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Cherwell DISTRICT COUNCIL NORTH OXFORDSHIRE

SUPPLEMENTARY INFORMATION

Planning Committee

19 March 2015

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If you need any further information about the meeting please contact Aaron Hetherington, Democratic and Elections aaron.hetherington@cherwellandsouthnorthants.gov.uk, 01295 227956

CHERWELL DISTRICT COUNCIL
PLANNING COMMITTEE

19 March 2015

WRITTEN UPDATES

Agenda Item 7 **14/01384/OUT Bicester Eco Town, Banbury Road, Bicester**

- Members are reminded of the supplementary item circulated on 19 March setting out the conditions proposed and a summar of the Heads of Terms for a legal agreement
- Revised Recommendation;

  Recommendation Approve subject to;

  1. delegation of the negotiation of the S106 agreement to officers in accordance with the summary of the Heads of Terms attached at Appendix B and subsequent completion of S106 agreements
  2. delegation of final changes to conditions to officers of the conditions;

Agenda Item 8 **14/01454/F Manor End House, Manor Rd.Adderbury**

- Six additional letters of objection raising similar matters to those set out in the agenda

Agenda Items 9 **14/01531/OUT Land N of Corner Farm, Kirtlington**

Comments received from OCC Highways which state

- The County's recommendation based on the submitted documents remains unaltered. However it is apparent, from the current application, that an appropriate form of access can be provided. I suggest therefore it would not be expedient to refuse this application subject to provision of the access and compliance with the recommended conditions and obligations of the more recent application
- Consequently the r**ecommendation is amended** to remove the second reason for refusal

Agenda Item 10 **14/01762/F Swacliffe Park Equestrian**

The following correspondence has been received post preparation of the report for committee:

- Responses from the following consultees, wishing to add no further

comments on the application following the consultation exercise; carried out in light of the change of description and revised/additional information being received.

  - Ecology Officer
  - Landscape Officer

- Two further comments of support; received online and via email.
- A further response from Sibford Ferris PC raising no objections, but commenting on highways impact.
- A letter from Shoosmith's solicitors requesting the right to speak again at committee on behalf of the objectors.
- A further letter from Shoosmith's solicitors on behalf of the objectors setting out reasons why the application should be deferred again and that any decision would be unlawful (see appendix 1).
- A letter from the applicants to planning committee (see appendix 2).
- A detailed objection letter from Robin and Emily Grimston, Michelle Boycott and Brenda Vandamme (see appendix 3 with officers response to points built in).
- An email from OCC as Highways Authority stating a formal response is on its way, but that with regard to the transport recommendation, it remains as previous; however that a further condition will be required to secure full details of the relocated access.
- An email from Michelle Boycott stating that if no public speaking is allowed could the following points be considered:
  - Noise Intrusion on a constant 24 hour 7 days a week
  - Social intrusion on a constant 24 hour 7 days a week
  - Traffic noise and traffic volume on three villages
  - Parking facilities too close to 3 adjoining properties
- An email from Mr Grimston stating that if no public speaking is allowed could the following points be considered:
  - The area on which the <50 horse activity will take place is not crystal clear.
  - Conditions 3 and 6 are contradictory.
  - No consideration has been given to the eminently sensible traffic proposal from Tadmarton Parish Council.
  - Noise is an important issue
- A further email from Mr Grimston requesting that we consider a revised routing arrangement put forward by Tadmarton PC.
- Two emails from Brenda Vandamme supporting Mr Grimston's request for a review of the routing and also questioning the distance stated in the officer's report of the field access from her property. This was measured

at 34m on the submitted 1:2500 scaled site plan, however following a further site visit it became apparent that there was a discrepancy and the distance was 28m.

Agenda Item 13 14/01911/F Easington Sports Club, Addison Rd. Banbury

- Members have received a letter from the Addison Road Residents Group which commented as follows
  As residents of Addison Road and members of a group representing said residents, we are formally requesting that the decision on the planning application for 6 floodlights, reference number 14/01911/F, submitted by Easington Sports Football and Social Club, be delayed due to the fact that we have not had sight of a detailed report from the ASB Manager, Mr Rob Lowther, with regards to the level of light pollution which would inevitably have an adverse effect on the quality of life of the residents the 60 houses in Addison Road and Grange Road, which back onto the football field. As this report is not available on the website for the residents to see, we can only assume that as members of the planning committee, you have not seen it either.

  On inspection of e-mails which have been sent to and from Rob Lowther to Mr Philip Smith, the planning consultant from Aitchison Raffety, with regards to this planning application, we feel that Mr Smith has not faithfully reflected the comments made by Mr. Lowther with regard to the impact on the residents and the suitability of such lighting in such a restricted space. These documents are attached for your closer inspection. Please note that if the planning committee rejected the previous planning application how can the current one be approved when virtually nothing has changed. In fact, the lights have increased in number from 4 to 6! Does this not mean the light pollution will be spread over a wider area than before and, therefore impact on more houses? We also understand the Mr Rob Lowther is not a lighting expert but is the ASBM. As such, we would like to request that an independent lighting expert be brought in who can provide us with a more detailed report. Furthermore, we would like to bring to your attention that we have asked the club to install a temporary lighting column so that the residents would be able to see exactly what these columns would be like and how much light each one spills out. Only then will we be able to appreciate the full impact of 6 of them. This seems to be reasonable request but one which has been declined by the club.

Agenda Item 14 14/01953/F Glebe Leisure Caravan Park, Fringford

- The application has provided a complete Police Incident list relating to the caravan park and fishing lakes. This corroborates the information previously provided and referenced in paragraph 5.16 of the Committee Report. It does not alter the recommendation for the application.

Agenda Item 17 **14/02132/OUT Land at Bunkers Hill, Shipton-on-Cherwell**

- Environmental Protection Officer: I recommend applying the full contaminated land conditions. As a proposed residential property, it is a sensitive land use and the future users would be vulnerable to contamination.

  As such, I **recommend applying conditions** J12-16 to assess whether this development will be affected land contamination:
  - J12 - Desk study/Site walk over
  - J13 - Land contamination: Intrusive investigation
  - J14 - Land contamination: Remediation scheme
  - J15 - Land contamination: Carry out remediation
  - J16 - Land contamination not previously found

- Members have been sent a letter from the applicant's agent

Agenda Item 18 **14/02139/OUT Land N of Corner Farm, Kirtlington**

- **OCC comments** received - I am able to confirm these submissions have been considered and I do not wish to vary my recommendation. Briefly, the applicant has demonstrated an appropriate level of visibility at and on approach to the junction; traffic impact is negligible in relation to the current and future traffic levels on the local highway network; traffic associated with the proposed fruit farm does not raise concern with respect to this proposal; accident records show the likely causes to be 'loss of control' and 'careless/reckless/in a hurry' and therefore I do not consider they have any bearing on this proposal.

- **The Council's Ecologist comments** I have no objections on ecological grounds to the proposed development however I have a number of comments:

  The submitted ecological assessment is satisfactory in depth and scope with the additional bat surveys of the buildings and badger survey. If site clearance does not occur by December 2016 update surveys may be required. An updated walkover survey for badgers will be required pre-commencement of works to check if new setts have opened up/become active. The main habitats of importance on site are the hedgerows, trees and fruit trees and these are proposed to be retained. There is an old bat roost in building 1 (bungalow). The recommendations within the bat survey report should be sufficient and if adhered to will avoid the need for a licence. There are badger setts on the edges of the site these are proposed to be accommodated such that a licence is unlikely to be needed at this stage. There are adjacent records of reptiles however as the half of the land adjacent to the golf course is not proposed for development the proposed brief method statement for site clearance to avoid harm to reptiles should be sufficient if conditioned.

  What is the plan for the other half of the land within the 'assessment boundary'? Is that to remain as pasture? Will the fruit trees to the South West be retained long term? It's future will influence the effectiveness of any biodiversity measures on site.

The Design and access Statement proposes creation of areas for biodiversity and more details will be needed on this but in general the ecological enhancements recommended within the survey reports could result in a net gain to biodiversity. The addition of an attenuation feature could have biodiversity benefits – is this likely to have year-round standing water?

I would reiterate the CDC Ecology comments from the previous submission for this site namely that there is a known population of swifts in Kirtlington and therefore swift nest boxes are something that should be included within the built environment as an appropriate enhancement and that integrated bat boxes, as well as some fixed onto trees around the site should be included.

Since a rare species of bat was recorded foraging or commuting nearby, it is particularly important that the lighting scheme does not affect any existing, or new, woodland or hedgerows. Any lighting scheme should adhere to the principles set out by the Bat Conservation Trust on this subject and be checked by an ecologist.

She recommends **variation/additional conditions** to deal with a Landscape and Ecology Management Plan , bat and bird boxes and ensuring compliance with submitted protected species

- Letter received from solicitors acting for the **Mid Cherwell Neighbourhood Forum** in which they say

The Forum is concerned that the reports to Committee, and therefore the consequent decisions of the Council, carry a serious risk of being legally flawed since they do not have sufficient regard to National Policy and related Case Law particularly with regard to the relationship between the absence of a 5 year housing land supply within Cherwell and the Forum's emerging neighbourhood plan.

They give various case law examples and suggest we seek legal advice
The advice obtained from our legal team is that as there is no proposed NP out for consultation yet and the neighbourhood planning area has not even been designated. The emerging NP can only be given limited weight at this stage

Contrary to the comments contained in para 5.27 and 5.28 of the report it is acknowledged that the Neighbourhood should be correctly described as carrying limited weight at this times

- One **further letter of objection** has been received stating
I was very surprised and concerned when I read on our village website this morning that the case officer is recommending the application for 75 dwellings for approval at next week's committee, despite this being against the overwhelming evidence of its unsuitability already presented by Kirtlington Parish Council. Please look again carefully at the various problems listed in the Parish Council submission of 12th February 2015. This application must be rejected for all the reasons put forward clearly already.

- **Letter from the applicants** which confirms their agreement to enter a Section 106 agreement; submitting an amended Design and access statement; commenting on the conditions (suggesting that timing in conditions 2 and 3 is too tight and unreasonable);
- As a result of the above there is a need for **two additional conditions and a planning note** limiting the site area to be developed , the number of houses

permitted , and with regards to gable spans respectively

Agenda Item 23 15/00180/F Franklins Yard,Bicester

- OCC Highways comments– no objection.

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Our Ref TDW.pk.M-00340232
Date 18 March 2015

VERY URGENT

Dear Sirs

SWALCLIFFE PARK EQUESTRIAN - APPLICATION NO: 14/01762/F
PLANNING COMMITTEE - 19 MARCH 2015

Further to our letter of 13 March, we have now had the opportunity to consider the Officer's Report to Planning Committee.

We note that this is still on the Agenda for consideration on Thursday 19 March, despite our request that the Item be deferred. We have also noted your decision to prevent us from speaking at the Planning Committee on the 19 March. We have written to you separately in relation to that matter as we consider that to be a procedural flaw, breach of natural justice and contrary to Article 1 of the Human Rights Act 1988 (right to a fair hearing).

For the various reasons set out below, any decision taken by Members on Thursday other than to refuse or defer consideration of this application will be unlawful and subject to potential legal challenge. We say this for the following reasons:-

1. Officers have not addressed the EIA screening issue adequately or at all in the Report to Committee;

2. Officers have totally misunderstood and misapplied the so called "28 day Rule" as set out in the GPDO 1995 (as amended) and have given weight to a "fallback" position which does not exist as a matter of law;

3. Officers have misapplied and/or misunderstood important principles on enforcement time limits which means that the existing car park constructed on site is unlawful and not "immune" from such action as alleged in the Report;.

4. Any decision to grant Planning Permission on Thursday would be legally flawed as the Council has not discharged its statutory duties under the Habitats Directive/Regulations 2010.

5. The Ecology Survey produced in 2012 is now considerably out of date and also relates to a previous application. It cannot be relied upon by the Council in discharging its statutory duties under the Habitats Directive/Regulations 2010. The partially updated survey dated November 2014 is totally inadequate as it was prepared following a site visit on 5 November 2014 i.e. outside of the May – October period for analysing impact on Protected Species as recommended by Natural England;

6. In addition the 2012 Ecology Survey and update fails to provide a separate Great Crested Newt survey and Bat Survey. No decision to grant permission can be made in the absence of these surveys as the Council is unable to discharge its statutory duty to avoid harm to protected species and/or their habitats under the Habitats Directive/Regulations 2010.

7. The current application contains material changes from those before the February Committee. Not only has the application description been amended (again), it now includes specific reference to additional operational development as part of its description. Amended plans showing new access points on to the site have also been submitted. This takes the application way beyond that which was originally applied for by the Applicant. The extent of these changes since submission is unreasonable and should have resulted in a fresh application;

8. The application lacks precision and it is impossible to establish from the documents, plans and information submitted just what development is proposed to take place and where. Any decision to grant permission in the absence of such clarity of plans/documents and relevant information is therefore flawed;

9. Linked to the above is the truncated Consultation period for responding to the amended application description and plans. This is totally inadequate and contrary to established case law, Human Rights Legislation and procedural fairness.

10. Officers have misapplied and/or misunderstood the Councils' own Development Plan policies which designate the site as an Area of High Landscape Value. Despite this important designation, no detailed or acceptable Landscape scheme has been submitted in support of the application and no detailed assessment of landscape impacts made in the Report. This goes to the principle of whether development should be permitted at all in this location and it is entirely inappropriate to try and impose a landscape condition after the event.

11. The Council has failed to address noise issues adequately or at all and again seeks to deal with this by the imposition of mitigation measures after the event; despite having no clear or adequate evidence of the extent of potential noise nuisance that will result from the proposal.

12. The Council has failed to have proper regard to the significant highway safety and highway impacts of this proposal. It has also failed to have any or proper regard to the alternative proposals to mitigate highway impact put forward by Tadmarton Parish Council and local residents.

It has also not escaped our notice that this retrospective Application in its amended form has been brought to Planning Committee with undue haste and with the sole intention of the Council avoiding the need to take enforcement action. Indeed, the Council's failure to take any action to enforce against this unauthorised breach in the past three years has been described as "dilatory" by a High Court Judge.

It is quite apparent therefore that the obligation on the Council to provide for the proper planning of the area has been sacrificed in this case merely to avoid the need for officers to engage in the enforcement process. The fact is that the Council has not opened and does not currently have an

"active" enforcement file despite three years of unauthorised use and numerous complaints from our clients and local residents.

Granting permission for an unauthorised use in these circumstances in order to regularise it is plainly irrational. In effect, the owner of the Site has benefited for three years from his previous and continuing breaches of planning control. Rather than granting retrospective permission therefore the Council should refuse permission and take immediate enforcement action to regularise the use on the Site.

Any other decision will set a dangerous precedent and send out the message to land owners that they can ignore and totally circumvent the planning system in the knowledge that the Council will take little if any action to remedy that breach.

We deal with each of the points numbered 1-12 above (and some additional matters) in more detail below:

1. EIA Screening Opinion

Paragraph 5.63 of the Report states that the current application:

"...has been screened by the Authority in relation to environmental impact pursuant to Part 2, Regulation 4 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011" ("the 2011 Regulations").

However, this so called screening opinion is defective in that it merely states that the proposed development is not "EIA" development for which a full Environmental Statement is required.

No reasons have been given for that opinion despite our repeated requests. It is clear that when adopting a Screening Opinion the planning authority has to provide sufficient information to enable anyone interested in the decision to see that proper consideration had been given to the possible environmental effects of the development and to understand the reasons for the decision. ***(see R. (on the application of Mellor) v Secretary of State for Communities and Local Government (C-75/08) [2010] P.T.S.R. 880.***

In any event, the LPA's assessment is legally flawed as it merely states that the proposal does not fall within Schedule 1 or Schedule 2 of the 2011 Regulations. However, as stated in the application description, the proposal includes retention of and extension to existing parking areas which is development which falls four square within paragraph 10(b) of Schedule 2 of the 2011 Regulations.

In addition, paragraph 13 (b) of schedule 2 states *that "...any change to or extension of development..."* is also EIA development.

It is therefore necessary for the Council to ask and answer the questions posed in column 2 of Schedule 2 namely, whether;

> *"The development as changed or extended may have significant adverse effects on the environment"*

As a result of the above, the current Screening Opinion is flawed as not only does it relate to the Application as originally submitted (which has since been amended) but it also fails to apply the correct legal approach to Screening. In addition the Council has not applied the

selection criteria referred to in Schedule 3 of the 2011 Regulations. This includes the requirement to:-

1.1 Assess the cumulative impacts of the current proposals with other development in the area. In this case that will include a need to assess the combined environmental impacts of highway safety/impact noise and nuisance etc., arising from this proposal when combined with:

- the anaerobic digester at Grange Farm; and
- the use of the Lunge Pen and Floodlit Riding Arena adjacent to Grange Farm which is being used in association with the Applicants unlawful equestrian activities on the site (see paragraph 5.71 of the Report to Committee).

1.2 Despite officer comments in paragraph 5.64 of the Report this exercise has quite simply not been carried out as part of the current screening process.

1.3 In addition, the application sits within an "Area of High Landscape Value" ("AHLV") which requires an assessment of the environmental impacts pursuant to paragraph 2 (viii) of Schedule 3.

In short, it is simply not possible for the LPA to reach a decision on whether or not an Environmental Statement is required until it has gone through this formal assessment. In addition, that exercise can only be carried out upon receipt of further information from the Applicant dealing with each of those relevant matters set out in Schedule 3 of the 2011 Regulations.

In the absence of that information and a proper assessment of it, it is not possible for the LPA to reach a firm conclusion on the environmental impacts under the 2011 Regulations at this stage.

In the light of the above, any decision to grant planning permission on 19 March would be legally flawed and subject to potential legal challenge.

2. The GPDO – 28 Day Temporary Use

2.1 This is an important issue and one which has influenced the statutory consultee's responses to this application and the case officer's own recommendation for approval of the application. It is disappointing to note therefore that despite reference to this in paragraph 1.4 of the Report that the "**...fall-back position should be a material consideration...**" there is no further justification or reasoning given in the Report for that position.

2.2 The Appellants position on this point is simply that no such fall-back position exists as a matter of law and therefore it is not appropriate for this to be given the weight attributed to it by the relevant officers and statutory consultees.

2.3 **Part 4 Class B of the GPDO** allows:-

"the use of any land for any purpose for not more than 28 days in total in any calendar year... and the provision on the land of any moveable structure for the purposes of the permitted use."

The factual position with the application site is that the current unauthorised use of the land for equestrian training/competitions and events relies upon ***"unlawful"*** structures and engineering operations which include:-

(a) An existing parking area which is required to be extended;

(b) Equestrian jumps and obstacles;

(c) Unauthorised access points on to the land; and

(d) Various ditches and other hard standing areas (unauthorised engineering operations) all of which require planning permission.

The fall-back position therefore cannot be implemented without reliance on these ***unauthorised structures*** which are in effect ***"permanent"*** structures and features in the land and not "moveable structures" as envisaged by Class B. *"The GPDO does not carry the right to carry out physical works" (see* paragraph 29 ***Ramsay and Ramsay v SOS 2001).***

The interpretation of Class B and therefore the fall-back position is therefore legally flawed and that impacts directly upon the officer's recommendation to grant approval.

We would refer you specifically to those parts of the report which refer to and rely upon the fall-back position namely:-

(a) Paragraph 1.7 which states (erroneously in any event) that events can be held on site without the planning permission for 28 days in any one calendar year – please note that this fails to take into account setting up days and the true position if fall-back were to be applied would allow only 6-7 **events** a year;

(b) The comments of the highway consultant in paragraph 3.10 which states that:-

"pertinent to this consideration is the fall-back position of the application site. The application site under permitted development rights may hold large events for 28 days each year."

(c) Paragraph 5.15 which states that:-

"whilst there has been a breach of the 28 day rule, this would be the applicant's fall-back position and unlimited events could be held on site, without the need for planning permission for 28 days in any one calendar year."

(d) Paragraph 5.27 which states that:-

"Oxfordshire Highway Authority raises no objections to the proposed day to day use of the site...given the fall-back position of relying on permitted development rights, there are not sufficient grounds for refusing the application on highway safety grounds; subject to the larger events not being carried on more than 28 days in any one year..."

(e) In the case officer's conclusions on paragraph 5.74 he states that:-

"consideration of the application is finely balanced and whilst officers do not dispute or object his representations that there are significant impacts on the local highway network and neighbour amenity as a result of large equestrian events being held at the site; due regard has to be had to the fall-back position that the applicants have in terms of what can be carried out under permitted development."

(f) In 5.77 of his conclusions the case officer also states:-

"in conclusion, officers consider that given the fall-back position that could be adopted, that the proposals on balance are therefore considered to be acceptable."

It is clear from the officer's assessment that having considered that the arguments are finely balanced, decisive weight is placed on the fall-back position which as we have stated above simply does not exist in this case as a matter of law.

Put simply, if the Council were to refuse permission for this application, the various unauthorised structures, access points and engineering operations would continue to be in breach of planning control and the use of the land for competitions and events would simply not be possible under the 28 day rule. Class B does not apply where there are unlawful permanent features or structures on the land.

Should planning permission be granted on 19 March, therefore, this would be based upon a misconceived and fundamentally flawed assessment of the fall-back position upon which the case officer and statutory consultees place significant i.e. decisive weight. This would make that decision subject to potential legal challenge.

3. The lawfulness of the existing car park and other operational development

3.1 Paragraph 5.49 refers to the fact that:-

"Officers consider that the permanent jumps/obstacles constitute operational development and therefore consent is required."

3.2 In addition, paragraph 5.68 states that the existing parking area has been in place since August 2005 and therefore is immune from enforcement action.(this is an incorrect assertion for the reasons stated below).

3.3 Not only do these comments confirm that the operational development required in connection with the use of this land for events is a "permanent feature" (and therefore reinforces the argument that no legal fall-back position exists), but it also raises the broader issue of enforcement time limits.

3.4 The Report has assumed in paragraph 5.68 that the parking area has been in existence since August 2005. However, that is a matter that can only be legally determined by way of an application under ***Section 191 of the Town and Country Planning Act 1990*** i.e. an application for a Lawful Development Certificate.

3.5 The Appellant has previously been advised to submit that application to the Council but has refused to do so presumably because of lack of evidence in support of such application. It is therefore not appropriate for the case officer to make assumptions in this report that various unauthorised structures are lawful. We would respectfully

submit this goes beyond the powers available to him in the absence of a Section 191 application.

3.6 In any event, paragraph 5.68 of the Report reaches an incorrect conclusion on time limits for enforcement action. This is because while a 4 year limitation period applies to operational development in many cases, when that operational development is linked to and is parasitic upon an unlawful change of use, the time limit for enforcement is **10 years**. (*see* **Murfitt –v- Secretary of State for the Environment and Another (1980) P and CR254).**

In other words, as the Council has accepted that there has been a material change in use of the land which involves the use of unauthorised development in association with that change of use, it can secure the removal of **all operational development** and the reinstatement of land ***within a 10 year period of that unauthorised development being carried out.*** .

There is therefore no impediment to the Council seeking the removal of all unauthorised structures and the reinstatement of the land at this stage.

In any event, we would reiterate the position that only Section 191 of the 1990 Act can provide a formal legal determination of this issue and that Members should place no weight on the assumptions made by the officer as to immunity of any development from enforcement action.

4. Ambiguities in the Application and Failure to Consult

4.1 The application before the Committee on Thursday is not the same application which was originally submitted by the Applicant.

4.2 The description of the application has changed on two previous occasions and amended plans and documents submitted at various times during the process. This has resulted in this application moving from a change of use application to a "hybrid" application seeking not only the retention of unauthorised operational development but also the carrying out of additional engineering works to relocate one of the unlawful access points on to the road leading from the B4035.

4.3 In addition, amended plans submitted as recently as 5 March have confused matters to the point where these are now inconsistent with previous plans and other documents. As such, any statutory consultee or local resident wishing to establish the changes made by these plans and exactly what is to be permitted by this application has an impossible task.

4.4 In light of the above, any local planning authority acting reasonably would have invited the Applicant to withdraw this application and start again. At present, the application process is by no means open and transparent or clear as to what development is being permitted and where. That is brought into sharp focus by the fact that while access points on to the agricultural land have been created or shown on amended plans, there is no firm indication on those plans as to how the proposed car park areas and other hard standings etc. will be accessed. If the intention is to merely allow visitors to the site to drive over agricultural land then where is the consideration of that very material consideration in the Report? This is, after all, an Area of High Landscape Value which is protected by Policy C13 of the Council's own Development Plan Policies. Put simply the full extent of the environmental impacts of the proposal have not been addressed adequately or at all. .

4.5 There is also no certainty from the plans as to where the car park and extension is and will be located. The plans show little if any clarity or detail (they are not even to scale), a point made by the Council's own Landscape Officer.

4.6 Further, the comments of Tadmarton Parish Council which seek the reversal of traffic flow along the Ushercombe Road between lower Tadmarton and Wigginton Heath have simply not been considered or assessed by either the County Council or officers at the Local Planning Authority. Again this is a matter which should be given full consideration not least because it falls within the requirements under the EIA Regulations 2011 i.e. to look at suitable alternative solutions which lead to a lesser impact in environmental terms.

We have also previously written to you in light of the inadequacy of the consultation period which has arisen as a result of the change in description of the application and submission of amended plans. For the reasons that we have specified above, the consultation period of 10 days which includes a week-end is entirely unreasonable.

The fact that consultation letters dated 5 March were **received** by us and our clients on **9 March** also means that the truncated consultation period will only expire at midnight on the date of the Planning Committee in any event. There are a number of points here:-

(a) It is totally inappropriate for this Report to be kept on this week's agenda bearing in mind that further consultation responses were requested;

(b) The fact that the Report refers to the amended plans and change in description and states that Members will be "updated" on consultation responses at the meeting on Thursday is totally unacceptable and raises questions of pre-determination of this application by the case officer;

(c) Given the lack of clarity in the submitted plans as to the nature and extent of this proposed application and operational development it is simply not possible for any consultee to respond adequately or at all to the amended plans until further information is provided. Which plans/documents are being relied upon by the Applicant and the case officer? What is the extent of the development to be permitted?; and

(d) The consultation period is unreasonably short and any decision to grant permission in all the circumstances would be subject to legal challenge based on the lack of a fair and transparent decision making process.

With regard to the points made above, we would refer you to the recent Court of Appeal case in ***Silus Investments –v- London Borough of Hounslow (case no. CO/4576/2014) dated 19 February 2015*** and in particular the reference to procedural unfairness in that judgement. In short, this states in paragraph 51 of the Judgement that:-

"where a public body decides to embark upon a consultation when it is not obliged to do so, it must nonetheless comply with the minimum standards of a lawful consultation procedure. These standards were succinctly expressed in R –v- Brent Borough Council Ex-parte Gunning (1985)..."

The Judgement continues:-

"...***to be proper, consultation must be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to give intelligent consideration and an intelligent response; adequate time must be given for this purpose; and the product of consultation must be conscientiously taken into account when the ultimate decision is given."***

4.7 In paragraph 54, the Judgement conclude:-

"First the Defendant's consultation notice was not accompanied by "sufficient reasons for particular proposals" to give intelligent consideration and an intelligent response. The summary posted on its website and the details given in the email letters to consultees were too brief and superficial to provide for a meaningful consultation."

4.8 In paragraph 55 he goes on to state that:-

"Second, the 7 day period from 19 to 27 August 2014 was too short (it included a week-end) and when there had been no advanced warning of the proposal."

4.9 Finally in paragraph 57 it is stated that:-

"Third the product of the consultation was not "conscientiously taken into account" when the decision was made because the decision was made before all the consultation responses had been received."

4.10 In summarising the position, therefore I would refer you to paragraph 68 of the above Judgement which states that decision makers should be reasonably receptive to argument and the decision makers mind should not be ***"closed".*** In addition, where a decision maker is under a duty to act fairly the subject of the decision may probably be said to have a right to be heard and rights are not to be lightly denied...

4.11 In paragraph 70, the Judge concludes that:-

"If a proper procedure had been followed the claimant would have had the opportunity to make a reasoned objection to the defendant's recommendation ... it would not be proper to act on the assumption that their representations would have made no difference to the outcome. This would be tantamount to accepting that the development had a closed mind and would not have regard to their representations. That would defeat the very purpose of consultation procedure."

Given all of the above, the position here is that:-

(a) The case officer has prepared a Report to Committee recommending approval of an application prior to the expiry of the consultation process;

(b) That raises doubts as to whether there has been a fair process and has defeated the very purpose of the consultation procedure as criticised in Silus.

(c) The corollary of the above is that the officer has approached his recommendation with a "closed mind";

(d) In any event, having decided to resort to a further consultation process, that consultation process needed to be fair. Objectors have a legitimate expectation to a full 21 day consultation period given the changes to description and amended plans and general lack of clarity and ambiguities that we have identified with the application itself; and

(e) If follows from the above that any decision to grant planning permission based on the current recommendation in the Report would be flawed in legal terms, contrary to the Court of Appeal decision in Silus and therefore subject to potential legal challenge.

5. Ecology

5.1 The Council has failed to discharge its statutory duty under regulation 9(3) of the Habitats Regulations 2010 in that it is relying on an ecology survey which is now nearly 3 years old. That is outside of the Natural England guidance which requires ecology surveys to be updated every 2 years. Again, any decision to grant planning permission based on the current ecology survey would be contrary to this guidance and legally flawed (see ***Hardy v Cornwall County Council 2000***)

5.2 The fact that the Applicant has sought to provide updated information on ecology in November 2014 is irrelevant as this did not include a full survey. In any event it was carried out on the 5th November 2014 i.e. outside of the May – October period recommended by Natural England for assessing impact on protected species.

5.3 This point is extremely important because reference is made in the November 2014 survey to the lack of any separate "Great Crested Newt Survey". There is also no separate Bat survey despite the fact that the November report refers to part of the application site being used as a foraging ground for bats.

5.4 In the case of ***Morge –v- Hampshire County Council***, the Supreme Court stated in paragraph 66 that:-

"The introduction of artificial lighting would affect the quality of foraging habit (of bats) by attracting insects from unlit areas. Although this would favour some species, it would adversely affect others. Moreover increased lighting, can delay the emergence of bats from roosts and so reduce foraging opportunities. Lighting also constitutes a barrier to bats gaining access to foraging areas."

5.5 In addition, the Judgement goes on to say that:-

"Increased noise levels would also have an adverse impact on some species of bats, the Brown long eared in particular."

5.6 In quashing the planning permission, the Supreme Court stated that the impact on protected species had not been dealt with adequately or at all in the ecology survey (particularly with regard to impact on Bats) stating that:-

"... I do not accept that they established "the extent that they may be affected by the proposed development". It goes on that:-

"... Reports obviously have to be clear and full enough to enable them i.e. the planning authority to understand the issues and make up their minds within the limits that the law allows them."

5.7 Paragraph 33 of the Judgement made it clear that conditions cannot be imposed to overcome such impacts as that would not comply with the Habitats Directive or the Local Planning Authority's duties under the Habitats Directive/Regulations.

5.8 In the more recent case of ***Bagshaw –v- Wyre Borough Council (2014 EWHC508)*** the planning permission was again quashed on the basis that the applicant and the Local Planning Authority had failed to engage with the Regulations and the Habitats Directive.

5.9 In paragraph 36, the Judge concluded that:-

"The Defendant has a statutory duty under Regulation 9 (3) of the 2010 Regulations to have regard to the requirements of the Habitats Directive. Paragraph 99 of the Circular states:-

"It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted...".

5.11 In the absence of any separate or recent Bat survey and Great Crested Newt survey (carried out within the last 2 years), the Council simply does not have the information available to it to discharge its duties under the Habitats Directive and Habitat Regulations. That opens the Council to a serious accusation of failure to discharge its statutory duty (which in turn raises the potential for legal challenge), if planning permission is granted for this proposal on 19 March.

5.12 The only option available to the Council in the circumstances is to either refuse the application or defer it until after May 2015 to allow appropriate protected species surveys to be carried out.

6. Area of High Landscape Value

One of the core principles in the NPPF is that planning should recognise the intrinsic character and beauty of the countryside and should look to conserve and enhance the natural environment.

The site is within an area designated as being of **High Landscape Value** (AHLV) to which Policy C13 (Areas of High Landscape Value), applies. This states:

"C13 THE IRONSTONE DOWNS, THE CHERWELL VALLEY, THE THAMES VALLEY, NORTH PLOUGHLEY, MUSWELL HILL AND OTMOOR ARE DESIGNATED **AREAS OF HIGH LANDSCAPE VALUE** WITHIN WHICH THE COUNCIL WILL SEEK TO CONSERVE AND ENHANCE THE ENVIRONMENT.

As with development within the A.O.N.B., **careful control of the scale and type of development will be required to protect the character of the Areas of High Landscape Value, and particular attention will need to be paid to siting and design**." (our emphasis).

Paragraph 5.48 in the Report confirms that the Council's Landscape officer has raised concerns relating to the impact that the proposed parking area, and vehicles parked within the site would have on the landscape and surrounding countryside. She states that:

"...a landscaping scheme has been submitted in support of the application; however, its detail is ***considered unacceptable by the Landscape officer and further work will be required*** in this area"

The case officer then states that:

"It is unfortunate that a landscaping scheme could not be finalised within the timeframe of the application but it is considered by officers that this is not an obstacle that cannot be overcome and not a reason to refuse the application on these grounds alone. It is considered that a suitable landscaping scheme would sufficiently screen the parking area and that these details can be secured through the addition of suitably worded conditions should permission be granted.

This is simply the wrong approach from both a policy and legal perspective. Policy C13 states that "... **careful control of the scale and type of development will be required to protect the character of the Areas of High Landscape Value, and particular attention will need to be paid to siting and design** "

This means that a satisfactory landscape scheme must be submitted now so that the extent of the development proposed can be judged in the context of protecting the character of the AHLV. Further, how can proper regard be had to "siting and design" when the extent of development proposed and its location cannot be accurately ascertained from the application documents submitted by the Applicant, Again, the amended plans and information are both ambiguous and incomplete.

Again, should retrospective permission be granted, it will be a clear demonstration to other land owners that despite the Council's own allocation of the Site as an Area of High Landscape Value, that affords no additional protection to the countryside.

This in itself is a dangerous precedent and a clear failure to have regard to a very material consideration and makes any decision to grant permission at this stage unsafe and subject to potential legal challenge.

7. Noise Issues

The role of the Anti-Social Behaviour Officer is to assess the potential for Statutory Noise Nuisance. The role of the Planning Officer in exercising his planning judgment is to ascertain if the development had an unacceptable impact on the amenity of neighbouring properties. This requires consideration of the noise impact of the development in its particular planning context, which includes an Area of High Landscape Value. There is no evidence that the Members have been directed to this issue adequately or at all.

The Planning Officer has failed to consider or apply Paragraph 123 of the NPPF which states that planning decisions should "*protect areas of tranquillity which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason.*"

The views of the Council's own Anti-Social Behaviour Officer are set out in paragraph 3.4 of the Report. The Officer is critical of the proposed noise management plan (NMP) as he states that the effective starting point for the noise management plan should be the site layout with

the general premise being to locate those activities that have the greatest potential to generate noise away from noise sensitive locations. i.e. residential dwellings.

The officer states in clear terms that:

"In this regard I believe more could be done to achieve this objective. It is my view that in order to be effective a NMP would contain an assessment and plan for each of the potential configurations with scaled plans setting out the optimum location for each area of activity with the plan drilling down into the details of each of the event configurations. I also understand from our conversation that the applicant's agents have indicated that they would be resistant to my suggestion that visual rather than audible alerts could be used at the start and finish of elements of competition but have not indicated that there are any over bearing reasons, beyond convention, that support this stance."

He goes on:

"***My concern that the applicant's consultants had not considered the individual characteristics of the various sounds heard was reflected in my earlier response. The absence of a description of the activity taking place at the time of measurement is considered a flaw in the applicant's consultant's work."***

Despite these concerns the Report before Members proposes to deal with noise issues by way of a noise management plan. However, that is the wrong approach in this case given the concerns raised by your officer and our client's own noise consultants.

In short, until such time as the true noise impacts of the proposals have been assessed it is simply not appropriate to put in place a noise management/mitigation plan. It would be unlawful for the Council to do so as that would be based on an assumption that noise issues can be mitigated or managed without having any cogent evidence to support that position.

It is simply too late to remedy that mistake after the principle of the development has been established .following grant of planning permission. As such the Council would not have protected our clients' residential amenity and that of other residents and the decision would be unlawful

8. Increased Traffic/Highway Safety

As indicated earlier, the Highway Authority and Council's assessment of the Highway issues relating to this proposal have been considerably tainted by consideration of (and the giving of significant weight), to a "fallback" position which does not exist as a matter of law.

In addition, we would endorse the serious concerns of Tadmarton Parish Council about all event traffic going through Tadmarton and Swalcliffe.

As the Council has noted in the Report the Parish Council would like to see a reversal of traffic flow along the Ushercombe Road between Lower Tadmarton and Wigginton Heath. This will mean all traffic will access the SPE site via the Gated Road South.

This would:

- Keep all equestrian traffic out of Tadmarton and Swalcliffe. The proposed Event Management Plan requires substantially all equestrian traffic to pass through these two villages;

- Reduce the road miles travelled by equestrian vehicles along unclassified roads.

Swalcliffe Parish Council in an email dated 2 December 2014 to the Case Officer said "the application proposes that traffic from the east for the events should be diverted so as to go along the B4035 through the villages of Tadmarton and Swalcliffe. Oxon Highways and Cherwell District Council should consider the effects of any increase in traffic on the main road through these two villages, in the light of current road management issues (e.g. lack of pavement and speeding)".

The reversal of traffic flow would respect the above comment from Swalcliffe Parish Council as well as their further comment of 12th January 2015 "we suggest that, if possible, any entry / exit gates are sited away from immediate neighbours houses"

We note that, despite the elapse of one month since the previous Committee, no professional evaluation of the Tadmarton Proposal has been considered.

It is also quite extraordinary that in a response yesterday to an email from a local resident on this issue the case officer has stated that:

> "The proposed routing arrangement suggested by Tadmarton Parish Council has been considered during the determination of the application and, ***whilst we have not received any comments from the Highways Authority on this matter, in my opinion***, it was not considered a viable option; as it would merely deflect event day traffic, off roads which were considered by the Highways Authority as being acceptable, in terms of being able to handle the levels of traffic associated with the larger events (and has done so in the past), onto an unclassified road which, again in my opinion, would not; being largely single track with limited opportunity for passing.

It is my opinion that the proposed routing plan contained within the EMP is the best solution in terms of minimising any impact on the safety and convenience of highway users, arising from the larger events taking place on site. But as with any proposal that affects highway matters ***I would ultimately be guided by the opinion of the Highway Authority on this issue."***

Furthermore access to the site is off a highway (i.e. land not in control of the Applicant), via three separate gated access points. All traffic must pass over public land to get into these gates.

Paragraph 32 of the NPPF states that these accesses must be "safe and suitable for all people " yet where is the analysis or safety study in the Report which discharges the requirements under paragraph 32 of the NPPF?

Contrary to what is stated by the Case Officer above there is little if any analysis of the alternative proposal in the Report to Committee. In any event and by his own admission, the case officer does not appear to have consulted the Highway Authority on his proposal and instead offers his own "opinion" on the issue. That is clearly inadequate and consideration of this Application needs to be deferred to allow a proper consultation process to take place with the Highway Authority which:

1) provides a full and reasoned analysis of the alternative highway proposal: and

2) includes within that assessment a comparism of highway safety/impacts and other environmental impacts associated with each proposal; and

3) assumes that no "fallback" position exists.

Unless and until this exercise is carried out, any decision to grant permission based on the current factual context will be unlawful and subject to legal challenge as it will fail to take into account or address a material planning consideration.

9. Alleged Benefits of the Development

Much has been made in the Report and at the previous Planning Committee of the benefits to the local economy which arise as a result of the current unauthorised use.

In reaching that conclusion, the officer has accepted at face value the statement in the applicant's statement of support that the development provides local employment.

No evidence or economic information was submitted to support this statement and it has been directly challenged by the objectors. In accepting the Applicant's evidence the officer has failed to take reasonable steps to acquaint himself with the relevant evidence on this point and has therefore given weight to a material consideration in the absence of any evidence to support that conclusion.

Paragraph 28 of the NPPF provides no support for a finding that the development is in the public interest. Leisure developments that benefit businesses in rural areas will only be supported when they are "sustainable" and "in appropriate locations where identified needs are not met by existing facilities ". The Applicant has failed to provide any evidence of need and whether or not this can be met by existing facilities. As such the Case Officer has erred in his assessment of the public benefits of the scheme.

That is a misapplication of National Planning Policy Framework which calls into question the legality of any decision to grant permission.

10. Proposed Planning Conditions

9.1 Without prejudice the fundamental flaws with the Application process that we have identified in this letter, we also have some serious concerns with regard to the proposed planning conditions, namely:

9.1.1 Condition 2 refers to a drawing numbered J251 which we have been unable to locate and which does not appear to be on the Council's website. As this is to be an "approved" plan it should be the subject of a further consultation process. Please provide a copy of that plan by return.

9.1.2 Condition 3 there is no logic in allowing "Events with greater than 50 competing horses" to take place on no more than 28 days when the Application can allow competitions, training and schooling for up to 49 competing horses without restriction. A suitable condition will therefore need to be included to control training/schooling and competition activities involving less than 50 horses. We therefore suggest that Condition 3 is reworded as follows:

"Events with greater than 50 competing horses shall be limited to take place on no more than 28 days (inclusive of any days required for the setting up and taking down of any associated temporary equipment and temporary structures) in any one calendar year."

9.1.3 In addition, there should be a new Condition 4 which reads "Competitions, training and schooling of fewer than 50 competing horses shall be limited to take place on no more than 28 days (inclusive of any days required for the setting up and taking down of any associated temporary equipment and temporary structures) in any one calendar year."

The reason for the above is clear in that if we assume for these purposes only that the 28 day GPDO provisions apply, then in the absence of express planning permission, the equestrian use involving training/schooling/competitions and events would only be allowed to take place

for 28 day per annum in any event. It is therefore unreasonable for the Council to restrict large Events up to 28 days per annum but allow other competitions to take place for 365 days a year.

9.1.4 For the same reason, both Condition 4 and Condition 5 will need to ensure that the Event Management Plan and Noise Management Plan are implemented in respect of competitions involving fewer than 50 competing horses. As such, additional conditions to that effect are needed. In addition, the second part of Condition 4 needs to be amended to read:

"no operational changes shall be made in relation to the details of the approved EMP which shall be implemented in full." The words which follow namely:

"without prior approval by the Local Planning Authority through the submission of a further approval of details reserved by condition application." Should be deleted. It is not appropriate for such operational changes to be made in the absence of a full application to amend Condition 4 i.e. in consultation with statutory consultees and local residents. It is in any event unlawful to vary the Planning Conditions in the way currently expressed in Condition 4 as this circumvents Section 73 of the Town and Country Planning Act 1990.

For the same reasons, the second part of Condition 5 which reads "without prior written by the Local Planning Authority etc" should be deleted so that this simply reads "no operational or other changes shall be made to the approved Noise Management Plan which shall be implemented in full."

9.1.5 Condition 6 an additional sentence should be added to the end of this condition as follows "The Applicant shall operate the site strictly in accordance with the approved Swalcliffe Park Equestrian – Calendar of Events in each relevant year.

9.1.6 For the reasons stated earlier, a calendar of events should also be maintained for competitions involving fewer than 50 competing horses and an additional condition reflecting the requirements of Condition 6 should be imposed.

9.1.7 Condition 7 requires two additional matters to be dealt with in the log of all equestrian users namely:

(v) the method of transport to the Site; and

(vi) the number and type of all vehicles associated with those equestrian activities.

9.1.8 Condition 8 - it is not appropriate to allow three months for a landscaping scheme to be submitted and approved given that this is an Area of High Landscape Value – this should be submitted within 14 days of any approval of planning permission. The same applies to Condition 13 with relation to the car parking areas.

9.1.9 Condition 14 is imprecise and ambiguous and needs to redrafted. There also needs to be a separate and precise Condition dealing with an exclusion zone between the Site and the boundaries of existing dwellings. We suggest that such exclusion zone should be a minimum of 500 metres from the boundary of those properties.

9.1.10 Condition 15 should be amended to read:

"The use of the Site for equestrian training, schooling, events and competitions shall be restricted to the hours of operation between 08:00 and 20:00 hours."

9.1.11 There also needs to be an additional Condition:

"No activities associated with equestrian use including training, schooling, events or competitions or the setting up or taking down of temporary structures associated with such use shall take place after 20:00 hours on any day.

9.1.12 An additional Condition also needs to be included as follows:

"There shall be no overnight camping or parking of vehicles on the Site and no other activities on the Site after 20:00 which are likely to cause nuisance or disturbance to residential amenity.

9.1.13 Condition 16 needs to re-worded as follows:

"No external lights/flood lights shall be erected on the Site." Again, the words "without the prior express planning consent of the Local Planning Authority should be deleted as any Application to construct external lights/flood lights will be the subject of a separate planning application in any event.

Please note that in suggesting the amendments to the above conditions, we are not in any way accepting the principle of the proposed development on this Site. Indeed, for the reasons specified earlier in this letter, we are of the firm view that this Application and the Report to Committee are legally flawed and subject to Legal Challenge in the event that planning permission is granted.

In the circumstances, we look forward to receiving your urgent confirmation (and no later than 1pm on Thursday 19 March) that this Application item will be removed from the Planning Committee Agenda and will not be placed before Members for determination until the legal flaws and procedural errors identified above have been remedied.

Yours faithfully

[redacted]

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BY EMAIL

Ref. PWA_13-002

18th March 2015

Dear Sirs,

SWALCLIFFE PARK EQUESTRIAN

Following the letter which has been circulated by Robin and Emily Grimstone; Michelle Boycott; and Brenda Vandamme (dated Monday 15th March 2015) I write to urge members to consider the application from Swalcliffe Park Equestrian favourably. It is clear that a number of objectors are attempting to cause yet further distress to the applicant and threaten further the continuation of their business.

The Taylor Family have a long history of farming in this area with the utmost consideration of neighbours and the environment, demonstrating excellent stewardship. The family have diversified the farm business in many ways over recent years to meet the demands of modern farming, not only have they developed this equestrian business to which this application relates but they also have a popular established B&B, have installed an anaerobic digester, farm 1800 acres of arable crops and one member of the Taylor family also runs a well-regarded local catering business. In all of their endeavours the Taylor family strive to respect the local community of which they are active members. The continued efforts by objectors has seen the Taylor family suffer a great amount of stress for over two years and I would urge the Council to prevent as far as possible any further delay to reaching a positive conclusion on the matter, in the interests of all parties.

The applicant has for some time now been attempting to resolve the matter of their continued use of their land for equestrian purposes. I would remind you that Barbara Taylor sought initial advice from the Council in 1997 at the beginning of equestrian activities on the site and was advised to proceed, and that planning permission was not required for low level activity. Equestrian activity has continued on the site ever since. Upon the request of the Council we originally submitted an application for the everyday schooling at their premises in May 2014, which was later recommended for approval by the Council's officers. Unfortunately, the nature of that application meant that no large events whatsoever could be held on site, an eventuality which would have a severe impact on the business and its income. As such, we prepared and submitted a further application to include all activities on the site, large events and everyday schooling, which is now before the Council with a recommendation from your officers that it be granted planning permission. The approval brings with it various conditions, all of which the Taylor family are happy to accept and abide by in order to ensure the business can continue with minimal impact upon neighbours and the village community.

Lastly, I would urge members to consider that any further delay in the determination of this planning application will place this established local rural business at even greater risk of collapse. There is no doubt that any deviation from the recommendation of your officers will see Swalcliffe Park Equestrian put out of business, with a knock-on effect to various other rural business across the Cherwell District.

Throughout the process we have I believe made every effort to assist your officers in providing additional information and remain hopeful that the recommendation will be carried forward by members at the committee meeting of 19th March 2015.

Yours Sincerely

FOR AND ON BEHALF OF THE DIRECTORS OF SWALCLIFFE PARK EQUESTRIAN

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15th March 2015

Dear Committee Member

Swalcliffe Park Equestrian (SPE) **14/01762/F**

Use of land at Grange Farm for mixed use comprising part agricultural, part equestrian **and competitions (Use Class D2), retention of 1no access and relocation of 1no access on to the road leading from the B4035 to Sibford Ferris; extension to existing parking area and retention of equestrian jumps and obstacles; as detailed in agent's letter dated 22nd December 2014.**

We are the three neighbours who live on the perimeter of the SPE site.

Timetable

We received from the Head of Public Protection and Development Management a second class posted Neighbour Notification on 9th March (dated 5th March) informing us of Amended Plans. We were given 10 days to respond. If this means from the date of the Letter, 10 days expires on 15th March, six days after we received notification on 9th March. This seems unreasonably short. If this means from the receipt of the letter the 10 days expires on 19th March, simultaneous with the actual Planning Committee. Either way it is unclear how the Case Officer proposes to take our comments into account, given that the Minutes for the Planning Committee were circulated on 11th March.

This timetable seems rushed and insufficient.

Response - Additional/Amended plans received 5th March and consultation letters sent the same day. No statutory requirement to re-consult.

Documents

A consequence of the rushed timetable is incomplete documentation

Nowhere is there laid out a set of the extant current documents. This is the second Amendment to the Application, following the original application in October '14. It is almost impossible to know which documents remain relevant and what the universe of documents is.

Response - All documents are available to view via the website and any that are superseded have been indexed as such.

The revised Event Management Plan does not even refer in its title to the correct Planning Application.

Response - The title of the document does not refer to any planning reference numbers but does use a simplified description of development.

The Amended Application title makes no reference to large events >50 horses. These are the events that cause the greater disturbance. Surely reference to these large events needs to be a headline issue?

Response - The application is for change of use to a mixed use of agricultural and equestrian there is no distinction between the various levels of equestrian use.

An equally crucial consequence of the fluidity of documents is how we can be sure, on what premise, consultants to the planning team, have based their reports.

Response - Consultations have been carried out on the revised/additional documents received with the amended development description

Site Area

A case in point is the Site Area for everyday training and schooling < 50 horses. We have 3 possibilities for the site area:

- Cross hatched area per Paul Walton's report, para 11, accompanying the October 14 application.
- The Amended Plans in December 14 included a map with purple colouring showing the "Areas for Schooling". The purple area is almost double the cross hatched area. Paul Walton in his report accompanying the Amended Plans in Dec 14, at para 11 says "..the submitted site plan illustrates within that an area of 14.26 ha with hatching in order to illustrate the land which will be used for every day use for training and schooling…". This conforms to the map enclosed with the application in Oct 14.
- The Case Officer attaches a site map that encloses an even larger area than the purple shaded area- in particular fields 3, 6 and 5 are included in the Case Officer's map.

Surely a cornerstone of any planning application is being crystal clear as to what piece of ground permission is being applied for which activity? It is precisely this opaqueness which will enable a tolerable level of activity to become intolerable, with no means of control.

Response - The red-line site area has remained constant throughout the application's determination. It may be that there is some confusion over documentation received in response to the PCN.

Noise Management Plan

Para 3.4 says the Case Officer writes "..it is my view that in order to be effective a NMP would contain an assessment and plan for each of the potential configurations with scaled plans setting out the optimum location for each area of activity with the plan drilling down into the detail of each of the event configurations". I believe that this may be repeating advice from the Anti Social Behavious Manager.

The Noise Management Plan submitted by Id!BRi in March 15 does not satisfy the above. The Case Officer appears to recognise this, because at the time of writing, the Application is still subject to receipt of an approved Noise Management Plan. Noise is a key issue, as evidenced in the past by letters from the community. Is it right that an application should be submitted for approval with such as key issue outstanding?

Response - The NMP is a work in progress document and its final details have not been agreed. Further work needs to be done in consultation with Rob Lowther/Trevor Dixon

Traffic

Tadmarton Parish Council recommends the reversal of the traffic flow between Lower Tadmarton and Wigginton Heath, with all traffic accessing via Gated Road South. This eminently sensible proposal has not been considered and was not even mentioned by the Case Officer in his verbal briefing to the Planning Committee on 19th February. It is a highly practical proposal that helps address a range of issues.

The proposed Event Management Plan. funnels all event traffic, (except that approaching directly from Shipston on Stour), through two villages (Tadmarton and Swalcliffe), much of the traffic is required to travel an extra 5 miles or so, including on unclassified roads, encouraging the temptation to short circuit through a third village, Sibford Ferris.

This offers the following benefits:

- Keeps all equestrian event traffic out of Tadmarton and Swalcliffe;
- Reduces road miles travelled by equestrian vehicles, along unclassified roads;
- Avoids temptation for some equestrian traffic to short circuit through Sibford Ferris;
- Avoids need to upgrade Grange Lane North (Sibford Ferris Parish Council);
- Reduces the need to use dangerous junction off B4035 at Tyne Hill;
- Acknowledges recommendation from Swalcliffe Parish Council that "… Oxon Highways and Cherwell District Council should consider the effects of any increase in traffic on the main road through these two villages, in the light of current road management issues (eg lack of pavement and speeding)"

It has the following disadvantages:

- The "mouth" of Gated Road South is narrow and one residential property may be affected. Both may be mitigated by use of land owned by the applicant that fronts Welsh Lane, east of Turpins Lodge.
- Access form the South may be less convenient to the Applicant.

Response - No response from OCC has been received with regard to the revised routing suggest by Tadmarton PC. In my opinion, the proposed change of route pushes event traffic onto less appropriate roads and would likely to more harm than the route accepted by OCC in the EMP as originally submitted, now revised only in terms of signage details.

Number of Events on Site

There is huge difference between 28 days events and 28 days including set up / take down time.

Planning Recommendation 3 says that "events with greater than 50 competing horses shall be limited to take place on no more than 28 days (including days required for setting up and taking down of any associated equipment and structures) in any one calendar year". At para 1.7 "it is the Officer's opinion that the 28 days allowed under the GPDO would include days required to erect associated structures before the event and also days required to clear the site post event.."

At para 3.4 ("Further Comments following revised / additional information being received" which reflects the comments of the Anti Social Behaviour Manager) "in the Applicant's response to a PCN they indicate that these large events currently operate for 13 days per year yet the total site that the land is in use, ie when an event is being put together and dismantled totals 39 days giving an overall use of 52 days per year"

Para 3.4 continues "I am assuming that the build up and dismantle times would be included within the permitted 28 days if approval were to be given and as a consequence the level of large use activity would fall."

Courses are typically open for walking the course the previous the www.brtisheventing.co.uk suggests that the site will remain open for 3 days after the March 22nd event.

Does the Applicant understand and accept that the consequence of Planning Recommendation 3, is that the number of actual Event days would most likely halve to about six? A clear, unequivocal understanding of this point is paramount.

Recommendation 3 makes Recommendation 6 otiose. The Calendar of Events exceeds what is permitted under Recommendation 3.

Response - The applicant fully understands the implications of all the conditions and particularly no.3. The calendar of events (condition 6) shows actual event days as being held over thirteen days. The applicants have said that they can set-up and take down in a shorter space of time than has been the case in the past and also that they may not be able to hold as many events as in previous years.

Recommendation 15 restricts site use for equestrian training and schooling to 8am to 8pm. How does this impact overnight camping at competitions?

Response - As noted condition 15 refers to training and schooling on a day to day basis and individual events.

Other points

- At Para 1.9 "the Applicant has stated that they have used the site for equestrian activities since 1997". This may be true for other parts of the planning unit but not for the principal part of the site in question. Aerial photos reproduced by Judith Norris in her report, dated October 2013, in connection with application 13/01295 show the larger northern of the site under crops in 2010 and the southern part under crops until 2006. The Applicant themselves show a Spring crop from March to July 2010.

  Why does the Case Officer refuse (see para 1.9) to acknowledge photographic evidence of crops on the site and yet at para 5.58 appear to accept photographic evidence of the car park?

Response - Aerial photographs are a snapshot in time on any one particular day. Whilst they can suggest a time when development has taken place, as with the parking area; they cannot demonstrate a continual use of an area; unless taken at frequent intervals over an identified period of time.

- The greater the area permitted for schooling the easier to spread equestrian activities across a greater area and the greater the scope to set up and dismantle events under cover of schooling, thereby eroding the impact of Planning Recommendation 3.

Response - As noted above there is no distinction between the various levels of equestrian use.

- The three access gates are all within close proximity of near neighbours and the 365 day overflow parking is within 10 metres of Swalcliffe House (Mrs Boycott). Swalcliffe Parish Council (para 3.1) "we suggest that, if possible, any entry and exit gates are sited away from immediate neighbours' houses"

Response - The accesses onto the Sibford Ferris Road form part of the application of which OCC has not raised any objection to (still awaiting a response to the revised information). The gate onto Grange Lane does not require planning permission; we therefore have no control.

- The proposed Grange Farm car parking and the 365 day proposed equestrian sites are not contiguous. This would require horses either to cross an agricultural field each day in breach of planning or move up the public road. At a recent Swalcliffe Parish Meeting we were led to understand that Cherwell Council and the Applicant have made a private arrangement to cover this point.

  We believe that Cherwell Council should disclose this and other private arrangements that they have made with the Applicant.

Response - No private arrangement has been discussed or even suggested at any stage. I do not consider that horses crossing the fields would be in breach of planning. They could also get to the schooling area via Grange Lane as is the case currently.

- The Case Officer's report makes no mention of "Overflow Carparking" immediately opposite Mrs Boycott's house. The possibility of horse boxes being permitted to park outside your windows each day of the year is a serious matter for consideration.

Response - The proposed extension to the parking area is considered to provide sufficient capacity for day to day use; although there may occasions when over-flow parking is required; it is considered that this would not be on a regular basis and could be accommodated within the field the field without it to the detriment of neighbour amenity.

Premise

At para 5.74 the Case Officer says ".. due regard has to be had to the fall back position that the applicants have in terms of what can be carried out under permitted development"

Surely what can be carried out under permitted development in isolation should be distinguished from the permitted development level of activity coupled with 365 days of schooling? Surely the essence of the planning application is to consider the effects of the combined and as appropriate adjust scale of activity, above or below, that allowed under permitted development?

Is the Case Officer's premise sound?
Response - The fall-back position has been confirmed to be a material planning consideration and it is therefore appropriate to consider this in the determination of the application.

Yours Sincerely

Robin and Emily Grimston Michelle Boycott Brenda Vandamme