

South Oxfordshire District Council
Development Control
South Oxfordshire District Council 135
Eastern Avenue
Mitlon Park
Abingdon
OX14 4SB

Our ref: WA/2023/130351/02-L01
Your ref: P22/S4618/O
Date: 15 February 2024

Dear Sir/Madam

Outline Planning Permission For Up To: 1. 1,450 New Dwellings (Class C3), 2. 120 Units Of Assisted Living Dwellings, With Ancillary Communal And Care Facilities (Class C2/C3), 3. 560 Sq.M Of New Community Use Buildings (Class F2), 4. 500 Sq.M Of New Commercial/Business/Service Buildings/Health Provision (Class E), 5. 2,600 Sq.M Of New Primary School (Class F1), 6. Creation Of Areas Of Green Infrastructure, Including Areas Of Open Space, Allotments, Habitats, Recreation Facilities And Public Park Areas, 7. Associated Transport, Parking, Access, Surface Water And Utility Infrastructure Works.

Full Planning Permission For: 1. Change Of Use To Class E And Associated Refurbishment Works To The Main Barn And 3no. Curtilage Barns At Wick Farm, 2. Change Of Use To Class F1 And Associated Refurbishment Works To The Wick Farm Well House Building, 3. Erection Of New Build Barn-Style Building (Class E), 4. Erection Of New Build Building Containing Back-Of-House Facilities For The Main Barn-Style Building (Class E), 5. Erection Of New Build Community Space Building (Class F2), 6. Associated Transport, Parking Associated With The Local Centre, Access And Utility Infrastructure Works, 7. Demolition Of Identified Buildings, 8. Associated Landscaping, Public Realm And Market Garden.

Land North Of Bayswater Brook Near Barton

Thank you for re-consulting us on the above application on 20 September 2023, following the submission of additional information and thank you for agreeing an additional timeframe for the provision of our comments.

Environment Agency position

The additional information does not address our earlier concerns. We therefore **maintain our objections** set out in our response dated 27 July 2023 (reference: WA/2023/130351/01-L01). We recommend that planning permission should be refused on this basis.

Did you know that in the UK, 6.6 million tonnes of household food waste a year is thrown away? Almost three quarters of that is food which could have been eaten. Do your bit to avoid domestic food waste to fight climate change! www.lovefoodhatewaste.com www.wrap.org.uk

Objection in principle

We object in principle to the proposed development as it falls within a flood risk vulnerability category that is inappropriate to the Flood Zone(s) in which the application site is located. In addition, the application is contrary to local policy STRAT13: Land North of Bayswater Brook as outlined in the Local Plan (South Oxfordshire Local Plan 2011-2035 (adopted December 2020)). We recommend that planning permission is refused on this basis.

Reasons

Annex 3 of the NPPF classifies development types according to their vulnerability to flood risk and provides guidance on which developments are appropriate within each Flood Zone. According to your baseline model which was approved in 2022 (our reference: WA/2019/126608/08) this site partially lies within the 5% annual exceedance probability (1 in 20 year) flood event which according to your Strategic Flood Risk Assessment is Flood Zone 3b – Functional Floodplain.

The development is classed as **more vulnerable** in accordance with Annex 3 of the NPPF. Table 2: Flood risk vulnerability and flood zone ‘incompatibility’ of the PPG makes it clear that this type of development is **not compatible** with the Flood Zones in which the site is located and therefore should not be permitted.

Furthermore, the Local Plan Policy STRAT13 states that built development should be located in Flood Zone 1 only, with areas of Flood Zone 2 and 3 preserved as accessible green space. According to the modelling submitted by the applicant, part of the housing development is located in the pre-development 1% annual exceedance probability plus an appropriate allowance for climate change (1% AEP + CC) flood extent. This means that houses are being proposed outside of Flood Zone 1 (defined as land with less than a 0.1% chance of flooding in any given year). While construction of a 'development platform' effectively raises the houses higher than the 1% AEP+15% climate change flood level, the Environment Agency would still class this as built development in the floodplain. The post development modelling does demonstrate the houses are located in Flood Zone 1, but it seems that this is only due to the construction of the 'development platform'.

Overcoming our objection

To overcome our objection, the applicant should clearly demonstrate that the proposed development is located outside of Flood Zone 3b – Functional Floodplain. The baseline 5% annual exceedance probability (1 in 20 year) flood event should be mapped onto a plan of the development to demonstrate that no ‘more vulnerable’ development is being proposed in Flood Zone 3b – Functional Floodplain. This includes any land raising to facilitate development.

In addition, the applicant should provide evidence to demonstrate that all built development is in Flood Zone 1 (i.e. that it lies outside of the baseline modelled 0.1% AEP flood extent), in accordance with local policy STRAT13: Land North of Bayswater Brook as outlined in the Local Plan (South Oxfordshire Local Plan 2011-2035 (adopted December 2020)). This may require the layout of the proposed development to be altered so that there is no built development outside of Flood Zone 1.

Objection 2 – Flood Risk Assessment

In accordance with Policy EP4 of the South Oxfordshire Local Plan 2011 – 2035 (adopted December 2020) and paragraph 173 of the National Planning Policy Framework (NPPF), in the absence of an acceptable flood risk assessment (FRA) we

maintain our objection to this application and recommend that planning permission is refused.

Reasons

The submitted FRA does not comply with the requirements for site-specific flood risk assessments, as set out in paragraphs 20 to 21 of the Flood Risk and Coastal Change planning practice guidance and its site-specific flood risk assessment checklist. The FRA does not therefore adequately assess the flood risks posed by the development. In particular, the modelling used to inform the technical detail in the FRA is not fit for purpose. Please see attached spreadsheet for full details; in summary:

- Mass balance is still outside of the modelling tolerance
- The model review has queried the conveyance, since some locations in the 1D model where there are structures have been modelled as open channel
- The Z shape file on the Elsfield lane is not properly attributed
- There is a query regarding the increase in peak flows in the model
- A combined blockage scenario to the culverts under Elsfield Lane should be considered

Overcoming our objection

To overcome our objection, the applicant should submit a revised FRA or Technical Note, and the modelling should be amended to address the points highlighted above. If this cannot be achieved, we are likely to maintain our objection. Please re-consult us on any revised FRA submitted.

Sydling's Brook Mitigation – advice to Planning Authority

A volumetric-type floodplain compensation scheme is being proposed here due to various site constraints. The Environment Agency does not normally support volumetric compensation schemes since such schemes do not normally compensate for loss of floodplain storage at the higher levels, meaning that in more severe flood events adequate floodplain storage may not be provided. However in this case significant justification has been provided as to why true level-for-level compensation is not possible. We advise that it is for the local authority to determine in this case whether this option for the Sydling's Brook is an acceptable compromise while taking into account other planning considerations.

Objection 3 – Biodiversity

The submitted planning application and associated documents indicate that physical habitat improvements to the Bayswater Brook, including reprofiling and channel creation and realignment will be required as part of the proposed development. Whilst we support the principle and objectives of such proposals, we do not have enough information to be satisfied that the proposed development can meet our requirements for the net improvement of ecology and physical habitats. In accordance with paragraphs 180 and 186 of the National Planning Policy Framework (NPPF) and Policy ENV3 of the South Oxfordshire Local Plan 2011 – 2035 (adopted December 2020), we therefore **maintain our objection** to the proposal and recommend that the planning application is refused.

Reasons

Whilst we welcome that there will be a commitment to provide enhancements to the Bayswater Brook, the information currently submitted does not adequately address our earlier concerns.

This objection is supported by paragraphs 180 and 186 of the National Planning Policy Framework (NPPF) which recognise that the planning system should conserve and

enhance the environment by minimising impacts on and providing net gains for biodiversity. If significant harm resulting from a development cannot be avoided, adequately mitigated, or as a last resort compensated for, planning permission should be refused. Opportunities to incorporate biodiversity in and around developments should be encouraged.

In addition, this objection is in accordance with Policy ENV3 of the South Oxfordshire Local Plan 2011 – 2035 (adopted December 2020) which states: Planning permission will only be granted if impacts on biodiversity can be avoided, mitigated or, as a last resort, compensated fully.

Overcoming our objection

To overcome our objection, the developer needs to provide sufficient design and details of the proposed ecological enhancements to the Bayswater Brook.

Specifically:

- Analysis of the distribution of flows and levels under a normal and lower flow regime, especially in relation to the creation of secondary channels. It is the Environment Agency's strong preference that flow is not split between channels and that the newly created channels be appropriately designed to carry all flow and deliver river habitat net gain.
- Identify the low flow characteristics in the new and existing channels.
- Set out the outline design for the new channels and the physical habitat enhancements of the existing (including gradient, width, depth, bank connection and in-channel features).
- Provide an indicative plan to show the location and design of enhancements.

Objection 4 – Foul waste

In accordance with paragraph 180 of the National Planning Policy Framework, we **maintain our objection** to this application as submitted because the proposed development would pose an unacceptable risk of pollution to surface water quality. We recommend that planning permission should be refused on this basis.

Reasons

Paragraph 180 of the National Planning Policy Framework states that the planning system should contribute to and enhance the natural and local environment by preventing both new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of water pollution. In addition, the Thames River Basin Management Plan requires the restoration and enhancement of water bodies to prevent deterioration and promote recovery of water bodies.

Oxford Sewage Treatment Works is a site of significant concern for the Environment Agency. In November 2021 the Environment Agency inspected Oxford STW, which led to Thames Water being issued with a Compliance Assessment Report (C.A.R.). Within this report, some serious and significant permit breaches were identified. While the site is non-compliant with its permit, the risk to the environment remains high.

Oxford STW was identified in 2017 as having insufficient Flow to Full Treatment (FFT) capacity for the population served. It was allocated a U_IMP5 driver for the AMP7 investment period in order to realign the FFT. This was due to be delivered March 2025, however the EA understands this has been delayed by several years. The scheme and deadline are regulatory and legislative commitments, and failure to deliver it on time will potentially lead to further noncompliance at the site. It also presents a significant and

ongoing risk to the receiving waterbody, particularly from continued and extended periods of storm overflows. Adding additional flows to the STW before this scheme is completed is not acceptable.

An AMP7 investigation was carried out at Oxford STW to understand the impact of the sewage discharge on Dissolved Oxygen. The investigation concluded that a scheme should be included in AMP 8 (2025-2030) to improve the Dissolved Oxygen status in the Northfield Brook. This was not included in Thames Water's draft business plan submission in October 2023. Without this scheme, there will be an unacceptable risk to deteriorating the Dissolved Oxygen status under the Water Framework Directive (WFD).

Oxford STW suffers greatly from groundwater infiltration and has an associated Groundwater Systems Impacted Management Plan (GISMP). This is partly, but not entirely, due to the brick sewers close to the Thames. The infiltration within the catchment, alongside a complicated pumping regime put the entire network at risk of storm overflows or network failures during times of high(er) flows. Additional load within the network, without improvements, will lead to more storm overflows, pollution incidents and network failures.

Overcoming our objection

The delivery of the AMP 7 scheme is vital to ensuring that Oxford STW has enough capacity to treat incoming flows. We also recommend that the STW is upgraded to meet the expected demands up to the end of the local plan period. Thames Water need to work with the Environment Agency to agree a scheme design, and a realistic and appropriate timescale. Thames Water also need to execute the recommendations of the 2021 CAR form and do everything possible to come back into compliance.

The AMP 8 Dissolved Oxygen scheme should be included in the final business plan submission. Furthermore, continued work on the GISMP to reduce the impact of infiltration in the network is essential.

Sequential test – advice to Planning Authority

What is the sequential test and does it apply to this application?

In accordance with the National Planning Policy Framework (paragraph 162), development in flood risk areas should not be permitted if there are reasonably available alternative sites, appropriate for the proposed development, in areas with a lower risk of flooding. The sequential test establishes if this is the case.

Development is in a flood risk area if it is in Flood Zone 2 or 3, or it is within Flood Zone 1 and your strategic flood risk assessment shows it to be at future flood risk or at risk from other sources of flooding such as surface water or groundwater.

The only developments exempt from the sequential test in flood risk areas are:

- Householder developments such as residential extensions, conservatories or loft conversions
- Small non-residential extensions with a footprint of less than 250sqm
- Changes of use (except changes of use to a caravan, camping or chalet site, or to a mobile home or park home site)
- Applications for development on sites allocated in the development plan through the sequential test, which are consistent with the use for which the site was allocated.

Avoiding flood risk through the sequential test is the most effective way of addressing flood risk because it places the least reliance on measures such as flood defences, flood warnings and property level resilience.

Who undertakes the sequential test?

It is for you, as the local planning authority, to decide whether the sequential test has been satisfied, but the applicant should demonstrate to you, with evidence, what area of search has been used. Further guidance on the area of search can be found in the planning practice guidance [here](#).

What is our role in the sequential test?

We can advise on the relative flood risk between the proposed site and any alternative sites identified - although your strategic flood risk assessment should allow you to do this yourself in most cases. We won't advise on whether alternative sites are reasonably available or whether they would be suitable for the proposed development. We also won't advise on whether there are sustainable development objectives that mean steering the development to any alternative sites would be inappropriate. Further guidance on how to apply the sequential test to site specific applications can be found in the planning practice guidance [here](#).

Exception test – advice to Planning Authority

In accordance with the National Planning Policy Framework (paragraphs 164 and 165), the proposed development is appropriate provided that the site meets the requirements of the exception test. Our comments on the proposals relate to the part of the exception test that demonstrates the development is safe. The local planning authority must decide whether or not the proposal provides wider sustainability benefits to the community that outweigh flood risk.

The exception test should only be applied as set out in flood risk table 3 of the Planning Practice Guidance (PPG) following application of the sequential test. The exception test should not be used to justify the grant of planning permission in flood risk areas when the sequential test has shown that there are reasonably available, lower risk sites, appropriate for the proposed development.

In those circumstances, planning permission should be refused, unless you consider that sustainable development objectives make steering development to these lower risk sites inappropriate as outlined in PPG (ref ID: 7-033-20140306).

Our role in the exception test

The exception test is in two parts, described in the NPPF (paragraph 164). In order for the test to be passed it must be demonstrated that

1. The development would provide wider sustainability benefits to the community that outweigh flood risk; and
2. The development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.

Paragraph 165 of the NPPF makes clear that both parts need to be met for the test to be satisfied. It is for the applicant to demonstrate this.

We provide advice on the second part of the test, but it is for you, as the local planning authority, to consider the first part of the test, accounting for the findings of the flood risk assessment and our flood risk advice, and to determine whether the test, overall, has been satisfied. Development that does not satisfy both parts of the exception test should be refused.

Where the flood risk assessment shows the development will be safe throughout its lifetime without increasing flood risk elsewhere

Even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, there will always be some remaining risk that the development will be affected either directly or indirectly by flooding. You will need to weigh these risks against any wider sustainability benefits to the community.

Environmental permit - advice to applicant

The Environmental Permitting (England and Wales) Regulations 2016 require a permit or exemption to be obtained for any activities which will take place:

- on or within 8 metres of a main river (16 metres if tidal)
- on or within 8 metres of a flood defence structure or culverted main river (16 metres if tidal)
- on or within 16 metres of a sea defence
- involving quarrying or excavation within 16 metres of any main river, flood defence (including a remote defence) or culvert
- in a floodplain more than 8 metres from the river bank, culvert or flood defence structure (16 metres if it's a tidal main river) and you don't already have planning permission

For further guidance please visit <https://www.gov.uk/guidance/flood-risk-activities-environmental-permits> or contact our National Customer Contact Centre on 03708 506 506 (Monday to Friday, 8am to 6pm) or by emailing enquiries@environment-agency.gov.uk.

The applicant should not assume that a permit will automatically be forthcoming once planning permission has been granted, and we advise them to consult with us at the earliest opportunity.

Other Consents – advice to applicant

As you are aware we also have a regulatory role in issuing legally required consents, permits or licences for various activities. We have not assessed whether consent will be required under our regulatory role and therefore this letter does not indicate that permission will be given by the Environment Agency as a regulatory body.

The applicant should contact 03708 506 506 or consult our website to establish if consent will be required for the works they are proposing. Please see <http://www.environment-agency.gov.uk/business/topics/permitting/default.aspx>

Final Comments

Thank you again for consulting us on this application. Our comments are based on the best available data and the information as presented to us. **Subject to our flood risk objection being overcome, we have planning conditions we would recommend in regards to groundwater and contaminated land.**

If you are minded to approve this application for major development contrary to our flood risk objection, we request that you contact us to allow further discussion and/or representations from us in line with the [Town and Country Planning \(Consultation\) \(England\) Direction 2021](#).

This statutory instrument prevents you from issuing planning permission without first referring the application to the Secretary of State for Housing, Communities and Local Government (via the National Planning Casework Unit) to give them the

opportunity to call-in the application for their own determination. This process must be followed unless we are able to withdraw our objection to you in writing. A failure to follow this statutory process could render any decision unlawful, and the resultant permission vulnerable to legal challenge.

Should you require any additional information, or wish to discuss these matters further, please do not hesitate to contact me. Please quote our reference number in any future correspondence.

Yours faithfully

**Miss Chloe Alma-Daykin
Planning Advisor**

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