)* – No comments or observations to make.

Thame Town Council – No objection.

Transport Development Control (TDC) – No objection. The addition of 16 children is not a significant increase to the site traffic. However, extra parking for staff would need to be managed. The application should not have any negative highway impacts provided that conditions are imposed to ensure that existing cycle parking provision is retained and the schools travel plan is updated to take account of the development.

County Ecologist – No objection.

**Third Party Representations** (Copies of these letters are available in the Member's Resource Centre)

13. We have received 2 letters from neighbouring residents, one strongly opposing the application and one objecting. They have made the following points:
  - The site is already overdeveloped with not enough play areas;
  - The temporary buildings should have only been on site for a 'temporary' period;
  - This area of the site is already noisy and will increase with additional pupils;
  - Traffic congestion will increase in Denbigh Road, Henrietta Road and Cromwell Avenue;
  - Access and parking will be inadequate and become more hazardous with the increase in traffic;

- Current restrictions on Denbigh Road (no vehicle entry at specific times) are ignored and not enforced;
- A full traffic study should have been produced and provision for extra parking should be a condition of any consent.

**Development Plan and other Policies (see Policy Annex)**

14. *All relevant policies are set out in the Policy Annex at Item 12 on this Agenda.*
15. Planning applications should be decided in accordance with the development plan unless material considerations indicate otherwise. The relevant development plan documents are:

South Oxfordshire Local Plan 2011 (SOLP). The relevant policies are as follows: G2, G3, G5, G6, EP2, D1, D2, CF2, T1, T2, T3.

**Comments of the Head of Sustainable Development**

16. The key planning issues to be considered with this application are:
- (i) Transport issues;
  - (ii) Potential impact of the pre-school activity on nearest residents;
  - (iii) Overdevelopment of the existing site and impact of temporary buildings.

(i) Transport issues

17. The application seeks to provide a new pre-school facility on the existing primary school site operating between 9am and 3.30pm Monday to Friday (including school holidays) and providing accommodation for a maximum of 16 children and 4 members of staff. The proposal would therefore result in extra trips to and from the site. Policy CF2 of the SOLP permits new community facilities provided that there are no overriding traffic objections to the proposal. Policies G3, T1, T2, and T3 require new development to be safe in highway terms, accessible and encourage trips by other means than the private car.
18. Local residents have expressed concerns relating to: an increase in vehicular traffic to and from the site; additional parking on surrounding residential roads; current parking restrictions not being enforced; no additional parking being provided and the lack of a full transport study with the application.
19. As the addition of the pre-school onto the site could result in up to 16 additional children and 4 staff visiting each day, consideration needs to be given as to whether these additional trips would have an unacceptable impact on the surrounding highway network. The school site is located within the town centre with large residential areas to the north and north east. There are three pedestrian entrances to the site (see paragraph 3) and Thame Cattle Market is used by parents as a drop off area. The Ludsden Grove entrance to the site is restricted for vehicles during school drop off and collection times and parking and access enforcements are in place on Denbigh Road in order to restrict parents dropping off children during certain times of the day.

20. The applicant states that the majority of children and staff who will use the facility live in close proximity to the site and will be closer to the pre-school than at present (currently located in Church Road). As a result the majority will walk or cycle to the pre-school. Transport Development Control officers do not consider that a full transport assessment is required for this application because they consider that the development would not have any negative highway impacts and are satisfied with the information provided. Although there is local concern that there may not be sufficient parking on site for staff the applicant has confirmed that all staff live within the immediate area and walk to the site.
21. Transport Development Control officers do not consider that the additional children visiting the site would be significant and raise no objection subject to cycle parking adjacent to the development being retained and the school travel plan being updated to take account of the proposed development, both of which can be addressed by planning condition. In my view the school site is well located within and adjacent to the residential area it serves, which would encourage staff and pupils to walk or cycle to the site or use nearby public transport stops as opposed to travelling by private car. The pre-school would be located more centrally to residential areas than at present. There are three pedestrian accesses to the site which serve the surrounding area well and allow good access. This is consistent with Policy T1 of the SOLP which requires developments to provide safe and convenient routes for cyclists and pedestrians and be accessible by public transport. By co-locating the pre-school onto the primary school site it would also enable parents with siblings at the primary school to make one journey to one site.
22. Concern has been raised by a local resident that existing restrictions for times of access into nearby Denbigh Road (to the north of the site) are not adhered to and properly enforced. The school periodically invite the police to attend school start and finish times and have confirmed that restrictions on Denbigh Road are enforced and action is taken when necessary. The school have confirmed that they would seek to inform (and reiterate) new/existing parents of the current restrictions in place on Denbigh Road. The school will investigate with County Highway officers whether additional and/or clearer signage could be provided at the entrance to Denbigh Road which could help highlight restricted areas further.
23. The site is accessible and well located next to residential estates and as the majority of children and staff visiting the existing pre-school site do so on foot this is likely to continue once it is relocated to the primary school site. Current parking restrictions are in place on surrounding roads and these are enforced by the police, although the school recognise that further communications could be carried out with parents to remind them of restrictions. Therefore, I consider that the development is consistent with policies G3, T1, T2, and T3 of the SOLP which require new developments to be in sustainable locations, safe in highway terms, accessible and not cause undue harm to local amenity in this respect.

(ii) Potential impact of the pre school activity on nearest residents

24. The development is located within a residential area, although it would be within an existing building on an established school site. Policy CF2 of the SOLP permits new community facilities provided there are no overriding amenity objections whilst Policy EP2 seeks to protect existing occupiers from unacceptable noise. Local residents have commented that the development would increase noise on the site.
25. The proposed development would lead to an increase in activities that take place directly on this site. The pre-school would be accommodated within an existing building which would not be extended any closer to existing residential properties. Although the area to the north of the building would be used more intensively for outdoor play it is still some 15 metres to the edge of the nearest residential garden and approximately 30 metres to the nearest dwelling. The hours of use of the pre-school would be 9am – 3.30pm Monday to Friday which is similar to the main part of the school day. The pre-school would operate during school holidays but within these times only.
26. In my view given the proposed hours of use and that the facility would mostly be located within an existing building on an established school site there would not be a significant impact in terms of increased noise and disturbance, even during school holidays. Most activities during the day would be located within the existing building. Environmental Health have no objection to the application. I consider that subject to a condition restricting the hours of use of the building to those set out in the application the development accords with SOLP policies CF2 and EP2 and would not have a significant impact on amenity.

(iii) Overdevelopment of the existing site and impact of temporary buildings

27. The development would create an additional pre-school facility on the school site by extending an existing temporary building. Other minor external works around the building are also proposed. Policy G5 of the SOLP seeks to ensure that development proposals make the best use of land and buildings whilst Policy G6 requires new development to be of a scale and type that is appropriate to the site and its surroundings. Policy D1 requires new development to be of a good design. Policy CF2 allows for new community facilities provided that there are no overriding environmental objections or conflicts with other policies in the SOLP. A comment has been received from a local resident that the existing site is already overdeveloped and suffers from a lack of playing areas. They also comment that temporary buildings on the site should have only been in place for a temporary period.
28. Although the development would provide a new pre-school the extent of the extension proposed and the other works is relatively minor. The new extension would only be 24 square metres in size and would be constructed on an area of amenity grassland, no formal play areas, playing fields or hard play areas would be lost. The extension itself would only be 3 metres in length and would not increase the width of the existing building, or move it further towards residential properties to the north. The extension would also be of a scale and design to match the existing temporary building. A condition can be

imposed requiring the temporary building to be painted in a single colour to blend in with its surroundings. The external works would provide a dedicated and secure outside early years play area. Although temporary buildings are, by their nature, not as attractive as a permanent extension or a new freestanding building I consider that the scale of the development is limited and would not have a significant impact on the overall intensity of development of the site or the surrounding area.

29. The local resident also comments that temporary buildings on the site should have been used for a temporary period only. As highlighted in paragraph 4, planning permission was granted in 2009 for a new permanent six classroom building to replace three double temporary classrooms on the site. These works are nearing completion and the three double temporary units were due to be removed from the site during the summer holidays. The areas where the temporary buildings are currently positioned will be landscaped and used as outdoor play/learning spaces. The building subject of this application is the last remaining temporary building on the site, it has planning permission until 2013 and should the school wish to extend the temporary planning permission again in the future the merits for doing so would need to be assessed at that time. In my view considerable steps have now been taken to remove the majority of temporary buildings from the site and as a result the school and the surrounding area will begin to see the benefits of this.

### Conclusion

30. The proposal would allow for the relocation of an important educational and community facility onto the Barley Hill Primary School site. Policy CF2 of the SOLP permits community facilities provided there are no overriding amenity, environmental or traffic objections. In planning terms I believe this proposal is acceptable and meets the above criteria. Whilst the development would lead to an increase in numbers of children and staff making trips to the site the overall impact on the surrounding highway network would be limited. The site is also well located in order to encourage sustainable trips to it. The additional floorspace created by the extension to the existing building would be modest. There would not be a need to remove landscape features or impact on areas of formal play/sports pitches in order to construct the extension and the buildings footprint would not move closer to the nearest residential properties to the north of the site. The hours of use of the pre-school would be restricted to a limited period and as such I do not consider that increased noise or disturbance would occur.

### **RECOMMENDATION**

31. **It is RECOMMENDED that Application No. R3.0076/10 be approved subject to conditions to be determined by the Head of Sustainable Development to include the following matters:**
1. **That the development must be carried out strictly in accordance with the particulars contained in the application and the plans accompanying subject to conditions covering matters below.**

2. That the development shall commence within 3 years of the date of the permission.
3. That the hours of use of the building for pre-school use shall be between 9am – 3.30pm, Monday to Friday only.
4. That no development shall take place until the trees on the site which are to be retained and which are adjacent to or within the development area, have been protected during building operations by means of a protective fence around the edge of the canopy of the trees.
5. Prior to the commencement of the development a Construction Traffic Management Plan shall be submitted and approved. No contractors access via Ludsdan Grove.
6. Prior to the commencement of the development the external colour of the extension and a scheme for repainting the existing temporary building shall be submitted and agreed. The extension and the existing temporary building shall be painted prior to its first use.
7. Prior to the commencement of the development the final details of the free- standing canopy shall be submitted and agreed.
8. Prior to the commencement of the development the final details of new fencing and gates shall be submitted and agreed.
9. Within six months of the use of the extension the school shall review and update their Travel Plan to take account of the proposed development.
10. That the adjacent covered cycle parking shall be retained in its current position.

**Highways Informative:**

The school are encouraged to, in consultation with the Local Highway Authority, investigate the possibility of providing additional and/or clearer signage at the entrance to Denbigh Road. Any agreed additional signage shall be implemented prior to the use of the extension.

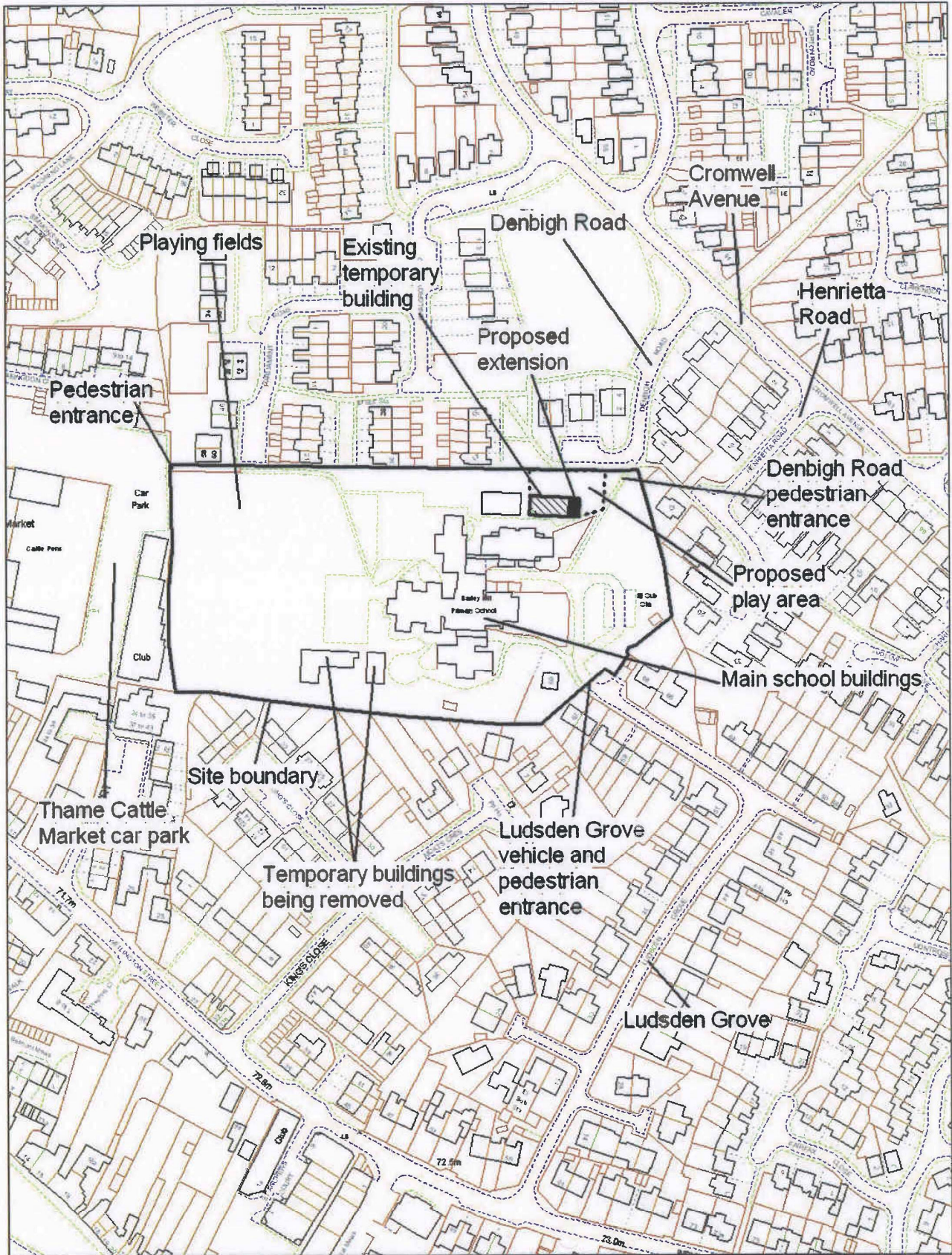
MARTIN TUGWELL  
Interim Head of Sustainable Development

Background Papers: File Ref: R3.0076/10 8.3/7006/09

September 2010

Barley Hill School - Plan A

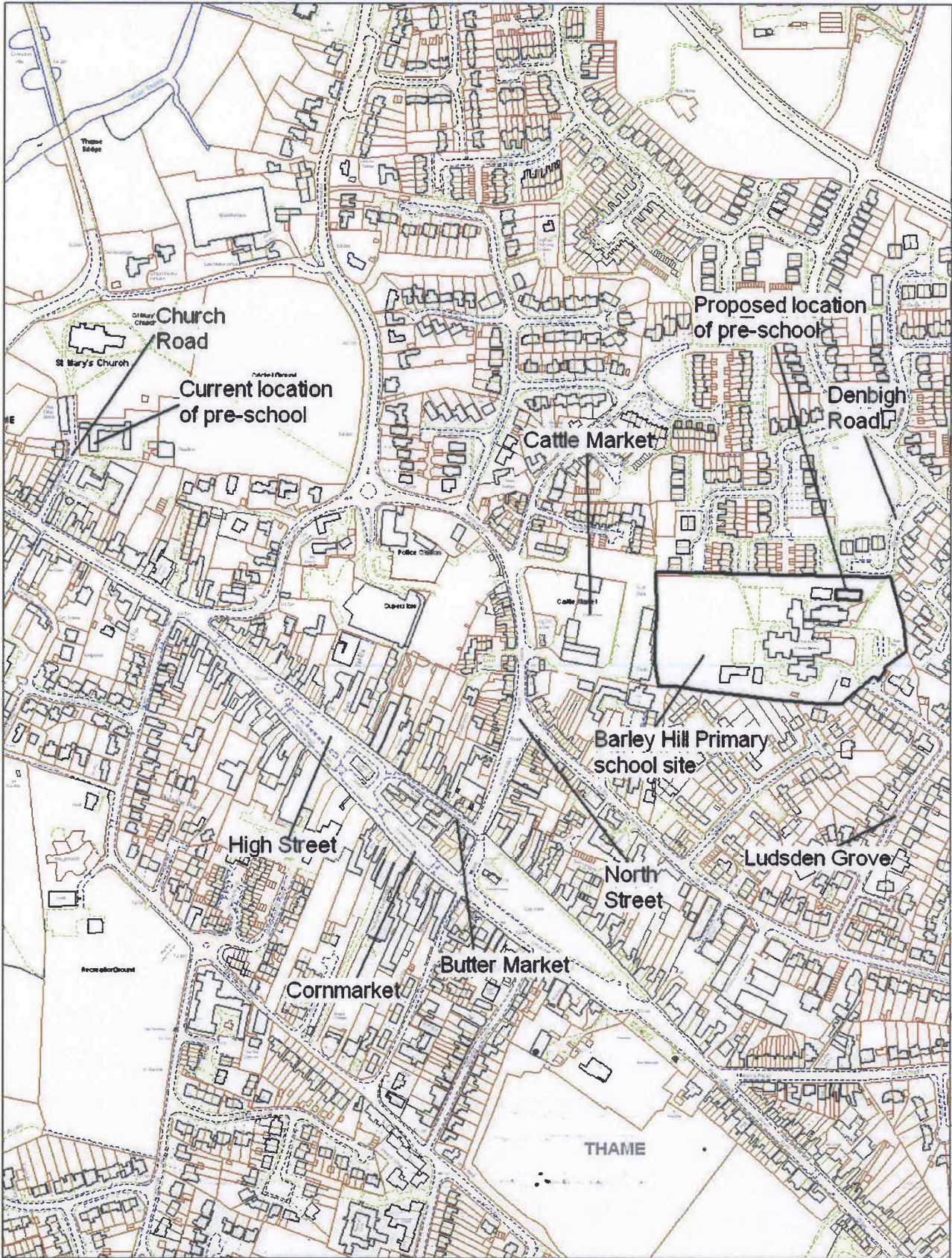
App. No. R3.0076/10



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Scale: 1:2200  
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Scale: 1:4400  
Plot Date: 23/08/10  
By: PF

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Contact Officer: Naomi Woodcock Tel: Oxford 815708

Division(s): Bampton

## **PLANNING & REGULATION COMMITTEE – 13 SEPTEMBER 2010**

### **ERECTION OF 2 SINGLE STOREY EXTENSIONS TO PROVIDE ADDITIONAL YOUTH AND COMMUNITY FACILITIES. CREATION OF 6 ADDITIONAL CAR PARKING SPACES (INCLUDING 1 DISABLED SPACE); DEMOLIITION OF AN EXISTING WALL; ERECTION OF NEW 1.8 METRE HIGH FENCING; CREATION OF NEW FOOTPATH AND INTERNAL ALTERATIONS**

#### **Report by Interim Head of Sustainable Development**

**Location:** Bampton Community Centre, Church View, Bampton, Oxfordshire, OX18 2NE.

**Applicant:** Oxfordshire County Council

**Application No:** R3.0103/10

**District Council Area:** West Oxfordshire

#### **Introduction**

1. This application is for the construction of two single storey extensions to the existing community building (one to the front and one to the rear) to provide new and improved facilities at Bampton Community centre. The proposals will compliment refurbishment and internal alterations to the existing building. Outside, a new footpath and relocation of six parking spaces is proposed along with the demolition of a wall and erection of a 1.8 metre fence to the west of the community centre building. The community centre is a listed building and so a separate application for listed building consent has also been submitted. This will be determined by the Secretary of State for Communities and Local Government.

#### **Location (see site plan)**

2. Bampton is a large village in a rural area which sits midway between Witney, Carterton and Faringdon. The community centre is located on the western side of the village just off Church View about 75 metres north of the A4095 Faringdon to Witney Road.

#### **Site and Setting (see site plan)**

3. The community centre is immediately bounded by an area of open space (Sandford Fields) to the west and residential properties to the north, east and south. Access to the site onto Church View is gained from a short cul-de-sac (Shrewsbury Place) which runs along the north side of the community centre building.

4. The community centre lies within the Bampton Conservation Area. The latter is characterised by a mixture of one and two storey stone, brick and timber dwellings with pitched roofs. Church View is a narrow street and has a limited pavement on one side of the street. The majority of properties around the community centre site do not have front gardens and the doors open directly onto the pavement or street.
5. The application site comprises a Grade II listed community centre building (set back from Church View), the Bush Club (a day centre) and a vacant building located behind the community centre at the western end of the site. There is space for 6 cars to park at the front of the site adjacent to Shrewsbury Place. Concreted land immediately behind the community centre building is also used for car parking. There are trees and hedgerows to the west of the main building and along the north west and west site boundary. The closest house to the site is adjacent to the southern boundary on Church View. There is a gap of 1.5 metres between this dwelling and the area proposed for the new front extension. Other dwellings situated close by are 15 metres to the east (on Church View) and 16 metres to the north (on Shrewsbury Place).

## **Background and Details of the Development**

### Aim of the development

6. The Bush club building leaks and is generally in a poor state of repair and is only used once a week as a day centre for the elderly. The main community centre also needs refurbishment but is used more widely, including a weightlifting club. The intention is that the front extension would be designed to re-house the weightlifting club, whilst the rear extension would allow re-introduction of a youth club. Overall the single extended and refurbished community building would enable a wider range of community activities in a good quality building. The Council has secured some government funding to refurbish the existing youth centre building and to extend it to the front and rear to provide new accommodation for the above 3 users of the site. The grant also relies on some OCC funding for the project. It is intended that this would be realised through the sale of the rear part of the site (where the Bush Club and other vacant building is located) for redevelopment.

### Design

7. Both extensions would be single storey, and would have high pitched slate roofs, painted timber doors and windows. The walls would be finished in a natural coloured lightly textured render with a random rubble limestone plinth. Bat bricks are to be incorporated into the structure on the south facing gables of the rear extension. The front extension would be 90m<sup>2</sup>, the rear one 100m<sup>2</sup>.

Building Research Establishment Environmental Assessment Method (BREEAM)

8. The new extensions are designed to achieve a BREEAM rating of 'Very Good'. Some of the ways in which this would be achieved are as follows:
- low energy lighting;
  - new condensing system;
  - use of natural ventilation;
  - use of natural lighting throughout the building; and
  - sustainable rainwater drainage system.

Parking and Access

9. At present there are about 6 parking spaces at the front of the site for people visiting the building with access from Shrewsbury Place. The new front extension would displace this parking. Replacement parking for 5 cars is therefore proposed on the concrete area to the rear of the site plus a disabled space to be created close to the entrance of the building. Part of a stone boundary wall would be removed to create access to the parking from Shrewsbury Place. A lay-by is proposed at the front of the building to allow dropping of at the centre and secure bicycle parking next to the building entrances. The proposed hours of use of the new refurbished building would be as existing i.e. the weightlifters club 24 hours a day for 7 days a week and by the other various users between the hours of 9.30am – 10.00pm.
10. Associated external works would include new and amended paths, new planting beds, block pavers and shrub planting to the front of the building, and a new access ramp to serve the main building entrance. A new 1.8 metre timber fence is proposed between the rear of the extension and the proposed new parking area. As part of the development internal alterations (including removal of wall partitions, cleaning and repairing the fabric of the existing building) would be undertaken.
11. As part of the development the vacant buildings (including the Bush Club) to the rear would be demolished.

**Consultations**

12. Prior to the submission of the application, pre-application discussions were undertaken with the applicant and officers from both OCC and the District Council. This scheme has been submitted as a result of those discussions.
13. West Oxfordshire District Council (Planning) –The District Council has raised no objection to the proposal but recommends conditions to cover the following issues: i) submission of external material samples; ii) submission of full joinery details; iii) trees to be protected during construction phase; iv)

submission of a landscaping plan; v) submission of a detailed schedule of all hard surface materials; vi) full design details of new fencing, vii) that the car park is constructed and laid out prior to the occupation of the new development; viii) demolition to be carried out in accordance with submitted plans, ix) works to the new development are to match that of the listed building; and x) submission of full details of measures for the protection of bats and their habitats.

West Oxfordshire District Council (Environmental Health) – No objection.

Bampton Parish Council – Object. The Parish Council states that 5 car parking spaces would not be adequate for the size of the building. Concerned about the extension at the front and suggest that materials should be in keeping with the existing building.

English Heritage – The large gable at the south end of the building makes an important contribution to its architectural value and the proposal to add an extension to the front will materially harm the architectural value and significance of the building. Given its prominent location the simple and functional design of the extension is also likely to compare poorly with the existing building. The proposals offer public benefits which may outweigh the harm to significance. It is unclear why such a large extension is necessary or why all of the facilities have to be provided in a single building. The weighlifting club facilities appear to stand reasonably well as an independent facility and could be accommodated to the rear in the extensive area currently occupied by the Bush Club. Even if the level of facilities proposed are demonstrably necessary and must be linked, it would be preferable to limit the damage to the rear.

Environment Agency (EA) – No objection subject to a condition requiring works to cease if contamination is found to be present.

Planning Ecologist – The application is unlikely to affect any protected species but may affect nesting birds. Suggest that no trees or vegetation are removed during the bird breeding season and that works should cease if any bats are found to be present.

County Forester – No objection.

County Archaeologist – Archaeological field evaluations were undertaken on the site in September 2008. The evaluation revealed the presence of a number of archaeological features, including a ditch, post holes and a gully that appear to be related to the medieval barn that was found on an adjacent site. None of the features are of such importance as to preclude the development of the site but they would justify further investigation and recording in the event of the development proceeding. Suggest that the applicant be responsible for ensuring the implementation of an archaeological monitoring and recording action to be maintained during the period of construction.

Transport Development Control – The location of the proposed disabled car parking space and the proposed dropping off lay-by are acceptable. Suggest

that the lay-by is laid out to the approval of the Highway Authority. Concerned that large events held at the centre may lead to visitors parking on Shrewsbury Place and Church View. Suggest that a robust, restrictive and enforceable parking management plan is submitted to address this issue. Suggest that parking and manoeuvring areas are provided in accordance with the drawings submitted with the application. The amount of cycle parking proposed is acceptable although it should be sheltered and secure to promote its use.

**Third Party Representations** (Copies of these letters are available in the Member's Resource Centre)

14. 14 responses from local residents have been received. The key points are:
- Proposed extensions are unimaginative, of an inappropriate scale and would have a negative impact on the listed building, the site, Bampton Conservation Area and the surrounding area.
  - Insufficient landscaping is proposed.
  - Local residents would be affected by noise, light and vibration.
  - The development may encourage anti-social behaviour.
  - Weightlifters accommodation should be sited in a more appropriate part of the village.
  - Concerns about the impact of additional/reduced parking, traffic and construction traffic on local residents and emergency services.
  - Welcome the provision of cycle parking.
  - The development cannot be justified within the current financial climate.
  - The proposed sale of the land to the rear of the centre should form part of the application.
  - The application would not be considered if the land was being developed privately.
  - Unclear why the application is being determined by the Secretary of State rather than the District Council.

**Development Plan and other Policies**

15. All relevant planning policies are set out in the Policy Annex at Item 12 on this Agenda.
16. Planning applications should be decided in accordance with the development plan unless material considerations indicate otherwise. The relevant development plan documents are:

The West Oxfordshire Local Plan 2011 (WOLP). The relevant policies are as follows: BE2, BE3, BE5, BE6, BE7, BE8, BE13, BE18, BE19, NE6, NE9, NE11, NE13, T1, T2, TLC1, TLC8, TLC12.

17. In addition Planning Policy Statement (PPS) 5: Planning for the Historic Environment is relevant to this development.

### **Comments of the Head of Sustainable Development**

18. The key planning issues to be considered with this application are:
- (i) The need for and the siting of community facilities.
  - (ii) Potential impact of the design on the listed building and surrounding area.
  - (iii) Potential impacts on neighbouring residents (particularly traffic and other nuisances).
  - (iv) Potential environmental impacts.
- (i) The need for and the siting of community facilities
19. The Bush Club building located behind the community centre is currently used as a day centre for the elderly but is in a poor condition and provides sub-standard accommodation. The existing community centre building is predominately used by a local weightlifters club. It is intended that Bampton Youth Club be re-established at the community centre. The aim of the proposal is to provide improved accommodation for all these groups within a single community centre building. Policy TLC1 of the WOLP supports the provision of community facilities that meet the needs of the local community and Policy TLC12 of the WOLP states that development proposals should not result in the loss of local services and facilities. Some residents are concerned about providing accommodation for the weightlifters club. The club already operates at the community centre and the new accommodation would simply allow it to continue in a dedicated building. The improved centre would provide improved accommodation for both young and old (for the Youth Club and the Bush Club). There is a need for an improved facility and the application accords with Policies TLC1 and TLC12 of the WOLP in this respect as the proposal would go a long way towards meeting the needs of the elderly, young people and local groups and ensuring they remain as local community services.
- (ii) Potential impact of the design on the site, listed building and surrounding area

#### *Overdevelopment of the site*

20. The application seeks to extend the existing community centre building by erecting two single storey extensions to the front and rear. The floor area of the community centre building would be increased from 250m<sup>2</sup> to 440m<sup>2</sup> (an increase of 190m<sup>2</sup>). The two buildings that are to be removed as part of this proposal total about 420m<sup>2</sup> in area. The actual increase in new community floorspace on the site is therefore about 20m<sup>2</sup> – although, in due course, there

are likely to be proposals for other development at the rear of the site. Policy BE2 of the WOLP requires new buildings to relate satisfactorily to the site. One local resident is concerned that the development would be too intensive and would the site. The existing community centre building is single storey and just over 8 metres high to its ridge point. The proposed extensions would be lower than the existing building (the front extension being 7m to ridge height and the rear extension being between 7 metres and 7.5 metres to ridge height). In my view the extensions would not dominate the existing building and given the overall small increase in new floorspace, the proposal in my opinion does not amount to overdevelopment of the site. I am satisfied therefore that the scale of the development would relate well to the site and that the application therefore accords with Policy BE2 of the WOLP.

*Design and impact on the listed building*

21. The existing grade II listed community centre building has a rock faced limestone façade and steeply pitched slate roofs with stone copings to the gables. The northern, eastern and western elevations have large windows which have stone dressings and in some cases gothic arches. The new extensions would be of a simpler design to that of the listed building. It is proposed that the extensions would have high pitched slate roofs to match this element of the existing building and the walls would be finished in lightly textured render with a random rubble limestone plinth.
22. Policy BE7 of the WOLP requires that additions or alterations should be in scale and sympathy with the original character of a listed building.
23. Local residents have expressed concern that the development would be unsympathetic with the character of the grade II listed building. They are concerned about a modern architectural design, the use of non-matching materials and the detrimental effect that the front extension may have on the front elevation of the main listed building. They suggest that extensions should be limited to the rear of the building to minimise the overall impact on the building. The Parish Council are also concerned about the front extension and the use of non-matching materials. English Heritage are similarly concerned that erecting an extension to the front of the existing building would partially mask the gable and harm its architectural value. English Heritage also comment that if the level of facilities is demonstrably necessary and must be linked, it would be preferable to limit the impact only to the rear of the building.
24. The District Council were involved in pre application discussion about this development. They raised no issues about the design solutions that have been put forward. They have not objected to the application as submitted.
25. In terms of their size, both extensions are proportionately smaller than the existing building and lower in height to eaves and to the ridge of the main building. The steep pitched roof should reflect the pitch of the listed building and it would be clad in slate to match it. Whilst the walls would be different (rendered compared to limestone) and would appear new they would compliment the listed building. The windows in the main have a vertical emphasis similar to the existing building although I have some concerns about

the square design of the windows on the south elevation on the front extension. Should windows be required in this elevation I consider that their design should be amended to be more in keeping with the windows shown in the rest of the new development. I consider that this can be addressed by a condition requiring the details of these windows to be agreed before any work commences on site. The new extensions are to sit on a plinth of rubble stone. The existing building is constructed in coursed limestone and I consider that coursed stonework to match the existing should be used in the new development. This can be required by condition.

26. English Heritage argue in principle that an extension at the front will harm the main feature of interest in the building which in their view is the large gable end. The new extension to the front will not impact directly on this window which would remain untouched. The view of this window particularly from the south east though would be affected. However the front elevation of the existing building is asymmetrical (there are 5 gables on this façade) and therefore I consider that an extension (with its own gable end) added to one side of the frontage would not significantly detract from its appearance.
27. The question of what is good design and architecture is often a subjective matter. Extending an old building by way of a modern, simple yet sympathetic design can often work better than trying to mimic exactly the design and materials of the historic structure. In my view, the design proposed is appropriate. I consider that subject to conditions requiring agreement of external materials, side windows to the front extension and details relating to the refurbishment works the application accords with Policy BE7 of the WOLP.
28. Policy HE9.4 of PPS5 requires local authorities to weigh the public benefits of a proposal against any harm that might be caused to a heritage asset. In this case, I believe that any harm to this listed building as a result of this development is limited and the public benefit that would be achieved, providing a building that would be a valued community asset for the village, outweighs that harm.

*Impact on Bampton Conservation Area*

29. The community centre is located within the Bampton Conservation Area, an area characterised primarily by a mixture of two storey and single storey stone buildings with pitched roofs. Policy BE5 of the WOLP advises that every effort should be made to ensure that the character and appearance of conservation areas are not eroded by the introduction of unsympathetic development proposals. One local resident considers that extending the community centre as proposed would adversely affect the appearance of the conservation area. In my view the existing tarmac area to the front of the community centre is not in keeping with the character of the area. The proposed front extension would enhance the character of the area as built development would be brought closer to the street frontage (as are many other properties in Church View) and the pitched roof would be in keeping with the character of the properties in the immediate vicinity. The erection of this extension, along with the hard and soft landscaping proposals, would also enhance the setting of the community centre within the Conservation Area by reducing the impact of the

'extent of tarmac' that currently exists to the front of the building. The rear extension would also reduce the size of the large concrete area to the rear of community centre and again the setting of the building would be improved with the proposed landscaping works.

(iii) Potential impacts on neighbouring residents (particularly traffic and other nuisances)

*Parking and the local highway network*

30. It is proposed that the existing car park be relocated and formalised to create 6 car parking spaces (to include one disabled space). A new drop-off and pick up lay-by would be created on site and cycle parking to accommodate up to 30 bicycles provided. Policy TLC1 of the WOLP seeks to ensure that proposals for community development do not generate unacceptable levels of traffic on the local highway network and Policy T2 of the WOLP seeks to improve facilities for cyclists. Local residents have expressed concern about the impact that the proposed development may have on the local roads and parking (in particular extra traffic and parking in Church View, the potential blocking of domestic driveways and garages, the lack of insufficient parking for users of the centre, and the loss of on-site parking spaces for residents, shoppers and drivers attending functions held at Sandford Fields). Concern about contractors' vehicles and the question of access for emergency vehicles has also been raised.
31. Bampton Parish Council has commented that parking provision in the new development is inadequate. Transport Development Control have raised no objection to the new arrangements but have expressed concern about the use of the building for large functions which may result in additional parking on Shrewbury Place and Church View in particular. Transport Development Control consider that this issue can be addressed through the imposition of a condition requiring the submission of a parking management plan. Given Transport Development Control's comments above and the strong views expressed by local residents about parking and emergency access, I consider that a condition requiring the submission of a parking management plan should be attached to any consent given and any plan approved should be rigorously implemented for any functions or events that are organised at the community centre. The Parish Council, who would be responsible for running the centre, would need to be party to any management plan agreed. The parking management plan should include, amongst other things, details of alternative parking provisions for function users and details of how these provisions will be communicated to visitors to the building. To encourage people to travel sustainably to the community centre site, a condition can also be imposed requiring covered cycle parking to be provided prior to the occupation of the building. In conclusion I am of the view that subject to appropriate conditions, the application can be made to accord with Policies T2 and TLC2 of the WOLP.

*Noise and vibration*

32. The application proposes that the community centre building would be accessible to users of the weightlifting club 24 hours a day, 7 days a week, as

at present. The youth club and day centre would only be open between the hours of 6.00pm - 10.00pm and 9.30am – 2.30pm respectively. Policy BE19 of the WOLP states that permission will not be granted for development if occupants of housing would be exposed to significant noise disturbance. Two residents are concerned that the development would lead to an increase in noise, in particular associated with the comings and goings of the weightlifting club and dropped weights creating excessive noise and vibration for adjacent dwellings. In view of a possible noise issue with this development the District Council Environmental Health Officer has been consulted. He has confirmed that he has no objection to the application. In my view, the proposed hours of use by the youth centre are appropriate. The weightlifting club is to be located in the front extension and in relation to this use I do consider that it would be unreasonable to allow the weightlifters club to continue to have 24 hours access to the building which could involve activities (albeit fairly low key) taking place through the night and the very early hours of the morning. I feel therefore that it would be reasonable to impose a condition restricting the hours of use of the building (for the weightlifting club) to 6.00am - 12.00 midnight to protect the residential amenity of local residents. The weightlifters club has confirmed that they would be prepared to accept such a restriction. Subject to this condition, the proposed development accords with Policy BE19 of the WOLP.

*Maintenance and light pollution*

33. The two extensions would be erected 1.5 metres and 10 metres respectively from the southern site boundary. The residential dwelling immediately south of the community centre forms part of the southern site boundary. Low energy lighting is proposed throughout the building and external lighting is not proposed as part of the application. Policy BE2 of the WOLP permits proposals which creates or maintains a satisfactory environment for people living in the area. A neighbouring resident has expressed concern that the front extension would prevent him from maintaining the northern elevation of his property. This resident has also commented that there is a blocked up door on the northern elevation of his residential dwelling which opens into the community centre site. Another resident has commented that neighbouring occupiers may be affected by lights, particularly as lights are often left on in the community building. I believe the front elevation would not prevent the adjacent resident from maintaining their residential dwellings or unblocking the access door to the community centre site as there would be a 1.5 metre gap between this dwelling and the proposed development. Although concerns have been raised about the impact that lights would have on local residents, I consider that any impact would be minimal as no external lighting is proposed and low energy lighting is proposed within the building. I therefore consider that the application accords with Policy BE2 of the WOLP as the development would maintain a satisfactory environment for people living in the area.

(iii) Potential environmental impacts

*Trees and Landscaping*

34. As part of this development, it is proposed that a combination of hard and soft landscaping should be provided to include new planting beds, shrub planting

and bark chippings. No trees would be affected by the development. Policy NE6 of the WOLP requires that planning permission should not be granted for proposals which would result in the loss of trees and Policy BE2 requires the submission of a landscaping scheme for all hard and soft landscaping. One resident has commented that very little landscaping is proposed. Church View is almost urban in form with houses and other buildings close up to the road. The relatively limited landscaping proposed is in keeping with the level of landscaping in the surrounding area. The District Council has commented that trees which are to be retained on site should be protected from damage during construction works and a landscaping plan submitted for approval. No trees would be directly affected by this development. However, to ensure that no trees are damaged and lost during construction, a tree root protection condition can be imposed. I am satisfied therefore that the proposal accords with policy NE6 of the WOLP.

### *Biodiversity*

35. No protected species have been found on site, although bat bricks are to be incorporated into the structure on the south facing gables of the rear extension. A condition can be imposed to protect nesting birds during the sensitive season. As such the proposal accords with Policy NE13 of the WOLP.

### *Planning process*

36. Some residents have asked why this application is being determined by the Secretary of State rather than the District Council and why the selling of the land in the western part of the application site does not form part of the planning application. As the proposal seeks to extend and alter a listed building, an identical application has been submitted (in conjunction with this planning application) for listed building consent. The County Council does not have the authority to determine applications for its own listed buildings and they are determined by the Secretary of State for CLG. If the land immediately behind the community centre (in the western half of the site) is to be sold off in the future for development then such a proposal would require a separate planning application for decision by the District Council.

### Conclusion

37. The proposal would provide the community with a significantly improved community facility for local community groups to make full use of in the future. As such it accords with planning policies TLC1 and TLC12 of the WOLP. Much concern has been made about parking in Church View and Shrewsbury Place as a result of visitors arriving at the centre. These issues can be addressed by suitable conditions, particularly a condition requiring management of parking at the site for larger functions and events. The amenity of local residents would not be significantly affected by the activities within the new centre providing times of use are restricted. Although concerns have been raised about the impact that the development would have on the site, listed building and Conservation Area, I consider that the size of the extensions are appropriate for the size of the site and should not unduly detract from the setting and appearance of the listed building. The design and

materials proposed should sympathetically complement the listed building and contribute to the character of the Bampton Conservation Area. The benefits this scheme will provide in terms of a much enhanced community facility should outweigh any harm that the development would have on the listed building.

## **RECOMMENDATION**

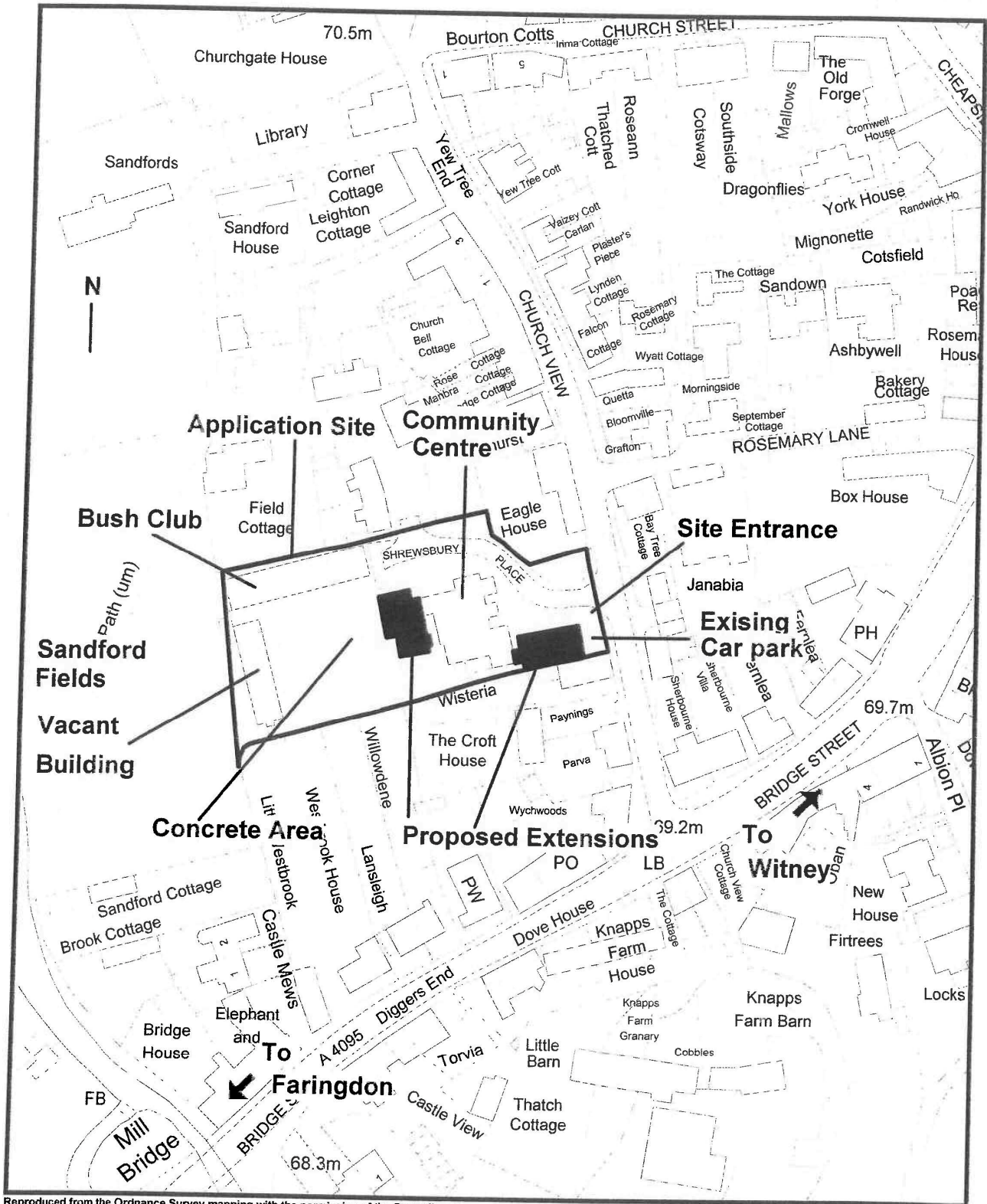
38. **The Committee is RECOMMENDED to approve Application Number R3.0103/10 subject to conditions to be determined by the Head of Sustainable Development to include the following matters:**
- 1. The development must be carried out strictly in accordance with the particulars contained in the application and the plans.**
  - 2. Commencement of the development within 3 years.**
  - 3. Submission and agreement of external materials.**
  - 4. Submission of fencing details.**
  - 5. Submission of full details of external doors and windows and sample of paint/stain colour.**
  - 6. Submission and agreement of stonework to the proposed plinth.**
  - 7. Refurbishment and internal alterations to be carried out as shown on approved plans.**
  - 8. New works to be carried out in materials to match adjoining fabric unless shown on approved plans.**
  - 9. Submission of tree root protection zone details**
  - 10. Submission of hard and soft landscaping scheme.**
  - 11. Implement landscaping**
  - 12. If any bats are found at any point, all work should cease immediately and the Protected Species Officer contacted immediately.**
  - 13. If any contamination is found at any point, all work should cease immediately and a remediation strategy shall be submitted, agreed and implemented.**
  - 14. Submission and agreement of a construction management plan.**
  - 15. Submission and agreement of a car park management scheme. Any scheme approved to be implemented for functions and events at the centre.**
  - 16. Manoeuvring and parking areas to be constructed, laid out, surfaced and drained in accordance with sustainable drainage details (SUDS).**
  - 17. Submission, approval and implementation of cycle parking details**
  - 18. Submission and approval of full lay-by details.**
  - 19. Undertaking of an archaeological watching brief.**
  - 20. Hours of use of users to be restricted to the following: i) Day centre – 9.30am – 2.30pm, ii) Youth centre – 6.00pm – 10.00pm, and iii) weightlifters club – 6.00am – 12.00pm (midnight).**

**Vegetation removal informative – No trees or vegetation are to be removed during the bird breeding season.**



# Bampton Community Centre

R3.0103/10



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Scale: 1:1250  
Plot Date: 20/8/2010  
By: NMW  
Dept:

Contact Officer: John Hamilton, tel: 01865 815584

Division(s): Woodstock

## **PLANNING & REGULATION COMMITTEE – 13 SEPTEMBER 2010**

### **DEMOLITION OF THE PRATTEN BUILDING AND ERECTION OF A BUILDING, INCLUDING A BASEMENT, TO PROVIDE A NEW MUSEUM FOR THE SOLDIERS OF OXFORDSHIRE**

#### **Report by Interim Head of Sustainable Development**

**Location:** Fletchers House, Park Street, Woodstock

**Application No:** R3.0058/10

**District Council Area:** West Oxfordshire

#### **Introduction**

1. This is an application to construct a two storey building, with a basement, in the grounds of the Oxfordshire Museum in Woodstock to create a new museum building for the Soldiers of Oxfordshire (a charitable trust known as SOFO). SOFO has an extensive collection of military and other artefacts, documents and medals that represent a significant aspect of military and social history in Oxfordshire. The collection was originally kept at The Slade in Oxford and is currently housed at Caversfield near Bicester.
2. SOFO has over many years built up a working relationship with the County Museum Service and regularly holds temporary exhibitions at the Oxfordshire Museum. SOFO has been in discussion with the County Council for some time over the use of part of the Museum site for a permanent building that would contain the SOFO collection, archive and study space as well as providing galleries for temporary exhibitions.
3. The new building is proposed to be located on the site of the 'temporary' Pratten Building which would be removed from site as part of the development.

#### **Location**

4. The Oxfordshire Museum is located in Fletchers House on Park Street in the centre of Woodstock. Woodstock is about 16 km (10 miles) to the north west of Oxford. The A44 Oxford to Stratford upon Avon road runs through the town. Immediately to the west of the town is Blenheim Palace, a World Heritage Site.

## **The Site and its setting (see plan)**

5. Fletchers House, which houses the main body of the Oxfordshire Museum, is a Grade II Listed Building. The museum site itself is bounded to the east by Brown's Lane, to the north by Harrison's Lane and to the west by adjoining properties. Immediately east of Fletchers House on the street frontage, but largely hidden behind the existing stone wall, is a modern glass building which comprises the museum's main entrance and cafeteria. This was built in the mid 1990s. Behind Fletchers House there are some outbuildings (also listed) which have been converted to gallery and education space.
6. The garden area to the museum is located immediately to the north of Fletchers House and bounded by a massive listed stone boundary wall that is brick faced to the garden side. There is a brick walled area on the eastern side of the garden in which are contained the dinosaur footprints from Ardley Quarry.
7. A substantial hedge runs across the northern third of the garden area behind which is an existing temporary building (known as the Pratten Building). The garden contains a number of mature trees. The whole site is included within the Woodstock Conservation Area.

## **Details of the Development**

8. The application site in the rear garden of the Oxfordshire Museum is currently occupied by the Pratten Building, a temporary building of modular construction in moderate condition with a flat roof. This building is to be removed.
9. It would be replaced by a new permanent museum building (creating 190m<sup>2</sup> of floorspace built over 2 storeys with a basement) to provide exhibition space for the SOFO collection, archive and gallery space for temporary exhibitions. The archive space would be located in the basement with public exhibition and social spaces at ground and first floors. The first floor would be designed with voids to the ground floor galleries to allow large vertically orientated exhibits which is not possible in the existing museum galleries. The gallery spaces are to be linked and designed in a way that would enhance the museum experience to the public and allow a route to be taken around the garden incorporating both the Dinosaur garden and existing garden galleries.
10. The ground floor of the new building would be set below the height of the existing perimeter wall. The first floor elements would be seen projecting above the wall when viewed from outside the site. The massing of the building is designed to be low key both in terms of its relationships to the garden, the existing buildings on site and the immediate surroundings beyond the museum wall.
11. A limited palette of materials is proposed, with a glazed cloister and main entrance on the ground elevation facing into the garden, a glazed box at first floor level over the proposed reception area and glazed elements and louvred timber cladding (to provide texture to the massing) to the first floor gallery,

plant room and lift shaft. Ashlar stone is proposed on the elevation facing the service yard to the west.

12. The proposal requires the removal of an existing cherry tree in the north west corner of the lower terrace of the garden. The western half of the hedge (that currently forms the northern boundary of the garden) is to be removed. The new building is designed to form a new northern edge to the garden. The eastern half of the hedge is to be retained to help soften the impact of the new building. A substantial walnut tree close to the retained eastern hedge is also to be retained.

## **Consultation responses**

13. The application has been amended as a result of initial responses received to the proposal. The consultation responses below therefore from West Oxfordshire District Council, Woodstock Town Council, English Heritage and the two third party objectors to the application all relate to the proposal as amended.
14. West Oxfordshire District Council – objects to the proposal and makes the following comments.

This is an interesting proposal for an important and sensitive group of buildings at the heart of the conservation area and within the World Heritage site. Policy TLC1 of the WOLP 2011 is a permissive policy concerned with new tourism, leisure and community facilities. As a public museum at the core of a local tourist centre, the District Council considers that the principle of the development is supported by this policy subject to appropriate design. On the point of design, the District Council agrees with the comments of English Heritage and objects to the scheme. The main concerns are:

- (1) the 1st floor structure, even in its revised state, will dominate sensitive views into the site, is excessively large and bulky and does not respect the scale of the surrounding buildings;
- (2) the architectural style is ‘brutal’ and does not preserve or enhance the informal quality of this part of the conservation area.

In conclusion, whilst the principle of the development is welcomed, the design needs to be revisited, particularly the 1<sup>st</sup> floor aspect.

15. Woodstock Town Council – objects on the grounds that the scale and appearance is totally inappropriate to the centre of Woodstock and its conservation area.
16. English Heritage (1<sup>st</sup> response) – In principle the replacement of the ‘temporary’ Pratten building with a high quality contemporary building for the SOFO museum is to be welcomed. However, it is considered that the building proposed is unacceptable as it would adversely affect both the character of the conservation area in which it sits and the setting of the Grade II Listed Fletchers House. This is principally due to the presence of a substantial 2<sup>nd</sup> storey on the proposed building.

Recommend that the design is revisited and the 1<sup>st</sup> floor gallery and plant room omitted. Whilst 1<sup>st</sup> floor elements are not considered to be out of the question these need to be more sympathetic to the scale and form of surrounding buildings. If applicants are unwilling to revise the design it is recommended that the application be refused.

2<sup>nd</sup> response (to amended scheme) – While the revised design reduces the size of the first floor it does not fully address the concerns raised previously. Earlier reservations therefore still stand.

Recommend that design of 1<sup>st</sup> floor is revisited to create a building that enhances rather than detracts from the significance of the conservation area. The LPA should be satisfied that Policies HE9.4, with respect to the impact on the significance of the conservation area, and HE.10, with respect to the setting of the nearby listed buildings, of PPS5 are met before granting any planning permission.

17. County Archaeologist – The site is within an area of archaeological potential. Recommend that should planning permission be given, a condition on the following lines should be attached:

‘No development to commence until applicant has organised an archaeological watching brief, to be monitored during construction period. The brief to be to a specification undertaken by a professional archaeologist to be agreed by the LPA’.

18. County Ecologist – No objections but recommend the following conditions:

- (1) Any trees to be felled outside bird breeding season (September-February inclusive).
- (2) If any protected species found at any point, all work to cease immediately. Mitigation strategy (if required) to be agreed with Natural England before work recommences.

19. County Tree Officer – Proposal involves removal of a cherry tree and about half of a well established box hedge. The cherry is a well established tree and an attractive feature of the garden but has no great landscape or cultural significance. Replacing the tree elsewhere in the garden raises a problem – there is no obvious site for another tree.

The hedge proposed to be removed is a very large (and good) example of its kind. There may be some biological interest in the hedge so a formal ecological opinion is required as to whether there would be any harm to ecological interests by its removal. If the partial hedge removal comes down to a landscape/amenity issue, then this becomes a very subjective issue. You will need to weigh the historical, cultural and amenity values of the hedge against the desirability to expose part of the new building to public view.

Tree/hedge protection measures are required for those trees/hedges to be retained.

**Third Party Representations** (copies are available in the Members Resource Centre)

20. Letters of objection have been received to the application from two local residents. The letters raise the following points –
- raising the height above the boundary wall would hem in the ‘White House’ and detract from its view and block light reaching the house;
  - view from drawing room window will be impaired by the plant room to the new building;
  - contractor’s access down Harrison’s Lane will cause a nuisance – additional lorries and dust;
  - overlooking and loss of privacy;
  - design solution unacceptable as it proposes 1960s modernisation with inappropriate finishes – design has not been properly thought through;
  - no case for building higher than the existing boundary wall;
  - second storey is completely unwarranted – building could be extended at single storey level to provide accommodation required;
  - amended proposals do not address original objections – that a 2 storey building is wholly unnecessary and unwarranted;
  - amended proposals do not address concerns of loss of light and overlooking (particularly from glazed bay on 1<sup>st</sup> floor);
  - proposal is for a museum building for which there is no demonstrable demand.

**Relevant Development Plan and other Policies**

21. All relevant policies are set out in the Policy Annex at Item 12 on this Agenda.
22. All planning applications should be determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan in this case comprises the West Oxfordshire Local Plan 2011 (WOLP). The relevant policies are as follows:
- BE2, BE3, BE5, BE6, BE7, BE8, NE13, NE15, TLC1.
23. In addition PPS5 – Planning for the Historic Environment is relevant in this case.

**Comments of the Head of Sustainable Development**

24. In my view the main issues for consideration regarding the planning merits of this application relate to:
- (i) need for the development (including the principle of whether it is supported by Development Plan policies);
  - (ii) design and relationship to adjoining listed building in particular and wider Conservation Area in general;
  - (iii) impact on neighbours;
  - (iv) traffic implications.

(i) Need for the development

25. The Oxfordshire Museum at Woodstock provides the main site where the public of the county have access to a facility which tells the story of Oxfordshire through a series of galleries and exhibitions featuring history, popular culture and contemporary arts and crafts. The museum is constantly looking to improve its facilities and over the years various improvements have taken place including the construction of a new modern reception area and cafeteria and various improvements to outbuildings in the rear garden which now provide additional gallery/exhibition areas and an education centre.
26. The proposed development, for the new SOFO museum, as well as providing exhibition space for SOFO's collection of military artefacts and documents, would also provide additional gallery and exhibition space for the existing museum, building on the facilities currently on site and adding to the attraction of the site for visitors. The design process has included input from a local school on how children view museums and what they would like to see included in them. In particular the provision of double height gallery/exhibition space in the new building should enhance the visitor experience (allowing 3D objects to be displayed) all adding to the aim of providing a much improved public facility in the heart of Woodstock, a local tourist centre.
27. Policy TLC1 of the WOLP 2011 (which is concerned with the provision of new tourism, leisure and community facilities) encourages the provision of the type of development proposed here subject to there being no adverse impact on the setting of the listed buildings and the wider conservation area. These issues are discussed below.

(ii) Design and relationship to adjoining listed building and conservation area

28. Fletchers House comprises an important group of buildings at the centre of the Woodstock Conservation Area although it is not within the World Heritage site as mentioned by the District Council (see plan).
29. The question of what is good design and good architecture, and whether a new building fits well into its surroundings, is often a subjective matter. In this case, the site is quite confined and the building is proposed to be located more or less on the footprint of the former prefabricated Pratten building located between the boundary wall and the hedge which forms the northern edge of the museum garden.
30. The ground floor would comprise a primarily glazed cloister facing out into the garden with two flat roofed first floor elements, plant space at the western end of the building and a larger gallery area at the eastern end. These features would be clad in timber louvres. At first floor level there would be a glazed box over the reception area. Both the District and Town Council have objected to the design of this building and English Heritage have raised serious concerns. In particular they take issue with the first floor part of the development which projects above the height of the massive boundary wall. They all consider that this element of the scheme is out of keeping with the character of the Conservation Area, is excessively large and bulky and out of scale with its surroundings.

31. As a result of these responses, the architect has twice amended the plans to try and address the concerns that objectors have raised. The amended plans have been the subject of a re-consultation exercise. The comments received from the District, Town Council and English Heritage outlined in paras 13-15 of this report relate to the first amendment to the proposals. To date only English Heritage have responded on the second amendment. The latter has comments as follows:

“Undoubtedly an improvement, the mass of the upper floor is not as big an intrusion as the previous scheme. However, the big wedge shaped slab is still an alien form given its surrounding context and does not relate particularly well to the ground floor. I think that breaking up the mass further is still necessary. A zinc roof on the plant room does not measurably improve it.”

32. The second amendment replaces the first floor timber louvred gallery with a slightly smaller, wedged shaped structure clad in zinc. In my view this second amendment introduces what I consider to be an alien wedge-like feature which I am not particularly happy with. I much prefer the first amendment (details of the two amendments will be included in the presentation to members at committee).
33. Whilst respecting the comments made by the District Council, the Town Council and English Heritage, I do not agree with them. The plan and layout of the new building has in my view been well handled on what is a very restricted site yet it has produced an interesting and inviting building which would enhance the museum garden and make a positive contribution to the way exhibition spaces have been established on this important, sensitive site. Having the first floor gallery provides the opportunity for the museum to secure some additional tall exhibition space (which is not available in the existing museum).
34. The elevations proposed in the new building are simply drawn and well proportioned and, in my view, there is a sensitively designed contrast between the massive structure of the boundary stone wall and the light, glazing treatment to the garden elevations. The use of natural timber louvers is also, to my mind, an appropriate treatment in this locality which should blend in with the surrounding local stone. It should be remembered that in the mid 1990s, an application was submitted for a modern glass and metal extension (with a curved roof) to create a new reception and cafeteria for the museum. The design of this extension was criticised at the time as being an alien feature which did not respect the setting of the listed building or the character of the conservation area. However, now that it is built and in use, it is viewed as an excellent, well designed addition to the museum. I consider that the proposed new museum building would also provide a modern, well designed, well proportioned structure that responds well to, and respects, the site on which it will sit.

35. The detailed design, together with the use of a relatively small palette of materials (glass, steel, stone and timber) is of a high standard and the building will incorporate a number of sustainable features e.g. flat roofs are to be 'green' roofs with a natural covering of sedum, there is solar water heating plant, all WCs to be of low flush type to reduce water use and pv cell generation for electricity is to be investigated through the design process. The aim is to secure a BREEAM rating of 'very good'.
36. The proposal involves the removal of part of the hedge which forms the northern edge of the museum garden. A cherry tree is also to be removed. The latter has no landscape or cultural significance. The County Tree Officer states that the hedge is a good example of its kind. However, in my view it does not make any significant contribution to the setting of the listed building (Fletchers House) and its partial removal will open up views of the new modern building which will now form the northern edge of the garden. The garden itself should not be affected. There is a large walnut tree in the garden which is an important feature in the site. The new building has been designed to retain this important tree and it is essential that it, along with the section of retained hedge, is protected properly during construction.
37. In summary, the Pratten building has no merit and its removal and replacement by a carefully designed modern building providing additional museum exhibition and educational space is to be welcomed. I consider that the building, as amended, has particular merit and that subject to conditions relating to materials, landscaping and tree/hedge protection, the proposal satisfies the aims of Policies BE2, BE5, BE6, BE7 and BE8 of the WOLP 2011.
38. English Heritage in their response refer to Policies HE 9.4 and HE 10 of PPS5 – Planning for the Historic Environment. Policy HE 9.4 states that “where a proposal has a harmful impact on the significance of a designated heritage asset which is less than substantial harm, in all cases the LPA should:
- (i) weigh the public benefit of the proposal against the harm;
  - (ii) recognise that the greater the harm to the significance of the heritage asset the greater the justification will be needed for any loss.”
39. In relation to Policy HE 10, PPS5 states that “when considering applications for development that affect the setting of a heritage asset, LPAs should treat favourably applications that preserve those elements of the setting that make a positive contribution to or better reveal the significance of the asset. When considering applications that do not do this, LPAs should weigh any such harm against the wider benefits of the application.”
40. As I have already indicated in this report, I do not agree with English Heritage's view that this development would harm the setting of the listed building or the character of the conservation area. Having said that, if some harm is considered to be caused by this proposal, I would suggest that this would be outweighed by the benefits that the proposal would provide – providing a significant new home for the SOFO collection and significant additional exhibition and educational accommodation for use by the Oxfordshire Museum, thereby optimising the use of the Oxfordshire Museum

on this site and helping to secure the future of the site as a valuable tourist and educational resource in this part of this historic town.

#### Impact on neighbours

41. Two letters of objection have been received from neighbouring properties in Harrisons Lane. Apart from design objections, particularly in relation to the provision of a first floor on the new building (addressed in the section above), the main objections relate to loss of view, light and privacy. Following receipt of the objectors' original comments, the architect amended the plans by reducing the mass of the first floor gallery area and moved it away from the elevations of the affected neighbour's property to address the loss of light, privacy and view. An exercise was also undertaken to confirm that the amended proposal did not impact on the rights of light to the affected property and these details have been submitted in support of the application. The neighbours have been re-consulted on the amended proposal. They maintain their objections to the application.
42. I consider that the proposal as amended, moving the first floor gallery element of the structure further to the east, would have no significant impact on the view, light or privacy to the neighbours' properties. To ensure privacy is respected in the detail, a condition could be attached to any permission given requiring details of the glazing (which could include obscure glazing) in the proposed glazed bay in the north (Harrisons Lane) elevation of the first floor gallery to be submitted and agreed before any development takes place. This should address any concerns of overlooking from the proposed development.

#### Traffic Implications

43. A concern raised by one of the neighbours relates to contractors' traffic using the narrow Harrisons Lane. The architect has submitted details about how contractors would access the site to undertake the works. They confirm that delivery vehicles would be suitably sized for the local road network, and also confirms that the narrowest section of Harrisons Lane, opposite the objectors' property, would not be used by contractors' vehicles. The site is in a sensitive location and is very restricted in nature so it is essential that a condition is applied to any consent given for a contractors' site management plan to be submitted and agreed before any work commences on site.

#### Conclusion

44. The removal of the now disused Pratten building from this site is to be welcomed. It provides the opportunity for a modern, well designed new museum building to be created to provide additional, much valued exhibition space which will only add to the experience of visitors to the museum. Notwithstanding the views from the District and Town Council, and English Heritage, I consider the plan form and detailed design of the new building to be fully justified and should contribute to the construction of a building of considerable merit.
45. Its relationship to the surrounding listed boundary wall and other buildings on the site is, in my view, wholly appropriate. The amendments made to the

scheme ensure that the design responds sympathetically to neighbouring properties outside the site and that their amenities are not unduly harmed.

46. Accordingly, I consider that the proposal will be an excellent, well designed addition to the building stock in this part of the town, which will enhance the setting of the listed building (Fletchers House) in particular and the wider conservation area in general.

## **RECOMMENDATION**

47. **The Committee is RECOMMENDED to approve Application No. R3.0058/10 for the demolition of the Pratten Building and erection of a building, including a basement, to provide a new museum for the Soldiers of Oxfordshire; at Fletchers House, Park Street, Woodstock subject to conditions to be determined by the Head of Sustainable Development, but to include the following matters:**

- (1) Detailed compliance – amended plans submitted.**
- (2) Development to commence in 3 years.**
- (3) Samples of all external materials to be agreed.**
- (4) Landscaping scheme (including tree replacement) to be submitted.**
- (5) Landscaping scheme to be implemented.**
- (6) Tree/hedgerow protection during construction works.**
- (7) Impact on walnut tree to be established, with mitigation measures to reduce impact, to be agreed.**
- (8) Archaeological watching brief to be undertaken.**
- (9) Any trees to be felled to be removed outside bird breeding season.**
- (10) If any protected species are found, all work to cease and mitigation strategy agreed before work recommences.**
- (11) Construction management plan to be submitted, agreed and implemented for duration of works.**
- (12) Glazing details (to include, extent of obscure glazing) to be submitted for north elevation of first floor gallery.**

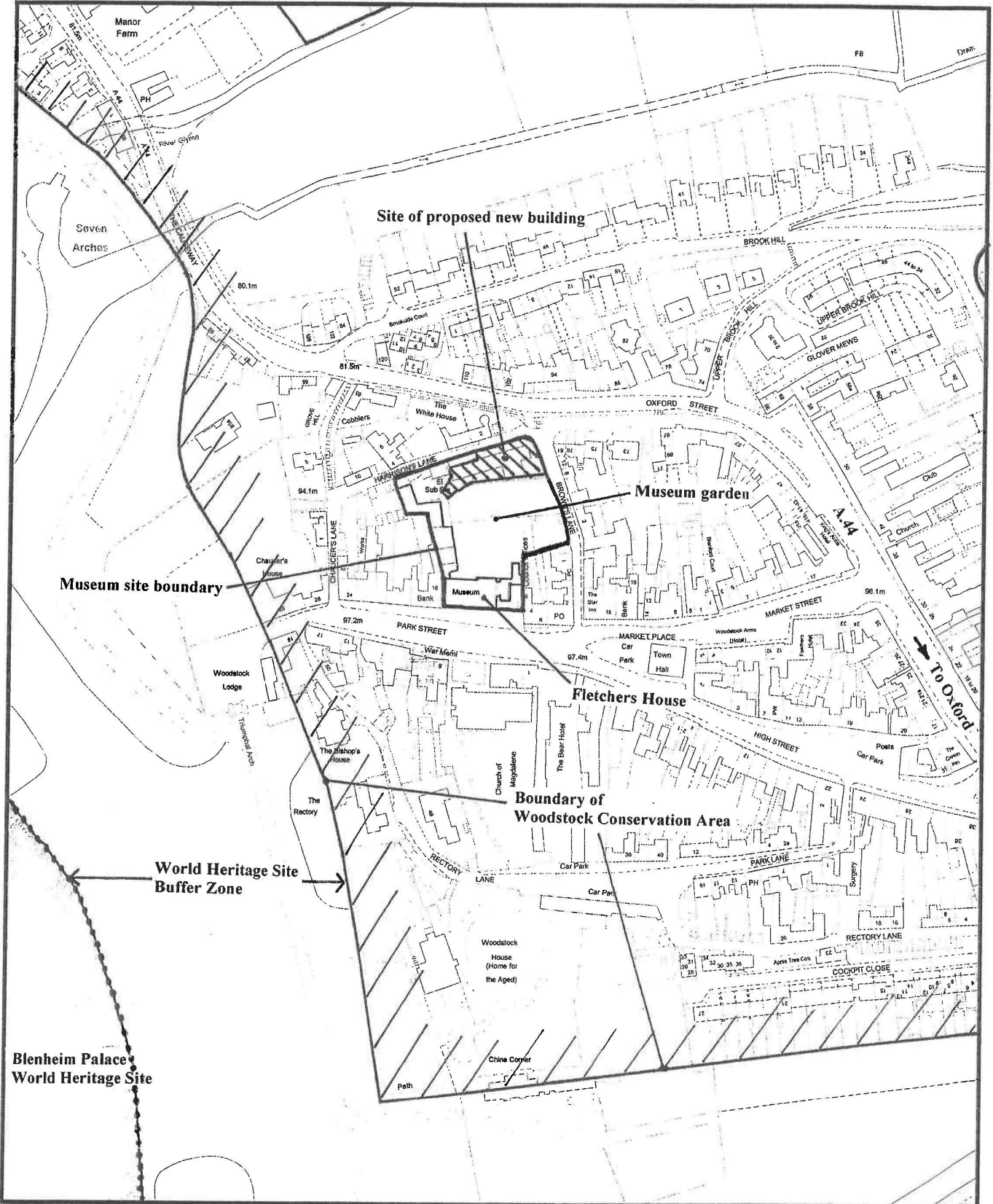
MARTIN TUGWELL  
Interim Head of Sustainable Development

Background Papers: File Ref: R3.0058/10 held in Speedwell House

September 2010

# SOFO building, Woodstock Museum

App.No. R3.0058/10



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Scale: 1:2500  
Plot Date: 10/8/2010  
By: jh  
Dept: ee

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Contact Officer: Taufiq Islam Tel: 01865 815884  
([mohammad.islam@oxfordshire.gov.uk](mailto:mohammad.islam@oxfordshire.gov.uk))

Division(s): Benson

## **PLANNING & REGULATION COMMITTEE – 13 SEPTEMBER 2010**

### **ERECTION AND OPERATION OF AN ANAEROBIC DIGESTION FACILITY**

#### **Report by Interim Head of Sustainable Development**

**Location:** Crowmarsh Battle Farm, Preston Crowmarsh

**Applicant:** Agrivert Ltd.

**Application No:** P10/W0877/CC

**District Council Area:** South Oxfordshire

#### **Introduction**

1. Agrivert Limited proposes to build an Anaerobic Digestion (AD) facility at Crowmarsh Battle Farm for the recycling of food waste. The application site is currently used for open windrow composting for green waste and animal bedding. The AD plant would mix food waste with energy crop silage to produce biogas which would be used to generate renewable energy and fertiliser.

#### **Location**

2. The site is adjacent to the A4074 Oxford to Reading road 1km (0.62 mile) north of Crowmarsh and 1km (0.62 mile) south of Benson and some 19 kilometres (11.78 miles) southeast of Oxford.

#### **The Site and its Setting (See plan 1)**

3. The site is located in open countryside covering an area of 2.5 hectares. Access to the site is directly from the A4074.
4. The nearest dwellings are located at Crowmarsh Battle Farm over 300m away beyond the A4074 to the west.
5. Directly south of the site is a sewage works and a small market garden. The works and market garden are separated from the application area by hedgerows with trees. RAF Benson lies to the east and north of the site and further east beyond the aerodrome is housing associated with RAF Benson.

6. The site is located about half a mile (750 metres) from the River Thames and outside its floodplain.
7. No footpaths or sites of ecological interest are affected by the proposal.
8. The site does not lie within any specially designated landscape area but the North Wessex Downs AONB lies approximately 650m to the west and the Chilterns AONB approximately 800m to the south east of the site.

## **Background**

9. The applicant (Agrivert) has recently entered into a contract with the County Council to treat Oxfordshire's biodegradable organic waste. This involves the treatment of combined food and green waste from the north of the County at an In-Vessel Composting (IVC) facility just south of Ardley and source segregated food waste treatment at the AD facility currently under construction at Worton Farm, Yarnton. The south of the County could be served by the AD facility which is the subject of this application. This application arises as a result of this contract.

## **Details of the Development**

10. The applicant is seeking permanent planning permission for this development. The annual quantity of material that could be put through the facility would be approximately 45,000 tonnes of biodegradable organic waste. This waste would be sourced mainly from Waste Collection Authorities doorstep collections of household food waste but also from the Commercial and Industrial (C&I) waste stream including restaurants, schools and food production companies. The energy crop, used to stabilise the food waste, would be grown on the adjacent agricultural fields. The proposed facility would mainly serve the south of the County.
11. If planning permission is granted for this development, it would replace the existing composting facility on the site. Permission for the composting facility was originally granted in November 2007. The relocation of the composting operation to a position immediately adjacent to this development (to the east) was the subject of a separate planning application which was approved, under delegated powers, at the beginning of this month.

### Buildings and Structures (Plan 2)

12. The built development would comprise three digestion and two storage tanks, a waste reception building, office and welfare facilities, biofilter, weighbridge, gas engine units, transformer, accelerator tank, energy crop silage area, energy crop silage feeder, access roads, car parking area, a wood chip dryer and ancillary plant.
13. The five digestion and storage tanks would be cylindrical in shape 8 metres high and rising in a conical fashion to a central point 11.5 metres high and would each be 28 metres in diameter. The reception building would cover a

ground area of 36 metres by 32 metres with a ridge height of 12 metres. The accelerator tank would be a small tank, 5 metres in diameter and 5 metres high. The energy crop silage storage area would cover an area of 3100 square metres. Silage would be stored to a maximum height of 3 metres and covered with plastic sheeting for protection. The wood chip dryer would be similar in appearance and construction to the reception building but measuring approximately 1200 square metres.

14. Solid waste would be delivered to the site in both refuse collection vehicles (RCVs) and bulkers. Liquid waste would arrive in tankers. The liquid waste would mainly comprise waste products from the food and farming industries including cooking oils, milk, brewery waste, leachate and factory processing wastes. All delivery vehicles would be weighed on the weighbridge and then proceed into the reception building.
15. The waste would be pre-treated within the reception building, involving reducing the particle size and mixing with liquids, before being pasteurised and pumped into the digesters. It would remain within the digesters for between 50 and 70 days, where it would be gently heated and stirred to encourage the digestion process and biogas production.
16. The biogas would be fed into gas engines, which would power a generator unit to produce electricity. This electricity would be transmitted directly into the National grid via a high voltage connection. It is anticipated that the facility would have a generating capacity of 2MW of electricity, providing the equivalent power for 3,333 households.
17. The digestate end product is used as a nutrient contributor for growing the energy crops feeding the digester and as a conventional agricultural fertiliser for nearby farms.
18. The wood chip dryer would use heat produced in the AD process to dry out wet "as chipped" wood, from sources such as highway maintenance and landscape gardeners. This would then be turned into pellets, which can be used as a carbon neutral fuel in any building that has biomass boilers.

#### Traffic and Access

19. The development would use the existing access from the A4074. The waste being brought to the AD facility would generally be transported in refuse collection vehicles (RCVs). Tankers would bring any liquid waste. The development would generate in total an average of approximately 82 vehicle movements daily (41 in and 41 out) if operating at maximum capacity. The relocated composting facility would continue to use this existing access. Traffic movements to the composting operation currently total 40 so the total number of movements using the same access would therefore average 122.
20. The original composting facility permission on this site was subject to a routing agreement. The applicant has agreed to enter into a routing

agreement for the new proposal to ensure that HGV's only turn left out of the site and left into the site.

#### Hours of Operation

21. The AD process would operate continuously 24 hours a day. However, waste would only be delivered between the hours of 0700 and 1800 Monday to Friday, 0700 to 1600 on Saturday and 0800 to 1400 on Sundays and Bank Holidays. The applicant states that these hours of delivery are required in order to accommodate the Waste Collection Authorities' need to deliver waste collected each working day and to catch up over Bank Holidays.

#### Lighting

22. External lighting would be required on the reception building, office and tanks for use during poor light in the winter months. The lighting is proposed to be used during permitted operational hours or if necessary during maintenance or emergency work. All external lights would be fitted with hoods and directed towards operational areas to minimise light spill and subsequent disturbance outside the site boundaries.

#### Assessment of Environmental Impacts

23. This application does not require a formal Environmental Impact Assessment (EIA) but the applicant has identified the main potential environmental impacts as visual, noise, dust, odour, bioaerosols, water pollution and has proposed mitigation measures for each impact.

#### 24. Water and Leachate

- The application proposes a completely sealed liquid management system. All liquids from incoming waste are immediately captured in the reception tanks and bunkers. Following reception the whole process would be totally enclosed and no liquids would leave the plant other than the treated digestate destined as liquid fertiliser.
- Rain water which falls upon the roof of the reception building would be collected and reused in the AD process. Runoff from other roofs and the digestion and storage tanks is considered clean and would therefore be collected and fed into an open attenuation area, which would then be discharged to the adjacent stream. Runoff from the hardstanding areas would go to the same attenuation and discharge system via a silt trap and hydrocarbon interceptor. Any runoff from the energy crop storage area requires separate collection and would be reused in the AD process.
- All potential contaminants i.e. leachate and diesel, would be stored in suitably designed tanks with adequate storage capacity.

25. Noise

- The gas engine would be the main source of noise and therefore be housed in a specially designed insulated container with a very low noise output.
- The other noise generating activities would be associated with HGV movements importing waste material and exporting digestate, as well as a loading shovel transporting the energy crop silage to its feed bunker. It is proposed that on site vehicles such as loading shovels should be fitted with white noise reversing alarms to minimise noise levels.

26. Dust and Odour

It is proposed that the reception building be equipped to mitigate any potential dust or odour problems from incoming waste. The reception building would be sealed to prevent egress of dust or odour outside the building. The sealed building would be kept under negative pressure ensuring dust and odours are prevented from escaping the building even when doors are open. A biofilter would scrub the air leaving the reception building including dust and odours.

27. Visual Impact

- Additional landscape planting is proposed around the site to provide screening of the development and to break up any views of the site from local vantage points. The proposed landscaping scheme includes a new belt of planting adjacent to the existing soil bund on the western, northern and eastern boundaries of the site and a new hedgerow along the northern and eastern boundaries of the field, bordering RAF Benson.
- The applicant has had a Landscape and Visual Appraisal carried out. The appraisal concludes that the impact of the proposed development would not be more than slight at a local and District level and negligible at a County level. It goes on to say that it would have minimal landscape and visual impact with no impact on important views within the North Wessex Downs and Chilterns AONB.

## **Consultation Responses and Representations**

28. South Oxfordshire District Council:

Planning and EHO - No objection to the proposal, subject to:

- OCC being satisfied that the highway impacts of the development are acceptable.
- Suggest OCC impose conditions on landscaping and lighting and Environment Agency control odour and noise by EPR permit.

- Highlight the fact that there is local concern regarding the impact of the proposed number of HGV movements.
29. Benson Parish Council - Object to the proposal for the following reasons:
- Breaches of the existing routeing agreement.
  - Proposed number of HGV movements would increase the likelihood of a serious accident.
  - Even if the vehicles followed the agreement, then the movements on this stretch of road would be far more than the proposed movements, with many routeing up and down the A4074 to reach the agreed roundabout.
  - There must now be a physical barrier to prevent drivers turning across oncoming traffic such as roundabout or separate channels.
30. Crowmarsh Parish Council - No objection to the proposal.
31. Natural England - No objection.
- Concerned that the North Wessex Downs AONB has not been referenced in the landscape and ecological assessment and recommend that comments are sought from the AONB planning officer.
  - Supports the proposed landscape mitigation measures of screening by vegetation.
32. Environment Agency - No objection subject to conditions requiring that the mitigation measures detailed in the Flood Risk Assessment (FRA) submitted with the application are applied and for a scheme to dispose of surface and foul drainage. Also provides advice to applicant regarding the Environmental Permit and waste handling.
33. North Wessex Downs AONB –
- First Comment - the Landscape Appraisal submitted by the applicant has made no reference to the North Wessex Downs AONB . The Landscape Appraisal should be amended to consider this and accordingly offer suitable mitigation measures if required.
- Second Comment - Revised Landscape Appraisal makes reference to the North Wessex Downs AONB and therefore no objection to the proposal.
34. Chiltern AONB - No response has been received yet.
35. Ministry of Defence (MOD) - No objection.
36. Highways Agency - No objection.
37. Transport Development Control - No objection in highway terms but would like the following to be secured:

- Submission of a Movement Access Plan (for vehicle movements within the site)
  - Submission of a Travel Plan
  - Routeing agreement to enforce the proposed 'left-in, left-out' system.
  - Retention of parking and manoeuvring areas in accordance with submitted plan
  - Submission and implementation of detailed design for the access to encourage left in and left out only vehicle movements.
38. County Ecologist - No objection to this development from a landscape or ecology point of view provided that conditions proposed relating to protected species (i.e. breeding birds), vegetation/landscape (i.e. retention & protection of existing vegetation and new planting) and long-term management of planting are imposed.
39. County Archaeologist - No objection subject to conditions requiring an archaeological watching brief and the presence of an archaeologist during the construction phase following approval of the proposed written scheme of investigation.

### **Third Party Representations**

40. One local resident has raised the following objections:
- The application fails to consider properly the production of volatile substances and how these will be controlled throughout all stages of the anaerobic digestion process, in order to avoid odour pollution/nuisance.
  - There is no provision for monitoring odour pollution/nuisance.

Request that OCC require the applicant to provide full technical details covering three points:

- The spectrum of volatile compounds likely to be produced, their likely concentration and the odour thresholds of such compounds.
- Measures that will be taken to capture/trap these substances and otherwise prevent them being vented to the atmosphere in an uncontrolled manner
- Measures taken to monitor odour pollution/nuisance, including analytical measurement and sensory evaluation.

### **Relevant Planning Policies – (See Policy Annex)**

41. All relevant policies are set out in the Policy Annex at Item 12 on this Agenda.
42. Development should be decided in accordance with the Development Plan unless material considerations indicate otherwise.

The Development Plan for this area comprises the saved policies of the Oxfordshire Structure Plan, Oxfordshire Mineral and Waste Local Plan (OMWLP) and South Oxfordshire Local Plan (SOLP) 2011.

The government guidance in planning policy statement (PPS10), Planning Policy Statement (PPS22) – Renewable Energy, the Waste Strategy for England 2007 and Oxfordshire Joint Waste Management Strategy (OJWMS) are material to consideration of the proposal.

The key policy issues deal with (i) open countryside; (ii) the need for waste facilities (iii) transport and (iv) local environmental impacts.

43. In terms of the need for the development national policy PPS10, PPS22 and the Waste Strategy for England 2007 are relevant. For location of the development in open countryside, policy to be considered includes W4 of the OMWLP. Landscape and visual impact of the development are covered by policy G4 and C1 of the SOLP and W5 of OMWLP. For environmental and amenity effects policies W3 (c) of OMWLP and EP1 and EP2 of SOLP are applicable. Transport issues are covered by policies T1 of the SOLP and W3 (a) and (b) of the OMWLP.
44. The Government has recently revoked the regional plans including the South East Plan. They advise that this fact should be a material consideration when determining planning applications. Evidence that informed the preparation of the revoked Regional Plans may also be material, depending on the facts of the case.

### **Comments of the Head of Sustainable Development**

45. The main issues to address in deciding this application relate to (i) whether the proposed location is acceptable in principle in open countryside and whether there is a more suitable alternative site available (ii) whether there is a need for the development (iii) whether the landscape and visual impacts are acceptable (iv) transport impacts and (v) whether potential local environmental impacts can be dealt with satisfactorily.

#### The Principle of the Development in Open Countryside

46. The development proposes some fairly large permanent structures in the open countryside. Although, this is not strictly a recycling proposal (it involves waste treatment). It stands above incineration in the waste hierarchy as it is a renewable energy recovery process and counts as composting for the purposes of the Waste Strategy 2007 targets for re-use, recycling and composting of household waste. Whilst strictly speaking OMWLP policy W4 is not relevant to this specific development it can still be usefully applied. OMWLP policy W4 does not support recycling and ancillary process in the open countryside unless there is an overriding need and there is no other suitable site available.

47. In terms of need for the development, this has been considered in paragraphs 49-52 of this report. Whether that need is 'overriding' will be considered at the end of the report when all other relevant impacts have been considered. As part of the submission, the applicant has provided an assessment of alternative sites for this development in south west Oxford, Abingdon, Didcot and Wallingford areas. These alternative sites have all been discounted for a number of reasons – limited space, proximity to residential properties, poorly located for proximity to waste source, distance to potential markets for the final product and inappropriate location in terms of environmental constraints.
48. I agree with the applicant's evidence that there would appear to be no other better site available for this specialist type of facility that is not located in open countryside. In this case therefore, the proposal can be regarded as consistent with the aims of policy W4 of OMWLP.

#### Need for the Development

49. Facilities that divert waste from landfill are supported by PPS10. In addition to the national requirements, the Oxfordshire Joint Waste Management Strategy (OJWMS) policy 6 sets out that the Oxfordshire Waste Partnership will provide an integrated system of collection and processing of household waste which will achieve, as a minimum:
- By 31 March 2010: recycle or compost at least 40% of household waste;
  - By 31 March 2015: recycle or compost at least 45% of household waste;
  - By 31 March 2020: recycle or compost at least 55% of household waste.
50. The strategy recognises that new waste treatment facilities will be needed if we are to meet our targets to reduce the amount of waste sent to landfill.
51. Oxfordshire achieved a recycling and composting rate of 43 per cent in 2008/09. This rate is above the target for 2010 set out in the Waste Strategy as well as the achieved UK average. However, the recycling and composting rate needs to be increased if targets for future years are to be met, and particularly to meet the future targets for 2020 set by the waste strategy for England and OJWMS. This AD proposal would make an important contribution to meeting that future target, additional to recycling and aerobic composting and would also contribute to meeting targets for recovery of waste and diversion of waste from landfill. It also sits well with the regime of similar facilities that have already been established in the County. The IVC facility near Ardley deals with green waste from north Oxfordshire and the AD facility at Worton Farm near Yarnton will treat source segregated food. This site, the subject of this application could serve the south of the County.
52. The Waste Strategy for England outlines that Government wishes to encourage AD, because their recent research suggests that it has significant environmental benefits over other options for food waste (and may be particularly cost effective for food waste if separately collected) and that the electricity generated from the biogas recovered in AD is eligible for Renewable Obligations Certificates (ROCs). This facility would be expected to

generate up to 2 MW of electricity per year. This generation of renewable energy is also supported by PPS22.

Landscape and Visual Impact

53. The development proposes some fairly large structures, up to 12 m in height. There are existing bunds and fencing around the site but the landscape and visual appraisal undertaken by the applicant suggests additional landscape planting should be undertaken as part of the development.
54. The additional planting proposed would contribute to improving the existing landscape character of the surrounding area and would break up any views of the site from local vantage points. If planning permission is granted, then conditions should be attached to secure the proposed planting around the site and other measures to mitigate the visual impact of the development. These mitigation measures include: i) a new belt of planting adjacent to the soil bund on the western, northern and eastern boundaries of the site; and a new hedgerow along the northern and eastern boundaries of the field, bordering RAF Benson and ii) the buildings and tanks to be built as agricultural type structures designed to fit into the local context and rural location.
55. There are no objections to the visual impact and landscape impact of the proposed buildings on site. Neither the County Ecologist Planner nor North Wessex Downs AONB board raised any concerns in this respect. In my view, other than its immediate impacts, the proposal should not have any significant detrimental impact on the character of the landscape of this area and would not unduly compromise the aims of SOLP policy G4 and C1 and OMWLP policy W5.

Traffic and Access

56. The main objection to this proposal, from Benson Parish Council, is on access and highway grounds. However, access to the site which previously served the composting site, from the A4074, is good. The number of additional vehicle movements proposed for this development is 82 (41 in, 41 out) maximum over the course of a working day. The existing composting operation which is to be moved to a site immediately adjacent to the east (using same access) has 40 movements (20 in, 20 out) maximum. Transport Development Control have confirmed that the additional HGV movements arising from this development when added to the composting traffic can be safely accommodated on the road network, taking into account the left in, left out route that they would need to take to follow the routing agreement.
57. The routing agreement would be intended to prevent the need for HGVs to turn across a lane of oncoming traffic i.e. to enter and leave the site only turning left. The access would be re-designed to make right turning difficult.
58. Benson Parish Council say there have been breaches of the routing arrangements for the present composting facility. I do not have any record of these alleged breaches. However, the concern of the Parish Council is noted

and any reported breaches in future would be investigated by the Council's enforcement and monitoring team. The site would also be subject to regular monitoring visits to ensure that the operation permitted is undertaken in accordance with that permission.

59. The site is also well related to the transport network, the A4074 giving access to the main routes through the south of the County and as such satisfies OMWLP policy W3 (b) and SOLP policy T1.

## **Local Environmental Impacts**

### Odour

60. There has been one objection from a local resident to this application raising a technical question on how odour from the development is to be controlled. This process, the subject of this application would take place inside buildings which should minimise the risk of odour nuisance. In addition, the applicant has set out how the management of the process and design of the tanks and associated buildings would minimise the risk of odour problems. The Environmental Health Officer has not raised any objection on odour grounds to the development.
61. I believe that the mitigation measures proposed and the fact that the proposed location of the facility is over 300 metres from the nearest property, significantly reduce the likelihood of odour being a problem. The facility will also need an Environmental Permit from the Environment Agency. Permit procedures would also ensure that odour is controlled. The proposal, therefore, satisfies OMWLP policy W3 (c) and SOLP policy EP1.

### Noise

62. The gas engine would be the main source of noise in this development. However, it would be housed in a fully enclosed insulated acoustic container and its operation should result in a very low noise output. Vehicle movements on site may be another source of noise e.g. loading shovels. These would be fitted with white noise reversing alarms to minimise the noise levels and a condition could be attached to any permission requiring these controls.
63. Vehicles accessing the site would use the direct access off the A4074. This access road does not run close to any dwellings and there is unlikely to be any significant noise disturbance. The proposed mitigation measures outlined above should ensure that noise disturbance does not occur which is sufficient to satisfy MWLP policy W3 (c) and SOLP policy EP2. The Environmental Health Officer has raised no objections to the proposals on this ground nor has there been any objection from local residents.

### Dust

64. Dust nuisance should not be a problem on this site but the applicant proposes to use a bowser if dust levels increase sufficiently on site. The internal haul

roads are hard surfaced which should minimise the possibility of dust generation on site. The applicant has also proposed to spray the site to minimise the surface drying out. A condition could be attached to any permission requiring all the mitigation measures to be provided and implemented as necessary.

### Conclusions

65. There is a need for AD facilities both nationally and locally. Increase in recycling/composting rates is supported by the Waste Strategy for England and PPS10.
66. The site already has screening bunds and fence and further planting would improve screening on the site. It should, therefore, not unacceptably damage the local landscape character or visual amenity of the open countryside and the surroundings and therefore accords with OMWLP policy W5 and SOLP policy G4 and C1.
67. The access to the site is to be used by both this development (AD proposal) and the relocated composting operation. However, the existing access is good and Transport Development Control have confirmed that it can accommodate the traffic movements proposed. In addition, the access would be realigned to make right turning difficult. The site is well related to the transport network and the proposal would, subject to a routeing agreement and a condition requiring signage on site, accord with OMWLP policy W3 (b) and SOLP policy T1.
68. Noise, dust, odour and visual intrusion could be controlled through conditions so that the proposal does not cause an unacceptable nuisance to local residents in accordance with OMWLP policy W3 (c) and SOLP EP1 and EP2.
69. The principal matter relating to this proposal is whether there is an overriding need for a development of this size and nature being located in an area of open countryside. In this instance, in my view, the case for a permanent AD facility at this location has been sufficiently well argued. The development sits well within the network of similar operations in the County and will significantly help the County to meet targets set for dealing with this type of waste in the next few years. The site also has good access to the A4074 and it is close to the source of and market for the waste. It is an existing (albeit temporary) waste management site, located alongside an existing waste site (sewage works) and I do not consider that the direct environmental impacts are significant. On this basis I consider that the need for this proposal has been substantiated and that this is sufficient to override development in the countryside.

### **RECOMMENDATIONS**

70. **It is RECOMMENDED that subject to a routeing agreement to ensure that vehicles turn left out of and into the site that planning permission for Application P10/W0877/CC be approved subject to conditions to be**

determined by the Head of the Sustainable Development dealing with matters including those set out below.

**Conditions to include:**

1. Compliance condition
2. Commencement date – 3 years
3. Operating hours to be agreed
4. Organic waste only to be treated
5. Fertiliser to be used on surrounding fields only as proposed in application
6. Lighting details to be submitted
7. Existing vegetation to be protected and retained
8. Planting scheme to be implemented
9. Effective silencers to be provided on plant, machineries and vehicles
10. External building materials to be agreed
11. Movement Access plan within the site to be submitted
12. Travel Plan to be submitted
13. Parking and Manoeuvring Areas to be retained
14. Vehicles access design onto the A4074 to be submitted and agreed.
15. Site signage to be agreed and displayed
16. Noise control measures to be implemented
17. Mitigation measures detailed within the Flood Risk Assessment (FRA) to be carried out.
18. Scheme to dispose of surface and foul drainage to be submitted and agreed.
19. Elevations of gas engine building to be submitted
20. No mud on the public highway
20. A water bowser to be used
21. Maintenance of screening bunds
22. Odour control scheme to be submitted in the event of any complaints.
23. Clearance of any vegetation in accordance with time agreed
24. Organising and implementing an archaeological watching brief

**EA Informative:**

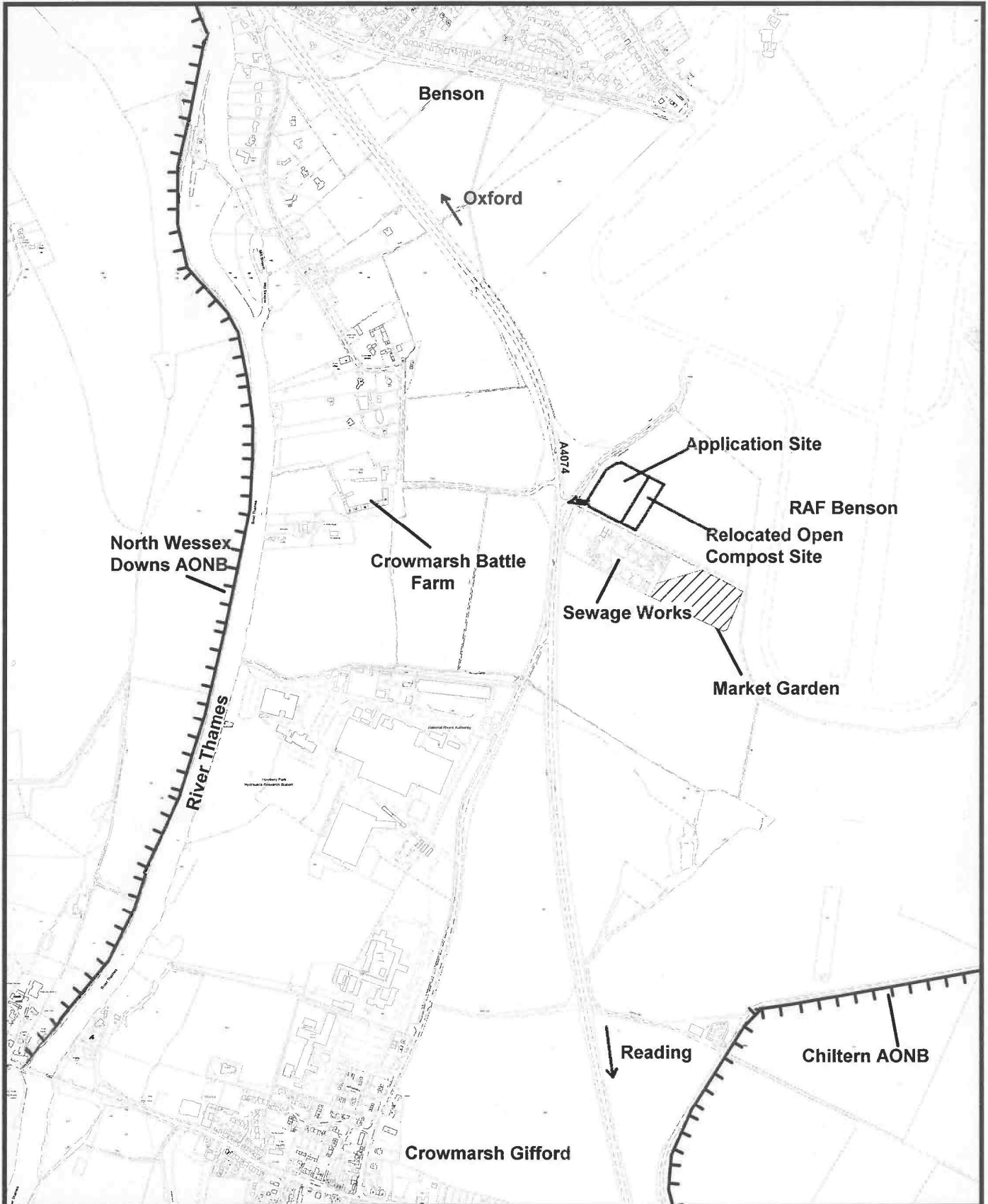
Issues of odour control, pest and vermin control and gas safety to be dealt with through the Waste Management Licence.

MARTIN TUGWELL  
Interim Head of Sustainable Development

Background papers: File held in Speedwell House

September 2010

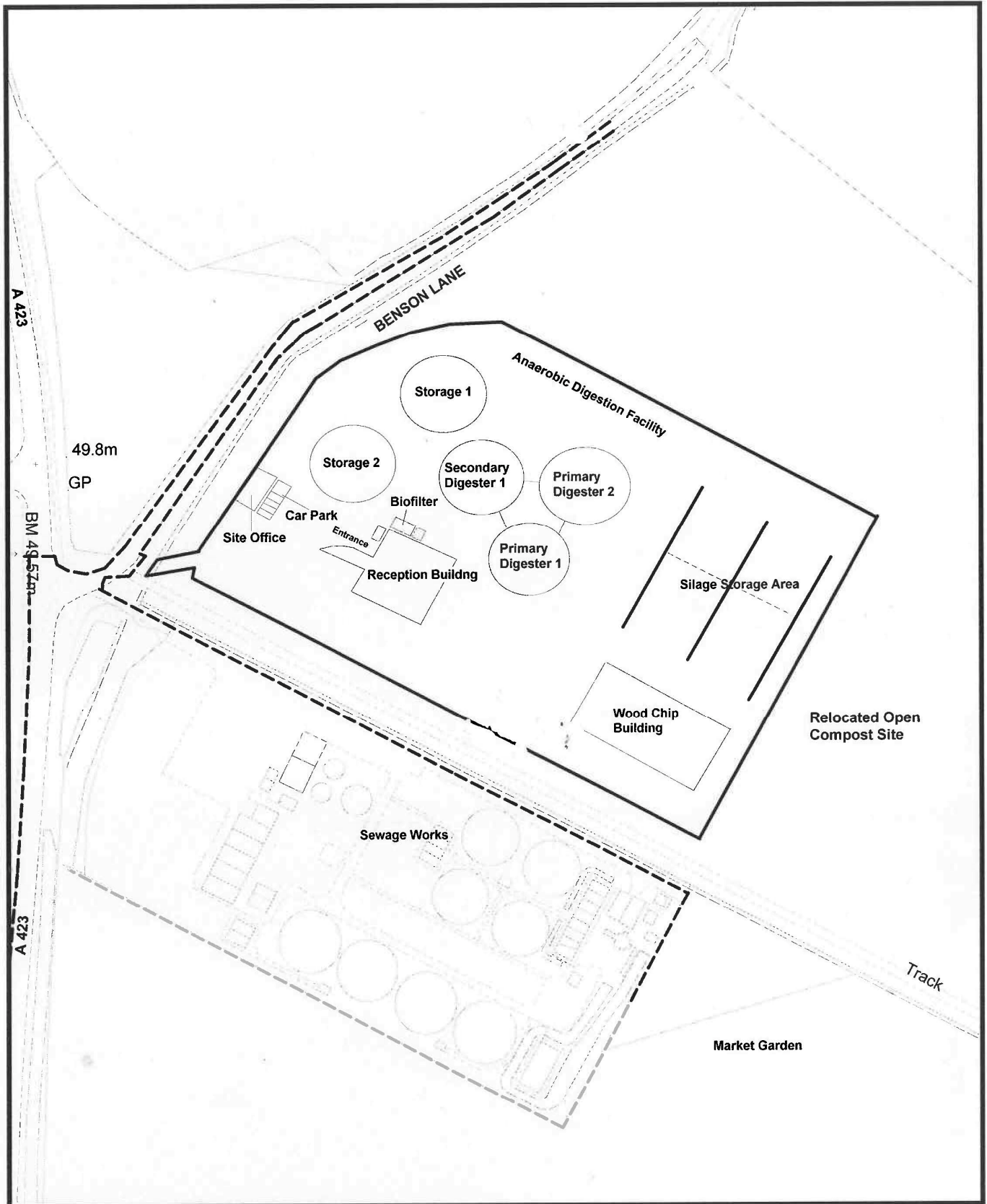
# Plan 1



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Scale:1:10000  
Plot Date:26/8/2010  
By: t  
Dept:

Plan 2



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By: TP  
Dept:

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Division(s): All

Contact Officer: Chris Hodgkinson Tel : Oxford 01865 815872

## **PLANNING & REGULATION COMMITTEE – 13 SEPTEMBER 2010**

### **PROGRESS REPORT ON MINERALS AND WASTE SITE MONITORING AND ENFORCEMENT**

**Report by Interim Head of Sustainable Development**

#### **Introduction**

1. This report updates members on the regular monitoring of minerals and waste planning permissions and progress on enforcement cases.

#### **Compliance Monitoring Visits**

2. County Council officers endeavour to pursue and foster good working relationships with operators following the grant of planning permission. The effective monitoring of sites can avoid problems developing and by acting in a proactive manner we can be a positive educator of good practice. This approach can avoid the necessity to act in a reactive way after problems emerge and can avoid the need for enforcement action. Through our efforts we seek to:
  - (a) identify potential problems early and avoid them developing;
  - (b) minimise the need to resort to enforcement or other action;
  - (c) encourage good practice rather than apply sanctions to bad practice;
  - (d) review previous decisions by the County Council;
  - (e) facilitate regular liaison and dialogue between operators, public/local community representatives and council officers.
3. All sites with planning permission are regularly visited and a report produced following each visit. Where elements of non compliance with a consent are identified this can result in subsequent compliance with matters that are outstanding or in a planning application being made to regularise unauthorised activities on site.
4. Annex 1 provides a schedule of all monitored sites. The first column sets out the target visits for the period 1 April 2010 to 31 March 2011 and the second the number of compliance monitoring visits carried out between 1 April 2010 to 31 July 2010 (i.e. the first third of the monitoring period). It is intended to report progress again at the conclusion of the monitoring year.
5. In order to try and achieve good environmental standards countywide, officers have committed to monitoring 317 planning permissions across all of the 112 mineral and waste related sites in Oxfordshire. However, you will see that some sites have a zero target for this year, these are low risk, small scale or dormant sites (such as sewage treatment works) which we record but will only

visit every other year. All other sites which are targeted for visits but thus far with a zero visit shown will be scheduled for an inspection during the remaining period of the financial year.

6. Of all the sites, 44 fall within the remit of Government Regulations that allow the council to charge a fee for conditions monitoring, in that they relate directly to the winning and working of mineral permissions or directly to land filling permissions. The 44 sites are split as follows; 19 mineral sites, 18 land filling operations and 7 dormant mineral/landfill sites. These 'Chargeable Sites' are shaded grey in Annex 1.
7. The remaining non-chargeable sites include scrap yards, recycling operations, waste transfer stations, sewage works and composting operations.
8. The current 'full' charge is £288 for an active site and £96 for a dormant site where activity is not taking place.
9. Officers have determined the target number of visits for each site on a "risk assessment" basis for each site drawing on the following points:
  - (a) sensitivity of location
  - (b) size and type of development
  - (c) number and complexity of planning conditions
  - (d) number of issues requiring monitoring input
  - (e) the stage and pace of development
  - (f) whether the operator carries ISO 14001 (recognised best standards)
  - (g) breaches of planning control are or have been observed
  - (h) complaints received for the site
10. There is an opportunity for operators to enter into discussions on how the Council has reached its decision for the number of visits scheduled per year.

## **Enforcement**

11. Annex 2 to this report sets out alleged breaches of planning control and the progress toward remedying those breaches of substance.
12. All operators are made aware of an allegation of a breach in planning control that has been made against them.
13. Annex 2 includes all cases which are currently being investigated regardless of when they were received. When a case is closed it will appear on the progress report as 'Case Closed' with a summary of the outcome.
14. Unless the case is a proven breach and formal enforcement action taken then no inference on the character of the operator should be drawn.
15. A glossary of terms used in Annex 2 is attached. The Planning Control & Enforcement Officer can be contacted for further information in respect of any of these cases if necessary.

## Monitoring and Enforcement Service

16. The routine monitoring programme continues to pay dividends by increasing compliance with planning conditions and in identifying and rectifying matters where conditions are not being complied with on all mineral and waste planning permissions.
17. The service is generally well received by householders, liaison committees, parish and town councils' with access to compliance reports providing a basis for discussions with operators on the progress on sites in their locality. It seeks to provide a timely response to local concerns and serves to pre-empt issues which are likely to affect the amenities of an area. There are nevertheless occasions when local people have high expectations about the actions that can be taken and are frustrated by the time it can take to resolve disputes. It is not always appreciated, for instance, that whilst carrying out development without a planning permission might be unauthorised, it is not illegal in the first instance.
18. Officers in the team also provide key support in ensuring that details pursuant to permissions are submitted where these are required by planning conditions prior to a development commencing. They often co-ordinate action between development control, highways, ecology and other county services and the operator. Ensuring works are completed in a timely manner and before development commences.
19. Some examples of the team's challenges and successes are provided here to illustrate the team's work:
  - Routine inspections at Sandfields Farm, Over Norton established that an unauthorised building had been erected on the land and recycling was taking place outside the permitted areas leading to the submission of two retrospective planning applications to ensure that proper controls were put in place.
  - Following an enforcement enquiry regarding waste chalk from building works at the Wellbarn Estate, Moulsoford. Officers from the team have been instrumental in securing the submission of a planning application for the deposit of the waste chalk on the estate so as to create a chalk grassland habitat for ecological benefit.
  - As a result of the failure of Wyatt Bros. (Oxford) Ltd to comply with an Injunction to remove waste from land at Waterstock Golf Course. The County Council took further committal proceedings in the High Court on the 5 May 2010. The Court has ordered Mr R Wyatt be committed to prison for the period of six months and that Mr M Wyatt be committed to prison for the period of four months. Both prison sentences are suspended for 12 months to allow the defendants to make realistic efforts to remove waste from the land. Nevertheless, at the time of writing no further waste has been removed from the land.

- There have been serious problems in the past at the Finmere Landfill site which culminated in the serving of an Enforcement Notice which could then not be upheld because of conflict with Environment Agency requirements. The closer working arrangements with the Environment Agency and the regular inspection of the site by officers has resulted in a more compliant operator. Premier Aggregates are taking part in regular liaison committees with the local community and are now keeping all parties updated as development progresses. Tipping of waste is presently taking place in line with the planning permission they have, notwithstanding that the company unsuccessfully sought permission for higher levels of tipping.
- The team is working successfully with partner agencies to secure compliance or remedy environmental harm. They are currently involved in a joint operation with South Oxfordshire District Council (SODC) to bring an enforcement action at Manor Farm in Peppard Common. An unauthorised waste transfer operation has now been stopped. Some bunding around the site contains unauthorised deposited waste and lorries continue to be parked on what was previously agricultural land. An action is underway by South Oxfordshire which will be supported by the county officer evidence to issue an enforcement notice to abate the various unauthorised mixed uses on the land and remedy the breach of control.
- Working with our Environmental Agency colleagues, County officers have been able to provide evidence to assist in the removal of unauthorised deposited waste at Hoad Hill Farm near Adderbury. In general terms the Environment Agency will secure the removal of waste from the land when it is 'big, bad and nasty' (their website terms) and where they can/will not, the county council is ready to remedy breaches of planning control.
- It has previously been reported that a particular reoccurring issue for residents close to mineral or waste activity can be the impact of lorries with a high expectation that officers can prevent what local people regard as excessive lorry traffic. However, in reality, unless there are very clear planning controls on numbers and definitive routing of lorries that can be monitored, it can be difficult to control these activities. It is intended to introduce requirements for independent lorry route monitoring for larger new development proposals but there can nevertheless remain a high public expectation which can be difficult to meet.
- This has been a particular issue for the residents of Benson arising from activities at the Eyres Lane Waste Transfer Station. Officers have been working to co-ordinate a liaison committee between local business and the local community to build a better understanding and negotiate a resolution to traffic and noise issues. It is early in the process with trust still being built on both sides but already we have

secured some small successes with a rubber covering fitted to chains to stop them 'clanging' and a negotiated routeing agreement.

## **RECOMMENDATION**

20. **It is RECOMMENDED that the Schedule of Compliance Monitoring Visits in Annex 1 and the Schedule of Enforcement Cases in Annex 2 be noted.**

CHRIS COUSINS  
Head of Sustainable Development

Background Papers: Files in Minerals and Waste Development Control  
Section, Speedwell House, Oxford.

16 August 2010

## Planning Enforcement – Glossary of Terms

BCN	-	Breach of Condition Notice – A summary procedure for the enforcement of planning conditions. Where there has been a failure to comply with a condition attached to a current planning permission the Local Planning Authority may serve such a notice.
CDC	-	Cherwell District Council
CLEUD	-	Certificate of lawful use / development. A procedure to allow a person to ascertain whether; (a) the existing use of land or buildings is lawful; (b) any operations carried out in, on, over or under land are lawful; or (c) any other matter constituting a failure to comply with a condition of a planning permission is lawful.
COU	-	Change of Use
EA	-	Environment Agency
EN	-	Enforcement Notice
Expediency	-	A judgment of the merits of an activity against planning policy.
LBA	-	Letter before action - a formal letter which sets out the alleged breach in planning control and suggested remedy.
OCC	-	Oxfordshire County Council
PCN	-	Planning Contravention Notice – A formal notice requiring a recipient to provide information about development on land so far as they are able.
Pd	-	permitted development
Pp	-	planning permission
SODC	-	South Oxfordshire District Council
VoWH	-	Vale of White Horse District Council
WODC	-	West Oxfordshire District Council

## Minerals & Waste Compliance Monitoring Sites in Cherwell District.

Contact Officer : Chris Hodgkinson, Senior Planning Enforcement Officer.

Direct Dial Tel: 01865 815872

Mobile Tel: 07899 065518

Address	Sites	Type - Mineral or Waste.	Status	Charge	Target Visits for year 01/04/10 to 31/03/11.	Visits Carried Out during period 01/04/10 to 31/07/10.
Alkerton CA & Landfill, Alkerton, Nr. Banbury, Oxon.	Alkerton Landfill	W	Active	Full	3	0
	Alkerton CA	W	Active	Nil		
Hornton Grounds, Stratford Road, Hornton, Banbury, OX15 6AH.	Alkerton Quarry	M	Active	Full	3	1
	Hornton Grounds Quarry.	M	Active & Aftercare (in part)	Full		
	Wroxton	M	Active	Full		
Ardley Quarry, Ardley, Bicester, Oxon, OX27 7PH.	Ardley Landfill	W	Active & Aftercare (in part)	Full	4	1
	Ardley Quarry	M	Active	Full		
Ardley Composting Site, Ashgrove Farm, Upper Heyford Road, Ardley, OX27 7PJ.	In-vessel Composting	W	Not Implemented	Nil	3	0
	Windrow Composting	W	Active	Nil		
Dewar's Farm, Ardley Road, Middleton Stoney, Oxfordshire, OX25 4AE.			Active	Full	4	1
Horsehay Quarry, Middle Barton Road, Duns Tew, Oxfordshire.		M	Active	Full	3	1

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Address	Sites	Type - Mineral or Waste.	Status	Charge	Target Visits for year 01/04/10 to 31/03/11.	Visits Carried Out during period 01/04/10 to 31/07/10.
Epwell ROMP, Shutford.		M	Dormant	Low	1	0
Finmere Quarry, Banbury Road, Finmere, Oxfordshire, MK18 4AJ.	Finmere (Landfill)	M & W	Active	Full	4	2
	Widmore	W	Aftercare	Nil		
	Clay, S&G	M	Not Implemented	Full		
	Sand & Gravel	M&W	Not Implemented	Full		
Gosford Silo Waste Recovery, Oxford Road, Kidlington, Oxford.		W	Not Implemented	Nil	1	0
Greenhill Farm Quarry, Bletchingdon.		W	Active	Full	1	0
Heneff Way - Batching, Heneff Way, Banbury, Oxon.		M	Active	Nil	1	1
Heneff Way - Tarmac, Heneff Way, Banbury, Oxon.		M	Active	Nil	1	1
L.C. Hughes Scrap Yard, London Road, Bicester.		W	Active	Nil	1	1

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Address	Sites	Type - Mineral or Waste.	Status	Charge	Target Visits for year 01/04/10 to 31/03/11.	Visits Carried Out during period 01/04/10 to 31/07/10.
Kidlington Rail Depot, Oxford Road, Kidlington, Oxford.		M	Active	Nil	1	1
Manor Farm - Biomass Gen, Twyford, Banbury, Oxon, OX17 3JL		W	Active	Nil	2	0
Old Brickworks Farm, Bletchingdon, Oxon, OX5 3DT.		W	Active	Full	2	0
Overthorpe Ind. Estate - WTS, Banbury.		W	Active	Nil	1	0
Sewage Plant, Merton		W	Active	Nil	0	0
Sewage Treatment Works, Hethe		W	Active	Nil	0	0
Shennington ROMP, Sugarswell Lane, Shennington.		M	ROMP	Low	1	0
Shipton on Cherwell Quarry, Shipton on Cherwell, Oxfordshire.		W	Active	Full	2	0

## Minerals & Waste Compliance Monitoring Sites in Cherwell District.

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Direct Dial Tel: 01865 815872

Mobile Tel: 07899 065518

Address	Sites	Type - Mineral or Waste.	Status	Charge	Target Visits for year 01/04/10 to 31/03/11.	Visits Carried Out during period 01/04/10 to 31/07/10.
Smiths Concrete Ltd, Old Blackthorn Station, Bicester.	Bicester	M	Active	Nil	1	0
Smiths Concrete Ltd, Southam Road, Banbury.	Banbury	M	Active	Nil	1	0
Smiths of Bloxham - WTS. Milton Road, Bloxham, Banbury, OX15 4HD.		W	Active	Nil	2	1
Stratton Audley, Elm Farm Quarry, Stratton Audley.	Landfill	W	Dormant	Low	1	1
	Recycling	W	Dormant	Nil		

## Minerals & Waste Compliance Monitoring Sites in South Oxfordshire District.

Contact Officer : Chris Hodgkinson, Senior Planning Enforcement Officer.

Direct Dial Tel: 01865 815872

Mobile Tel: 07899 065518

Address	Sites	Type - Mineral or Waste.	Status	Charge	Target Visits for year 01/04/10 to 31/03/11.	Visits Carried Out during period 01/04/10 to 31/07/10.
Ambrose Quarry, Ewelme, Oxon.		M	Dormant	Low	1	0
Battle Farm, Crowmarsh, 84 Preston Crowmarsh, Oxon, OX10 6SL.		W	Active	Nil	2	0
Caversham, Sonning Eye, Reading.	Caversham Main	M	Active	Full	3	0
	Caversham Extension	M	Active	Full		
Chinnor Quarry.		M	Dormant	Full	1	0
Clifton Hampton (The Old Sewage Works)		W	Ended	Nil	2	2
Culham B3 North		W	Active	Nil	1	1
Culham UKAEA	J30 JET	W	Active	Nil	1	0
Ewelme	Ewelme I (Buildings)	W	Active	Nil	4	0
	Ewelme I WTS	W	Active	Nil		
	Ewelme II MRF	W	Active	Nil		
	Ewelme II Landfill	W	Active	Full		

## Minerals & Waste Compliance Monitoring Sites in South Oxfordshire District.

Contact Officer : Chris Hodgkinson, Senior Planning Enforcement Officer.

Direct Dial Tel: 01865 815872

Mobile Tel: 07899 065518

Address	Sites	Type - Mineral or Waste.	Status	Charge	Target Visits for year 01/04/10 to 31/03/11.	Visits Carried Out during period 01/04/10 to 31/07/10.
Eyres Lane Waste Transfer Site, Ewelme.		W	Active	Nil	2	1
Ferris Hill Farm, Sibford Road, Hook Norton, Banbury, OX15 5JY.		W	Active	Nil	3	1
Greenwoods of Garsington, Scrap Yard, Pettiwell, Garsington, Oxford.		W	Active	Nil	1	0
Hundridge Farm, Waste Transfer, Hundridge Farm, Ipsden, Oxon		W	Active	Nil	2	0
Menlo Industrial Park - Scrap Yard, Roycote Lane, Thame, Oxfordshire, OX9 2JB.		W	Active	Nil	1	0
Playhatch Quarry - WTS, Dunsden Green Lane, Playhatch, Caversham, Reading.		W	Active	Nil	2	0
Sewage Pumping Station Beckley	Thames Water Sewage Plant	W	Aftercare	Nil	1	0

## Minerals & Waste Compliance Monitoring Sites in South Oxfordshire District.

Contact Officer : Chris Hodgkinson, Senior Planning Enforcement Officer.

Direct Dial Tel: 01865 815872

Mobile Tel: 07899 065518

Address	Sites	Type - Mineral or Waste.	Status	Charge	Target Visits for year 01/04/10 to 31/03/11.	Visits Carried Out during period 01/04/10 to 31/07/10.
The Piggeries, Sandy Lane, Horspath, Oxford.		W	Active	Nil	1	1
Waterstock Golf Course, Thame Road, Waterstock, Oxford. OX33 1HT.		W	Active	Full	3	2
Woodeaton Quarry, Woodeaton, OXON.		M	Dormant	Low	1	0

## Minerals & Waste Compliance Monitoring Sites in Vale of the White Horse District.

Contact Officer : Chris Hodgkinson, Senior Planning Enforcement Officer.

Direct Dial Tel: 01865 815872

Mobile Tel: 07899 065518

Address	Sites	Type - Mineral or Waste.	Status	Charge	Target Visits for year 01/04/10 to 31/03/11.	Visits Carried Out during period 01/04/10 to 31/07/10.
Aasvogel, Waste Transfer Station, Grove Business Park, Grove.		W	Active	Nil	1	0
Baulking Quarry, Baulking, Faringdon, Oxfordshire, SN7 7QB.		M	Aftercare	Full	1	1
Bowling Green Farm, Stanford Road, Faringdon, Oxon, SN7 8EZ.		M	Active	Full	3	1
Childrey Quarry, Childrey, Wantage, Oxon.		W	Active	Full	3	1
Chilton Waste (Prospect Farm), Prospect Farm, Chilton, Didcot, Oxfordshire, OX11 0ST.		W	Active	Full	3	1
Drayton CA Site, Drayton, Oxon.		W	Active	Nil	1	1
Composting Facility, Church Lane, Coleshill, Swindon, SN6 7PR.		W	Active	Nil	1	0

## Minerals & Waste Compliance Monitoring Sites in Vale of the White Horse District.

Contact Officer : Chris Hodgkinson, Senior Planning Enforcement Officer.

Direct Dial Tel: 01865 815872

Mobile Tel: 07899 065518

Address	Sites	Type - Mineral or Waste.	Status	Charge	Target Visits for year 01/04/10 to 31/03/11.	Visits Carried Out during period 01/04/10 to 31/07/10.
Glebe Farm Composting, Glebe Farm, Hinton Waldrist, Oxfordshire.		W	Active	Nil	1	1
Hackpen Hill (Land Raising), Childrey, Wantage, OXON.		W	Aftercare	Full	1	0
Haynes of Challow, East Challow, Wantage, Oxon, OX12 9TB.		W	Active	Nil	1	1
Hatford Quarry, Sandy Lane, Hatford, Oxon, SN7 8JH.		M	Active	Full	4	1
Hill Farm - Woodchipping, Nr Didcot, Oxfordshire.		W	Active	Nil	2	0
Quelchs Orchard, Scrap Yard, Charlton, Wantage.		W	Active	Nil	1	0
Redbridge CA, Old Abingdon Road, Oxford.		W	Active	Nil	1	1
Radley Sand and Gravel Plant, Thrupp Lane, Radley.	Curtis Yard	M & W	Active	Nil	3	0

## Minerals & Waste Compliance Monitoring Sites in Vale of the White Horse District.

Contact Officer : Chris Hodgkinson, Senior Planning Enforcement Officer.

Direct Dial Tel: 01865 815872

Mobile Tel: 07899 065518

Address	Sites	Type - Mineral or Waste.	Status	Charge	Target Visits for year 01/04/10 to 31/03/11.	Visits Carried Out during period 01/04/10 to 31/07/10.
Harwell, UKAE, Harwell, Didcot, OX11 0RA.	Business Park		Active	Nil	1	0
	Catapult Pit		Active	Nil		
	Southern Storage		Active	Nil		
	Waste Management Complex (B462)	W	Active	Nil		
	Western Storage		Active	Nil		
Radley Ash Disposal Scheme	Lake E	W	Not Implemented	Full	2	0
	Phase I	W	Aftercare	Full		
	Phase II	W	Active	Full		
	ROMP area	M	ROMP	Full		
Sandhill Quarry, Sands Hill, Faringdon, Oxon, SN7 7PQ.		M	Dormant	Low	1	0
Shellingford Quarry, Shellingford Crossroads, Stanford in the Vale, Faringdon, Oxon, SN7 8HE.		W	Active	Full	4	1

## Minerals & Waste Compliance Monitoring Sites in Vale of the White Horse District.

Contact Officer : Chris Hodgkinson, Senior Planning Enforcement Officer.

Direct Dial Tel: 01865 815872

Mobile Tel: 07899 065518

Address	Sites	Type - Mineral or Waste.	Status	Charge	Target Visits for year 01/04/10 to 31/03/11.	Visits Carried Out during period 01/04/10 to 31/07/10.
Stanford in the Vale Waste Disposal and Civic Amenity Site		W	Active	Nil	2	0
Sutton Courtnay (Hanson), Appleford Sidings, Abingdon, Oxfordshire, OX14 4PW.	Batching Plant	W	Active	Nil	4	0
	Bridge Farm	W	Not Implemented	Full		
	Rail Head	W	Active	Nil		
	Tarmac plant	W	Active	Nil		
Sutton Courtnay (WRG), Appleford Sidings, Abingdon, Oxfordshire, OX14 4PW.	Composting	W	Active	Nil	4	1
	Landfill	W	Active	Full		
Sutton Wick Landfill, Bassett Lane, Oday Hill, Abingdon.		W	In Restoration	Full	1	1
Sutton Wick Sand and Gravel, Peep-O-Day Lane, Abingdon, Oxon.	Sutton Wick Gravel	M	Active	Full	2	1
	Sutton Wick Plant	M	Active	Nil		
	Lake J	M	In Restoration	Full		

## Minerals & Waste Compliance Monitoring Sites in Vale of the White Horse District.

Contact Officer : Chris Hodgkinson, Senior Planning Enforcement Officer.

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Address	Sites	Type - Mineral or Waste.	Status	Charge	Target Visits for year 01/04/10 to 31/03/11.	Visits Carried Out during period 01/04/10 to 31/07/10.
Tubney Woods Sand Quarry and Landfill Site, Besselsleigh, Oxfordshire.		M	Active	Full	3	1
Whitecross Metals, Whitecross, Abingdon, Oxon.		W	Active	Nil	1	0
Wicklesham Quarry, Faringdon, Oxfordshire.		M	Active	Full	3	0

## Minerals & Waste Compliance Monitoring Sites in West Oxfordshire District.

Contact Officer : Chris Hodgkinson, Senior Planning Enforcement Officer.

Direct Dial Tel: 01865 815872

Mobile Tel: 07899 065518

Address	Sites	Type - Mineral or Waste.	Status	Charge	Target Visits for year 01/04/10 to 31/03/11.	Visits Carried Out during period 01/04/10 to 31/07/10.
B & E Skips, 115 Brize Norton Road, Minster Lovell, Oxon, OX29 0SQ.	Minster Lovell	W	Active	Nil	2	1
Boddington Lane Wood Chipping, North East side of Boddington Lane, North Leigh, Witney, Oxfordshire.		W	Dormant	Nil	1	0
Burford Quarry, Burford Road, Brize Norton, Oxfordshire.	Quarrying	M	Active	Full	4	1
	Manufacturing					
Castle Barn Quarry, Sarsden		M	Active	Full	3	2
City Farm, Eynsham.	City Farm I	W	Aftercare	Full	4	0
	New Wintle Farm	W	Active	Nil		
	City Farm II	W	Active	Nil		
Controlled Reclamation, Dix Pit, Stanton Harcourt, Oxon.		W	In Restoration	Full	4	2
Cornbury Park, (Quarrying) Charlbury, Oxon.		M	Active	Full	1	0

## Minerals & Waste Compliance Monitoring Sites in West Oxfordshire District.

Contact Officer : Chris Hodgkinson, Senior Planning Enforcement Officer.

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Mobile Tel: 07899 065518

Address	Sites	Type - Mineral or Waste.	Status	Charge	Target Visits for year 01/04/10 to 31/03/11.	Visits Carried Out during period 01/04/10 to 31/07/10.
Crawley Scrap Yard		W	Active	Nil	1	1
Deans Pit CA Site, Chadlington.		W	Active	Nil	1	0
Dix Pit, Stanton Harcourt, Oxon.	Conblock	W	Dormant	Nil	4	1
	Dix Pit CA	W	Active	Nil		
	Dix Pit Landfill Site	W	Active	Full		
	North Shore	M	Complete	Full		
	Premix - Hanson	M	Active	Nil		
Elmwood Farm, Burford Road, Black Bourton, Oxon, OX18 2PL		W	Active	Nil	2	0
Enstone Airport Waste Transfer, Unit 1, Enstone Airfield, Enstone, Oxon.		W	Active	Nil	2	1
Ethos Waste Transfer (William Wyatt's Yard), Lakeside Industrial Estate, Standlake, Oxon		W	Dormant	Nil	2	0
Fraser Evans & Sons, The Tyre Yard, Downs Road, Witney, Oxon., OX29 0SY.		W	Active	Nil	2	1

## Minerals & Waste Compliance Monitoring Sites in West Oxfordshire District.

Contact Officer : Chris Hodgkinson, Senior Planning Enforcement Officer.

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Address	Sites	Type - Mineral or Waste.	Status	Charge	Target Visits for year 01/04/10 to 31/03/11.	Visits Carried Out during period 01/04/10 to 31/07/10.
Gill Mill, Tar Farm, Gill Mill Complex, Ducklington, Oxfordshire.	Rushey Common	M	Aftercare	Full	3	1
	Gill Mill Quarry	M	Active	Full		
Great Tew Quarry, Butchers Hill, Great Tew, Oxon.		M	Active	Full	3	1
Hardwick Batching Plant, Adj. B4449, Hardwick, Oxon.	CEMEX	M	Active	Full	1	0
Hardwick Recycling, Adj. B4449, Hardwick, Oxon.	Fergal Yard	W	Active	Nil	1	0
M2 Solutions, Plot J, Lakeside Industrial Estate, Standlake		W	Dormant	Nil	1	0
M & M Skips (Witney), Station Road, Witney.		W	Active	Nil	1	1

## Minerals & Waste Compliance Monitoring Sites in West Oxfordshire District.

Contact Officer : Chris Hodgkinson, Senior Planning Enforcement Officer.

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Address	Sites	Type - Mineral or Waste.	Status	Charge	Target Visits for year 01/04/10 to 31/03/11.	Visits Carried Out during period 01/04/10 to 31/07/10.
Manor Farm - Waste Transfer, Kelmscott, Nr. Lechlade, Gloucestershire, GL7 3HJ.		W	Active	Nil	1	0
Mick's Skips (Hackett's Yard), Lakeside Industrial Estate, Standlake, Oxon.		W	Active	Nil	2	0
Sandfields Farm, Over Norton, Oxfordshire.		W	Active	Nil	2	1
Peashell Farm, Downs Road, Curbridge, Oxon OX29 7NZ.		W	Active	Nil	2	1
Rollright Quarry, Chipping Norton.	Phase 1	M	Active	Full	2	1
	Phase 2	M	Not Implemented	Full		
Showell Farm, Chipping Norton, Oxon OX7 5TH.		W	Active	Nil	2	0
Slope Hill Quarry, Glympton, Near Woodstock.		W	Active	Nil	2	1

## Minerals & Waste Compliance Monitoring Sites in West Oxfordshire District.

Contact Officer : Chris Hodgkinson, Senior Planning Enforcement Officer.

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Address	Sites	Type - Mineral or Waste.	Status	Charge	Target Visits for year 01/04/10 to 31/03/11.	Visits Carried Out during period 01/04/10 to 31/07/10.
Smiths Concrete, Eynsham Road, Cassington	Oxford	M	Active	Nil	1	0
Springhill Farm, Cross Hands Hill, Salford, Oxon, OX7 5FQ.		M	Active	Full	2	1
Hardwick IDO		M	ROMP	Low	1	0
Sturt Farm, Units 2A, 4 Sturt Farm Ind, Burford.		W	Active	Nil	1	0
Watkins Farm, Linch Hill, Stanton Harcourt, OXON. OX29 5BJ.	ROMP area	M	Aftercare	Full	1	0
	Stonehenge Farm	M	Not Issued	Full		
	Ireland Land	M	Active	Full		
Whitehill Quarry, Adj. A40, Burford, OXON.		M	Dormant	Low	1	1
Whitehill Quarry, Tackley, OXON.		M	Dormant	Low	1	0
Worsham Quarry, Burford Road, Asthall, OXON.		W	Active	Full	3	1
Worton Rectory Farm, Cassington, OXON. OX29 4SU.	Cassington Quarry	M	Active	Full	4	1
	Worton Composting	W	Active	Nil		
	M&M WTS	W	Active	Nil		

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**Progress of Enforcement Cases**  
(Covers period from 1 January 10 to 31 July 10)

**Contact Officer : Chris Hodgkinson, Senior Planning Enforcement Officer.**  
**Direct Dial Tel: 01865 815872**  
**Mobile Tel: 07899 065518**

Location	Date Received	Alleged Breach of Planning Control	Progress
<b>South Oxfordshire District Council</b>			
Waterstock Golf Course	1996	Unauthorised Change of Use – deposit of Waste.	Injunctive action to secure removal on-going. High Court extended date for removal of waste. Committal hearing on the 5 <sup>th</sup> May 2010. Mr R Wyatt and Mr M Wyatt received suspended prison sentences of six months and four months respectively on the condition that Court Order complied with by 11 <sup>th</sup> May 2011. Compliance checks continuing.
Waterstock Golf Course	1999	Breach of Planning Condition – Failure to restore land following Clay Extraction.	Enforcement Notice served in November 08 to secure proper restoration of the lake area. Notice has been appealed. The appeal was heard by the Planning Inspector at Public Inquiry at two hearings in September and November 09. Planning Inspectorate have upheld the enforcement notices with revised compliance dates to remove waste and re-profile the land by the end of August 2010 and to restore by end of September 2010. Compliance checks continuing.
Hundridge Farm, Ipsden	Feb 01	Unauthorised Change of Use – from Agriculture to Waste Transfer	CLEUD has been issued for part of the operation. The EA took contempt of court proceedings against the owner of the land, Mr Parker, in March for continuing to keep controlled waste on the land without a permit. Mr Parker received a 28 day suspended prison sentence and costs of £18,000. Land to be cleared by end of August and OCC continuing to work with EA on compliance.
Manor Farm, Peppard Common, Oxon	Nov 08	Unauthorised Change of Use – from Agriculture to Waste Transfer	Waste Transfer operations have ceased, machinery removed and retrospective planning application for waste transfer refused by OCC. However, bunding around the site contains unauthorised deposited waste. Joint action with SODC for various mixed use of the land. PCN served in Aug 10 to establish volumes of waste to be removed.

**Progress of Enforcement Cases**  
(Covers period from 1 January 10 to 31 July 10)

**Contact Officer : Chris Hodgkinson, Senior Planning Enforcement Officer.**  
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Location	Date Received	Alleged Breach of Planning Control	Progress
<b>South Oxfordshire District Council - Continued</b>			
Well Barn House Estate, Moulsoford	Jan 09	Unauthorised Change of Use – from Agriculture to land raising deposit of waste.	Chalk Waste being deposited on land following permitted Residential Development. LBA sent. Planning application submitted.
Stockwell Lane, Waterstock	March 10	Unauthorised Change of Use – from Agriculture to Waste Transfer	Unauthorised storage (possible transfer) of waste. Owner traced and letter sent. Small amount of builders rubble being stored for foundation to agricultural building which would be permitted development. Further waste being brought on to the land. Continuing with a watching brief.
New House Farm, Goring Heath.	April 10	Unauthorised Change of Use from Agriculture to Waste Transfer and Deposits of Construction/Demolition Waste.	Unauthorised Metal recycling activity on site - breaking electrical transformers. Construction and demolition (C&D) waste has been deposited on part of the site and evidence of burning farm waste. Visit in July 10 - Metal now removed and recycling activity ceased. No evidence of burning. C&D waste remains on site. PCN required before more formal EN.
Lane End Farm, Chalgrove	April 10	Unauthorised Change of Use from Agriculture to waste transfer of tyres and reclamation of scrap metal.	Site inspected – three pick up trucks and some agricultural machinery being stored. Non running vehicles in derelict state but not amounting to a material use of the land. Small amount of tyres being stored for silage clamp & weighing down tarpaulin covers. No obvious breach of planning control. No further action required. Case Closed.
Woodcote Sawmill, Pot Kiln Lane, Woodcote.	April 10	Unauthorised wood chipping and waste transfer operation.	Site Inspected – Site clear & gates locked. No Obvious breach of planning control. Anon complaint so no follow up available. Case Closed.

## Progress of Enforcement Cases

(Covers period from 1 January 10 to 31 July 10)

**Contact Officer : Chris Hodgkinson, Senior Planning Enforcement Officer.**  
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Location	Date Received	Alleged Breach of Planning Control	Progress
<b>Vale of White Horse District Council</b>			
Land adj. A338, East Hanney, Wantage, OXON.	May 09	Unauthorised deposit of Waste to create bunds for Marcham Shooting Grounds.	Investigated and established breach. PCN served July 09. Negotiations stalled. Expediency report to be completed prior to EN being served.
Tuckwells Sand and Gravel Plant, Thrupp Lane, Radley.	Sept. 09	Gravel washing and grading plant operating without planning permission.	Investigations continuing. Negotiations stalled. PCN served in May 2010. Awaiting outcome of CLEUD Application prior to deciding on appropriate enforcement action. Expediency report to be completed prior to EN being served.
Shellingford Quarry.	Feb 10	Non-compliance with planning permission extraction of limestone below permitted levels.	Development accords with current planning policy and within EA tolerances – currently not expedient to serve EN. Retrospective planning application invited. Pre-application discussions and reports being completed. Site continues to be regularly inspected in accordance with the compliance monitoring schedule.
Spring Hill Chicken Farm, Longworth.	April 10	Unauthorised waste transfer processing of construction and demolition waste, sub-soils and soils.	Initial investigation found that VWHDC had granted planning permission for the restoration of the land to equestrian use. The planning permission allowed for the mechanical screening of waste bunds on the land and spreading of soils. Allegations continue to be made that waste is being brought on to the land, sorted and taken off again. A joint investigation is continuing with the EA, there is currently insufficient evidence to bring an enforcement action.
Blandys Farm, Bassett Road, Letcombe Regis	July 10	Unauthorised deposit of waste	Initial site visit - operator asserts that land drain being installed. Investigations continuing.

## Progress of Enforcement Cases

(Covers period from 1 January 10 to 31 July 10)

Contact Officer : Chris Hodgkinson, Senior Planning Enforcement Officer.  
 Direct Dial Tel: 01865 815872  
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Location	Date Received	Alleged Breach of Planning Control	Progress
<b>West Oxfordshire District Council</b>			
Stone Farm, Lidstone,	June 09	Winning and working of building stone without planning permission.	Investigated. Established breach of planning control. Retrospective planning application submitted and subsequently withdrawn. Quarrying has ceased and owner is working on satisfactory restoration and aftercare scheme. Negotiations continuing.
Pergal Contracting, Hardwick.	Mar 07	Unauthorised change of use – waste recycling	Investigations continuing. PCN served and responded to. Part of the land is immune from enforcement action as per aerial photography. A further PCN is required. Expediency report to be completed prior to EN being served.
Waste Transfer Stn, Sandsfield Farm, Over Norton.	Apr 08	Unauthorised development of new building without planning permission.	Monitoring visit identified building being erected without planning permission. Development meets planning policy. Conditional Planning permission granted. NFA required. Case Closed.
City Farm, Eynsham.	May 08	Unauthorised change of use – waste recycling.	Monitoring visit has identified operations extended outside of permitted area. Development meets planning policy. Conditional Planning permission granted. NFA required. Case Closed.
Cornbury Park, Charlbury.	June 08	Unauthorised sale of building stone.	Small quarry operates on the land which is permitted development for agricultural purposes. Allegation that amounts of building stone are being sold and removed separately. Very small scale. Assurances given that sales have ceased. Adverts removed from Cornbury website, etc. However, we continue with watching brief.
Land at Cotswold Dene, Lakeside Industrial Park, Standlake.	July 08	Unauthorised change of use – land raising	Waste being tipped without planning permission. EA lead authority and taking prosecution proceedings. OCC officers provided evidence for proceedings.

**Progress of Enforcement Cases**  
(Covers period from 1 January 10 to 31 July 10)

**Contact Officer : Chris Hodgkinson, Senior Planning Enforcement Officer.**  
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Location	Date Received	Alleged Breach of Planning Control	Progress
<b>Cherwell District Council</b>			
Stratton Audley Quarry	Jul 05	Unauthorised change of use – over-tipped landfill.	Site is closed. Negotiations between owners and planning officers on an acceptable land form are continuing with a view to submission of planning application to remedy breach.
Clattercote Priory Farm, Claydon.	Nov 08	Unauthorised change of use – waste recycling.	Waste wood chipping operation to provide pig bedding. Operation being carried out under exemption from the EA. Agricultural permitted development exempt from planning control. NFA required. Case Closed.
Land at Bainton Crossroads, Bicester.	March 10	Unauthorised waste wood chipping to create compressed fire wood blocks.	Unauthorised activity established. Negotiation with CDC and operator that planning application would be dealt with by CDC. Conditional Planning Permission granted 12 July 2010. Case Closed.
Wood Hill Farm, Adderbury	April 10	Unauthorised deposit of waste / waste transfer and burning of waste.	Joint investigation with the EA evidence of tipping in woodland and burning in the open. Some hazardous wastes have been cleared and the burning has stopped and area cleared. Tipping ceased but deposited C&D material remains in woodland. As per protocol EA lead authority and OCC awaiting response from EA legal team on whether or not they will be taking injunctive action to remove remaining waste.
Glebe Court, Fringford	April 10	Unauthorised deposit of waste – washing out of road sweepers.	Washing out of waste by Bicester Sweepers and storage of waste prior to proper disposal. Land in industrial use and lawfully occupied. Recognised process as part of operation. No breach of planning control – No further action required. Case Closed.
Land at Old Sewage Works, Launton Road,	May 10	Unauthorised waste transfer	Small scale skips business operating from the land without planning permission. Investigations on-going – not been able to ‘catch’ persons on site. LBA sent. No response from owners. PCN required before more formal EN.

**Progress of Enforcement Cases**  
 (Covers period from 1 January 10 to 31 July 10)

**Contact Officer : Chris Hodgkinson, Senior Planning Enforcement Officer.**  
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Location	Date Received	Alleged Breach of Planning Control	Progress
<b>Cherwell District Council – continued</b>			
Banbury Mini Skips, Station Approach, Banbury.	June 10	Unauthorised waste transfer	Skips business operating from the land without planning permission. Investigations on-going. Operating from B2 General Industrial Premises and accords with current planning policy. Investigations continuing. Retrospective application invited.

## PLANNING & REGULATION COMMITTEE – 13 SEPTEMBER 2010

### RELEVANT DEVELOPMENT PLAN AND OTHER POLICIES

Report by Interim Head of Sustainable Development

*This paper is the Annex referred to in Items Pn5 to PN10*

#### OXFORD LOCAL PLAN 2001-2006

##### POLICY CP1 – DEVELOPMENT PROPOSALS

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 or 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 be retaining features which are important to, and remove features which detract from, the character of the local area.

In addition, in and adjacent to conservation areas, new development needs to have special regard for the character and appearance of the area.

#### POLICY CP11 – LANDSCAPE DESIGN

Planning permission will only be granted where:

- a. the landscape design relates to the function and character of the spaces and surrounding buildings;
- b. existing trees, shrubs, hedges and water features of significant landscape value are incorporated alongside new planting;
- c. buildings and paved surfaces are located far enough from existing trees and hedges to avoid damage to roots from sub-surface works;
- d. all boundary edges or fences are designed as an integral part of the development and surrounding area;
- e. paving and location of street furniture are designed to make walking and cycling easy, improve pedestrian safety, give an uncluttered appearance, and make use of good quality materials to enhance their setting; and
- f. the landscape design enhances ecological value, wherever possible.

Proposed new planting must be properly established and maintained in the long term. This will be controlled by planting condition or planning obligation.

When development is permitted near trees, protection during site works will be necessary. Tree protection measures, required by planning condition, will be approved provided they comply with British Standard 5837 – Trees in Relation to Construction or any subsequent amended standard.

#### POLICY CP21 – NOISE

Planning permission will be refused for developments which will cause unacceptable noise. Particular attention will be given to noise levels:

- a. close to noise-sensitive developments; and
- b. in public and private amenity space, both indoor and outdoor.

The City Council will impose easily enforceable conditions to control the location, design, layout and operation of development proposals to minimise any adverse impact as a result of noise and its transmission.

Proposals for noise sensitive developments should have regard to:

- c. the existing sources of noise, e.g. from roads, railways and other forms of transport; industrial and commercial developments; sporting, recreation and leisure facilities;
- d. internally generated noise or associated externally generated noise; and
- e. the need for appropriate sound insulation measures.

#### 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 ED3 – SCHOOLS

Planning permission will only be granted for significant trip-generating development at schools that meets the following criteria:

- a. it will not cause unacceptable traffic or parking problems;
- b. appropriate provision is made for access and dropping-off facilities; and
- c. the site is accessible by walking, cycling or public transport, including links to the park and ride sites, for the majority of people travelling to the site.

#### POLICY TR2 – TRAVEL PLANS

A travel plan (TP), which has clear objectives, targets and a monitoring and review procedure, must be submitted for development that the City Council considers is likely to have significant transport implications (as defined in Appendix 2).

Planning permission will be granted only if the City Council is satisfied that adequate and appropriate measures will be put in place.

#### POLICY TR4 – PEDESTRIAN AND 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.

#### POLICY TR5 – PEDESTRIAN AND CYCLE ROUTES

The City Council will support and, where appropriate, implement measures that create more direct, safe and secure pedestrian and cycle routes.

The City Council will seek improvements along highway routes, particularly along the following corridors:

- a. B4495 (Donnington Bridge, Hollow Way, The Slade, Windmill Road, Headley Way and Marston Ferry Road);
- b. B480 (Cowley Road to Watlington Road);
- c. A4158 (Iffley Road to Sandford Road); and
- d. Barns Road and Blackbird Leys Road.

The City Council will seek to improve links towards the City Centre including from:

- e. North Oxford: from Walton Well Road along the railway and canal corridor;
- f. Marston: between Marston Road and Longwall Street;
- g. Headington: between Marston Road and Longwall Street;
- h. Barton: between North Way and Pullens Lane;
- i. Risinghurst: between Downside Road and Windmill Road;
- j. Temple Cowley: between Cowley Road and Meadow Lane;
- k. East Oxford: between Jackdaw Lane and Abingdon Road via a new bridge over the River Thames; and
- l. West Oxford: along land south of Botley Road.

The City Council will seek to improve links to key destinations including:

- m. Marston Road with Marston Ferry Road via Rippington Drive;
- n. Boulton's Lane with Copse Lane;
- o. the Ring Road cycle track with Meaden Hill;
- p. Roosevelt Drive with Bartlemas Close;
- q. the Ring Road cycle track with Masons Road;
- r. the Ring Road cycle track with and through the Oxford Business Park North;
- s. Sandy Lane West with and through the Oxford Business Park South; and
- t. Blackbird Leys with Armstrong Road.

The City Council will seek to secure the following new pedestrian and/or cycle links:

- u. Saxon Way to the John Radcliffe Hospital.
- v. Gardiner Street to the Nuffield Orthopaedic Centre; and
- w. Peat Moors to the Churchill Hospital.

Where appropriate, the City Council will seek contributions towards, or the provision of, new or more attractive pedestrian and cycle routes and facilities which will be secured by planning conditions or a planning obligation.

The improved links described in points e. to w. above are shown on the Proposals Map.

## **South Oxfordshire Local Plan 2011 (SOLP)**

### **POLICY G2 – PROTECTION AND ENHANCEMENT OF THE ENVIRONMENT**

The district's countryside, settlements and environmental resources will be protected from adverse developments and opportunities sought to enhance the environment wherever they arise.

### **POLICY G3 – LOCATIONAL STRATEGY**

In considering proposals for new development, locations which are close to services and facilities, and which are well served by public transport will be favoured.

Development that would give rise to a significant increase in traffic generation in relatively inaccessible or isolated rural locations will not be permitted.

#### POLICY G4 - DEVELOPMENT IN THE COUNTRYSIDE AND ON THE EDGE OF SETTLEMENTS

The need to protect the countryside for its own sake is an important consideration when assessing proposals for development. Unless permitted by other policies in the plan, new built development in the countryside, in the open gaps between settlements and on the edge of settlements where the built-up area would be extended, will not normally be permitted, except for agriculture and forestry.

#### POLICY G5 – MAKING THE BEST USE OF LAND

In considering development proposals within the built-up areas of settlements the best use of land and buildings will be sought, in terms of the type and density of development, in order to reduce the need for development of greenfield sites or of sites in non-sustainable locations. Priority will be given to the release of previously-developed sites within the four towns over greenfield sites or sites in less sustainable locations. In seeking to make the best use of land regard will be had to the role and importance of open space within settlements.

#### POLICY G6 – PROMOTING GOOD DESIGN

Planning permission will not be granted for proposals which are not of a high quality and inclusive design, which fail to protect and reinforce local distinctiveness, or which are of a scale or type that is inappropriate to the site and its surroundings.

#### POLICY C1 - LANDSCAPE CHARACTER

The conservation and where possible, enhancement of the landscape of the district will be sought. Development that would adversely affect the distinctive features of the landscape character areas will not be permitted.

Where development is acceptable in principle it should:

- (i) be integrated into the landscape character of the area;
- (ii) protect important local features; and
- (iii) where possible, contribute to local distinctiveness.

Measures will be sought to integrate new development sensitively, mitigate impacts and where appropriate, enhance local landscape character through conditions and agreements attached to planning permissions.

#### POLICY C6 – BIODIVERSITY CONSERVATION

In considering proposals for development, the maintenance and enhancement of the biodiversity resource of the district will be sought. Full account of the effects of development on wildlife will be taken. Where there is any significant loss in biodiversity as part of a proposed development, the creation and maintenance of new landscape features, habitats, habitat links and wildlife corridors of appropriate

scale and kind will be required to ensure there is no net loss in biodiversity resources.

#### POLICY C8 – SPECIES PROTECTION

Development that would have an adverse effect on a site supporting a specially protected species will not be permitted, unless damage to the ecological interest can be prevented through the use of planning conditions or planning obligations.

#### POLICY CON7 – PROPOSALS AFFECTING A CONSERVATION AREA

Planning permission will not be granted for development which would harm the character or appearance of a conservation area. The following will be required when considering proposals for development in conservation areas:

- (i) the design and scale of new work to be in sympathy with the established character of the area; and
- (ii) the use of traditional materials, whenever this is appropriate to the character of the area.

#### POLICY CON12 – ARCHAEOLOGY AND HISTORIC BUILDING ANALYSIS AND RECORDING

Before the determination of an application for development which may affect a site of archaeological interest or potentially of archaeological importance, prospective developers will be required, where necessary, to make provision for an archaeological field evaluation, in order to enable an informed and reasoned planning decision to be made.

#### POLICY CON13 - ARCHAEOLOGY AND HISTORIC BUILDING ANALYSIS AND RECORDING

Wherever practicable and desirable, developments affecting sites of archaeological interest should be designed to achieve physical preservation in situ of archaeological deposits. Where this is not practicable or desirable, conditions will be imposed on planning permissions, or planning obligations sought, which will require the developer to provide an appropriate programme of archaeological investigation, recording and publication by a professionally-qualified body.

#### POLICY EP1 - PREVENTION OF POLLUTING EMISSIONS

Proposals which would (by reason of smell, fumes, smoke, soot, ash, dust, grit, or other forms of polluting emissions) have an adverse effect on people and other living organisms, the atmosphere, the land, underground water supplies or watercourses will not be permitted, unless effective mitigation measures will be implemented. In addition, development will not be permitted near to an existing or proposed polluting use, unless effective mitigation measures will be implemented to ensure that there would be no adverse effect on the health and amenity of future occupiers.

## POLICY EP2 – NOISE AND VIBRATIONS

Proposals which would by reason of noise or vibrations have an adverse effect on existing or proposed occupiers will not be permitted, unless effective mitigation measures will be implemented. In addition, noise sensitive development will not be permitted close to existing or proposed sources of significant noise or vibrations.

## POLICY EP3 – LIGHT POLLUTION

Proposals for new floodlighting and other external lighting that would have an adverse effect on neighbouring residents, the rural character of the countryside or biodiversity will not be permitted, unless effective mitigation measures will be implemented.

## POLICY EP6 – SURFACE WATER PROTECTION

Developers will be required, wherever practicable, to demonstrate that the surface water management systems on any development accords with sustainable drainage principles and has been designed as an integral part of the development layout. The system should effectively mitigate any adverse effects from surface water run-off and flooding on people, property and the ecological value of the local environment.

## POLICY R1 – FORMAL RECREATION

Proposals for new or improved facilities for outdoor sport or children's play to serve local needs will be permitted in or adjacent to settlements provided that there are no overriding amenity, environmental, Green Belt, transport or agricultural objections.

## POLICY D1 – GOOD DESIGN AND LOCAL DISTINCTIVENESS

The principles of good design and the protection and reinforcement of local distinctiveness should be taken into account in all new development through:

- (i) the provision of a clear structure of spaces;
- (ii) respecting existing settlement patterns;
- (iii) providing for a choice of routes and transport modes to, from and within the development;
- (iv) providing a development that users find easy to understand through the use of landmarks, vistas and focal points;
- (v) providing landscape structure as a framework for new development;
- (vi) respecting the character of the existing landscape;
- (vii) respecting distinctive settlement types and their character;
- (viii) providing good quality site and building design and appropriate materials; and
- (ix) providing well-designed external areas.

## POLICY D2 – VEHICLE AND BICYCLE PARKING

Planning permission will not be granted for developments that fail to incorporate adequate, safe and secure parking for vehicles and cycles. Vehicle parking should be provided in a discreet and sensitive manner.

## POLICY CF1 – SAFEGUARDING COMMUNITY FACILITIES AND SERVICES INCLUDING RECREATION FACILITIES

Proposals that result in the loss of a recreation facility or an essential community facility or service, through change of use or redevelopment, will not be permitted unless:

- (i) suitable alternative provision is made for the facility (or similar facilities of equivalent community value) on a site elsewhere in the locality, or
- (ii) in the case of recreational facilities, it is not needed, or
- (iii) in the case of commercial services, it is not economically viable.

## POLICY CF2 – PROVISION OF COMMUNITY FACILITIES AND SERVICES

Proposals that would result in the provision of additional community facilities or services within settlements will be permitted, provided that there are no overriding amenity, environmental or traffic objections to the proposals and that there is no conflict with the other policies in this plan.

## POLICY T1 – TRANSPORT REQUIREMENTS FOR NEW DEVELOPMENTS

Proposals for all types of development will, where appropriate:

- (i) provide for a safe and convenient access to the highway network;
- (ii) provide safe and convenient routes for cyclists and pedestrians;
- (iii) be accessible by public transport and have a safe walking route to nearby bus stops or new bus stops and appropriate infrastructure should be provided;
- (iv) be served by an adequate road network which can accommodate traffic without creating traffic hazards or damage to the environment;
- (v) where new roads, pedestrian routes, cycleways and street lighting are to be constructed as part of the development, be constructed to adoptable standards and be completed as soon as they are required to serve the development; and
- (vi) make adequate provision for those whose mobility is impaired.

## POLICY T2 – TRANSPORT REQUIREMENTS FOR NEW DEVELOPMENTS

Proposals for development will, where appropriate, make provision for:

- (i) loading, unloading, circulation and turning space;
- (ii) parking for people with disabilities;
- (iii) the parking of vehicles in accordance with the Council's maximum parking standards;
- (iv) measures to reduce the need for vehicle parking where appropriate; and
- (v) cycle parking in accordance with the Council's standards.

## POLICY T3 – TRANSPORT ASSESSMENTS AND TRAVEL PLANS

A transport assessment should be submitted with planning applications for all developments with significant transport implications. Where appropriate a travel plan should be included with the assessment.

## **West Oxfordshire Local Plan 2011**

### **POLICY BE2 - GENERAL DEVELOPMENT STANDARDS**

New development should respect and, where possible, improve the character and quality of its surroundings and provide a safe, pleasant, convenient and interesting environment.

Proposals for new buildings and land uses should clearly demonstrate how they will relate satisfactorily to the site and its surroundings, incorporating a landscape scheme and incidental open space as appropriate.

A landscape scheme accompanying detailed proposals for development should show, as appropriate, hard and soft landscaping, existing and proposed underground services, a phasing programme for implementation and subsequent maintenance arrangements.

Proposals will only be permitted if all the following criteria are met:

#### **Quality of Development and Impact upon the Area:**

- a) the proposal is well-designed and respects the existing scale, pattern and character of the surrounding area;
- b) new buildings or extensions to existing buildings are designed to respect or enhance the form, siting, scale, massing and external materials and colours of adjoining buildings, with local building traditions reflected as appropriate;
- c) the proposal creates or retains a satisfactory environment for people living in or visiting the area, including people with disabilities;
- d) existing features of importance in the local environment are protected and/or enhanced;
- e) the landscape surrounding and providing a setting for existing towns and villages is not adversely affected;
- f) in the open countryside, any appropriate development will be easily assimilated into the landscape and wherever possible, be sited close to an existing group of buildings.

#### **Crime:**

- g) good design has been used to help reduce the opportunities for crime.

#### **Energy and Resources:**

- h) regard has been given to:
  - i. principles of energy and resource conservation:
  - ii. provision for sorting and storage facilities to facilitate recycling of waste.

### **POLICY BE3 - PROVISION FOR MOVEMENT AND PARKING**

Development should make provision for the safe movement of people and vehicles, whilst minimising impact upon the environment. Within built-up areas priority should be given to pedestrians, cyclists and public transport.

Proposals will only be permitted if all the following criteria are met:

- a) safe and convenient circulation of pedestrians and cyclists, both within the development and externally to nearby facilities, with provision to meet the needs of people with impaired mobility as appropriate;
- b) safe movement of all vehicular traffic both within the site and on the surrounding highway network;
- c) provision for the increased use of public transport as appropriate to the scale of development;
- d) provision for the parking of vehicles, including bicycles and motorcycles, in accordance with the standards in Appendix 2.

Development which would have a significant impact on the highway network will not be permitted without the prior submission of a Transport Assessment.

#### POLICY BE5 - CONSERVATION AREAS

The special architectural, historic and environmental character or appearance of the Conservation Areas will be preserved or enhanced. Every effort will be made to ensure that this character or appearance is not eroded by the introduction of unsympathetic development proposals either within or affecting the setting of the designated area.

#### POLICY BE6 - DEMOLITION IN CONSERVATION AREAS

Applications for the demolition of unlisted buildings in a Conservation Area will only be permitted if:

- i. the structure to be demolished makes no positive contribution to, or has an adverse impact upon, the character or appearance of the area, or
- ii. the demolition forms part of redevelopment proposals that will positively enhance and improve the character and setting of the Conservation Area.

#### POLICY BE7 - ALTERATIONS AND EXTENSIONS TO LISTED BUILDINGS

The special interest of all listed buildings should be preserved or enhanced. Any additions or alterations shall be in scale and sympathy with the original character of the building. The use of traditional materials and building techniques will be encouraged and the imaginative use of modern materials and contemporary design will be considered in its context.

#### POLICY BE8 - DEVELOPMENT AFFECTING THE SETTING OF A LISTED BUILDING

Development should not detract from the setting of a listed building.

#### POLICY BE13 – ARCHAEOLOGICAL ASSESSMENTS

Prior to determining applications affecting sites and areas of archaeological potential, applicants may be required to provide an archaeological assessment and/or field evaluation to determine:

- a) the significance, character and importance of any archaeological monument or remain and

- b) the likely impact of the proposed development on such features
- c) the level of mitigation required to suitably protect the archaeological resource through preservation in situ or preservation by record including excavation, post excavation analysis and publication.

#### POLICY BE18 – POLLUTION

Planning permission will not be permitted for development which could give rise to unacceptable levels of pollution, unless adequate mitigation measures are provided to ensure that any discharge or emissions will not cause harm to users of land, including the effects on health and the natural environment.

#### POLICY BE19 – NOISE

Planning permission will not be granted for:

- a) housing and other noise sensitive development if the occupants would experience significant noise disturbance from existing or proposed development;
- b) development including the use of land, if because of the noise it will create, the occupants of housing and other noise sensitive development would be exposed to significant noise disturbance, unless there is an overriding need for the proposal which cannot be met elsewhere.

#### POLICY NE6 – RETENTION OF TREES, WOODLANDS AND HEDGEROWS

Planning permission will not be granted for proposals that would result in the loss of trees, woodlands or hedgerows, or their settings, which are important for their visual, historic, or biodiversity value. Removal will only be allowed where it can be demonstrated that the proposed development would enhance the landscape quality and nature conservation value of the area.

#### POLICY NE9 – SURFACE WATER

New development or intensification of existing development will not be permitted where the additional surface water run-off would result in adverse impacts such as an increased risk of flooding, river channel instability or damage to habitats, unless appropriate attenuation and pollution control measures are provided.

#### POLICY NE11 – WATER QUALITY

Development should not have an adverse impact on the quality of surface or ground water supplies and resources.

#### POLICY NE13 - BIODIVERSITY CONSERVATION

In determining planning applications, the Council will seek to safeguard, maintain and enhance priority habitats and species within the District. Development proposals should include measures to mitigate any effects upon features of nature conservation value, including where appropriate the provision of compensatory habitats or management.

## POLICY NE15 - PROTECTED SPECIES

Development that would have an adverse effect on a site supporting a specially protected species will not be permitted unless damage to the ecological interest can be prevented through compliance with conditions or planning obligations.

## POLICY T1 – TRAFFIC GENERATION

Proposals which would generate significant levels of traffic will not be permitted in locations where travel by means other than the private car is not a realistic alternative.

## POLICY T2 – PEDESTRIAN AND CYCLE FACILITIES

Measures will be sought to protect, improve and extend facilities for cyclists and pedestrians, and particularly to extend the cycle and pedestrian route networks within and between settlements, within and through new development areas and through the countryside generally.

## POLICY TLC1 - NEW TOURISM, LEISURE AND COMMUNITY FACILITIES

Permission will be granted for:

- a) visitor-related proposals which respect and enhance the intrinsic qualities of the District;
- b) community facilities to meet local needs;
- c) the recreational and cultural use of land on a small scale to meet local needs;
- d) new recreational and cultural buildings where they are essential to the existing use of the associated land and are appropriate in scale, design and siting.

Proposals for leisure, tourist and community developments will not be allowed where they would have an adverse impact on the character or environment of the countryside or on towns and villages within the District or would generate unacceptable levels of traffic on the local highway network.

## POLICY TLC8 – PUBLIC RIGHTS OF WAY

The existing public rights of way network will be safeguarded and where appropriate, improved access to the countryside will be sought, with additional public rights of way for walkers, horseriders and cyclists.

## POLICY TLC12 – PROTECTION OF EXISTING COMMUNITY SERVICES AND FACILITIES

Development proposals should not result in the loss of useful local services and facilities unless it can be demonstrated that:

- a) the existing use is not viable; or
- b) adequate and accessible alternative provision remains or will be provided.

**Oxfordshire Minerals and Waste Local Plan (OMWLP) 1996 adopted July 1996**

**Policy W3** Proposals for re-use/recycling will normally be permitted provided that:

- (a) the site is close to the source of the waste and/or the market for the re-used/recycled material;
- (b) the site is well related to appropriate parts of the transport network, and located where the number and length of motorised journeys is likely to be minimised;
- (c) the proposal will not cause unacceptable nuisance in terms of noise, dust, fumes, smell, visual intrusion or traffic;
- (d) the proposal will not pose an unacceptable risk to the water environment
- (e) the proposal does not conflict with Structure and Local Plan policies.

**Policy W4** Proposals for re-use/recycling and ancillary processes will not normally be permitted in the open countryside unless:

- a) there is an established overriding need and there is no other suitable site available and/or,
- b) the development is to form part of a mineral extraction/landfill site and will be removed on completion of extraction/landfill.

**Policy W5** In all cases waste treatment plant, buildings, machinery and stockpiles must be properly screened from the surrounding landscape. Such screening- by landscaping or other means - should be in place before any waste stockpiling or treatment begins.

**Planning Policy Statement 10: Planning for Sustainable Waste Management**

**SUSTAINABLE WASTE MANAGEMENT**

- The overall objective of Government policy on waste, as set out in the strategy for sustainable development, is to protect human health and the environment by producing less waste and by using it as a resource wherever possible. Through more sustainable waste management, moving the management of waste up the 'waste hierarchy' of reduction, reuse, recycling and composting, using waste as a source of energy<sup>5</sup>, and only disposing as a last resort the Government aims to break the link between economic growth and the environmental impact of waste. This means a step-change in the way waste is handled and significant new investment in waste management facilities. The planning system is pivotal to the adequate and timely provision of the new facilities that will be needed.
- Positive planning has an important role in delivering sustainable waste management:
  - Through the development of appropriate strategies for growth, regeneration and the prudent use of resources; and,

- By providing sufficient opportunities for new waste management facilities of the right type, in the right place and at the right time.

## **KEY PLANNING OBJECTIVES**

- Regional planning bodies and all planning authorities should, to the extent appropriate to their responsibilities, prepare and deliver planning strategies that:
  - help deliver sustainable development through driving waste management up the waste hierarchy, addressing waste as a resource and looking to disposal as the last option, but one which must be adequately catered for;
  - provide a framework in which communities take more responsibility for their own waste, and enable sufficient and timely provision of waste management facilities to meet the needs of their communities;
  - help implement the national waste strategy, and supporting targets, are consistent with obligations required under European legislation and support and complement other guidance and legal controls such as those set out in the Waste Management Licensing Regulations 1994;
  - help secure the recovery or disposal of waste without endangering human health and without harming the environment, and enable waste to be disposed of in one of the nearest appropriate installations;
  - reflect the concerns and interests of communities, the needs of waste collection authorities, waste disposal authorities and business, and encourage competitiveness;
  - protect green belts but recognise the particular locational needs of some types of waste management facilities when defining detailed green belt boundaries and, in determining planning applications, that these locational needs, together with the wider environmental and economic benefits of sustainable waste management, are material considerations that should be given significant weight in determining whether proposals should be given planning permission;
  - ensure the design and layout of new development supports sustainable waste management.

## **Planning Policy Statement 22: Renewable Energy**

### **The Government's Objectives**

The Government's energy policy, including its policy on renewable energy, is set out in the Energy White Paper. This aims to put the UK on a path to cut its carbon dioxide emissions by some 60% by 2050, with real progress by 2020, and to maintain reliable and competitive energy supplies.

The development of renewable energy, alongside improvements in energy efficiency and the development of combined heat and power, will make a vital contribution to

these aims. The Government has already set a target to generate 10% of UK electricity from renewable energy sources by 2010. The White Paper set out the Government's aspiration to double that figure to 20% by 2020, and suggests that still more renewable energy will be needed beyond that date. The White Paper sets out policies to stimulate the development of new technologies to provide the basis for continuing growth of renewables in the longer term, to assist the UK renewables industry to become competitive in home and export markets and in doing so, provide employment.

Increased development of renewable energy resources is vital to facilitating the delivery of the Government's commitments on both climate change and renewable energy. Positive planning which facilitates renewable energy developments can contribute to all four elements of the Government's sustainable development strategy:

- social progress which recognises the needs of everyone – by contributing to the nation's energy needs, ensuring all homes are adequately and affordably heated; and providing new sources of energy in remote areas;
- effective protection of the environment – by reductions in emissions of greenhouse gases and thereby reducing the potential for the environment to be affected by climate change;
- prudent use of natural resources – by reducing the nation's reliance on ever diminishing supplies of fossil fuels; and,
- maintenance of high and stable levels of economic growth and employment-through the creation of jobs directly related to renewable energy developments, but also in the development of new technologies. In rural areas, renewable energy projects have the potential to play an increasingly important role in the diversification of rural economies.

## **The Waste Strategy for England 2007**

### **Objectives and targets**

1. The Government's key objectives are to:
  - decouple waste growth (in all sectors) from economic growth and put more emphasis on waste prevention and re-use;
  - meet and exceed the Landfill Directive diversion targets for biodegradable municipal waste in 2010, 2013 and 2020;
  - increase diversion from landfill of non-municipal waste and secure better integration of treatment for municipal and non-municipal waste;
  - secure the investment in infrastructure needed to divert waste from landfill and for the management of hazardous waste; and
  - get the most environmental benefit from that investment, through increased recycling of resources and recovery of energy from residual waste using a mix of technologies.

2. The overall impact of this strategy is expected to be an annual net reduction in global greenhouse gas emissions from waste management of at least 9.3 million tonnes of carbon dioxide equivalent per year compared to 2006 (equivalent to annual use of around 3 million cars). The additional greenhouse gas emissions reductions result from an increase in diversion of waste from landfill of around 25 million tonnes of waste per annum. These benefits will be further boosted by significant extra greenhouse gas benefits from the waste prevention measures in the strategy.
3. A greater focus on waste prevention will be recognised through a new target to reduce the amount of household waste not re-used, recycled or composted from over 22.2 million tonnes in 2000 by 29% to 15.8 million tonnes in 2010 with an aspiration to reduce it to 12.2 million tonnes in 2020 – a reduction of 45%. This is equivalent to a fall of 50% per person (from 450 kg per person in 2000 to 225 kg in 2020).
4. Higher national targets than in 2000 have been set for:
  - recycling and composting of household waste – at least 40% by 2010, 45% by 2015 and 50% by 2020; and
  - recovery of municipal waste – 53% by 2010, 67% by 2015 and 75% by 2020.
5. Because lower levels of waste growth are expected than when the consultation document was published, meeting these targets implies lower levels of residual waste than were previously assumed. The Government will review the targets for 2015 and 2020 in the light of progress to 2010 and future forecasts, to see if they can be even more ambitious.
6. The Government will shortly be setting a new national target for the reduction of commercial and industrial waste going to landfill. On the basis of the policies set out in *Waste Strategy for England 2007*, levels of commercial and industrial waste landfilled are expected to fall by 20% by 2010 compared to 2004. The Government is considering, in conjunction with the construction industry, a target to halve the amount of construction, demolition and excavation wastes going to landfill by 2012 as a result of waste reduction, re-use and recycling.

## Chapter 5 (Paragraph 24 and 25)

### Paragraph 24:

The various energy from waste technologies, their different feedstocks, carbon emissions performance, and outputs are described in the 'summary guidance on energy from waste technology' (Annex E) which is intended to act as a guide to local authorities and others who are considering procurement. The Government wishes to encourage local authorities and businesses to consider using anaerobic digestion. Such use would complement current work on measures to promote anaerobic digestion in farming, where it has benefits for manure and slurry management. And in suitable circumstances, spare capacity may be available in on-farm anaerobic digestion plant to manage biowaste from the locality, as is common practice in Denmark. Our recent research has suggested that anaerobic digestion has significant environmental benefits over other options for food waste (and may be

particularly cost effective for food waste if separately collected). Although anaerobic digestion is currently a commonly used technology in some other European countries this is not the case in England.

Paragraph 25:

The electricity derived from the energy recovered in anaerobic digestion is eligible for Renewable Obligations Certificates. The WIP New Technologies Programme is also funding demonstration project(s). Plants have been situated successfully in light industrial estates within towns, and there is scope for using food wastes derived from both household and business sources. Defra has established an Anaerobic Digestion Policy Network to take forward work on anaerobic digestion and maximise the synergies between the different markets for it.

## **Oxfordshire Joint Municipal Waste Strategy**

### **Policy 6:**

The Oxfordshire Waste Partnership will provide an integrated system of collection and processing of household waste which will achieve, as a minimum:

By 31st March 2010: recycle or compost at least 40% of household waste;

By 31st March 2015: recycle or compost at least 45% of household waste;

By 31st March 2020: recycle or compost at least 55% of household waste.

Other Material Considerations

The Institute of Lighting Engineers Guidance Notes for the Reduction of Obtrusive Light (1995)

South Oxfordshire Core Strategy Preferred Options Consultation (March 2009)

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Division(s):

## PLANNING & REGULATION COMMITTEE – 13 SEPTEMBER 2010

### **COMMONS ACT 2006: IN THE MATTER OF AN APPLICATION TO REGISTER THE WITNEY MEADOWS COUNTRY PARK, FARM MILL LANE, WITNEY AS A TOWN OR VILLAGE GREEN**

**Report by the County Solicitor & Head of Legal & Democratic Services**

#### **Introduction**

1. On 5 February 2009, Mr Owen Edwards of Eton Close, Witney applied to the County Council as Registration Authority under Section 15 of the Commons Act 2006 to register land known as Witney Meadows Country Park, Witney 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.
2. The Planning & Regulation Committee have delegated powers to determine such applications, provided they are ‘duly made’.
3. The application was considered objectively by a senior barrister experienced in the relevant law, Mr Vivian Chapman QC, who gave an Opinion as to whether the application was ‘duly made’. In light of his advice the application was accepted as ‘duly made’ and was subsequently publicised in accordance with the statutory requirements.
4. No objection was received during the statutory 6-week objection period and a Report was therefore prepared for the meeting of the Planning & Regulation Committee on 14 September 2009. Shortly before that meeting however, an objection was received from the Highways section of the County Council (the “Lead Objector”) which the Registration Authority was required to consider pursuant to Regulation 6(2)(a) of the [Commons \(Registration of Town or Village Greens\) \(Interim Arrangements\) \(England\) Regulations 2007](#). The Committee therefore resolved to defer consideration of the application in order that proper consideration could be given to the matters raised by the objection.
5. There then followed a period of further submissions by both of the parties on various issues of law and fact and two further Opinions were obtained from Mr Chapman QC. Ultimately it was not possible to decide the matter on the papers and so an independent public inquiry was held. Mr Charles Mynors (“the Inspector”), a barrister experienced in the area of law was appointed to chair the Inquiry.

6. A Pre-Inquiry Meeting was held on 21 June 2010 at the Methodist Church, Witney and the Inquiry sat on 24, 25, 28, 29, 30 June and 1 July 2010 also at the Methodist Church.
7. A copy of the Inspector's Report is appended at Annex 4. The main points to note are summarised below.

### **The Application Site: Land at the Witney Meadows Country Park, Witney**

8. The application form describes the Application Land as Witney Meadows County Park, off Farm Mill Lane, Witney in Oxfordshire. The Application Land is shown edged red on 'Application Map A' included as part of Annex 1. A larger-scale plan showing the Application Land and the surrounding area is attached as Annex 2.
9. The Application Land extends from just south of Farm Mill to the north and bounds the A40 to the south. Its eastern and western boundaries are the banks of branches of the River Windrush. Public footpath Witney FP15 crosses the site from north to south. The site of a former railway (now dismantled) crossed the southern part of the Application Land.
10. The Application Land is crossed by overhead and underground power cables owned by Scottish and Southern Energy in the positions shown on the plan attached in Annex 3.
11. The whole of the Application Land is registered at HM Land Registry under title number ON123730. The registered proprietor is the Witney Town Council.
12. The locality or neighbourhood relevant to the application is described as the Council wards of Witney North, South, East, West and Central. The application form does not include a plan of the locality or neighbourhood.

### **The Town Green Application**

13. The application form was duly signed by Mr Edwards and supported by the prescribed Statutory Declaration. The Applicant submitted several additional pieces of information in support of his application, including a supporting statement and a list of responses obtained through the Witney First website. Mr Edwards subsequently served on the Council additional information, including thirteen evidence questionnaires in the format recommended by the Campaign to Protect Rural England.

### **The Determination of the Application**

14. Having been received by the County Council 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 Witney Town Council as landowner.

15. The statutory objection period expired on 10 July 2009. Objections were received from the Lead Objector dated 10 September 2009 and 12 November 2009. A letter dated 5 November 2009 was also received from the Witney Town Council as landowner confirming that it also objected to the application.
16. The principal grounds for objection were as follows:
  - (a) The specified area from which the users of the land came, being the electoral wards in Witney Town, was neither a 'locality' or a 'neighbourhood' as required by the Commons Act 2006. Furthermore, many users of the Application Land come from outside this area.
  - (b) The Application Land has been used by the public with the permission (express or implied) of the landowner and has therefore been used 'by right' and not 'as of right'. A significant part of the land was also let for grazing purposes and this indicated that part or all was not used by the public during the 20-year period.
17. The second Objection dated 12 November 2009 also made reference to the closure of the land for some 49 days in early 2001 in consequence of the outbreak of foot and mouth disease.
18. The Applicant subsequently submitted written responses to the Objections dated 22 October 2009 and 14 January 2010. In the latter response, the Applicant addressed the 2001 foot and mouth closure and contended that the period of closure should be disregarded pursuant to section 15(6) of the Commons Act 2006. Reference was made to the DEFRA Guidance "Section 15 of the Commons Act 2006: Guidance Notes for the Completion of an Application for Registration of a Town or Village Green" (2007) in which a foot and mouth outbreak is given as an example of a closure which should be disregarded. If the closure is not disregarded, the period of closure would be a significant interruption meaning that the Applicant could not show use for a full period of 20 years.
19. The County Solicitor consequently obtained Opinions of leading Counsel on these issues. Ultimately it was considered that the issues could not be resolved simply in writing and that a public Inquiry would need to be held. An Inquiry was also considered to be desirable in view of the fact that the County Council was involved in this matter both as Commons Registration Authority and Highways Authority and therefore a potential conflict of interest arose in this case.
20. It is important to note at this stage that the Council as Commons Registration Authority is essentially neutral in this matter. It is simply concerned to assess the application and register the Application Land if it qualifies properly for registration. As such this role is entirely separate from the interest of the Lead Objector in relation to the application. The legal work in relation to these

issues has been dealt with by different legal officers in Legal Services and management procedures have been put in place to ensure that no actual conflict of interest situation arises.

### **The Public Inquiry**

21. A public Inquiry chaired by an independent barrister was therefore held on 24, 25, 28, 29, 30 June and 1 July 2010 at the Methodist Church in Witney.
22. The Applicant and the Lead Objector were both represented by Counsel. Representatives of the Town Council attended the Inquiry and supported the Lead Objector's case although were not separately represented. Both parties called witnesses to give evidence in person and further written evidence was also given to the Inquiry.
23. During the course of the Inquiry, the Inspector raised an additional query regarding the area from which users of the Application Land come. He pointed out to the parties that the boundaries of several wards in Witney changed in 2001 by the addition of certain areas and therefore the claimed 'neighbourhood or locality' was not the same throughout the 20-year period. Both parties made submissions on this point.
24. The Inspector subsequently submitted his Report and recommendation to the County Solicitor on 1 September 2010 a copy of which is attached at Annex 4.

### **The Inspector's Recommendations**

25. The Inspector's findings are summarised at the beginning of his Report and are briefly as follows:
  - (a) The Application Land as a whole has been used since it was acquired by the Witney Town Council in 1998 for public recreation and this use constitutes 'lawful sports and pastimes';
  - (b) The users of the Application Land come from more than one neighbourhood (namely, the various neighbourhoods in the town of Witney) all of which are in the locality of the district of West Oxfordshire. This recommendation follows the recent judgment of the High Court in Leeds Group plc v Leeds City Council [2010] EWHC 810 that 'neighbourhood' could mean more than one neighbourhood. Where the evidence showed that the users came from more than one neighbourhood, the registration could proceed on the basis of multiple neighbourhoods rather than one composite neighbourhood;
  - (c) The closure in 2001 due to the foot and mouth outbreak should be disregarded in calculating the relevant 20-year period, since the closure was 'by reason of an enactment' as required by section 15(6) of the 2006 Act;

- (d) The Witney Town Council acquired the land for the purposes of public recreation (although the land was not expressly acquired pursuant to section 9 of the Open Spaces Act 1906 or section 164 of the Public Health Act 1875) and thereafter maintained it for that purpose. There were instances of overt conduct of the Town Council which made it clear that the Town Council was granting permission for the use rather than merely acquiescing in it;
26. In view of these conclusions and the more detailed discussions of the law and evidence in his Report, the Inspector recommends that the application be rejected.
27. The County Solicitor supports these conclusions.

### **Representations by Scottish and Southern Energy plc**

28. As set out in Annex 4, SSE plc have power cables running under and over the Application Land. They are therefore concerned to ensure that their ability to access these cables and carry out works is not compromised. SSE plc has pre-existing rights under deeds with the Town Council dated 16 May 1989, 22 January 1998 and 10 November 2000. In view of the Inspector's recommendation above, these rights will not be affected by any registration of the Application Land.

### **Relevance Of Past Planning Determinations**

29. It is important to stress that, in considering the application to register the Application Land as a town or village green, the Committee is exercising its delegated regulatory functions as commons registration authority for town and village greens. Those functions derive from entirely different legislation to that relating to its functions as local planning authority (LPA), and entirely different considerations apply.
30. In considering planning applications, the LPA is looking forward in time to contemplate the consequences of land use changes.
31. In considering whether the Register of Town and Village Greens should be amended in consequence of the application, the Committee has to look back in time to see whether there is evidence that town or village green rights have accrued.
32. It follows that matters relating to the future uses of the Application Land, and the existence of any planning permissions in respect of it, are not relevant to the consideration of this application by the Committee acting in its capacity as commons registration authority. Such matters should not be taken into account by the Committee and should not influence the determination of the outcome.

## RECOMMENDATION

33. **Having received the Opinion of the Inspector set out in Annex 4 to this report, the Committee is RECOMMENDED to REJECT the application for registration as a new Town or Village Green that plot of land known as Witney Meadows Country Park, Farm Mill Lane, Witney in Oxfordshire that site being indicated clearly on “Application Map A” of the application submitted by Mr Owen Edwards and dated 5 February 2009.**

PETER CLARK  
County Solicitor & Head of Legal Services

Background papers:            Appendices to Form 44  
   Additional Evidence Questionnaires  
   Objections by Highways Authority dated 10 September  
   2009 and 12 November 2009  
   Closing Submissions on Behalf of the Applicant dated 14  
   July 2010  
   Closing Submissions on behalf of the Lead Objector  
   dated 28 July 2010  
   Inquiry Bundles  
   Statutory Declaration of Mr David Condon dated 26 July  
   2010  
   Opinions of Mr Vivian Chapman QC dated 25 April 2009,  
   21 January 2010 and 19 March 2010  
   In Members' Resource room from 6 September 2010 until  
   the conclusion of the meeting.

Contact Officer:            Richard Goodlad, Solicitor (Tel: 01865 323917)

September 2010

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

5 - FEB 2009

Application number:

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.

### 1. Registration Authority

To the

**Note 1**

Insert name of registration authority.

**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:

Full postal address:

Telephone number:  Mob:   
 (incl. national dialling code)

Fax number:   
 (incl. national dialling code)

E-mail address:

**3. Name and address of solicitor, if any**

**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.

Name:

Firm:

Full postal address:

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.

**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.

\* 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.

**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.

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

**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.

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

Name by which usually known:

Witney Meadows Country Park

Location:

Off Farm Mill Lane, Witney, Oxfordshire  
(See area outlined in red on application map).  
Exhibit marked "Application Map A"

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

Common land register unit number (if relevant) \*

**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:

Council Wards of  
Witney - North, South, East, West and  
Central

Tick here if map attached:

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

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.

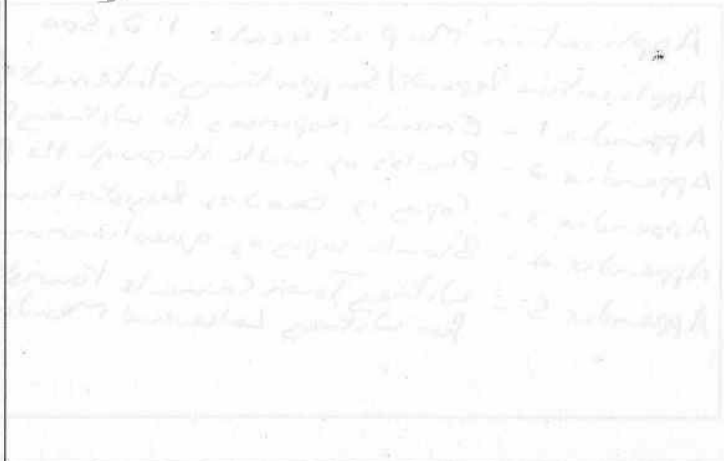
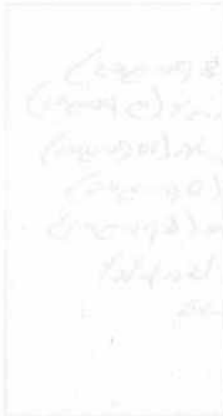
This information is not needed if a landowner is applying to register the land as a green under section 15(8).

The area that is subject to this application is the Witney Meadows Country Park (area outlined in red on the application map).

This area has been used for recreation by residents of and visitors to Witney for many years.

The site is currently owned by Witney Town Council who actively encourage recreational use. The Town Council have owned the site and encouraged such activity since September 1988.

The supporting evidence submitted with this application clearly indicates use of the land "as of right" by a "significant number of inhabitants."



**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**

Witney Town Council  
 Town Hall, Market Square, Witney, OX28 6AG  
 Dismantled Railway Land  
 Believed to be owned by railway authorities.

**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).

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

*[Faint, illegible handwritten text]*

**Note 10**

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

Please use a separate sheet if necessary.

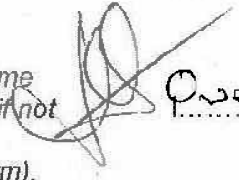
**10. Supporting documentation**

Application Map at scale 1:2,500  
 Application Report/Supporting statement (8 pages)  
 Appendix 1 - Email responses to Witney First (9 pages)  
 Appendix 2 - Photos of walk through the Park (10 pages)  
 Appendix 3 - Copy of Deed of Registration (2 pages)  
 Appendix 4 - Blank copy of questionnaire (6 pages)  
 Appendix 5 - Witney Town Councils Tourist leaflet for Witney Lake and Meadows

### 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.

<sup>1</sup> Insert full name (and address if not given in the application form).



Owen Edwards,<sup>1</sup> solemnly and sincerely declare as follows:—

<sup>2</sup> Delete and adapt as necessary.



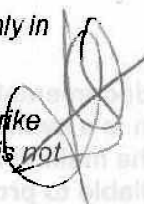
1.<sup>2</sup> I am ((the person (one of the persons) who (has) (have) signed the foregoing application)) ((the solicitor to (the applicant) (<sup>2</sup> one of the applicants)).

<sup>3</sup> Insert name if Applicable

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.

<sup>4</sup> Complete only in the case of voluntary registration (strike through if this is not relevant)



4.<sup>4</sup> 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/

**11. Any other information relating to the application**

**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.*

**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:

5<sup>th</sup> February 2009

Signatures:

Owen Edwards

**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.*

<sup>4</sup> 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 *Owen Edwards*  
at *2 Heynes Place*  
*Witley Oxfordshire*  
this *5th* day of *February*  
*2009*

*Owen Edwards*

Signature of Declarant

Before me \*

Signature:

Address:

*2 Heynes Place*  
*Witley Oxfordshire*

Qualification:

*Solicitor*

\* 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*

been reviewed and approved with the declaration in  
in which no such consent is 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 1935

*[Signature]*

Signature of Declarant

Declared by the said *[Name]*

*[Signature]*

at *[Address]*

*[Signature]*

this *[Day]* day of *[Month]*

*[Year]*

Before me

*[Signature]*

Signature

Address

*[Signature]*

Qualification

*[Signature]*

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

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

REMINDER TO OFFICER TAKING DECLARATION:

Please print all alterations and mark any ink as an exhibit.

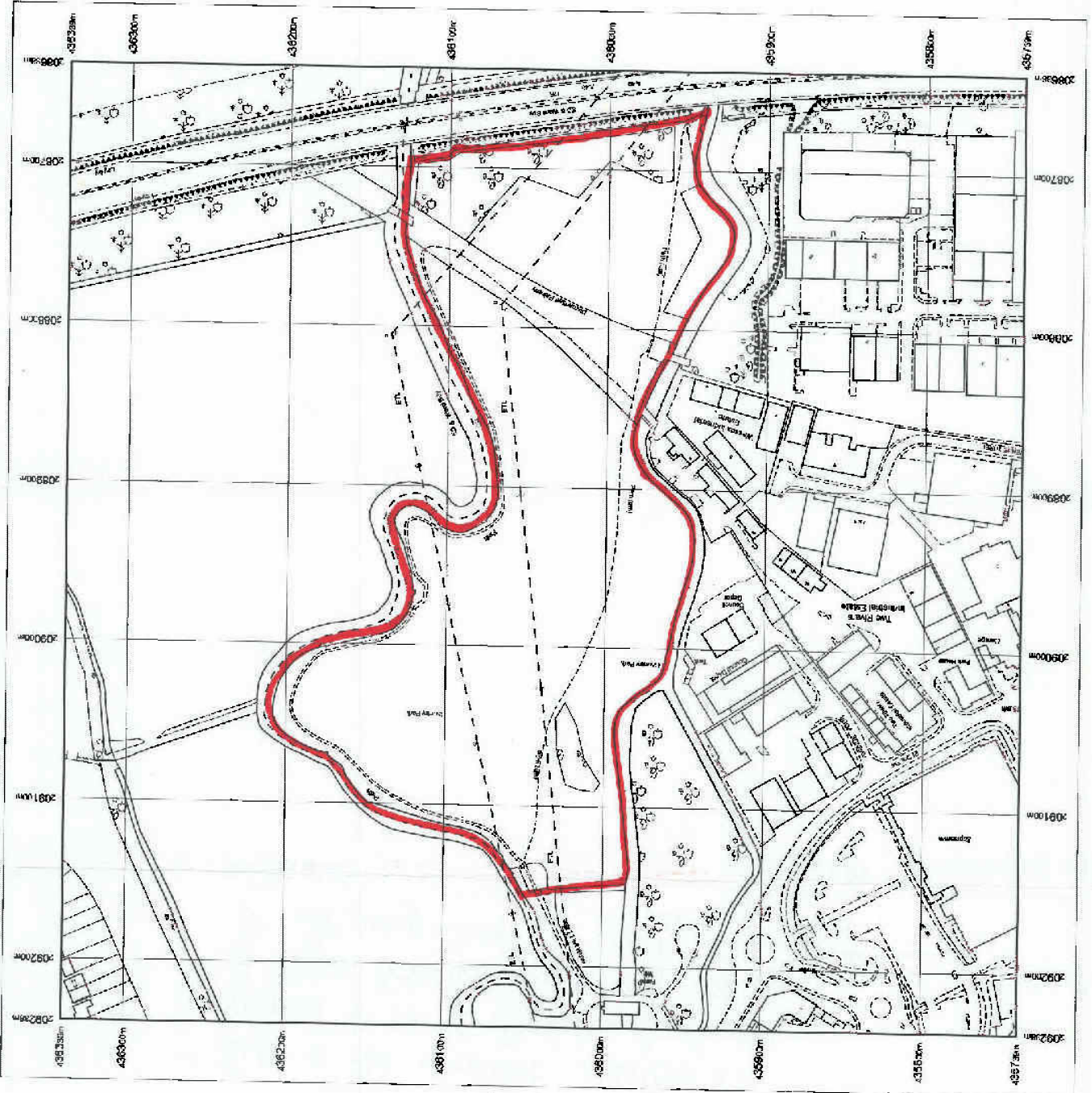
PN13

Further information can be found on the OS Sitemap information leaflet or the Ordnance Survey web site  
www.ordnancesurvey.co.uk  
Settlement number: 00713300  
Centre coordinates: 436089 209926



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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.

*Boundary of Town Green*



*Application Map A*



OS Sitemap®

This is the exhibit marked A  
referred to in the Statutory Declaration  
of Owen Edwards made this 5th day  
of February 2009

Alan Smith  
Solicitor.



## **Application Report to the Commons Registration Authority for Oxfordshire Witney Meadows Country Park Village/Town Green Application**

Brief Statement of Case and outline of the proposal:

**That the whole of the application site shown outlined in red on the application site map at a scale 1:2,500, is registered as a village/town green by the commons registration authority to reflect its long and continued use for recreation by the people of Witney.**

**This application is supported by a significant number of people living in Witney who have legally used the site for recreation for more than 20 years (up to 70 years). Evidence of this support is provided in Appendix 1.**

**It is the only safe public access route through the countryside from Witney Town centre to Witney Lakes (other routes are beside busy main roads and through Industrial Estates).**

**The site is in public ownership and signs clearly state that access is legally permitted to the site. The site is intensively used by the people of Witney throughout the year, and this use is encouraged by the owners and local authorities and has been for over 20 years.**

**It is therefore clear that the site should be registered as a Village Green by the commons registration authority.**



**Application Report to the Commons Registration Authority for Oxfordshire  
Witney Meadows Country Park Village/Town Green Application**

**Fuller Statement of Facts to support the application.**

Background:

1. The application site is shown outlined in red on the application map at a scale of 1:2,500. This is all in the ownership of Witney Town Council purchased for and known as "Witney Meadows Country Park".
2. Section 15 of the Commons Act 2006 deals with the registration of greens. This states that:
  1. "Any person may apply to the commons registration authority to register the land to which the Part ie. part 1 of the Commons Act 2006, registration applies as a town or village green in a case where subsection (2) applies.
  2. This subsection applies where –
    1. 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
    2. they continue to do so at the time of application".

Ownership of the site and legal access "as of right".

2. Witney Town Council purchased the plot of land between the two rivers from Farm Mill down to the A40 on 30<sup>th</sup> September 1988 from a Mr Sharp of Witney. The Town Council minutes of its meeting dated 15 June 1988 minute numbered F242/88 refer to the proposed uses of the land:
 

*"... and to the use for sporting, recreational or Allotment purposes, or as a Nature Reserve or for touring caravans or for any ancillary use thereto be adhered to and the Council's Solicitors be instructed accordingly" (12 September 1988 A343 22/08/88 transaction completed 30/09/88).*
3. Proof of the Town Council ownership is included in Appendix 3. This an extract from the 1988 Deed of Transfer to Witney Town Council – copy kindly provided by the Town Council, it shows the transfer and a copy of the map showing the extent of ownership north of the A40.
4. It has been rented out in part for grazing cattle, but has nonetheless been open to the public for recreation ever since. This area was later extended by the addition of Witney Lakes and forms part of the Lower Windrush Valley recreation area.
5. Across the centre of the site is the route the disused Great Western Railway line. This also has established use as a footpath.
6. The application site is crossed by one footpath shown on the ordnance survey maps for over 120 years (these have not been reproduced in this report for copyright reasons, but can be viewed on-line at [www.old-maps.co.uk](http://www.old-maps.co.uk) ). The site plan taken from the Witney Town Council entrance board for the park clearly shows this route. In addition, there are several established footpaths crossing the site, also shown on the entrance board. These have also been consistently used for public access for a lot more than the required 20 years, as attested by the signatories included in Appendix 1.

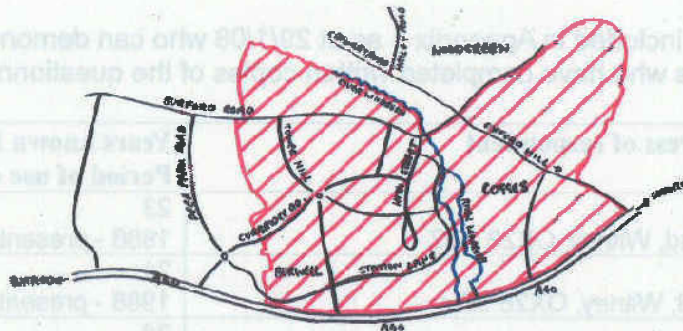
### Application Report to the Commons Registration Authority for Oxfordshire Witney Meadows Country Park Village/Town Green Application

7. Before Witney Town Council purchased the land to protect it for use as a Country Park, the people of Witney accessed the land beyond the public footpaths under the ancient law of custom, and a pattern of use created the presumption that the local inhabitants had established recreational rights over the land.
8. There are no encumbrances to the public entering the site, and gates are not locked, signs and public leaflets for the park produced by the local authorities encourage its year round use. The owner's (Witney Town Council) website encourages access to the whole of the Lower Windrush valley from Farm Mill lane across the application site:

**"Getting There** Easily accessible on foot from the town centre from Farm Mill Lane ... the park has surfaced paths encouraging access for all."

#### Locality of people supporting

9. In line with the regulations, evidence gathered of support for the application and statements made comes from people living within neighbourhood of the adjacent Witney Central, East and South Town Council wards (see the approximate map below).



10. This is supplemented by evidence from people living within Witney West and North Town Council wards as they are also within easy walking distance of the Country Park as it is close to the Town Centre (see Appendix 1).
11. The Country Park is used by people coming from across the whole of Witney and surrounding areas as well as people employed within the Town centre who use it for breaks during their working day.

**Application Report to the Commons Registration Authority for Oxfordshire  
Witney Meadows Country Park Village/Town Green Application**

Evidence of Use for over 20 years

12. Set out in Appendix 1 to this application are extensive details proving that a significant number of people from the neighbourhood, as defined above, use the Country Park and have done so for over 20 years.
13. The Country Park has been used for general recreation by the public, primarily this has been for Countryside walks, dog walking, jogging, sunbathing, fishing (licences being issued by the Witney Angling Club), access to swimming in the adjacent river, picnics and nature watching / studies (there is a small nature reserve). The entrance boards, benches and leaflets provided by the owners and local authorities encourage these uses. The site is a resource for local educational visits to spot wildlife and is part managed by volunteers.
14. As the statements and documentary evidence included in Appendix 1 prove, many of these activities had already been a customary use of Witney residents for many years before Witney Town Council purchased the site to ensure they could continue.
15. Evidence of use for over 20 years received via hard copy is summarised below, but we are continuing to add to this evidence base and have asked the Registration Authority when these need to be submitted for consideration.

List of Signatories to be included in Appendix 1 as at 29/1/08 who can demonstrate use of the site for over 20 years who have completed written copies of the questionnaire:

	<b>Name and address of respondent</b>	<b>Years known land/ Period of use of land</b>
1	David Condon 135 Vanner Road, Witney, OX28 3QZ	23 1986 - present
2	Philip Jones 45 Mirfield Road, Witney, OX28 5BH	21 1988 - present
3	Fiona Basson 35 Burwell Meadow, Witney, OX28 5JG	28 1980 - present
4	Richard Dosssett-Davies 65 West End, Witney OX28 1NJ	45 1965 - present
5	John Dosssett-Davies Eastways, 2 The Leys, Witney, OX28 4DH	70 1937 - present
6	Anne Dosssett-Davies Eastways, 2 The Leys, Witney OX28 4DH	24 1985 - present
7	John Matthews 27 Oxlease, Witney, OX28 2QZ	36 1983 - present
8	Christopher Purple 27 Oxlease, Witney, OX28 2QZ	23 1986 - present

16. Additional documentary evidence of the uses and their longevity is available, these are outlined in the sections below. Again, we are continuing to add to this evidence base.
17. **Together these present a clear justification for approving the application for designation of Witney Meadows Country Park as a Town Green.**
18. Considerable documentary evidence exists of the long term public use of the site. We have included a couple of references below.

## Application Report to the Commons Registration Authority for Oxfordshire Witney Meadows Country Park Village/Town Green Application

*Extract from: 'Death in the hayfield' taken from 'Historic Witney', Witney & District Historical & Archaeological Society page 62 – published by Mill House Publications, Mill House, 59 Weavers Close, Witney, OX28 4TE – ISBN 0-952-44052-0 (copied below)*

This extract demonstrates that the Farm Mill meadow in 1873 was “a popular spot on summer evenings, when bathers would swim in the river...” this practice still continues.

### DEATH IN THE HAYFIELD

A dreadful accident occurred on Tuesday evening in a field adjacent to the Witney Railway, when Mr Marriott and his men were busy carrying hay. One of the men, named Crumplin, of New Yatt, was attending a horse when the 7.20 up train passed, and the horse dashed away, throwing the unfortunate man down. The cart passed over him, crushing his chest and killing him on the spot. Mr Batt was sent for, but he was extinct before he arrived... the horse continued its wild career across the field, and before it was stopped it smashed the gate of the railway crossing.

**T**HE tragic accident outlined above was recorded in *The Oxfordshire Weekly News* on Wednesday 22nd August 1888, the accident having taken place on the previous day. Such incidents serve as reminders of how dangerous horse transport actually was, and indeed Victorian newspapers were full of horse-related accidents caused by frightened, ill-treated or just high-spirited animals. The 'Mr Batt' mentioned was Doctor Augustine Batt, a well-known local doctor who resided in a large Georgian house on The Hill, and gave his name to the Batt School.

The field in which the incident took place was probably

the meadow between Farm Mill and the railway. The crossing mentioned in the report was not a public level crossing but a farm crossing which was situated between the two Windrush bridges on the original Witney Railway main line. In 1873, this part of the line was relegated to goods-only status – passenger traffic being diverted onto the East Gloucestershire Railway, which diverged from the Witney Railway at a point known as 'Witney Goods Junction', some 24 chains to the east of Witney New Station.

The aforementioned field was a popular spot on summer evenings, when bathers would swim in the river while trains occasionally clattered past on the nearby railway line. From the crossing, one could look west towards Witney passenger station or east towards the so-called 'Ballast Hole' bridge. Trains could be seen coming from a considerable distance – first a speck on the distant horizon with a waisp of white steam above, and then a rapidly approaching object with whirling cranks and a staccato bark. Finally, having reached Witney Goods junction, the engine driver would cut off steam, allowing his train to coast around the curve into Witney station, where the locomotive could be watered before resuming its rural journey to Fairford.

**Application Report to the Commons Registration Authority for Oxfordshire  
Witney Meadows Country Park Village/Town Green Application**

*Extract from: Wesleyan & St Marys Church of England School on top of page 145 taken from 'Witney in Old Photographs Collected by Tom Worley', published by Alan Sutton Publishing, Brunswick Road, Gloucester – ISBN 0-86299-439-X (copied below)*

This extract demonstrate that as far back as 1905 “every year in the summer, the Wesleyan School and St Mary's Church of England School would hold their treat in a field in Farm Mill Lane. The children would parade through the town to the field for sports followed by tea, cakes and sweets”.

The fields continue to be a valuable recreational and educational resource for the local schools, as outlined below.



Every year in the summer the Wesleyan School and St Marys Church of England School would hold their treat in a field in Farm Mill Lane. The children would parade through the town to the field for sports, followed by tea, cakes and sweets. This parade is in High Street, 1905.

**Application Report to the Commons Registration Authority for Oxfordshire  
Witney Meadows Country Park Village/Town Green Application**

The Country Park in the Lower Windrush Valley.

19. The County Council's Countryside Service has confirmed that the application site owned by Witney Town Council is the only Country Park in the Lower Windrush Valley. The County Council is seeking to promote public footpath access through this area to the rest of the Lower Windrush Valley. The site is crossed by one public footpath shown on the ordnance survey maps, and is bisected by a number of established public footpaths based on many years of use. The Witney Town Council map below shows the main two routes forming a circular path around the site. In addition there are significant established direct north-south, east-west routes and a route along the disused railway line. These are shown on the "walk through" photos in Appendix 2 where the intensity of their use is clear from the wear on the ground.
20. These routes provide a comprehensive recreation resource for the park, and the only direct safe route from the Town Centre to the Witney Lakes park to the south (and then onto the national footpaths network). Other routes are beside busy roads and through Industrial Estates.



*Map of site from the Witney Town Council entrance map showing the circular path*

*Key for entrance sign showing public footpath, riverside path and picnic sites etc.*

21. Witney Meadows Country Park is signed from across Witney using the standard national brown Tourism signs (see Appendix 2). There are strict regulations applying to the use of these signs erected by the Highways Authority (the County Council). As can be seen from the extracts below, these confirm that the County Council has accepted that the Country Park is open without prior booking, has adequate parking and attract a "minimum of 5,000 visitors per year".

Extract from the County Council's Tourism Signage Policy (April 2007):

*An eligible tourism destination is defined as:*

*'A permanently established attraction or facility which attracts or is used by visitors to an area and is open to the public without prior booking during its normal opening hours.'*

*All establishments must: ...*

- e) attract a minimum of 5,000 visitors per year.*
- f) be open at least 2½ hours a day for 150 days a year.*

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22. Extract from a New Look at Old Paths Countryside Access in the Lower Windrush. Lower Windrush Valley Project (August 2007), Oxfordshire County Council:
6. *Witney Town Council provides the only Country Park in the Lower Windrush Valley. Witney Lake and Meadows is a small urban fringe site covering 30ha, which the town council purchased in 1988. From 1993 until 2005 a Park Ranger was employed to manage the country park and a volunteer group was established to assist with much of the maintenance and habitat creation works. In 2005, the park ranger post was lost due to financial constraints and responsibility for the Country Park now falls to the Town Council's Amenity Manager who has a much wider remit than just this site.*
23. The photographic walk through the Park – see Appendix 2, shows the wide range of facilities that have been provided to encourage its use. These include:
- many footpath stiles at the western edge of the site and to access areas to the south
  - footpath stiles into fenced areas at the centre and south of the site
  - pedestrian gates and underpasses at the north and south of the site
  - safety fencing along the eastern footpath edge
  - several benches for sitting
  - maps and direction signs
  - leaflets encouraging public use.

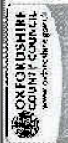
Opportunities for observing wildlife / taking part in nature conservation

24. There is a rich diversity of insects, mammals, fish and plants across the application site, including bats, voles, freshwater crayfish, badgers, otters, kingfishers, beetles and lizards, some of which are 'Red-book' listed. There are also some rare grassland varieties.
25. This diversity is valued by many who visit the site to watch the wildlife and take part in its conservation. It therefore presents a valuable accessible educational resource for the schools and people of Witney.

Opportunities for connecting with Witney's History

26. The site has a varied history, and presents an opportunity for Witney schools and residents to learn about the history of the area. The two most obvious historical features of the site are the disused railway line and World War 2 pill box (rare in the area) – see Appendix 2. But the sites history links with the wider Cogges area and Museum project. Connecting the built and natural history of the Cogges Museum into this wider area is seen as essential to the Museums continuing visitor success.

End of Statement.



Date: 19/2/2010

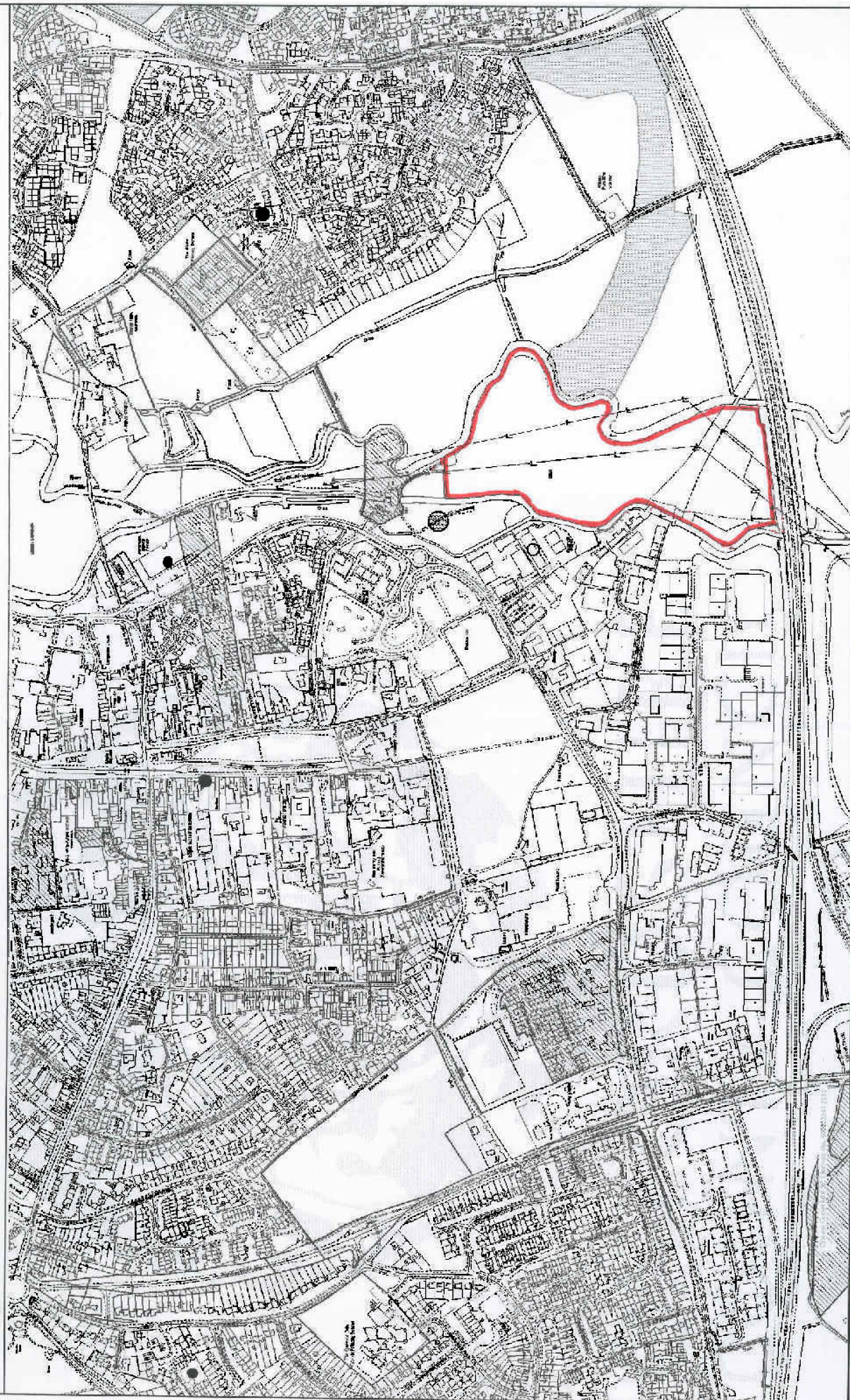
Centre = 436589 E, 209165 N

Scale: 1:5000

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1 Woodstock Road  
Yarnton  
Oxon  
OX5 1BR



Mr R Goodlad  
Legal & Democratic Services  
Oxfordshire County Council  
County Hall  
New Road  
Oxford  
OX1 1ND

Phone: 01865 845925  
Fax: 01865 845951

E-mail: [stephen.bomford@scottish-southern.co.uk](mailto:stephen.bomford@scottish-southern.co.uk)

23 August 2010

Our reference: OX/SPB  
Your reference: RDG/29989

Dear Mr Goodlad

#### **Witney Meadows Country Park - Commons Act 2006**

Thank you for your letter received at this office on Monday 23 August 2010 together with details of the application for Town Green status.

Southern Electric Power Distribution plc, a subsidiary of Scottish and Southern Energy (SSE), provides and maintains electricity distribution to Central Southern England, part of which serves the Witney area. There are significant circuits crossing the land that is show on the plan provided for potential designation as a town green.

#### **1) Circuits Crossing The Proposed Town Green Area**

Please find attached a plan indicating the circuits crossing the area, which have been coloured to ease identification:-

Orange – 11,000 volt (hv) underground cables, which supplies part of Witney town, Ducklington and the High Cogges area.

Blue – 33,000 volt (ehv) dual circuit overhead line, which are the two main feeds taking power from Witney Grid (132,000/33,000 volts), just outside Ducklington, to our Witney Town 33/11kV primary substation serving at least 50% of Witney itself, as well as many of the villages/areas surrounding Witney.

Yellow – 33,000 volt (ehv) dual circuit overhead line, which is an alternative link to Witney Town 33/11kV primary substation, together with an alternative feed eastwards to our Eynsham 33/11kV primary substation.

From this you will see that these circuits provide electricity to Witney and the surrounding area; without them we would not be able to be maintained supplies to tens of thousands of our customers.

**2) Ongoing Maintenance And Repair**

The ehv overhead lines are subject to an ongoing maintenance regime, which involves periodic inspections, replacement of poles, stays and conductors. Emergency repairs may be required at any time if the lines are damaged. .

Access would also be required to the hv underground cables in the event of any faults or damage to repair the cables and restore supplies to our customers.

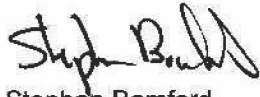
**3) Future Load Growth**

There are no known proposals to up-grade the existing overhead lines or cables at this time, but as load continues to grow in the Witney area, there is always the possibility that we may have to carry out reinforcement works to the various ehv/hv overhead lines and/or underground cables.

**4) Conclusion**

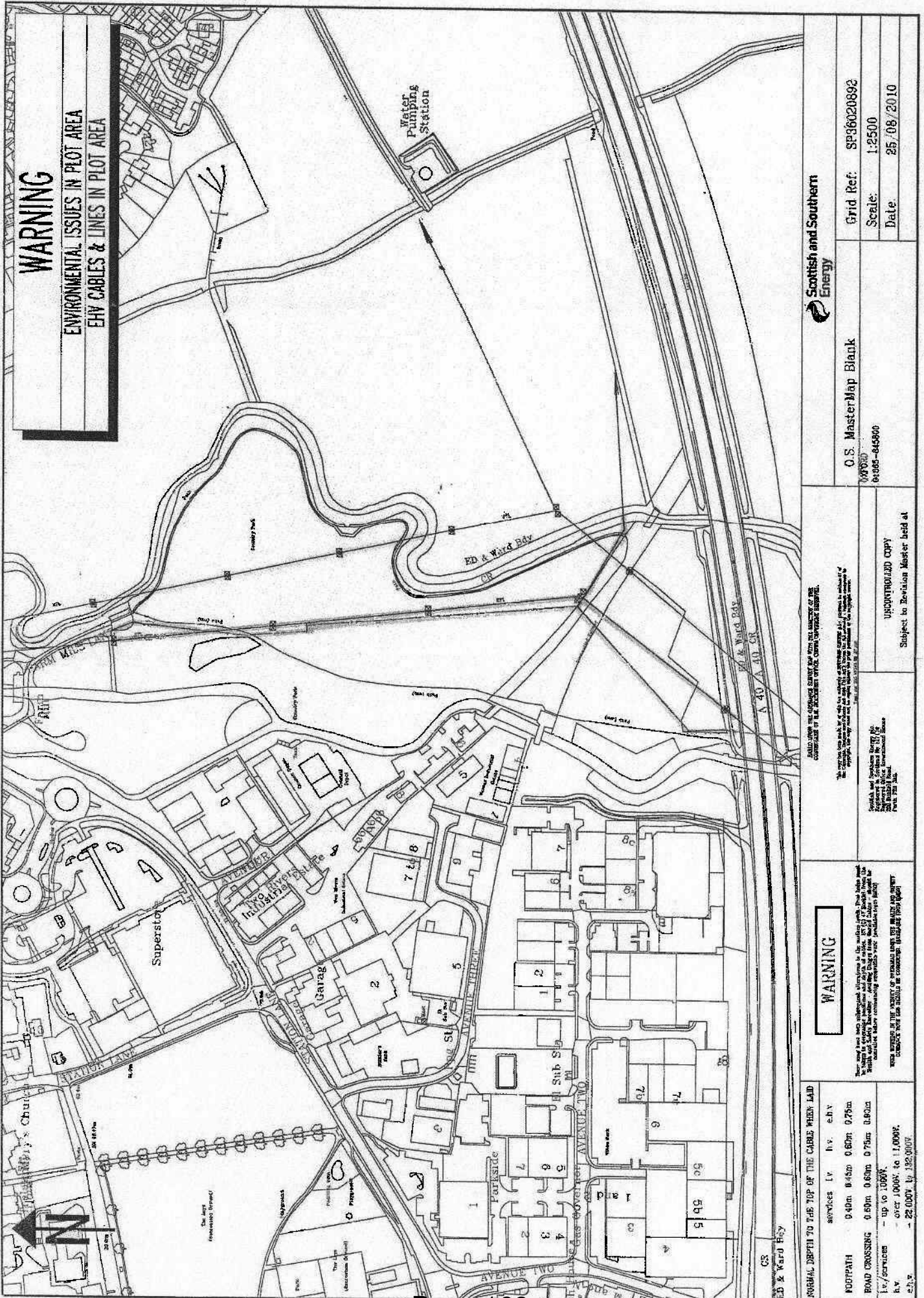
Therefore, I am very concerned that any change of designation for this area would restrict or stop our ability to repair, replace, maintain and supplement the various existing ehv and hv circuits and seriously compromise SSE's statutory obligation to maintain the supplies to our customers in the area.

Yours sincerely



Stephen Bomford  
Wayleave Policy Manager

Cc Sharon Groth - Witney Town Council



**WARNING**

ENVIRONMENTAL ISSUES IN PLOT AREA  
EHV CABLES & LINES IN PLOT AREA

Water pumping Station



Grid Ref: SP66020892  
Scale: 1:2500  
Date: 25/08/2010

O.S. MasterMap Blank  
04965-64690

READ FROM THE APPROVED SURVEY MAP AND THE SURFACE OF THE  
CONDUIT TO BE INSTALLED UNDER THE SURFACE OF THE  
ROAD. THE SURFACE OF THE CONDUIT SHALL BE AT THE SAME LEVEL AS THE  
SURFACE OF THE ROAD.

UNCONTROLLED COPY  
Subject to Revision Master field at

**WARNING**

These drawings have been prepared by the author and are not to be used for any other purpose without the written consent of the author. The author is not responsible for any errors or omissions in the drawings or for any damage or loss of any kind resulting from the use of the drawings. The user of these drawings is advised to check the accuracy of the information contained therein and to consult the relevant authorities before proceeding with any work.

NORMAL DEPTH TO THE TOP OF THE CABLE WHEN LAD	
services lv	h.v. e.h.v
0.40m	0.45m 0.60m 0.75m
0.60m	0.60m 0.75m 0.80m
ROAD CROSSING	
- up to 1.00m	
- over 1.00m, to 1.00m	
- 22.00m to 132.00m	

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In the matter of the Commons Act 2006 and the Local Government Act 1972;  
and in the matter of land at Witney Meadows, Witney, Oxfordshire

**Report to Oxfordshire County Council on  
the determination of Application NLREG21  
to register land at Witney Meadow as a town or village green**

---

**SUMMARY**

I have been appointed by Oxfordshire County Council under section 111 of the Local Government Act 1972 to hold a public local inquiry into an application that has been made to it as registration authority under the Commons Act 2006 for the registration as a town or village green of land at Witney Meadow, Oxfordshire, and to advise the Council as to how to determine it.

My conclusions are as follows:

- (a) that the Application Land as a whole has been used since it was acquired by the Town Council primarily for public recreation, and for grazing – but that the grazing did not interfere with the recreation – and that such use constitutes use for lawful sports and pastimes for the purposes of the 2006 Act;
- (b) that such use of the Application Land has been by a significant number of the inhabitants of more than one neighbourhood – namely, the various neighbourhoods that together make up the built-up area of Witney – and that those neighbourhoods were and are all within a single locality, West Oxfordshire District, whose boundary has not changed since 1974;
- (c) that the Application Land has been used continuously, in more or less the way in which it is now, throughout the period from 19 December 1988 to the date of the application (a period of 20 years and 49 days) – other than when it was closed for a 49-day period from 7 March 2001 to 25 April 2001 – but that that closure was by reason of the Animal Health Act 1981, and the Foot-and-Mouth Disease Order 1983, as amended by the Foot-and-Mouth Disease (Amendment) (England) Order 2001, and thus falls to be disregarded for the purposes of calculating the 20-year period under the 2006 Act;
- (d) that the Town Council acquired the Application Land for the purposes of public recreation, and maintained it for those purposes at all times from then on; and that the overt conduct of both the Council and those members of the public using the Land, including local residents, makes it clear that the Council was positively permitting them

to use it for lawful sports and pastimes, and not merely acquiescing in such use, such that their use of the Land during the relevant 20-year period was by permission, and thus not as of right.

I therefore conclude that the Application Land is not eligible to be registered as a town or village green, and that the application be disposed of accordingly.

## **A. INTRODUCTION**

### **Procedural matters**

#### *The Application*

1. I have been appointed by Oxfordshire County Council in its capacity as registration authority under the Commons Act 2006 (“the Registration Authority”) to hold a public local inquiry under section 111 of the Local Government Act 1972 into an application that has been made to it for the registration as a town or village green of land at Witney, Oxfordshire, and to advise the Council as to how to determine it.
2. The Application was made by Mr Owen Edwards, of 90 Eton Close, Witney, Oxfordshire OX28 3GB (“the Applicant”). It was made on 5 February 2009, and accepted by the registration authority as being complete on the same date. It relates to land described in the application as “Witney Meadows Country Park”, being a substantial area of open land bounded to the east and west by two branches of the Windrush River, and to the south by the A40 Witney By-Pass (“the Application Land”).
3. The Application was made under section 15(2) of the 2006 Act.
4. The Registration Authority was advised by Mr Vivian Chapman, QC on 25 April 2009 that the Application had been duly made, and proceeded to advertise it, and to notify those whom the Authority considered might be expected to object.
5. The County Council in its capacity as highway authority under the Highways Act 1980 (“the Highway Authority”) submitted an objection to the Application, dated 10 September 2009. That objection was sent to the Applicant, who responded by a letter dated 22 October 2009. That in turn prompted a “Further Objection” from the Highway Authority, dated 12 November 2009, and a further letter from the Applicant, dated 14 January 2010.
6. An objection was also made by Witney Town Council, the owner of the Application Land, which in essence relied on the representations that had been made by the Highway Authority.
7. Those objections and responses were the subject of a further Advice from Mr Chapman, dated 21 January 2010. He recommended that further submissions should be invited from the parties relating to closure of the Application Land in 2001 due to an outbreak of foot-and mouth disease. Submissions were made on that and other points by the Highway Authority, dated 23 February 2010.

8. Mr Chapman advised on 19 March 2010 that further exchanges of written representations were delaying rather than accelerating the final disposal of the Application. The Registration Authority accordingly decided to hold an inquiry at which the parties would be able to call evidence and make legal submissions.

*The inquiry*

9. I held a pre-inquiry meeting at the Methodist Church, Witney on Friday 21 June 2010, and a six-day inquiry also at the Methodist Church on Thursday 24, Friday 25, Monday 28, Tuesday 29, Wednesday 30 June and Thursday 1 July 2010.
10. The Applicant was represented at the pre-inquiry meeting by Mr Quayle, of Hodsons (solicitors), and at the inquiry by Mr Jeremy Pike of counsel. Mr Pike called twelve witnesses to give oral evidence at the inquiry as to their use of the Application Land: Mrs Fiona Basson, Mr Kim Bond, Mrs Jane Condon, Mr Mike French, Mrs Claire French, Mr Stephen Harness, Mrs Pamela Hawker, Mr Philip Jones, Mrs Gill Oliver, Mrs Edwina Pateman, Mrs Margaret Thompson, and Mrs Pamela Triggs. Mr James Mawle gave oral evidence as to the use of the neighbouring land and related matters.
11. The Applicant also relied on a further thirteen statutory declarations from others who had used the Application Land, and a statutory declaration from Mr Nigel Boden, a former employee of the Town Council. It is unfortunate that Mr Boden was unable to be present at the inquiry – I had hoped that by extending the inquiry into a second week, he would be able to attend; but that did not prove to be the case.
12. The Highway Authority was represented at the pre-inquiry meeting by Mr George Laurence, QC and Miss Ros Crail of counsel, and at the inquiry by Miss Crail. Miss Crail called at the inquiry four witnesses who had used the Application Land (Mrs Maureen Combs, Mr Nigel Day, Mrs Karen Pitt, and Mr William Stewart), and seven witnesses who had been involved with the Application Land in the course of their employment (Mr David Askew, Mr Julian Hartless, Councillor David Harvey, Mr Michael Harvey, Mr John Hickman, Miss Janine Howells, and Miss Julia Taplin).
13. The Highway Authority also relied on statements from Mr Henry Westbury, a former employee of the Town Council, and from three people who had used the Application Land.
14. By agreement between the two principal parties, the closing submissions were submitted in writing, following the close of the inquiry; Mr Pike did have an opportunity to respond in his submissions to those of Miss Crail, and to produce a further statutory declaration (from Mr David Condon) in response to a new point made in her submissions.
15. The Town Council was represented at the pre-inquiry meeting and the inquiry, but produced no evidence and made no submissions.
16. I visited the Application Land and surrounding areas on several occasions unaccompanied by the parties; and I held a site inspection on Thursday 1 July, after the conclusion of the inquiry, accompanied by representatives of the principal parties.

17. I am grateful to all concerned – including in particular both the officers of the Registration Authority and the representatives of the Methodist Church – for facilitating the smooth running of the Inquiry and the site inspection.
18. I have subsequently been sent by the Registration Authority details of various wayleaves relating to the Land. I refer to them briefly later in the report, but in my opinion these do not affect the case of any of the parties.

*The evidence*

19. As is normal in such cases, the available evidence on which I have to base my recommendation consists of the documentary material (plans, reports, and so on) produced before the start of the present dispute; the oral evidence presented by those who appeared at the Inquiry, and the written statements accompanying such evidence; the statements produced by others who did not give such evidence; and what I saw myself in my various site inspections. I have listed or referred to this above.
20. I have given special weight to documentary evidence produced prior to the start of the present dispute, as it was not tainted by any suspicion of possible bias – although of course there is no procedure for the discovery of documents, as there is in standard civil litigation, so there is always the possibility that unhelpful material could have been simply omitted.
21. As for oral and written evidence produced in connection with these proceedings, it needs to be remembered that the desirability or otherwise of any proposals for development on or affecting the land in question is wholly irrelevant. Equally irrelevant is any view that the land should, as a matter of principle, be retained for recreation. However, it is likely that much if not all of the evidence in this category will have been produced by those who have views – possibly strong views – on such matters; and that will be relevant in assessing their credibility as witnesses.
22. I am in particular aware that in this case the Highway Authority has obtained planning permission for the construction of a road across some of the Application Land. Those giving oral evidence to me at the Inquiry as to the use of the Land could therefore be said to be biased, in that they are or were or may have been either opposed to that proposal or in favour of it. However, I detected no particular tendency to misrepresent the truth – in either direction – and neither of the advocates (nor any of the witnesses) at the Inquiry seriously suggested that this was the case.
23. I also took into account other written evidence, including in particular statements from those who did not give oral evidence at the Inquiry. As well as the statutory declarations mentioned above, there were also questionnaires that had been completed by ten other local people,<sup>1</sup> and a letter. I gave such evidence less weight, as it had not been the subject of cross-examination; but (as is normal in such cases) it was generally consistent with the evidence of those who did appear in person.

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<sup>1</sup> In addition to the questionnaires completed by those who produced a statutory declaration or gave oral evidence.

24. There were also email responses from almost 100 people, couples or families. I gave little weight to the latter, as it was not clear what the comments had been responding to; and the applicant made almost no reference to them at the inquiry. Again, however, I note in passing that their content was very similar to the evidence to which I have given greater weight.
25. References to “CB”, “App” and “HA” are respectively to the Common Bundle of Documents produced for the Inquiry; the Applicant’s Bundle; and the Highway Authority’s bundle.

*The definition of a town or village green*

26. Finally, by way of introduction, it may be helpful to recall the statutory definition of a town or village green.
27. Section 15 of the 2006 Act, so far as relevant, provides as follows:
  - “(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.
  - ...
  - (6) In determining the period of 20 years referred to in subsections (2)(a) ... , there is to be disregarded any period during which access to the land was prohibited to members of the public by reason of any enactment.”
28. That provision came into force on 6 April 2007, in place of the virtually identical definition previously to be found in section 22 of the Commons Registration Act 1965 (as amended by the Countryside and Rights of Way Act 2000).
29. The statutory definition makes it clear that, for land to be eligible to be registered as a town or village green, it must have been used:
  - for lawful sports and pastimes,
  - by a significant number of the inhabitants of any locality or any neighbourhood within a locality,
  - throughout the relevant period (subject to any closure by reason of any enactment), and
  - as of right.
30. In the remainder of this report I describe the Application Land, and then consider each of these questions in turn.

## B. THE APPLICATION LAND

### *Description of the Application Land*

31. The Application Land consists of a number of distinct areas, each with its own characteristics. The northern section, amounting to around 70% of the whole in area, consists of a pleasant grass meadow, between the two branches of the Windrush. For simplicity, I refer to the eastern branch as “the East Windrush”, and the western branch (which is slightly less substantial) as “the West Windrush”. The central section, less than 10% of the area, is the land that was formerly occupied by the railway line. The southern section (perhaps about 20%) is a small meadow lying between the old railway land and the By-pass to the south.
32. A well-made path runs from the Farm Mill Lane entrance (see below), following the undulating course of the East Windrush, separated from the river bank by trees. Some benches – of varying ages – have been erected along this path. This riverside path is not a public right of way, but is currently well-maintained, and readily usable by, for example, those with buggies or in wheelchairs – or on bicycles. The river itself is not particularly deep, or wide, and could easily be crossed by a swimmer of average ability. About half way down the path is a tree that is clearly used as a focus for playing and other activities related to the river. On the other side of the river is open farmland, owned and farmed by Mr Mawle.
33. There is not a formal path along the bank of the West Windrush, nor is there any evidence of an informal one. However, there is a path (which is a public right of way on foot: see below) from the Farm Mill Lane entrance that runs in a straight line roughly due south to the point where the two branches of the railway used to cross the West Windrush. There is a small area of land, to the west of this path and near its northern end, fenced off from the remainder of the meadow (referred to at the inquiry as “Area D”).
34. As noted above, the northern meadow is grassland. In high summer, when I saw it, the grass is relatively high; but I have seen a photograph taken since the end of the inquiry that shows its condition following mowing. There are various informal paths criss-crossing the meadow between the two main paths, which appear to be used as short cuts by those taking walks.
35. The principal entrance to the Application Land, for those on foot or bicycles, is at the northern end of the meadow, where the two paths meet. This was referred to at the inquiry as the Farm Mill Lane entrance. A new wooden kissing gate, suitable for use by those in wheelchairs (or with buggies), was introduced at this entrance in 2006.
36. Mr Hickman produced a photograph of the earlier signboard that had stood at this entrance in August 1994, saying “Witney Town Council: Witney Lake and Meadows”.<sup>2</sup> This had been replaced in 1997 or 1998 by the sign that stands there now, which says

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<sup>2</sup> HA, p 84E.

“Witney Town Council: Witney Lake + Meadows Country Park”.<sup>3</sup> I consider these signs in more detail, and the possible implications of their wording, later in this report.

37. Farm Mill Lane runs to the entrance to the Application Land from Church Green (in the centre of Witney); the first section from Witan Way to the entrance to the land is passable by vehicles, and there is a parking area by the eponymous Mill. A path running north from the Mill links into the network of paths between Witney and Cogges.
38. The central section of the Application Land consists of land that was formerly the tracks of the East Gloucestershire Railway, at the point where the freight line diverged from the passenger line. This has the flat featureless appearance characteristic of former track bed, and is bounded by hedges to north and south. The line was closed in 1970; it is not clear when the tracks were removed, but no-one claims that it was after 1989.<sup>4</sup>
39. The riverside path crosses the old railway track close to where the latter crosses the East Windrush on a bridge that has now been partly dismantled, at the eastern end, so as to be impassable to pedestrians. Mr Mawle explained that he had – after some trouble – arranged for the bridge to be blocked off in or around 1999, to prevent trespass onto his land.<sup>5</sup>
40. At the western end of the former railway land there are two bridges across the West Windrush. The northern bridge is blocked off at the eastern (meadow) end by a fence, on which has been erected a sign – visible to those leaving the Application Land to cross the bridge – saying “no trespassers”; there is no corresponding sign on the fence facing into the Industrial Estate. The southern bridge is impassable by even the most hardy trespasser.
41. The southern meadow is bounded to the north by the hedge bordering the old railway line, and to the south by the By-pass.
42. Along the southern boundary of this meadow, separated from it and from the By-pass by fencing that is still in good condition, is an area of woodland (“Area A”). And to the west, along the border of the West Windrush, is smaller area of woodland (“Area B”), separated from the meadow by a modest fence. Between the two bridges, bordering the West Windrush, is another small area of woodland (“Area C”). Area A is some 0.56 hectares in area; Areas B and C together amount to some 0.28 hectares.
43. The planting of these areas of woodland was the subject of a Woodland Grant Scheme application, approved by the Forestry Commission in 1994.<sup>6</sup> There were no signs, but there were stiles across the fencing, and access was allowed, although discouraged (by long grass and nettles).

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<sup>3</sup> HA, p 84D.

<sup>4</sup> Research on the internet suggests that it may have been in the early 1970s – see, for example, [http://www.martin.loader.btinternet.co.uk/Witney\\_Junction.htm](http://www.martin.loader.btinternet.co.uk/Witney_Junction.htm)

<sup>5</sup> HA, p 197.

<sup>6</sup> HA, pp 265-284; Howells.

44. A pedestrian route (the southern continuation of the riverside path) crosses the old railway line and then runs, via a gap at the eastern end of the hedge, alongside the fence bounding Area A, and joins the public right of way at its southern end. That right of way runs down the western side of the southern meadow, bordering Area B, then heads towards a larger meadow – “the Wet Meadow” – to the south of the By-pass (which it crosses through a pedestrian under-pass).

#### *Public footpaths and other easements*

45. The only public right of way crossing or adjacent to the Application Land is the one, mentioned above, that runs more or less in a straight line due south from the Farm Mill Lane entrance to the underpass under the By-pass (currently path 410/15 on the definitive map). This forms part of a route from the path between Witney and Cogges down to the far end of Ducklington (via paths 410/13 to the north and 149/3 to the south), and joins a path from Church Green to Farm Mill (410/14). Each of these has been right of way on foot since at least 1968.<sup>7</sup>
46. The Land is crossed by two prominent power lines – two 33,000 volt overhead cables that cross the Application Land roughly from north to south. There is also a line of 11,000 volt underground cables crossing the Land roughly from north to south, approximately on the line of the western of the two overhead lines. These are the subject of wayleaves that were granted the Town Council to Scottish and Southern Electricity, copies of which came to light after the end of the inquiry.

#### *The Country Park*

47. The Application Land forms part of the Witney Lake and Meadows Country Park, owned by the Town Council. The other two parts are the Wet Meadow, and Witney Lake – a flooded former gravel pit. The public right of way that runs from the Farm Mill Lane entrance, heading southwards across the Land, continues across the Wet Meadow, and joins a route (which is apparently not a public right of way) from a point to the east of Ducklington Church heading towards the Thames. There is also a pedestrian entrance to the path circling Witney Lake (also not a public right of way), via a further under-pass from the southern end of Avenue Two.
48. There are thus two entrances to the Country Park for those coming from Witney – the Farm Mill Lane entrance, and the Avenue Two entrance.
49. The land that now forms the Country Park (including the Application Land) was acquired by the Town Council in 1988; I consider this further towards the end of this report.

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<sup>7</sup> CB, pp 9-16.

## C. THE NATURE OF THE USE OF THE LAND

### *Introduction*

50. There were, as noted above, twelve witnesses who gave oral evidence at the inquiry on behalf of the Applicant as to their use of the Application Land. A further four gave such evidence on behalf of the Highway Authority, albeit in significantly less detail. There were a further thirteen witnesses who produced statutory declarations as to their use of the Land, but did not give oral evidence. I do not consider that it would be useful to describe the evidence given by each witness separately, not least because the written statements and declarations were in very similar terms, as was much of the oral evidence. What follows is thus a summary of the salient points.
51. I should also record that neither the Highway Authority nor the Town Council challenged the evidence produced on behalf of the Applicant relating to the use of the Application Land.

### *Use: those giving oral evidence*

52. The most comprehensive picture as to the use of the Application Land emerged from the written and oral evidence given by those who appeared in person at the inquiry on behalf of the Applicant. That picture was both consistent and unsurprising.
53. The principal activity in which witnesses had indulged was “walking” – with or without dogs. All of those who appeared at the inquiry said that they had walked themselves, and that they had seen others doing so. Those who produced written statements but did not give oral evidence said the same. And I saw people walking, on each of my visits. The walking seems to have been generally along the two paths, but also using the short cuts between them; Mrs Condon noted that dogs were generally walked around the edge of the Land, but the whole area was used.
54. In addition, of the twelve people who gave oral evidence, eight also said that they had taken part in “family walks”, as a distinct category of activity,<sup>8</sup> and four of those had also seen others do so. Five had taken part in picnics,<sup>9</sup> and nine had seen others do so.<sup>10</sup> As to where those picnics took place, there was no hard-and-fast rule; but Mrs Condon said that they sometimes picnicked amongst the wild flowers.
55. Another popular activity, again not surprisingly, was children playing: three-quarters had either played themselves (or their children or grandchildren had done so) or seen others playing.<sup>11</sup> The games might be with a ball,<sup>12</sup> or hide-and-seek in the long

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<sup>8</sup> Basson, Condon, French, Hawker, Lawrence-French, Oliver, Pateman, Thompson.

<sup>9</sup> Bond, Condon, Hawker, Lawrence-French, Thompson

<sup>10</sup> Basson, Bond, French, Harness, Hawker, Lawrence-French, Pateman, Triggs, Thompson.

<sup>11</sup> Condon, French, Harness, Hawker, Jones, Lawrence-French, Pateman, Thompson, Triggs.

<sup>12</sup> Triggs.

grass,<sup>13</sup> or bug hunts, running across the whole of the meadow, and treasure hunts (as well as playing in the river, and picnics).<sup>14</sup>

56. A few had indulged in running or jogging, or exercise generally.<sup>15</sup> Rather more had seen others do so.<sup>16</sup> Running and jogging is likely to have taken place principally, but not necessarily exclusively, on the paths; but other forms of exercise may have taken place elsewhere on the Application Land.
57. Less strenuous forms of activity included nature study and bird watching (mentioned by seven witnesses<sup>17</sup>) and photography (by one<sup>18</sup>). A number mentioned “relaxation” more generally<sup>19</sup> – or teenagers “chilling”.<sup>20</sup> Two referred to meeting friends or fellow-parents; two to courting; and one to visits at lunchtime. Such activity is likely to have occurred randomly across the whole of the Land.
58. Given the proximity of the Windrush, it is not surprising that many mentioned water-related activities. Many witnesses had fed (or assisted their children to feed) the ducks, or had seen others so.<sup>21</sup> Two had indulged in fishing; many had seen others doing so.<sup>22</sup> Almost all had seen people bathing (or paddling) in the river;<sup>23</sup> many had done so themselves, or their children (or in one case their dog) had done so. Four had seen canoeing taking place;<sup>24</sup> two had canoed themselves.<sup>25</sup> One claimed to have played Pooh-sticks.<sup>26</sup>
59. A number mentioned activities by girl guides, brownies, scouts and cubs.<sup>27</sup> Such activities took various forms, and happened all over the Application Land. Schools had also organised activities. And on at least one occasion Army cadets had exercised all over the Land.<sup>28</sup>
60. Several witnesses referred to activities prohibited or discouraged by the rules (considered in more detail later in this report). One witness had been cycling; one had taught her children to cycle. Several had seen others doing so;<sup>29</sup> one saw cycling every other weekend – indeed I myself saw a child cycling on the riverside path. I consider that most if not all cycling is likely to have occurred on the paths. And occasionally

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<sup>13</sup> Condon.

<sup>14</sup> Pateman.

<sup>15</sup> Pateman, Triggs.

<sup>16</sup> Basson, Bond, Condon, French, Harness, Jones, Pateman, Triggs.

<sup>17</sup> Basson, Condon, Harness, Lawrence-French, Oliver, Pateman, Thompson.

<sup>18</sup> Harness.

<sup>19</sup> Basson, Hawker, Jones, Lawrence-French, Oliver, Thompson.

<sup>20</sup> Triggs.

<sup>21</sup> Basson, Bond, Condon, French, Jones, Lawrence-French, Pateman, Thompson.

<sup>22</sup> Bond, Condon, French, Harness, Hawker, Jones, Lawrence-French, Triggs.

<sup>23</sup> Basson, Bond, Condon, French (children), Harness, Hawker, Jones, Lawrence-French, Pateman, Thompson, Triggs.

<sup>24</sup> Bond, Condon, Lawrence-French, Pateman.

<sup>25</sup> French, Pateman.

<sup>26</sup> This must be doubtful, in view of the absence of a suitable bridge.

<sup>27</sup> Hawker, Lawrence-French, Thompson, Triggs.

<sup>28</sup> Oliver.

<sup>29</sup> Basson, Harness, Lawrence-French.

people (including children) had been seen camping, mainly near the Farm Mill Lane entrance.

61. Other activities mentioned by those giving oral evidence included metal detecting and kite flying.

#### *Other evidence*

62. As well as the evidence of those who appeared at the inquiry, a further thirteen written statements were submitted by the Applicant. These disclosed a very similar pattern of activity to that analysed in more detail above; the only additional activities mentioned were Frisbee throwing, yoga, and painting.
63. Mr Harvey, who gave evidence on behalf of the Highway Authority, had been a parks foreman employed by the Town Council. He said that the Land had been used throughout the year for jogging, fishing and walking. People “went everywhere”.

#### *Access into the Land via the railway bridges*

64. I have already noted that a fence was erected at the north-west end of the old railway bridge across the West Windrush, which provides access to the Application Land from the Two Rivers Industrial Estate. Mr Hickman, an employee of the Town Council since 1993, considered that it had been erected by that Council, before the start of his employment there. There is (and always has been) a sign saying “no trespassers” on the fence, facing into the Application Land; but no sign on the other side of the fence. Notwithstanding the sign, it is easy to climb over the fence at this point; and it is then possible to walk through the Industrial Estate to Witan Way, from where there is an easy pedestrian route into the centre of Witney.
65. Some witnesses said (in their written statements or in oral evidence) that they used the route through the Industrial Estate as a means of access to the Application Land; but those who gave oral evidence generally made it clear that they only used that route rarely.<sup>30</sup>
66. There is no sign at the entrance to the Industrial Estate from Station Lane stating that there is no way through to the Country Park; but equally there is no sign pointing to it either. And it is not at all obvious that there is a through route to the Application Land via the old railway bridge. And anyone who goes over the bridge in the opposite direction, from the Application Land via the Industrial Estate towards the centre of Witney, has to climb the fence, and cannot be unaware of the “no trespassers” sign – which seems to be aimed at those within the Application Land, indicating that the Industrial Estate is private land, and that there is no exit that way.
67. Miss Howells confirmed that there was no right of way through the Industrial Estate; and people were not encouraged to gain access to the Country Park via that route.

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<sup>30</sup> Basson, Condon, Harness, Hawker, Lawrence-French, Oliver.

She had never seen anyone gaining access from there, although she knew some who did. She considered that the crucial point was the attitude of neighbouring landowner.

68. Overall, this is not a particularly inviting route, in either direction; and I conclude that the bridge would only be rarely used as a way into or out of the Application Land.
69. And I have already noted that it would be virtually impossible to cross the other bridge over the West Winrush at this point.
70. The disused railway bridge crossing the East Windrush, just north of the By-pass, from the Application Land to the land owned by Mr Mawle, began to be used as an unauthorised short cut, and was (finally) closed off by the Town Council in 1999. I consider that this route would have been used only infrequently before it was cut off; and not at all thereafter.

#### *Grazing*

71. A number of witnesses at the inquiry recalled the Application Land having been used to graze cows, sheep, horses and donkeys (or some of those).<sup>31</sup> However, no-one remembered them being fenced off from the public; and there was no mention of any conflict between the grazing and the use of the Land for general recreation.

#### *The fenced-off areas*

72. As for the fenced-off areas (Areas A to D referred to above), these were fenced off, and seem to have been little used. Mrs Condon explained that they had explored Area A (adjacent to the By-pass); it had once been a nature trail, but it was somewhat half-hearted, since there were too many nettles.
73. I too explored Area A, and formed the view that it would not be inviting to casual users of the Application Land, due to the thick undergrowth. The same appeared to be true of Areas B to D.
74. On the other hand, if the Application Land were to be registered as a town or village green, it would seem somewhat artificial to exclude these areas – just as the largely inaccessible boggy area was not excluded from the Trap Grounds village green in north Oxford.<sup>32</sup>

#### *Likely pattern of use*

75. From my observation of the Application Land itself, and my reading of the written and oral evidence, I consider that there are several ways in which people might use the Application Land itself. Firstly, some will use the paths across it (either the meandering

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<sup>31</sup> Basson, Bond, J Condon, Hawker, Jones, Oliver, Pateman, Triggs; also Cotton, Mr and Mrs Leach, Matthews, Merifield, Petersons, Triggs, Wicket.

<sup>32</sup> *Oxfordshire CC v Oxford CC* [2006] 2 AC 674, HL, at paras 1, 66, 67. I have also visited that land, and considered that the boggy area there was similarly uninviting, if not more so.

riverside path or the more direct north-south right of way) to get from the Farm Mill Lane entrance to the underpass going under the By-pass, as part of a longer walk to the Wet Meadow or beyond. Secondly, some will use the Land as a destination, and will walk around or across it: they will walk, cycle or drive to the Land, gaining access to it via the Farm Mill Lane entrance or the underpass, and will then use the Land for general recreation (children's play and so forth).

76. It is thus possible to enter the Application Land either via the Farm Mill Lane entrance, or via the pedestrian under-pass crossing the By-pass. However, to get to the latter it is necessary either to walk from the entrance at Avenue Two, or from Ducklington. And the walk along Station Lane from the Farm Mill Lane entrance to the Avenue Two entrance is not particularly attractive. Whilst it would theoretically be possible to make a larger circuit taking in both entrances, this seems to me not particularly likely.
77. I therefore suspect that most people would both enter and leave the Land via the Farm Mill Lane entrance – either going down one or other of the two paths and coming back the same way, or making a circuit around the whole of the Land, going down one path and back up the other. And in either case they might sometimes go under the By-pass to explore the Wet Meadow, although this makes quite a long walk – particularly for those not driving to and from the entrance. Alternatively, it would be possible to go part of the way down one of the paths, and cut across the middle of the Land before returning via the other path.
78. It would also be possible to enter the Country Park at Avenue Two, go round the Lake, cross the Wet Meadow, and then round the Application Land, before leaving via the Lake to return to the starting point at Avenue Two. But this too would be a substantial walk.

### *Conclusion*

79. My initial impression was that the use of the Application Land by local people was confined principally to the two north-south paths; and I therefore was particularly interested in evidence as to how the Land had actually been used during the relevant 20-year period. The reason for my concern was that use of a linear route merely to pass from one point to another might, in appropriate circumstances, establish a claim to a public right of way; but it would not justify the land to either side of the route being registered as a town or village green.<sup>33</sup>
80. Having now had the opportunity to consider the position in more detail, I have no doubt that a significant element in the use of the Land in this case was by people passing from the Farm Mill Lane entrance to the underpass beneath the By-pass, and vice versa.
81. However, I am satisfied that such use was by no means the only (or even, perhaps, the principal) use of the Land. Having analysed carefully the general geography of the

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<sup>33</sup> *Oxfordshire CC v Oxford CC* [2004] Ch 253, at paras 102-105.

Country Park and the various possible routes to and through it, I consider that (as noted above) it is likely that most people wishing to enjoy the facilities afforded by the Application Land would both enter and leave the Land via the Farm Mill Lane entrance – either going down one or other of the two paths and coming back the same way, or making a circuit around the whole of the Land, going down one path and back up the other.

82. Some (particularly those with younger children) would take short cuts from one path to the other, to make a shorter circuit; and some would use the land to either side of the paths – including the river bank – for other forms of recreation, as catalogued above.
83. Further, whilst there was some evidence as to activity taking place that was in breach of the rules issued by the Town Council as owner of the Land, and thus arguably unlawful, such activity was on a very modest scale.
84. I therefore conclude that the Application Land as a whole has been used since it was acquired by the Town Council primarily for general public recreation by local people, over and above any use of the paths simply as routes from one place to another. It was also used for grazing; but the grazing did not interfere with the recreation. Further, such use constitutes use for lawful sports and pastimes for the purposes of the 2006 Act.

## D. THE IDENTITY OF THE USERS OF THE LAND

### *Introduction*

85. I have noted that the Application Land has been used “by local people”. However, in order for land to be eligible for registration as a town or village green under the Act, section 15 requires that it must be proved that the use of the land in question throughout the relevant period has been by

“a significant number of the inhabitants of

- [i] a locality or
- [ii] a neighbourhood within a locality.”

I have added the numbers in square brackets in line with the judgment in the recent decision of the Chancery Division in *Leeds Group PLC v Leeds CC*.<sup>34</sup>

86. Under the corresponding definition of the 1965 Act, as originally enacted, there used to be a requirement that the “predominant” use of the land had to be by the inhabitants of a locality.<sup>35</sup> However the Administrative Court in *R (Oxon and Bucks Mental Health NHS Trust and anr) v Oxfordshire CC* (“the *Warneford Meadows* case”), decided earlier this year, has concluded the effect of the amendment to that definition

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<sup>34</sup> [2010] EWHC 810 (Ch).

<sup>35</sup> *R (Sunningwell PC) v Oxfordshire CC* [2000] 1 AC 335 per Lord Hoffmann at p 358B.

introduced by the Countryside and Rights of Way Act 2000 was not only to introduce the reference to “neighbourhood” (as carried forward into the 2006 Act), but also to remove the “predominant use” requirement.<sup>36</sup>

87. The House of Lords has held that the word “locality” in limb [i] must refer to a single locality, whereas “locality” in limb [ii] could mean “locality or localities”, relying on the Interpretation Act 1978.<sup>37</sup> And it has long been settled law that a “locality” means an area of land known to the law, such as a borough, parish, either ecclesiastical or civil, or a manor.<sup>38</sup>
88. The court in *Leeds* considered that the word “neighbourhood” in limb [ii] could mean “neighbourhood or neighbourhoods”; and that a neighbourhood is an area that has sufficient cohesiveness to justify being described as such.<sup>39</sup> It also drew attention to the dictionary definition: “a district or portion of a town; a small but relatively self-contained sector of a larger urban area.”
89. In addition, it seems to me – although there is no judicial authority to support the proposition – that a town or village green cannot be registered by reference to a locality (under limb [i]) or a neighbourhood (under limb [ii]) where the boundaries of that locality or neighbourhood changed significantly (that is, other than on a *de minimis* scale) during the 20-year period. It is now clear that registration of land as a green confers rights on those who live in the relevant area; and rights cannot be vested in an uncertain group. It is less clear whether the same consideration would operate so as to make ineligible a neighbourhood that was within a locality that altered during the 20-year period.

#### *Administrative boundaries*

90. The Application Land lies within the county of Oxfordshire and the district of West Oxfordshire. The boundaries of both the county and the district were fixed under the Local Government Act 1972, with effect from 1 April 1974, and have not altered since.<sup>40</sup>
91. The electoral wards within the district of West Oxfordshire were prescribed by the District of West Oxfordshire (Electoral Arrangements) Order 1977, which came fully into force on 3 May 1979.<sup>41</sup> This provided for the urban area of Witney (including Cogges) to be split into four electoral wards. The 1977 Order was revoked by the District of West Oxfordshire (Electoral Changes) Order 2001, which aligned the southern boundaries of Witney South and East wards to coincide with the By-pass

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<sup>36</sup> *R (Oxfordshire & Buckinghamshire Mental Health NHS Foundation Trust and Oxford Radcliffe Hospitals NHS Trust) v Oxfordshire CC* [2010] EWHC 530 (Admin).

<sup>37</sup> *Oxfordshire CC v Oxford CC* [2006] 2 AC 674, HL, per Lord Hoffmann at para 27.

<sup>38</sup> *Ministry of Defence v Wiltshire CC* [1995] 4 All ER 931 at p 937.

<sup>39</sup> Paras 92 to 105.

<sup>40</sup> CB, p 53.

<sup>41</sup> Statutory Instrument (SI) 1977 No 681 (CB, pp 32-38).

(which had been opened in 1977), extended Witney East and West wards, and transferred a small area of land from Witney East to Witney North.<sup>42</sup>

92. The parish boundaries in this part of Oxfordshire were prescribed by the West Oxfordshire (Parishes) Order 1985, which came into force on 1 April 1985.<sup>43</sup> The principal relevant effect of the 1985 Order was to align the southern boundary of Witney parish to coincide with the By-pass. The 1985 Order was partially superseded (although, oddly, apparently not formally amended) in relation to the area around Witney by the West Oxfordshire (Parishes) Order 2000, which came into force on 1 April 2001.<sup>44</sup> The effect of the 2000 Order was to extend the parish of Witney at its eastern and western ends.
93. It would seem that boundaries of the Ecclesiastical Parish of Witney have remained the same since 1982, when it was enlarged to incorporate the neighbouring parish of Hailey.<sup>45</sup> The Parish of Witney does not include Cogges, which is the centre of its own parish.

#### *The evidence*

94. The application form in the present case stated (in answer to question 6) that “the locality or neighbourhood within a locality in respect of which the application is made” was “Council wards of Witney – North, South, East, West and Central”. Those wards are shown on the map forming part of the 2001 Order (above), and together comprise the whole of the built-up area of Witney – including the extensions to east and west.
95. Those who gave evidence come from all over Witney – that is, the built-up area to either side of the Windrush – including in particular central Witney (between the Windrush and Tower Hill / Ducklington Lane), Cogges (to the east), and Hailey, Newland and Wood Green (to the north).
96. Some of those giving evidence lived to the west of Tower Hill / Ducklington Lane (defined by Mr Condon<sup>46</sup> as “West Witney”, including the Deer Park Estate); although there were – not surprisingly – fewer from there, as it lies further from the Application Land. And some were from Madley Park, a substantial area of housing built since 2005 to the east of Woodgreen.
97. Given the nature of the Application Land, in that it was laid out as a recreational resource for the whole of Witney and is in practice used as such, I have no doubt that it is indeed used by people, both adults and children, from all over the built-up area of Witney – although I am sure that those living closer to it use it more often and more regularly than those living further away; and this is reflected in the distribution of the dots on the map showing those who gave evidence.

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<sup>42</sup> 2002 SI No 48 (CB, 20-30).

<sup>43</sup> 1985 SI No 181 (CB, pp 39-48)

<sup>44</sup> 2001 SI No 1278 (CB, pp 49-53).

<sup>45</sup> CB, pp 54, 55.

<sup>46</sup> Witness statement submitted after the inquiry.

### *Neighbourhoods*

98. Witney is clearly a recognisable community, surrounded by open countryside, with boundaries that are fixed at any given moment. Like any town of its size, it will be divided up into neighbourhoods. I heard no evidence as to what the identity of such neighbourhoods might be; and no doubt opinions could well differ as to where precise boundaries should be drawn – and it could perhaps be argued that some adjoining neighbourhoods overlap.
99. I have noted some of the constituent parts of Witney above – in particular central Witney, Cogges, Hailey, Newland, Madley Park, Wood Green, West Witney, and the Deer Park Estate.

### *Conclusion*

100. It seems to me that, since the decision of the High Court in *Leeds* has made it clear that a town green can be used by the inhabitants of more than one neighbourhood, there is no need to engage in a somewhat arid exercise of splitting up Witney into separate, non-overlapping neighbourhoods.
101. That is not to say that Witney as a whole is one neighbourhood – I accept the submission of Miss Crail that a “neighbourhood” is not the same as a town, as is clear from the dictionary definition of the word. Nor do I consider that adding two or more neighbourhoods makes one composite neighbourhood – that approach was rightly rejected in *Leeds*.<sup>47</sup>
102. However, in this case I am satisfied that the use of the Application Land has been by a significant number of the inhabitants of more than one neighbourhood – namely, the various neighbourhoods that together make up the built-up area of Witney. That accords with the evidence as to use of the Land. It also accords with the “locality or neighbourhood” identified by the Applicant in the original application form – albeit that he specified the area by reference to electoral wards, rather than neighbourhoods.
103. And those neighbourhoods were and are all within a single locality, whose boundary has not changed since 1974 – namely, West Oxfordshire District.

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<sup>47</sup> Para 106.

## E. THE CONTINUITY OF THE USE OF THE LAND

### *Introduction*

104. For an application for the registration of land as a town green to succeed, the registration authority must be satisfied that the land in question has been used in a qualifying manner for a period of 20 years, ending on the date of the application. Generally, therefore, the qualifying period will start on the date 20 years before the date of the application.
105. If access to all or part of the land was not possible for a period during those 20 years (other than purely as the result of a *de minimis* interruption) – for example where a farmer plants an arable crop for a few years – that will normally be fatal to the success of an application. However, section 15(6) of the Act provides that, in determining the relevant 20-year period, “there is to be disregarded any period during which access to the land was prohibited to members of the public by reason of any enactment.”
106. There has apparently been no decision of the courts relating to the interpretation of section 15(6). However, I assume that the section requires that where, for example, access to land is prevented for a period of 12 months “by reason of an enactment”, an applicant must show that the land has been used for the whole of the period of 21 years ending on the date of the application other than the one year during which access was prevented.
107. In this case, the application was made on 5 February 2009. On the face of it, therefore, the applicant must prove that the Application Land has been used in a qualifying manner for 20 years ending on that date – that is, since 6 February 1989. However, it is accepted by all that access to the Land was prevented for a 49-day period from 7 March 2001 to 25 April 2001. That on its own would be fatal to success – save that, as a result of section 15(6), the application would still succeed if the applicant can show:
  - that the Land has been used in a qualifying manner since a date 49 days before 6 February 1989 – that is, 19 December 1988; and
  - that the closure was “by reason of any enactment”.

### *The acquisition of the Application Land*

108. The minutes of the Town Council’s Finance and General Purposes Committee meeting on 22 April 1985 record that:

“Unofficial enquiries had revealed that it would be possible to purchase the lake [to the south of the By-pass] and with it went all the land from there and between the two rivers up to Farm Mill, to a total of approximately 69 acres. There is unrestricted pedestrian access to this land by public footpaths, and some vehicle access believed also to be available, although not convenient or most desirable.

The extent to which the public currently used the footpath created round the lake (albeit unofficially) indicated the pleasure that was already being enjoyed, and the group

had felt that this unique opportunity to acquire this asset should not be lightly brushed aside.”<sup>48</sup>

109. This tends to indicate that the Application Land was being used informally for recreation during the period prior to 1988 when it was owned by a local farmer.
110. Negotiations followed, and on 30 September 1988 land to the north and south of the railway (including half the bed of the adjoining sections of the East and West Windrush) was transferred by Sidney Smart Farms Ltd to the Town Council.<sup>49</sup>
111. It is not clear when the railway land was transferred to the Council, but it appears to be agreed between the parties that that land too has been owned by the Town Council since 1988.
112. Of the 12 people who gave oral evidence at the inquiry on behalf of the Applicant, 8 had used the land since before December 1988, 4 had used it since a date after December 1988. Of the 14 who produced statutory declarations but did not give oral evidence, 4 had used the Application Land since before December 1988, 10 for less long. Of the 11 who had produced questionnaires or a letter, 6 had used the Land since before December 1988, 5 for less long.
113. Overall, about half of these 37 witnesses had used the Application Land since before December 1988, half for less long. But that is not surprising; 21½ years is a long time, and it would be odd if all of those producing oral or written evidence had lived in Witney for longer than that. In addition, the pattern of use appearing from the evidence of those who had used the Land for longer was similar to that appearing from the relative newcomers. And almost all of those producing statutory declarations asserted that the pattern of use of the Land had not changed in the time they had known it (although I am slightly sceptical as to how much care was taken in making that assertion, given that it is in precisely the same words in all the declarations).
114. The evidence from the email survey is also split roughly equally between those who have used the Application Land since before December 1988 and those who have started using the Land more recently.
115. Finally, of the 4 witnesses who gave oral evidence in support of the Highway Authority, all had used the Application Land for significantly less than 20 years, but they had generally visited it sufficiently infrequently that their evidence as to the general pattern of use of the Land was of limited value in any event.
116. I am therefore satisfied that the Application Land has been used continuously, in more or less the way in which it is now, throughout the period from 19 December 1988 to the date of the application – other than when it was closed for a 49-day period from 7 March 2001 to 25 April 2001. It therefore remains to be determined whether that closure was “by reason of any enactment”.

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<sup>48</sup> CB, p 498.

<sup>49</sup> Extract from conveyance accompanying application.

### *Foot-and-mouth disease (FMD): the legislation*

117. Section 1(a) of the Animal Health Act 1981 provides that the Minister may make such orders as he thinks fit

- for the better execution of this Act, or
- for the purpose of in any manner preventing the spreading of disease.

Sections 50 and 51 provides that for purposes of the Act, a non-metropolitan county council is within its area to execute and enforce the Act and every order of the Minister (insofar as the Act or any order under it falls to be executed and enforced by a local authority).

118. Section 52 of the 1981 Act provides that the council is to appoint as many inspectors and officers as it thinks necessary for the execution and enforcement of this Act; and is to assign to those inspectors and officers such duties as it thinks fit. It may also delegate to them discretion – presumably to execute and enforce the Act, although the extent of the delegation is not explicitly stated. And section 59 empowers the Minister to act in default.

119. The above provisions of the 1981 Act were in force at all relevant times in 2001 as they are today.

120. The relevant order under the 1981 Act was the Foot-and-Mouth Disease Order 1983<sup>50</sup> – which was repealed on 23 February 2006 by the Foot-and-Mouth Disease (England) Order 2006.<sup>51</sup> However, prior to its revocation, the 1983 Order was amended on a number of occasions; references below to provisions of the Order are to the form in which they were in force at the relevant date (generally 7 March 2001, except as noted).

### *Infected areas*

121. Under article 17 of the 1983 Order, the Minister could designate land as an “infected area”, to which the provisions of Part III of the Order would then apply.

122. Under article 27 a local authority inspector may prohibit the entry of any person onto any land in an infected area, by displaying a notice to that effect at every entrance to the land – notwithstanding the existence of any public footpath or right of way.

123. By virtue of the Foot-and-Mouth Disease Declaratory (No 101) Order 2001, the Minister declared as an infected area an area centred roughly on Oxford, including at its western extremity parts of Witney to the east of the A415 and to the south of the A4095 – which includes the Application Land.<sup>52</sup> That Order made various amendments to Part III of the 1983 Order, but did not affect article 27.

124. The Declaratory (No 101) Order 2001 only came into effect at 7.00 p.m. on 12 April 2001, which is over a month after the Application Land was closed. However, it

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<sup>50</sup> 1983 SI No 1950; see CB, pp 262-317,

<sup>51</sup> 2006 SI No 182

<sup>52</sup> 2001 SI No 1485; CB, pp 393-397.

revoked the Declaratory (No 10) Order 2001.<sup>53</sup> The Declaratory (No 10) Order had been made on 27 February 2001, and was amended three times before it was revoked by the Declaratory (No 101) Order.<sup>54</sup> I do not know what was the effect of the Declaratory (No 10) Order or of any of the orders that amended it – they were not included in the Common Bundle, and were never published; they may thus be difficult to obtain. However, it may be surmised that at least some of the area subject to the (No 101) Order was declared as an infected area as early as 27 February 2001; but whether that Order affected all or any of Witney is unknown.

125. In the light of that tangled statutory background, it is not clear whether all or any of the Application Land was within an infected area on 1 March 2001. Nor is it clear whether, if it was within an infected area, the relevant declaratory order made any amendment to the provisions of the 1983 Order – and in particular to article 27.

#### *Controlled areas*

126. Under article 30 of the 1983 Order, the Minister could designate land as a “controlled area”, to which the provisions of Part IV of the Order would apply.
127. By virtue of the Foot-and-Mouth Disease Declaratory (Controlled Area) Order 2001, with effect from 5.00 pm on 23 February 2001, he declared the whole of England and Wales as a controlled area. The copy of this Order at HA, p 390 has no SI number; but I note from the Official List of Statutory Instruments that 2001 SI No 530, also entitled the Foot-and-Mouth Disease Declaratory (Controlled Area) Order 2001, came into force at 5.00 pm on 23 February 2001. I therefore assume that the version in the HA bundle is a draft of what became 2001 SI No 530, and that the final version (which was unpublished) had the same text.
128. That first Declaratory Order only remained in force until midnight on 2 March 2001.<sup>55</sup> The Foot-and-Mouth Disease Declaratory (Controlled Area) (England and Wales) (No 2) Order 2001<sup>56</sup> came into force at midnight on 2 March 2001 – I have not seen a copy (it too was unpublished), but I assume it replaced SI No 530. Successive orders were then made as SIs Nos 700 (6 March), 875 (9 March), and 1044 (16 March); it is not known what their effect or extent was.
129. Article 35A of the 1983 Order, as originally enacted, provided that:
- (1) Subject to paragraph (2) below, an inspector may, notwithstanding the existence of any public footpath or right of way, prohibit the entry of any person—
    - (a) onto any land (including any common, or any unenclosed or waste land); or
    - (b) into any agricultural building,

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<sup>53</sup> 2001 SI No 593. See SI No 1485, article 4.

<sup>54</sup> By Declaratory (Amendment) (No 13) Order 2001 (SI No 675) (4 March 2001); By Declaratory (Amendment) (No 23) Order 2001 (SI No 874) (9 March 2001); By Declaratory (Amendment) (No 35) Order 2001 (SI No 1343) (3 April 2001).

<sup>55</sup> Declaratory (Controlled Area) Order 2001, article 1(2).

<sup>56</sup> SI No 642.

by displaying, or causing to be so displayed, a notice to that effect at every entrance to that land or building.

(2) No person shall enter any land or building in respect of which a notice is displayed under paragraph (1), other than—

(a) the owner of any animal on that land or in that building, or the employee of any such owner or any other person authorised by him or her, who enters for the purpose of tending to that animal; or

(b) a person entering the land or building under the authority of, and in accordance with any conditions specified in, a licence granted by an inspector.

(3) A notice under paragraph (1) above shall be displayed at every entrance to the land or building to which it relates by the inspector, in such manner as will ensure that the restrictions imposed by it are brought to the attention of those persons likely to be affected by them.

(4) No person shall remove a notice under paragraph (1) except under a licence granted by an inspector.”

Article 35A was inserted in that form into the 1983 Order by the Foot-and-Mouth Disease (Amendment) (England) Order 2001 with effect from 2.00 pm on 27 February 2001.<sup>57</sup>

130. In addition, article 35B of the 1983 Order, also inserted on 27 February 2001, provided that once the Minister had confirmed the existence of FMD in any part of the area of a local authority, that authority could publish a declaration preventing the movement of people in or out of an area identified in the declaration. That provision was then refined by the Foot-and-Mouth Disease (Amendment) (England) (No 2) Order 2001 with effect from 7.00 pm on 2 March 2001, so the authority could publish regulations (rather than merely a declaration) prohibiting the movement of people in or out of a specified area.<sup>58</sup> In each case, it would seem that the area identified in the declaration or regulations did not have to include the location of the FMD outbreak.
131. The Foot-and-Mouth Disease (Amendment) (England) (No 4) Order 2001 then replaced articles 35A and 35B of the 1983 Order with a new article 37A, taking effect from 11.00 am on 16 March 2001.<sup>59</sup> This enabled any authority to prevent entry onto any land in a controlled area (whether or not FMD had been confirmed in the authority’s area) simply by displaying a notice to that effect at every entrance to the land. However, such a notice could only be displayed with the prior written consent of the Minister.
132. The Amendment (No 4) Order also provided that any restrictions on access to land imposed prior to 16 March 2001 – that is, by declaration or regulations under section 35B – would continue to have effect until revoked by a declaration by the Minister or the local authority.<sup>60</sup>

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<sup>57</sup> 2001 SI 571.

<sup>58</sup> 2001 SI 680.

<sup>59</sup> 2001 SI 1078.

<sup>60</sup> The Amendment (No 3) Order, and the Amendment (No 5) to (No 14) Orders are not relevant for present purposes.

*Action by the County Council*

133. A letter dated 1 March 2001 was sent by the Trading Standards Service of the County Council, by fax, to the owners and occupiers of all land across which there was a pedestrian right of way.<sup>61</sup>
134. The letter explained that the County Council had powers under the Foot-and-Mouth Disease (Amendment) (England) Order 2001 to prevent the spread of FMD – including the power to close footpaths. It accordingly authorised the owners and occupiers of land meeting the criteria set out in the letter to post notices at the entrance to such land, to prevent access. The criteria referred to were:
- land (including common land) grazed or used, or recently grazed or used, by cattle, pigs, sheep, goats or deer;
  - footpaths, bridleways or other non-vehicular rights of way passing in close proximity to any of the above animals; and
  - land (including woodland) used by wild deer.
135. A sample notice was attached to the letter, printed in red. This was headed with the name and logo of the County Council, and was dated 1 March 2001. The main section of the notice stated simply:

ENTRY ONTO THIS LAND IS PROHIBITED  
ALL PUBLIC FOOTPATHS AND RIGHTS OF WAY ARE CLOSED

It then referred to the 2001 Order, and explained that the County Council had been given powers under the Order to close footpaths, to prevent the spread of FMD; and that failure to comply with the requirements of the Order was an offence. I refer to this sign below as “the Red Notice”.

136. An advice note for councillors was issued by Trading Standards on 6 March 2001, which indicated that the reference to land that had been “recently” grazed or used referred to grazing or use in the previous 56 days (8 weeks) – but the letter itself contains no such restriction.
137. The progress of the outbreak of FMD, and the County Council’s response to it, can be traced by reference to a stream of press releases issued by the Council in March and April 2001. The first release, dated 1 March, noted that the Council’s Trading Standards Service had sent official notices to owners and occupiers of agricultural land, authorising them to post notices at strategic points where farmland was normally accessed by the public. The first confirmed outbreak of FMD in Oxfordshire occurred near Bicester, on 3 March.
138. Guidance was issued by the County Council, stated to be correct as at 13 March 2001, noting that “footpaths and bridleways within Oxfordshire which cross, or are adjacent

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<sup>61</sup>HA, pp 309-402; also Exhibit A to Mr Mawle’s statement.

to agricultural land, common land and woodland are currently closed, and the public should not use them until further notice.”<sup>62</sup>

### *Other evidence*

139. The various witnesses giving oral evidence on behalf of the Applicant all without exception stated that they had not visited the Application Land “during the 2001 foot and mouth epidemic”.
140. Some said that they had not seen any signs on or at the entrance to the Application Land – generally because they knew that they should keep away without having to be told.<sup>63</sup> Others had not used the land at that time anyway.<sup>64</sup> Some said that they had seen a sign restricting entry – either at the Farm Mill Lane entrance<sup>65</sup> or at other sites in the locality.<sup>66</sup> Not surprisingly, those who did recall having seen a sign did not claim to be certain that it was in precisely the same terms as the Red Notice; but thought that it had probably been in the same or similar terms. Several witnesses recalled a padlock having been attached to the gate at Farm Mill Lane entrance.<sup>67</sup>
141. Some had seen deer on the Application Land at various times, before and after the outbreak of FMD.<sup>68</sup> Other thought there must be deer there, or had seen deer dung, or hoof prints or other evidence of deer foraging.<sup>69</sup> Mr Boden had heard from local people that they had seen deer on and near the Land; and he had seen damage to trees on the Land caused by deer.
142. I have already mentioned that a number of witnesses recalled the Application Land having been used to graze cows, sheep, horses and donkeys (or some of those).<sup>70</sup> And licences were issued by the Town Council annually – other than in 2001 (not surprisingly) and 2003 – for the Land to be used for the grazing of livestock.<sup>71</sup>
143. Mr Mawle, the owner of land in Cogges across the East Windrush from the Application Land that is the subject of the present application, explained that he had received a copy of the letter of 1 March 2001 from the County Council, as referred to above, along with some copies of the Red Notice. He explained that he put up notices as requested – some were the notices sent with the letter, some were black and white photocopies as the Council had not sent enough.

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<sup>62</sup> Annex 7 to Ms Taplin’s evidence.

<sup>63</sup> Basson, Condon, French, Harness; also Devonald, Fisher, Partridge.

<sup>64</sup> Hawker, Lawrence-French.

<sup>65</sup> Jones, Oliver, Thompson.

<sup>66</sup> Bond, Pateman, Triggs.

<sup>67</sup> Jones, Merifield, Petersons.

<sup>68</sup> Basson (since 2000), Bond, Harness; also Devonald (not recently), Partridge.

<sup>69</sup> French, Lawrence-French (in the 1980s); also Cotton, Mrs Leach, Merifield, Petersons, Wackett.

<sup>70</sup> Basson, Bond, J Condon, Hawker, Jones, Oliver, Pateman, Triggs; also Cotton, Mr and Mrs Leach, Matthews, Merifield, Petersons, Triggs, Wicket.

<sup>71</sup> CB, pages 193-225.

144. Mr Boden, in his statutory declaration, explained that he had been the Parks Ranger, employed by the Town Council, at the time of the FMD outbreak. He explained that there initially (during February 2001) there had been considerable confusion, but that the advice from MAFF (the relevant dept of central Government at the time) and from the Trading Standards Department of the County Council had been to monitor the situation and to restrict public access where possible in areas where cattle had been grazed or where they were close by.
145. In March 2001, he was advised by the County Council and MAFF that the footpath across the Application Land should be closed, since the land was an environmentally sensitive area (ESA) and since the meadow had recently been grazed by cattle. Signs were erected using the advice received as to “in-house signs”, with wording broadly similar to the official Red Notice. Mr Boden did not produce a copy of the advice from MAFF / OCC re the wording for in-house signs, nor a copy of the notice he had erected. He noted that the path round the Lake remained open, “as it was not a designated path”.
146. The “official” notices finally arrived in April 2001, and were erected to replace the in-house notices. All the paths in the Country Park, including the permissive paths, were then closed. Later in April the Application Land was re-opened, although the sections of the Country Park south of the A40 remained closed for longer than the Application Land itself.
147. There appears to be no record in the formal minutes of any of the committees of the Town Council of either the closure of all or part of the Country Park or of the reasons for it. Councillor Harvey recalled in his written statement that the Town Council had taken the decision to close the Application Land on the basis of advice from the County Council Trading Standards Branch and MAFF, but he did not recall formal closure notices being displayed.
148. Miss Howells agreed that there would have been some record if the Town Council had decided to close the Park on its own initiative; but there was none.

### *Conclusion*

149. My analysis of the relevant statutory provisions above indicates that, as at 1 March 2001, the Application Land may have been in an infected area, and was in a controlled area. It follows that the provisions of article 27 of the 1983 Order may have applied; and that those of article 35A did apply.
150. It seems to be clear from all of the evidence taken as a whole that the Application Land was in fact closed, at some time in early March 2001. Letters were sent out by the County Council to all relevant landowners; and I see no reason why one would not have been sent to the Town Council – after all, it owned more land than just the Country Park. Mr Mawle recalls that he received one of the letters; and that he closed his land immediately. The Town Council, as a corporate body, might have had a less immediate reaction – particularly bearing in mind that 1 March 2001 was on a

Thursday – but I have no reason to suppose that it did not also close its land on or soon after 1 March; and the date of Wednesday 7 March 2001 seems plausible.

151. As to what notice was put up, I find the evidence of Mr Boden somewhat unsatisfactory (I have already noted that it is unfortunate that he was unable to be present at the inquiry). There is no reference anywhere else in the evidence as to guidance relating to in-house signs; and everyone else who saw a sign indicated that it was in the form of, or at least similar to, the Red Notice issued by the County Council. His reference to the Application Land being closed because it was an ESA makes no sense; nor does his suggestion that the path round the Lake remained open “because it was a permissive path”. Generally, his evidence reads as though he is attempting to recall, as best as he could, a series of events that had occurred in something of a hurry some nine years earlier.
152. Whilst it seems to be clear that the Application Land was closed, and that some notices were put up, I thus consider it likely that the notice put up at each entrance was either the Red Notice, or (as was done in the case of Mr Mawle’s land) a photocopy of that notice, rather than an in-house notice.
153. Miss Crail in her closing submissions focussed on the details of which notice was displayed by the Town Council (or by Mr Boden on its behalf). But that is to miss the point. The power under article 35A of the Order was to close the land in question, and the displaying of a notice was merely a means to that end. And the article merely stated that the notice had to be “to that effect” – that is, it had to convey the message that the land was closed. Any notice would suffice, provided that it clearly conveyed that message.
154. In this case, the County Council perfectly properly (for the reasons stated in the letter) delegated to each landowner the decision as to whether to close his or her land – and supplied a notice that could be erected if the owner or occupier of the land considered that it should be closed. But the letter did not specifically require that the landowner had to display a notice in precisely the form attached; and indeed a notice produced by the landowner himself or herself would have been just as appropriate, provided that it had stated clearly that the land was closed.
155. Thus, regardless of which notice was displayed, it seems to me that the Town Council was acting not on its own initiative, but in response to what was said to be the “advice” from MAFF and the Trading Standards Branch. In fact the letter of 1 March 2001 was not advice; it was an explanation by the County Council that it was empowered to close relevant land, but that it was authorising (although not, strictly, requiring) landowners to do so wherever their land met certain criteria.
156. The letter of 1 March 2001 was headed “The Foot and Mouth Disease (Amendment) (England) Order 2001”. That Order was in force from 27 February 2001 to 2 March 2001 – a short period, but one which included 1 March, when the letter was issued. Indeed, one might speculate that it was the making of the Order (no doubt accompanied by advice from MAFF to relevant local authorities) that prompted the issue of the letter.

157. As for whether the Application Land came within the criteria set out in the letter, they included land that had recently been grazed or used by the specified animals, and land used by wild deer. Licences were issued annually for the Land to be used for the grazing of livestock; and the evidence of local people confirms that it was in fact so used. So it would have been entirely reasonable for the owner of the Land to conclude that it was “grazed or recently grazed” by cattle (and I have already noted that the letter itself did not specify what was meant by “recently”). I have also noted that there was clearly some evidence as to the Land being “used” (a fairly non-specific word) by wild deer.
158. I therefore consider that it was entirely reasonable for the Town Council, as a landowner, to conclude that the Application Land did fall within the criteria set out in the County Council’s letter. And if there were any doubt on the matter, it would have been entirely proper for any landowner to err on the side of caution, given the somewhat tense situation that existed at the start of March 2001 both nationally and locally.
159. I thus conclude that the Application Land was within a controlled area at 1 March 2001, and that the County Council (by its inspector) therefore had powers, under article 35A of the 1983 Order, to prohibit the entry of any person onto any land. It did so by authorising landowners to act on its behalf to prevent public access to land that was in certain categories. The Town Council was such a landowner, and the Land was in two of those categories. It was therefore authorised to close the Land, as the agent of the County Council, and it duly did so.
160. I have earlier concluded that the Application Land may have been within an infected area, so that the County Council may have had powers to prohibit entry onto the Land under article 27 of the 1983 Order. However, this is not certain; and given that it had powers under article 35A in any event, there is no need to pursue that point. Further, the letter of 1 March 2001 is headed “The Foot and Mouth Disease (Amendment) (England) Order 2001”; and that Order inserts articles 35A and 35B into the 1983 Order, but makes no change to article 27. That of itself suggests that the County Council was acting in reliance on article 35A rather than 27.
161. It follows that the closure of the Application Land in 2001 was “by reason of an enactment”, namely the Animal Health Act 1981, and the Foot-and-Mouth Disease Order 1983, as amended by the Foot-and-Mouth Disease (Amendment) (England) Order 2001. The closure thus falls to be disregarded for the purposes of calculating the 20-year period under the 2006 Act.

## F. THE LEGAL BASIS FOR THE USE OF THE APPLICATION LAND

### *Introduction: use as of right*

162. For land to be eligible for registration as a town or village green, it must have been used for lawful sports and pastimes by a significant number of the inhabitants of any locality or any neighbourhood within a locality throughout the relevant 20-year period as of right. Use “as of right” means use *nec vi, nec clam, nec precario* – or, in English, not by force, not in secret, nor with the permission of the owner. There was developing prior to 2010 a further requirement that use should not be in the form of an activity that deferred to the requirements of the landowner – but that approach was deprecated by the Supreme Court in *R (Lewis) v Redcar & Cleveland BC*.<sup>72</sup>
163. In this case, as in so many, there is no suggestion that the land in question was used by force or by secrecy – subject, possibly to the brief discussion above as to entry to the Application Land via the bridge over the West Windrush from the Two Rivers Industrial Estate. The question is therefore whether the Land has been used “by permission”.
164. The Highway Authority argued, in short, that access to the Application Land by residents of Witney and others was by permission, and that that permission was subject to (a) the Code and Behaviour and (b) the Rules, each of which was posted by the Town Council on the noticeboards at both entrances to the Country Park – from Avenue Two and from Farm Mill Lane. Further, the Town Council had over the years positively invited the public onto the Land, by means of signs, leaflets and other promotional activity. This was all indicative of a permission of the kind necessary to negative any eligibility for its registration as a green.
165. In response, the Applicant argued that few had been aware of the Code and the Rules; and that they were in any event not enforced. Further, the signs, leaflets and open days were indicative not of a revocable permission but of acquiescence.
166. In their submissions relating to whether the use of the land in this case had been “as of right”, both Mr Pike and Miss Crail relied heavily on the decision of the House of Lords in *R (Beresford) v Sunderland CC*<sup>73</sup> and, to a lesser extent, on the Warneford Meadows case.<sup>74</sup>

### *The decision in Beresford*

167. I agree that those decisions, especially *Beresford*, are indeed the crucial ones; although I confess that the decision of the House of Lords in *Beresford* is not altogether straightforward. However, it is clear that the key point is to distinguish between use of land that is the subject of a permission, explicit or implicit, by the landowner – which is

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<sup>72</sup> [2010] 2 WLR 653, SC.

<sup>73</sup> [2004] 1 AC 889. HL.

<sup>74</sup> *R (Oxfordshire & Buckinghamshire Mental Health NHS Foundation Trust and Oxford Radcliffe Hospitals NHS Trust) v Oxfordshire CC* [2010] EWHC 530 (Admin).

thus *precario* – and use that is simply the result of acquiescence, which may be categorised as being “as of right”.

168. Lord Bingham put it thus:

“5. I can see no objection in principle to the implication of a licence where the facts warrant such an implication. To deny this possibility would, I think, be unduly old-fashioned, formalistic and restrictive. A landowner may so conduct himself as to make clear, even in the absence of any express statement, notice or record, that the inhabitants' use of the land is pursuant to his permission. This may be done, for example, by excluding the inhabitants when the landowner wishes to use the land for his own purposes, or by excluding the inhabitants on occasional days: the landowner in this way asserts his right to exclude, and so makes plain that the inhabitants' use on other occasions occurs because he does not choose on those occasions to exercise his right to exclude and so permits such use.

6. Authority, however, establishes that a licence to use land cannot be implied from mere inaction of a landowner with knowledge of the use to which his land is being put.”

169. This emphasises the need for a landowner to conduct himself so as to make clear that the inhabitants' use of the land is pursuant to his permission, and not merely due to his inaction.

170. Lord Rodger put it similarly:

“59. The council were, accordingly, entitled to refuse Mrs Beresford's application for registration of the area as a town or village green only if those who used the sports arena did so by the revocable will of the owners of the land, that is to say, by virtue of a licence which the owners had granted in their favour and could have withdrawn at any time. The grant of such a licence to those using the ground must have comprised a positive act by the owners, as opposed to their mere acquiescence in the use being made of the land. Prudent landowners will often indicate expressly, by a notice in appropriate terms or in some other way, when they are licensing or permitting the public to use their land during their pleasure only. But I see no reason in principle why, in an appropriate case, the implied grant of such a revocable licence or permission could not be established by inference from the relevant circumstances.”

171. Here Lord Rodger also refers to “a revocable licence or permission”, but this is not to distinguish it from an irrevocable one – any licence or permission can be revoked. Rather, the emphasis is on the need for any claim by the landowner to have granted a licence to rely on “a positive act”, as opposed to “mere acquiescence”. A decision can be revoked; a failure to make any decision means that there is nothing to revoke.

172. Lord Walker extends this to consider the position where the positive act takes the form of consent being granted by non-verbal means, that is, by conduct:

“75. An entry charge of this sort [as in *Gardner v Hodgson's Kingston Brewery*<sup>75</sup>] can aptly be described as carrying with it an implied licence. The entrant who pays and the man on the gate who takes his money both know what the position is without the latter having to speak any words of permission (although he may qualify the permission by

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<sup>75</sup> [1903] AC 229.

saying that no dogs, or bicycles, or radios are allowed). Similarly (especially in a small village community where people know their neighbours' habits) permission to enter land may be given by a nod or a wave, or by leaving open a gate or even a front door. All these acts could be described as amounting to implied consent, though I would prefer (at the risk of pedantry) to describe them as the expression of consent by non-verbal means. In each instance there is a communication by some overt act which is intended to be understood, and is understood, as permission to do something which would otherwise be an act of trespass.

76. The authorities contain many references (which can be identified and understood more readily since *Sunningwell*) to the importance of looking at the overt conduct of those involved, including what the landowner said and did from time to time during the period which the court has to examine. If the landowner found that his land was being used as a footpath by his neighbour (in a private right of way case) or by the whole village (in a public right of way case) and he suffered in silence, he would be treated as having acquiesced in what was going on. As Fry J (one of the judges who advised the House of Lords in *Dalton v Henry Angus & Co*<sup>76</sup>) said in that case, at p 773:

"the whole law of prescription and the whole law which governs the presumption or inference of a grant or covenant rest upon acquiescence. The courts and the judges have had recourse to various expedients for quieting the possession of persons in the exercise of rights which have not been resisted by the persons against whom they are exercised, but in all cases it appears to me that acquiescence and nothing else is the principle upon which these expedients rest."

173. Lord Walker also looked at the position where land is appropriated by a public authority landowner for the purposes of public recreation:

87. Where land is vested in a local authority on a statutory trust under section 10 of the Open Spaces Act 1906, inhabitants of the locality are beneficiaries of a statutory trust of a public nature, and it would be very difficult to regard those who use the park or other open space as trespassers (even if that expression is toned down to tolerated trespassers). The position would be the same if there were no statutory trust in the strict sense, but land had been appropriated for the purpose of public recreation.

...

90. In short [in this case] there is no evidence of any formal appropriation of the land as recreational open space by the city council or its predecessors. Nor is there material from which to infer an appropriation. Such action by the WDC or the CNT would have been unnecessary, and at or after the city council's acquisition in 1991 an appropriation as open space would have been inconsistent with the site's perceived development potential. It is true that the public's interim use of the land for recreation was not inimical to the city council's interests. But user can be as of right even though it is not adverse to the landowner's interests."

174. Thus, where land is explicitly held by an authority on a trust under the 1906 Act, the land would seem to be by permission, and thus not as of right. And the same would apply where land was formally appropriated for public recreation.

175. Lord Hutton agreed with Lord Bingham, Lord Walker and Lord Rodger.

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<sup>76</sup> (1881) 6 App Cas 740.

176. From those four speeches I deduce that the key point is to distinguish between use of land that is with the owner's explicit or implicit permission (which can, of necessity, be revoked) and use that is the result of the landowner's acquiescence. And it should not be forgotten that the context of the decision in *Beresford* was a factual situation where there was no indication by the landowner as to the basis on which members of the public were allowed to come and remain on the land in question.
177. Seen in that light, the speech of Lord Scott in *Beresford* arguably confuses the position, as he seems to be suggesting that the attitude of the landowner in that case had been more than mere acquiescence, but had nevertheless not been "permission" sufficient to render the use of the land not as of right. He thus held as follows:
- "48. I agree with Mr Petchey that, in the present case, the attitude of the successive owners of the sports arena to the public use of the land for recreation was more than mere acquiescence or toleration. There was, I agree, positive encouragement. The provision of the rows of benches was to make more comfortable the watching of the activities of others. The cutting of the grass was in order to enhance the enjoyment of the sports arena by those using it. I am receptive to the submission that the successive owners had impliedly consented to the recreational use of the land by the public. The users were, in my opinion, certainly not trespassers. But this does not, in my opinion, answer the question whether the use was "as of right" or "nec precario".
49. Was there any sign that the permission was intended to be temporary or revocable? There was none. The fact that the land was publicly owned seems to me highly material. Neither the WDC nor the CNT nor the council were, or are, private landowners. Their respective functions were and are functions to be discharged for the benefit of the public. The provision of benches for the public and the mowing of the grass were, in my opinion, not indicative of a precatory permission but of a public authority, mindful of its public responsibilities and function, desirous of providing recreational facilities to the inhabitants of the locality. In these circumstances there seems to me to have been every reason for the inhabitants of the locality who used the sports arena to believe that they had the right to do so on a permanent basis."
178. This passage is sometimes cited (and was, not surprisingly, cited by Mr Pike in the present case) as authority for the proposition that permission, if it is to be *precario*, must be explicitly revocable. For the reasons indicated above, I reject that.
179. In addition, as pointed out by Miss Crail, the reasoning of Lord Scott in *Beresford* is to some extent at variance with that of his fellow members of the Judicial Committee, and was explicitly not adopted by them. Where there is a distinction of significance, it seems to me that I ought to follow the majority. Secondly, the phrase "as of right" is occasionally used when it would seem that what is meant is "by right" or "of right" – as she also points out, this is a not uncommon error.<sup>77</sup>
180. I thus conclude that the key is to distinguish between use of land that is with the owner's explicit or implicit permission (which can, of necessity, be revoked) and use that is the result of the landowner's acquiescence. And to do that, it is necessary to

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<sup>77</sup> see the judgment of McCullough J in *R (Brim) v Doncaster MBC* (1989) 57 P&CR 1; also the speeches of the House of Lords in *Glasgow Corp'n v Taylor* [1922] 1 AC 44.

consider the overt conduct of all those involved, including what the landowner said and did from time to time during the relevant period.

*Powers to hold land for recreation*

181. For completeness, and in the light of the observations of Lord Walker in *Beresford*, I note the principal specific powers under which a local authority (including a parish or town council) may hold land for public recreation – in addition to its general powers under the Local Government Act 1972.

182. Section 164 of the Public Health Act 1875 (as amended by the Local Government Act 1972) provides as follows:

“Any local authority may purchase or take on lease lay out plant improve and maintain lands for the purpose of being used as public walks or pleasure grounds, and may support or contribute to the support of public walks or pleasure grounds provided by any person whomsoever.

Any local authority may make byelaws for the regulation of any such public walk or pleasure ground, and may by such byelaws provide for the removal from such public walk or pleasure ground of any person infringing any such byelaw by any officer of the local authority or constable.”

A local authority is not defined.

183. Section 9 of the Open Spaces Act 1906 provides as follows:

“A local authority may, subject to the provisions of this Act,—

- (a) acquire by agreement and for valuable or nominal consideration by way of payment in gross, or of rent, or otherwise, or without any consideration, the freehold of, or any term of years or other limited estate or interest in, or any right or easement in or over, any open space or burial ground, whether situate within the district of the local authority or not; and
- (b) undertake the entire or partial care, management, and control of any such open space or burial ground, whether any interest in the soil is transferred to the local authority or not; and
- (c) for the purposes aforesaid, make any agreement with any person authorised by this Act or otherwise to convey or to agree with reference to any open space or burial ground, or with any other persons interested therein.”

184. A local authority for this purpose includes a parish council (see section 1). “Open space” is defined as follows:

“... any land, whether inclosed or not, on which there are no buildings or of which not more than one-twentieth part is covered with buildings, and the whole of the remainder of which is laid out as a garden or is used for purposes of recreation, or lies waste and unoccupied.”

185. Section 10 of the 1906 Act then provides:

“A local authority who have acquired any estate or interest in or control over any open space or burial ground under this Act shall, subject to any conditions under which the estate, interest, or control was so acquired—

- (a) hold and administer the open space or burial ground in trust to allow, and with a view to, the enjoyment thereof by the public as an open space within the meaning of this Act and under proper control and regulation and for no other purpose: and
- (b) maintain and keep the open space or burial ground in a good and decent state,

and may inclose it or keep it inclosed with proper railings and gates, and may drain, level, lay out, turf, plant, ornament, light, provide with seats, and otherwise improve it, and do all such works and things and employ such officers and servants as may be requisite for the purposes aforesaid or any of them.”

### *The acquisition of the Application Land*

186. There is no record of any resolution of the Town Council to purchase the Application Land. However, the Finance and General Purposes Committee of the Town Council resolved on 8 June 1987 to proceed with the purchase.<sup>78</sup> That resolution makes no reference to the statutory power under which the Land would be acquired, or the purpose for which it would be used – other than “for the benefit of the town”. Earlier reports of that Committee had similar not mentioned any particular statutory power, but the report to the meeting of 22 April 1985 made it clear that the acquisition was to be in the context of recreation provision.
187. Neither counsel made submissions as to the powers under which the Land had been acquired or was held.

### *The Code and the Rules*

188. Under the heading of “Witney Lake and Environs”, the minutes of the meeting of the Amenities Committee of the town Council on 4 March 1996 record that the Committee considered “the draft code of behaviour and set of rules relating to the lake, copies of which had been circulated”. The Committee recommended that the Code of Behaviour and Rules relating to the Witney Lake and Country Park be adopted.<sup>79</sup> The draft code and rules there referred to appear to be the ones referred to by other witnesses at the inquiry.<sup>80</sup>
189. It was not stated who was being recommended by the Committee to adopt the Code and Rules, and there does not appear to be any record of them being formally adopted. However, Miss Howells stated that she had examined the minutes books of

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<sup>78</sup> CB, pp 521-524.

<sup>79</sup> CB, pp 134-137.

<sup>80</sup> Howells, HA, pp 136-139.

the Town Council, and confirmed that the Council had adopted them at its meeting on 27 March 1996.<sup>81</sup>

190. The Code is drafted somewhat imprecisely.<sup>82</sup> Some its clauses are phrased as commands (“protect wildlife”; “avoid damage”). Some are in the form of rules (fires must not be started; dogs must be kept under control; fishing without a permit, cycling, riding and camping are not permitted), or approximate to rules (“noise will not be tolerated”). Some are merely exhortations (litter should be taken home; swimming is dangerous). No penalty for breach of the Code is specified. And reference is made to “a full set of rules governing the Lake and Country Park” to be found at the Avenue Two entrance.
191. The Rules are somewhat clearer, in that they simply list a series of activities that are “excluded”, either so as to avoid annoying fellow visitors or to achieve conservation objectives.<sup>83</sup> The Code and the Rules overlap, but neither includes all the provisions of the other. Miss Howells confirmed that neither were byelaws, formally adopted as such.
192. The sheet following the Rules, as annexed to both Mr Hickman’s and Mr Westbury’s evidence, states that the Town Council may grant limited dispensation for specific activities upon application to the Town Clerk.<sup>84</sup> That sheet seems (in the 1997 photograph: see below) to have been displayed on the board at the Avenue Two entrance, but immediately below the Code; it also follows the Code in Annex C to Mr Askew’s evidence. It is thus not entirely clear whether it forms part of the Rules or the Code (or both or neither); but probably nothing turns on that.

#### *Availability of the Rules and the Code*

193. The Rules were displayed from spring or summer 1996 onwards.<sup>85</sup> Mr Hickman, an employee of the Town Council, says that both the Code and the Rules were displayed at both entrances to the Country Park (Farm Mill Lane and Avenue Two) – and replaced from time to time as necessary. Mr Westbury, the Technical Officer, simply says in his written statement that the Rules (without the word “draft”) were displayed at the Avenue Two entrance – and replaced from time to time – but makes no comment as to the Code.<sup>86</sup>
194. Mr Michael Harvey was employed by the Town Council as parks foreman, until his retirement in 2001. He recalled erecting the notice boards at both entrances to the Country Park, and also erecting the stained wooden sign saying “Witney Country Park and Meadows” at the Farm Mill Lane entrance. And after the Code and Rules had

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<sup>81</sup> Howells, HA, p 133.

<sup>82</sup> HA, p 79, and elsewhere.

<sup>83</sup> HA, p 80, and elsewhere.

<sup>84</sup> HA, p 81, and elsewhere.

<sup>85</sup> Hickman, Westbury.

<sup>86</sup> Mr Westbury was unable to give oral evidence at the inquiry for health reasons.

been adopted, from time to time he had erected replacement notices when requested to do so, as well as a notice regarding grazing management and dogs.<sup>87</sup>

195. Miss Howells, who has lived in Witney for 40 years, has been the Amenities Manager for the Town Council since 2003, in succession to Mr Westbury. She stated that both the Code and the Rules were displayed at both the Farm Mill Lane entrance and the Avenue Two entrance to the Country Park, in laminated form, so as to be clearly visible to those entering or leaving the Park – she had typed them herself, and posted them, using a stapler. They were replaced from time to time, until the boards themselves were removed in 2006 as a result of damage by vandals. That Rules and Code that were displayed were the same as those that were in the written evidence at the Inquiry, but without the word “draft”; it was not entirely clear why there was no set of the final version available at the inquiry.
196. A photograph of the notice board at the Avenue Two entrance, taken in 1997, has been helpfully scanned to enable enlargement. This indicates that the Rules and the Code were on that board at that time. A photograph of the notice board at the Farm Mill Lane entrance, also taken in 1997, seems to show the Code being displayed, although this is not quite as certain. The photographs of the notice board at the Farm Mill Lane entrance annexed to Mr Askew’s evidence do not enable one to be certain as to what notices were being displayed.
197. Councillor Harvey recalled in his written evidence having seen the Rules and Code displayed on the board at both entrances, when he was taken round the Country Park by Mr Westbury after he had first been elected as Mayor of Witney in May 2001; although in cross-examination he was less certain which of the two documents he had seen. Mr Hartless said that he had seen in the autumn of 2006 a notice board at the Farm Mill Lane entrance, on which was displayed a Code of Behaviour; in a subsequent statement he described it as a “list of rules”.
198. Of the witnesses (all local residents) who appeared on behalf of the Applicant, most said that they remembered the large notice board at the Farm Mill Lane entrance; some also remembered the one at the Avenue Two entrance. Mrs Basson recalled the Rules and the Code of Behaviour being displayed on the board (as did four of the witnesses who did not give oral evidence<sup>88</sup>; most of the other witnesses did not – although many admitted that they did not recall what notices had been displayed, and did not deny that the Rules or the Code might have been there.
199. Several local residents gave oral evidence at the inquiry on behalf of the Highway Authority. Mrs Coombs and Mrs Pitt, both employees of Mouchel Parkman, recalled seeing notices setting out rules and a code of behaviour at the Avenue Two entrance. Mr Day (an employee of Jacobs Engineering) and Mr Stewart (an employee of the County Council) saw them at both entrances. All asserted that that meant that access to the Land was permitted, but only provided that the rules were complied with. Mr Pike on behalf of the Applicant drew attention to the connection between each of

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<sup>87</sup> HA, p 162.

<sup>88</sup> Cotton, Matthews, Merifield, Warner.

these four witnesses and the Highway Authority (Mouchel and Jacobs both provide consultancy services to the Authority), and submitted that Mr Day's evidence, in particular, was unreliable.

200. Of the witnesses who produced written statements on behalf of the Highway Authority, but who did not appear at the inquiry, Mr Ashby recalled seeing rules on the noticeboard at the Avenue Two entrance to the Park; Mrs Day recalled rules and a code of behaviour at that entrance; Mr Clapton recalled seeing rules and a code of behaviour at the Farm Mill Lane entrance.
201. The Code of Behaviour was also incorporated in the Country Park leaflet,<sup>89</sup> entitled "Witney Town Council welcomes you to Witney Lake and Meadows Country Park", produced by the Town Council and in circulation from 1997 – available at the Land, at the Town Hall, the Corn Exchange and at the Tourist Information Office.<sup>90</sup> Several of the Applicant's witnesses recalled having seen the leaflet (sometimes referred to at the inquiry as "the kingfisher leaflet").<sup>91</sup> That was replaced in 2005 with a slightly more professionally produced leaflet, which also mentioned restrictions on the use of the Application Land. The new leaflet too was widely available.
202. Mr Askew had obtained copies of the Rules and Code from the Town Council prior to organising a sponsored walk in 2004; he was not certain whether they had been displayed on the notice boards.

#### *Enforcement of the Rules and Code*

203. There was generally little evidence of anti-social behaviour on the Application Land – whether because of the existence of the rules and the code of behaviour or simply because the residents of Witney are naturally well-behaved must be a matter of conjecture. Most of the witnesses called by the Applicant said in their written statements that they could not recall seeing anyone being apprehended for inappropriate behaviour on the Hay Meadow. However, in answer to cross-examination, some said they had seen inappropriate behaviour taking place – in particular, cycling and occasional camping – or, more often, evidence of it (dismantled fences, remains of bonfires, glass, dog faeces, damage to trees).
204. Miss Howells stated that the Rules and Code were enforced as necessary. For example, she had asked young people camping, and anglers who did not have permits, to leave – sometimes she had assistance from the Police when doing so. Vandalism was reported to the Police. Essentially she took enforcement action against anti-social behaviour, and damage to property. The ban on cycling, on the other hand, was generally not enforced; and the Council tended to turn a blind eye.
205. Most of the Applicant's witnesses said that they could not ever recall seeing a Council official, park warden, policeman or other official patrolling the Hay Meadow.

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<sup>89</sup> See HA, p 120; and elsewhere.

<sup>90</sup> Day; Councillor Harvey; Westbury.

<sup>91</sup> Basson, Hawker, Lawrence-French, Pateman, Thompson (not certain).

However, Miss Howells said the Town Council staff on the Land wore high-visibility jackets; and were there reasonably often. Mr Michael Harvey occasionally reprimanded youngsters lighting fires on the Land.

206. Mr Boden was responsible for the promotion, development and maintenance of the Country Park, including health and safety issues, but his job description does not include enforcement of the Code of Behaviour and Rules; indeed he said in his written statement that he had only once attempted to enforce the rules – when he found evidence of fishing by someone without a permit. One or two people had seen Mr Boden on the land.<sup>92</sup> And the Committee reports contain mentions of his activity there.<sup>93</sup>
207. Miss Howells stated that litter was picked up weekly in winter, more often in summer.
208. The Applicant's witnesses all asserted in their written statements that they had never sought permission, nor had consent, to be on the Land; nor had they ever been challenged, or asked to leave; nor had they ever seen any sign discouraging use by local people. They had had thus always used the meadow openly and without secrecy in the belief that the meadow had been used by local people as a community area. I do not question that the written statements were produced in good faith. However, I give limited weight to those assertions, since they were all in identical, somewhat formulaic terms; and it must be questionable how much thought was given by each witness to the precise content of each assertion.

#### *Signs, leaflets and other publicity*

209. Brown (tourist) signs were erected at some time in the late 1990s at the entrance to Farm Mill Lane from Witan Way, and at the entrance to Avenue Two from Station Way.<sup>94</sup> Those signs are still there today.
210. I have already noted that the kingfisher leaflet (produced by the Town Council) and its more modern successor were widely available – although I observe in passing that sometimes visitors are more aware of such leaflets than local residents. Those two leaflets contained information about features of interest, and particularly wildlife, that could be observed in the Country Park – including the Lake, the Wet Meadow and the Application Land (described as “the Hay Meadow”).
211. Some saw the leaflet displayed on the notice boards at the Country Park.<sup>95</sup> A more detailed handout highlighting points of interest was given to members of the public taking part in tours of the Country Park organised by the Town Council.<sup>96</sup> Information panels were installed in 2005/06, and are still displayed at both entrances. And there

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<sup>92</sup> Basson, French.

<sup>93</sup> CB, pp 146-149, 631, 653, 688, 703.

<sup>94</sup> Hickman.

<sup>95</sup> Stewart; Hartless.

<sup>96</sup> Westbury.

were the nameboards, noted above, at the Farm Mill Lane entrance, making it clear that the Land was owned by the Town Council.

212. Open days were organised by the Town Council in 1996 and 1998, involving the Application Land as well as the Lake and the Wet Meadow; and these were publicised by leaflets and articles in the local press.<sup>97</sup> Some local people remembered them.
213. Regular reports were submitted to the Amenities Committee of the Town Council by the Park Ranger (Mr Boden) and, more recently by the Amenities Manager (Miss Howells) and the Deputy Town Clerk.<sup>98</sup> These dealt with a range of relatively minor issues relating to the Country Park generally, and the Application Land in particular – and noted that guided tours had been given for various local groups.

#### *Other matters*

214. The Town Council leased fishing rights on the banks of the East Windrush and the West Windrush alongside the Application Land to the Newland Fishing Club, based in Witney.<sup>99</sup> And a series of annual grazing licences were issued to a local farmer, allowing him to graze livestock from spring to the end of November each year.<sup>100</sup>
215. From time to time, Miss Howells was asked to allow sponsored walks in the Country Park – including on two occasions by Mr Askew on behalf of Wood Green School. She always asked for such requests to be made in writing, and then reviewed them in accordance with her normal practice. She agreed that merely using the footpath would not have needed permission. Mr Askew said he felt that he needed the support and permission of the Town Council to use the Park for the sponsored walks.
216. The path round the Lake was closed in May 2001, just after the FMD outbreak, whilst repairs were carried out with heavy machinery.<sup>101</sup>

#### *Consideration of the evidence*

217. Firstly, it is not clear under what statutory powers the Town Council acquired the Application Land – it may be that the point was never considered at the time; there is certainly no evidence that it ever was – but it is plain that the initial acquisition was in the context of making land available for public recreation. Nor does it seem that the land was ever appropriated for any other purpose following that.
218. It may be, therefore, that the doctrine enunciated by Lord Walker in *Beresford* would apply in this case, so that the position is the same as if the Land had been vested in the Council on a statutory trust under the 1906 Act. But in the absence of either evidence

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<sup>97</sup> HA, pp 174-194; CB, pp 238-251 passim.

<sup>98</sup> HA, pp 322-367; CB, pp 587-705.

<sup>99</sup> CB, pp 168-187.

<sup>100</sup> CB, pp 188-225.

<sup>101</sup> HA, p 172.

or submissions by counsel on the point, I would be reluctant to base my recommendation solely on it.

219. As to the Rules and the Code of Behaviour – on which there was much evidence, and submissions – I agree with Mr Pike that it is curious that there was no copy of them available to the inquiry other than those headed “draft”. However, the Town Council clearly intended to adopt them; and (in addition to the plain evidence of Miss Howells that they were in fact adopted) those who had seen them subsequently did not dispute that they were either in precisely the same form as the draft or in a very similar form. And it is significant that the Code as reproduced in the kingfisher booklet (produced in 1997) is in precisely the same terms as the draft.
220. I therefore find that the Code and the Rules were thus adopted in 1996, in the same or similar terms as the draft.
221. It is possible, but extremely unlikely, that the various witnesses giving evidence on behalf of the Highway Authority who gave evidence that they had displayed the Code and the Rules when they first came into effect, and then replaced them from time to time when necessary, were either misremembering or even misrepresenting what had occurred. However, the 1997 photograph indicates that the Rules and the Code were at that time displayed at the Avenue Two entrance to the Country Park; and Councillor Harvey is likely to have been looking carefully at what he was shown on his mayoral tour in 2001, and he remembers them being there.
222. In addition, some local residents giving evidence on behalf of the Highway Authority said that they recalled having seen the Rules and Code displayed on the notice boards at one or other of the entrances to the Park; as did some of those who produced written evidence on behalf of the Applicant but were not called at the inquiry (and one who was called). And whilst I give little if any weight to any expression by such witnesses of what they considered to be the implication of such displays, I think that it is unlikely that they were wrong in saying what they actually saw.
223. As for the other local residents, who said that they did not recall seeing the Rules and Code, I am not surprised; I strongly suspect that most people going into a park, open space or public building do not for a moment bother to read, far less ponder in detail, the terms on which they are allowed to be there.
224. In any event, I also note that the Code (although not the Rules) was also available on the kingfisher leaflet, which is agreed to have been generally available. And enquirers such as Mr Askew were supplied with copies where appropriate.
225. I therefore conclude that the Rules or the Code or both were at various times during the relevant 20-year period displayed on one or both of the notice boards at the two entrances to the Country Park – at Farm Mill Lane and Avenue Two – and that the Code, at least, was made more generally available. And the Code explicitly refers to the Rules. It is difficult to see what more could have been done by the Town Council, as owner of the Application Land, to publicise these rules. The fact that many of those who went onto the Land were not aware of them proves nothing.

226. As to the significance of the Code and the Rules, I agree with Mr Pike that the principles set out in the Warneford Meadows case apply to permission as much as to prohibition. In particular:

- “(1) The fundamental question is what the notice conveyed to the user. ...
- (2) Evidence of the actual response to the notice by the actual users is thus relevant to the question of actual knowledge and may also be relevant as to the putative knowledge of the reasonable user;
- (3) The nature and content of the notice, and its effect, must be examined in context;
- (4) The notice should be read in a common sense and not legalistic way;
- (5) ... The aim is to let the reasonable user know that the owner objects to and contests his user. Accordingly, if a sign does not obviously contest the user in question or is ambiguous a relevant question will always be why the owner did not erect a sign or signs which did. ...”<sup>102</sup>

227. In the present case, the Rules start:

“This Lake and Country Park has been provided and is being maintained by the Witney Town Council for the benefit and enjoyment of the residents of Witney. ”

And the Code of Behaviour starts:

“Visitors are welcome to enjoy this amenity ...”

228. This makes it plain that the Rules and the Code, taken together or separately, are indicating to any potential user of the Application Land that he or she is permitted, and indeed encouraged, to use it. Further, the wooden nameboards at each entrance make it clear that the land was owned by the Town Council, and was a “country park” (whatever that might be), which would presumably imply some form of availability for public use – especially when the signs were next to open entrances, and the Land was readily accessible from a public footpath.

229. And this impression would have been reinforced by the availability of leaflets and other publicity material – although I agree with Mr Chapman that that would not on its own have been determinative.

230. However, it should not be forgotten that the Rules, after the opening quoted above, continue:

“It is, however, necessary that certain regulations are applied to ensure that the selfish or destructive behaviour of a few is not detrimental to the enjoyment of the majority.

And the Code, after the above opening, continues:

“... but for the benefit of others and the resident wildlife it would be appreciated if you would kindly follow the code of behaviour during your visit.”

231. These qualifications make it clear that, whilst visitors were welcome to use the Application Land, they were not entitled to do whatever they want on it. They would not, for example, have been allowed to fly model aeroplanes, have barbecues, ride

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<sup>102</sup> *R (Oxfordshire & Buckinghamshire Mental Health NHS Foundation Trust and Oxford Radcliffe Hospitals NHS Trust) v Oxfordshire CC* [2010] EWHC 530 (Admin), at para 22.

horses, or practice archery – all of which might otherwise have been reasonable things to do on such land (and all of which, incidentally, would normally be categorised as lawful sports and pastimes). The prohibition of such activities was in addition to the ban on obviously destructive behaviour such as damaging fences, polluting waterways and removing plants (some of which would have been criminal offences anyway).

232. The fact that enforcement of the ban on prohibited activities was limited was principally because the prohibition was effective. Whether the absence of camping and barbecues was because people knew that they were not allowed to erect tents or light fires, or whether it was because they simply did not want to, does not matter. Either way, there was no need for heavy-handed supervision by Police or Council officers – although it is noteworthy that occasionally the Council staff did have to discourage fires or camping.
233. I thus conclude that the permission given by the Town Council to local people and others to use the Land was definitely a qualified permission.
234. Further, it was entitled to – and did – occasionally prevent access to the Land – such as when it was repairing paths around the Lake. Little evidence was given on the point, but it is known that the path along the bank of the East Windrush was re-surfaced and improved at some point in the last 20 years; and it may be imagined that access was restricted while that operation was taking place.
235. The Town Council employed staff to patrol the Application Land from time to time and regulate its use; and engaged in a range of activities that indicated that it was actively encouraging and supervising the enjoyment of the Land by the residents of Witney.

### *Conclusion*

236. I therefore conclude that the Town Council acquired the Application Land for the purposes of public recreation, and maintained it for those purposes at all times from then on. Further, the overt conduct of both the Council and those members of the public using the Land, including local residents, makes it clear that the Council was positively permitting them to use the Land for lawful sports and pastimes, and not merely acquiescing in such use.
237. It follows that the use of the Land during the relevant 20-year period was by permission, and thus not as of right.

## F. CONCLUSIONS AND RECOMMENDATION

### *Conclusions*

238. It will be recalled that section 15 of the 2006 Act makes it clear that, for land to be eligible to be registered as a town or village green, it must have been used:
- for lawful sports and pastimes,
  - by a significant number of the inhabitants of any locality or any neighbourhood within a locality,
  - throughout the relevant period (subject to any closure by reason of any enactment), and
  - as of right.
239. In this case, the Application Land as a whole has been used since it was acquired by the Town Council primarily for public recreation, and for grazing – although the grazing did not interfere with the recreation. Such use constitutes use for lawful sports and pastimes for the purposes of the 2006 Act.
240. That use of the Application Land has been by a significant number of the inhabitants of more than one neighbourhood – namely, the various neighbourhoods that together make up the built-up area of Witney – and those neighbourhoods were and are all within a single locality, West Oxfordshire District, whose boundary has not changed since 1974.
241. The Application Land has been used continuously, in more or less the way in which it is now, throughout the period from 19 December 1988 to the date of the application (a period of 20 years and 49 days) – other than when it was closed for a 49-day period from 7 March 2001 to 25 April 2001. However, that closure was by reason of the Animal Health Act 1981, and the Foot-and-Mouth Disease Order 1983, as amended by the Foot-and-Mouth Disease (Amendment) (England) Order 2001, and thus falls to be disregarded for the purposes of calculating the 20-year period under the 2006 Act.
242. The Town Council acquired the Application Land for the purposes of public recreation, and maintained it for those purposes at all times from then on. The overt conduct of both the Council and those members of the public using the Land, including local residents, makes it clear that the Council was positively permitting them to use it for lawful sports and pastimes, and not merely acquiescing in such use, such that its use during the relevant 20-year period was by permission, and thus not as of right.
243. It follows that the Application Land was used for lawful sports and pastimes, by a significant number of the inhabitants of one or more neighbourhoods within a locality, throughout the relevant 20-year period (disregarding its closure by reason of an enactment).
244. However, such use was by permission of the landowner, and thus not as of right.
245. I therefore conclude that the Application Land is thus not eligible to be registered as a town or village green.

*Recommendation*

246. For the above reasons, I recommend that the Application should be rejected.

**CHARLES MYNORS**

FRTPI, FRICS, IHBC, Barrister

31 August 2010

In the matter of the Local Government Act 1972  
and the Commons Act 2006  
And in the matter of land at Witney Meadow,  
Oxfordshire

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**Report to Oxfordshire County Council  
on the determination of  
Application NLREG21  
to register land at Witney Meadow  
as a town or village green**

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Peter G Clark,  
County Solicitor and Head of Legal and  
Democratic Services,  
County Hall,  
New Road,  
Oxford, OX1 1ND

tel. 01865-323917  
(Richard Goodlad)  
fax. 01865-783362

DX. 4310 Oxford

email: [richard.goodlad@oxfordshire.gov.uk](mailto:richard.goodlad@oxfordshire.gov.uk)

31 August 2010

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