

SUPPLEMENTARY INFORMATION

Planning Committee

16 February 2017

Agenda Item Number	Page	Title
18.	(Pages 1 - 48)	Written Update

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

16 FEBRUARY 2017

WRITTEN UPDATES

Agenda Item 7 15/01872/F Co-op site, High Street, Kidlington.

- Correction of error in reason for refusal No.1 Line 4 , after does INSERT “not”
- Further comments from Kidlington PC attached as Appendix 1

Agenda Item 8 16/01210/F Land off Warwick Road, Banbury

- **In response to concerns/questions from OCC Highways**, the developer has provided a Technical Audit Certificate from OCC for an existing Section 38 agreement for the site. The developer confirms that the road network being provided under the current application is identical to that associated with the said S38 / Technical Audit, advising: “...the logic was that we could implement the revised scheme within the constraints of the existing approved infrastructure whereby we were not at risk to implement it on site regardless of which residential approval we implemented around it.”
- **In response to officers’ concerns**, not reported in the agenda but emerging on review of draft legal documentation, regarding intended conveyance of land within the application site which under the approved layout is public open space (POS), an amended plan has been received, Revision L, to re-site the post and rail fence directly adjacent to driveways. However, on further discussion with the Council’s landscape officer, it is considered that the post and rail fence would visually detract from the development and that it is therefore appropriate and necessary to recommend a condition to remove this post and rail fence from the scheme.
- The amended layout plan received has different plot numbers to the layout plan originally submitted with the application, so several recommended conditions will need to be amended to reflect these new plot numbers.

Revised conditions to reflect the above:

Condition 2

Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the following plans and documents: “P.0918_59 Rev H” (Site layout), “P.0918_60 Rev C”, “P.0918_61 Rev B” (site location plan), “P.0918_62 Rev C” (Enclosures), “P0918_64B” (Garages), “P.0918_65A” (Enclosure

details), "P.0918_63D-1", "P.0918_63D-2", "P.0918_63D-3", "P.0918_63D-4", "P.0918_63D-5", "P.0918_63D-6", "P.0918_63D-7" and "P.0918_63F-4".

Reason – For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and comply with Government guidance contained within the National Planning Policy Framework

Condition 3

Notwithstanding the details submitted, the walls providing means of enclosure to new Plots 119, 127, 128 and 133 shall be laid in English Garden Wall bond.

Reason - To ensure the satisfactory appearance of the completed development and to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031, saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework

Condition 4

Notwithstanding the plans hereby approved, no development shall commence above slab level on the respective plots (namely new plots 133-136 inclusive) until a sample of the slate to be used in the construction of the roofs of the plots stated in approved drawing "P.0918_60 Rev C" (Materials Plan) to have natural slate roofs has been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out fully in accordance with the samples so approved.

Reason - To ensure the satisfactory appearance of the completed development and to comply with Policy ESD 15 of the Cherwell Local Plan 2011-2031, saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework

Condition 8

Before the respective dwelling is first occupied the first floor side-facing openings to Plots 124, 126, 134 and 136 and the first floor rear-facing openings to Plots 119, 123, 127, 131, 132 and 133 shown to serve a 'landing' shall be glazed with obscure glass (at least Level 3) only and fixed with a ventilation stay restricting the opening of the window to no more than 30 degrees from the elevation in question, and must be permanently maintained as such at all times thereafter.

Reason – To safeguard the living conditions of neighbouring residents and future occupiers of the development and to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031, saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework

Condition 11

Prior to the commencement of the development hereby approved, and notwithstanding the submitted details, an amended landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme for landscaping the site shall include:-

- (a) details of the proposed tree and shrub planting including their species, number, sizes and positions, together with grass seeded/turfed areas,
- (b) details of the existing trees and hedgerows to be retained as well as those to be felled, including existing and proposed soil levels at the base of each tree/hedgerow and the minimum distance between the base of the tree and the nearest edge of any excavation,
- (c) details of the hard surface areas, including pavements, pedestrian areas, reduced-dig areas, crossing points and steps,
- (d) details of all boundary treatments and means of enclosure.

Reason - In the interests of the visual amenities of the area, to ensure the creation of a pleasant environment for the development and to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031, saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

Agenda Item 9 16/01710/F Land W of M40, Kirtlington Road, Chesterton

- A lengthy representation has been received from Pegasus Planning acting on behalf of local residents raising many issues including a suggestion that the issue of air quality has been overlooked in the submission and officer's assessment. This representation is attached as Appendix 2. This representation also included a peer review of the submitted noise survey. That review is attached as Appendix 3
- The Council's Environmental Protection Officer has commented on the air quality issue raised that "At this stage we don't have information which shows air quality is above an objective, but it is a strong possibility. If it is above an objective, the LPA would be placing resident's health at risk by permitting this application, even as a temporary consent."
- **Recommendation changed to DEFER** to await the submission of an Air Quality assessment and its consideration

Agenda Item 10 16/01979/F Land at Main St. Great Bourton

- Members have been sent a letter from a resident of Great Bourton. This is attached as Appendix 4
- 5 further third party comments have been received raising the following points:

- The development is still 4 times the permitted size for a Category B village, which is clearly stated in CDC's Local Plan.
 - There has only ever been infill developments in the village for the last 50 years and this is the only way that new houses should be allowed.
 - There will be an influx of 90-100 cars which is unwelcome
 - The proposal would be on part of an Area of High Landscape Value.
 - It is beyond the built up limits of the village
 - The proposal would be built outside the existing village envelope on the edge of a Category B village where development should be restricted to conversions and infilling within the village.
 - Great Bourton has not been earmarked for such substantial development.
 - The development would spoil the entrance to the village, effectively joining the village to the Southam Road, thus removing its prized seclusion.
 - The proposed access point for the estate is too close to the main junction from the Southam Road. The extra cars would cause cars to back up to traffic coming off the Southam Road, which represents a significant danger to all motorists leaving or entering the village.
 - The existing Village hall is adequate and a new one is not wanted or needed.
 - The increase in number of homes to 43 is ridiculous, greedy and excessive. The residents of Great Bourton have voted against this development and the Parish Council and CDC should respect their wishes.
 - Continue to object despite the amendments/ alterations.
 - The amendments continue to give an urban feel at the entrance to the village.
 - Concerns around light pollution and increased traffic have not changed.
 - By suggesting a redesign, have Officers missed the point that the proposal should be assessed against the Local Plan.
 - The adoption of the Local Plan should provide protection of this Category B village from development on this scale rather than supporting this unsustainable plan.
 - The increase in density will not be modest and it will have a greater impact.
 - The Parish Council have confirmed that the majority object to this planning application.
 - There is little employment in the village and so most people living on the development would need to commute.
 - Reference is made to the Officer report and the conclusions reached in relation to sustainability matters.
 - There would be more traffic using the village hall, which does not appear to have been taken into account in terms of the Transport Statement.
- CDC Business Support Unit has advised that the development has the potential to attract New Homes Bonus of £237,058 over 4 years under

current arrangements for the Council. This estimate includes a sum payable per affordable home. The difference in the sum quoted here and that quoted in the report is due to changes in Central Government Policy relating to New Homes Bonus. The assessment at paragraph 7.69 of the Committee report therefore remains relevant as reported but the estimated New Homes Bonus quoted should refer to the update above.

Given the removal of the bus services, the OCC Highway Officer has advised the Case Officer that the requested contribution of £33,000 would be unlikely to support the existing Stagecoach service 502. The consideration was therefore around the possibility of the Parishes coming together to run a community bus service, however due to the organisation needed, OCC did not consider themselves best placed to collect the contribution and it was felt that it may be more appropriate for CDC to collect the contribution if considered necessary.

Officers have therefore been in contact with Great Bourton Parish Council, who have advised the following:

The PC has been working to try and find a way of providing some public transport provision following the removal by OCC and WCC of all grants, and the subsequent termination of almost all bus services serving our two villages. We felt that this was one of those issues that affected the local community far wider than just The Bourtons and have discussed the matter at the Northern Cluster of Parish Councils meeting convened by D.Cllr Ken Atack. This has demonstrated that there is overwhelming concern in all our villages and a general feeling that we should act together to try and reinstate some form of public transport provision.

One of the opportunities being researched is making use of the County Connect service provided through Northamptonshire CC. Meetings have been held with a representative of County Connect and this has confirmed that they would be interested in extending their provision to include our cluster of villages. This would effectively provide an “on-demand” type service to residents who were registered with County Connect. There would be a substantial support contribution required from each participating Council that covers the availability of the service and then passengers would either pay for each journey or use their bus pass [if available].

This indicates that we and our neighbouring local PC’s are working hard to replace the services so unfortunately removed by OCC’s actions.

But the kind of service provided by County Connect does not functionally replace a regular timed bus service which could be used by residents wishing to commute into Banbury for work. This demands a different approach and we have yet to find a way of replacing this element, which we feel is important to make the Garners Field development much more sustainable from an employment and transport viewpoint. We have not yet approached potential transport providers about the level of subsidies required to run a morning and evening commuter service as we

do not have access to the level of funds potentially required. Obviously once we have confirmation that the £33k contribution will be included in the s106 agreement and planning permission is granted we do intend to look more thoroughly into this. We have already received confirmation from OCC that they would be prepared to make this £33k contribution available to us, against a properly supported plan for a service, should the development go ahead.

OCC have considered the advice above and are content for CDC to collect the contribution to pass onto the Parish, given that they seem to be proactive in getting a scheme up and running. Officers have therefore instructed Legal to build in the contribution of £33,000 as a CDC schedule and this will be completed.

The Highway Authority have also considered the Parish Council's requested left turn filter lane, utilising some of the grass verge at the south bound exit from the village road onto the A423 (referred to at paragraph 7.45 of the Committee report). The response is that according to DMRB, the amount of traffic average annual daily traffic (AADT) travelling along the major road should be approximately 12,000 and on the minor arm, 2,700, in order to justify a ghost island filter lane. The current situation on the A423, taken from a traffic survey undertaken in January 2017, just south of Little Bourton, shows that on an average weekday there was 9,131 (Friday 6th Jan – was the highest flow counted)). In December 2015, a similar survey recorded average daily traffic (ADT) on the minor road into Great Bourton, at approximately 2,264 (7 day average). Looking at this data, OCC could not justify asking the developer to make a contribution towards any such S278 works, as current traffic flows do not warrant it. The opinion has also been expressed that it would be unlikely that a left turn filter lane would be converted into a bus layby once it had been constructed (at a large expense).

- The resolution at point d) is recommended to be changed to:

d) The following conditions, with delegation provided to Officers to make any necessary changes to conditions in response to the outstanding points and following a further detailed review, in agreement with the Chairman of Planning Committee.

- Planning conditions recommended for 16/01979/F

1. The development to which this permission relates shall be begun not later than the expiration of one year beginning with the date of this permission.

Reason - To comply with the provisions of Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. Except where otherwise stipulated by condition, the application shall be carried out strictly in accordance with the following plans and documents: application

forms, [Documents and drawing numbers need to be added]

Reason - For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and to comply with Government guidance contained within the National Planning Policy Framework.

3. Prior to the commencement of the development hereby approved, a stone sample panel (minimum 1m² in size) shall be constructed on site in natural ironstone, which shall be inspected and approved in writing by the Local Planning Authority. Thereafter, the external walls of the plots identified on drawing number 100 Rev A as being constructed from stone and the Community Hall shall be laid, dressed, coursed and pointed in strict accordance with the approved stone sample panel.

Reason - To ensure that the development is constructed and finished in materials which are in harmony with the building materials used in the locality and to comply with Policy C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

4. Prior to the commencement of the development hereby approved, a brick sample panel, to demonstrate brick type, colour, texture, face bond and pointing (minimum 1m² in size) shall be constructed on site, which shall be inspected and approved in writing by the Local Planning Authority. Thereafter, the external walls of the plots identified as being constructed from brick on drawing number 100 Rev A shall be constructed in strict accordance with the approved brick sample panel.

Reason - To ensure that the development is constructed and finished in materials which are in harmony with the building materials used in the locality and to comply with Policy C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

5. Prior to the commencement of the development hereby approved, samples of the tile and slate to be used in the construction of the roofs of the development, the distribution of which is indicated on drawing number 100 Rev A shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the samples so approved.

Reason - To ensure the satisfactory appearance of the completed development and to comply with Policy C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

6. Prior to the commencement of the development, full details of the doors and windows hereby approved, at a scale of 1:20 including elevations, vertical and horizontal cross sections, cill, lintel and recess detail, materials and colour/finish, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the doors and windows shall be installed within the building in accordance with the approved details.

Reason - To ensure the satisfactory appearance of the completed development and to comply with Policy C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

7. Prior to the commencement of the development, full details of the eaves and verge details of the dwellings and garages shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with the agreed details.

Reason - To ensure the satisfactory appearance of the completed development and to comply with Policy C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

8. Prior to the commencement of the development, full details of the porches for the dwellings including the materials to be used shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with the agreed details.

Reason - To ensure the satisfactory appearance of the completed development and to comply with Policy C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

9. Notwithstanding the submitted details and prior to the commencement of the development hereby approved, a plan showing full details of the finished floor levels in relation to existing ground levels on the site for the proposed development shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved finished floor levels plan.

Reason - To ensure that the proposed development is in scale and harmony with its neighbours and surroundings and to comply with Policy C28 of the adopted Cherwell

Local Plan and Government guidance contained within the National Planning Policy Framework.

10. Notwithstanding the details submitted and prior to the commencement of the development hereby approved; full details of the enclosures along all boundaries and within the site shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the approved means of enclosure, in respect of those dwellings which they are intended to screen shall be erected, in accordance with the approved details, prior to the first occupation of those dwellings.

Reason - To ensure the satisfactory appearance of the completed development, to safeguard the privacy of the occupants of the existing and proposed dwellings and to comply with Policies C28 and C30 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

11. Prior to the construction of each road or footpath, full details of the final surface treatment for that element of the highway shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the road or footpath shall be constructed in accordance with the approved details.

Reason - To ensure the satisfactory appearance of the completed development and to comply with Policy C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

12. Prior to the commencement of the development hereby approved, full details of both of the means of access between the land and the highway, including, position, layout, construction, drainage and vision splays shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the means of access shall be constructed and retained in accordance with the approved details

and any land and vegetation within the vision splays shall not be raised or allowed to grow above a maximum height of 0.6m above carriageway level.

Reason - In the interests of highway safety and to comply with Government guidance contained within the National Planning Policy Framework.

13. Prior to the commencement of the development hereby approved, full specification details of the estate roads, vehicular accesses, driveways and turning areas to serve the dwellings, which shall include construction, layout, surfacing, drainage and road markings, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter and prior to the first occupation of any of the dwellings, the access, driveways and turning areas shall be constructed in accordance with the approved details.

Reason - In the interests of highway safety, to ensure a satisfactory standard of construction and layout for the development and to comply with Government guidance contained within the National Planning Policy Framework.

14. Prior to the commencement of the development hereby approved, full specification details (including construction, layout, surfacing and drainage) of the parking and manoeuvring areas shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, and prior to the first occupation of the development, the parking and manoeuvring areas shall be provided on the site in accordance with the approved details and shall be retained unobstructed except for the parking and manoeuvring of vehicles at all times thereafter.

Reason - In the interests of highway safety and to comply with Government guidance contained within the National Planning Policy Framework.

15. Prior to the first use or occupation of the development hereby permitted, covered cycle parking facilities shall be provided on the site in accordance with details which shall be firstly submitted to and approved in writing by the Local Planning Authority. Thereafter, the covered cycle parking facilities shall be permanently retained and maintained for the parking of cycles in connection with the development.

Reason - In the interests of sustainability and to ensure a satisfactory form of development, in accordance with Government guidance contained within the National Planning Policy Framework.

16. No development shall commence on site until a Construction Traffic Management Plan providing full details of the phasing of the development has been submitted to and approved in writing by the Local Planning Authority (in consultation with the Local Highway Authority) prior to the commencement of development. This plan is to include wheel washing facilities, a restriction on construction & delivery traffic during the peak traffic periods and an agreed route to the development site. The approved Plan shall be implemented in full during the entire construction phase and shall reflect the measures included in the Construction Method Statement received.

Reason- In the interests of highway safety and to safeguard the residential amenities of local residents in accordance with Government Guidance in the National Planning Policy Framework.

17. Prior to the commencement of the development, a Construction Environment

Management Plan (CEMP), which shall include details of the measures to be taken to ensure construction works do not adversely affect residential properties on, adjacent to or surrounding the site together with details of the consultation and communication to be carried out with local residents shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with approved CEMP.

Reason - To ensure the environment is protected during construction in accordance with Policy ENV1 of the Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

18. Prior to first occupation a Travel Information Pack shall be submitted to and approved by the Local Planning Authority. The first residents of each dwelling shall be provided with a copy of the approved Travel Information Pack.

Reason - In the interests of sustainability and to ensure a satisfactory form of development, in accordance with Government guidance contained within the National Planning Policy Framework.

19. Prior to the commencement of any part of the development hereby approved the public right of way shall be protected in accordance with details to be firstly submitted to and approved in writing by the Local Planning Authority. Thereafter, the public right of way shall remain protected and available for use throughout the construction phase. No materials, plant, temporary structures or excavations of any kind should be deposited / undertaken on or adjacent to the Public Right of Way that may obstruct or dissuade the public from using the public right of way whilst development takes place.

Reason - In the interests of highway safety and to comply with Government guidance contained within the National Planning Policy Framework.

20. No changes to the public right of way direction, width, surface, signing or structures shall be made without prior permission approved by the Countryside Access Team or necessary legal process.

Reason - In the interests of highway safety and to comply with Government guidance contained within the National Planning Policy Framework.

21. The development hereby approved shall be carried out strictly in accordance with the recommendations and specifications set out in the Arboricultural Impact Assessment and Method Statement (AMS) Revision A and the Tree Protection Plan (drawing number HAY20809-03A) prepared by ACD Environmental revised on the 13th January 2017 including where no dig construction is required. The identified Tree Protection measures shall be installed prior to the commencement of the development.

Reason - To ensure the continued health of retained trees/hedges and to ensure that they are not adversely affected by the construction works, in the interests of the visual amenity of the area, to ensure the integration of the development into the existing landscape and to comply with Policy C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

22. Except to allow for the means of access and vision splays the existing hedgerow/trees along the north, west and south boundaries of the site shall be

retained and properly maintained and any hedgerow/tree which may die within five years from the completion of the development shall be replaced and shall thereafter be properly maintained in accordance with this condition.

Reason - In the interests of the visual amenities of the area, to provide an effective screen to the proposed development and to comply with Policy C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

23. Notwithstanding the submitted details and prior to the commencement of the development hereby approved, a landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme for landscaping the site shall include:-

(a) details of the proposed tree and shrub planting including their species, number, sizes and positions, together with grass seeded/turfed areas,

(b) details of the existing trees and hedgerows to be retained as well as those to be felled, including existing and proposed soil levels at the base of each tree/hedgerow and the minimum distance between the base of the tree and the nearest edge of any excavation,

(c) details of the hard surface areas, including pavements, pedestrian areas, reduced-dig areas, crossing points and steps.

Reason - In the interests of the visual amenities of the area, to ensure the creation of a pleasant environment for the development and to comply with Policy C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

24. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in accordance with BS 4428:1989 Code of Practice for general landscape operations (excluding hard surfaces), or the most up to date and current British Standard, in the first planting and seeding seasons following the occupation of the building(s) or on the completion of the development, whichever is the sooner. Any trees, herbaceous planting and shrubs which, within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the current/next planting season with others of similar size and species.

Reason - In the interests of the visual amenities of the area, to ensure the creation of a pleasant environment for the development and to comply with Policy C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

25. Prior to the commencement of the development, and notwithstanding the submitted details, full details, locations, specifications and construction methods for all purpose built tree pits and associated above ground features for hard and soft landscaped areas, to include specifications for the installation of below ground, load-bearing 'cell structured' root trenches, root barriers, irrigation systems and a stated volume of a suitable growing medium to facilitate and promote the healthy development of the proposed trees, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall be carried out in accordance with the approved details. Tree pits shall be constructed concurrent with the construction of any hard surfaced areas into

which they are to be installed.

Reason - In the interests of the visual amenities of the area, to ensure the creation of a pleasant environment for the development and to comply with Policy C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

26. Notwithstanding the submitted information and prior to the commencement of the development, full design details of the equipment and layout of the Local Area of Play (LAP) shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the LAP shall be implemented in accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.

Reason - In the interests of amenity, to ensure the creation of a pleasant environment for the development with appropriate open space/play space and to comply with Policy R12 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

27. Notwithstanding the submitted information and prior to the commencement of the development hereby approved, including any works of site clearance, a Landscape and Ecology Management Plan (LEMP) and method statement for protected species and biodiversity enhancements, together with long-term maintenance, has been submitted to and approved in writing by the local planning authority. The LEMP and method statement shall be carried out and retained in accordance with the approved details.

Reason -To protect habitats of importance to biodiversity conservation from any loss or damage in accordance with Policy C2 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

28. No removal of hedgerows, trees or shrubs shall take place between the 1st March and 31st August inclusive, unless the Local Planning Authority has confirmed in writing that such works can proceed, based on health and safety reasons in the case of a dangerous tree, or the submission of a recent survey (no older than one month) that has been undertaken by a competent ecologist to assess the nesting bird activity on site, together with details of measures to protect the nesting bird interest on the site.

Reason - To ensure that the development does not cause harm to any protected species or their habitats in accordance with Policy C2 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

29. Prior to the commencement of the development hereby approved, including any demolition and any works of site clearance, a report regarding badgers, which shall include details of a recent survey (no older than six months), any mitigation, whether a development licence is required and the location and timing of the provision of any protective fencing around setts/commuting routes, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall be carried out in accordance with the approved details.

Reason - To ensure that the development does not cause harm to any protected species or their habitats in accordance with Policy C2 of the adopted Cherwell

Local Plan and Government guidance contained within the National Planning Policy Framework.

30. Notwithstanding the submitted details and prior to the commencement of the development hereby approved, including any demolition, and any works of site clearance, a method statement for enhancing biodiversity on site and for the provision of bat and bird boxes shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the biodiversity enhancement measures shall be carried out and retained in accordance with the approved details.

Reason -To protect habitats of importance to biodiversity conservation from any loss or damage in accordance with Policy C2 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

31. All species used in the planting proposals associated with the development shall be native species of UK provenance.

Reason - To conserve and enhance biodiversity and prevent the spread of non-native species in accordance with Government guidance contained within the National Planning Policy Framework.

32. **Drainage (potential need for a drainage condition – to be added if required)**

33. The garage(s) shown on the approved plans shall not be converted to provide additional living accommodation without the prior express planning consent of the Local Planning Authority.

Reason - To ensure that satisfactory provision is made for the parking of vehicles on site and clear of the highway in accordance with Government guidance contained within the National Planning Policy Framework.

34. Notwithstanding the provisions of Class A of Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 and its subsequent amendments, no gate, fence, wall or other means of enclosure shall be erected, constructed or placed between the dwelling(s) and the highway without the prior express planning consent of the Local Planning Authority.

Reason – To retain the open character of the development and the area in accordance with Policy C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

35. All services serving the proposed development shall be provided underground unless details of any necessary above ground service infrastructure, whether or not permitted by the Town and Country Planning (General Permitted Development Order) 1995 (as amended), have first been submitted to and approved in writing by the Local Planning Authority. Thereafter, and prior to the first occupation of the development that they serve, the above ground services shall be provided on site in accordance with the approved details.

Reason - To ensure the satisfactory appearance of the completed development and to comply with Policy C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

36. If, during development, contamination not previously identified is found to be

present at the site, no further development shall be carried out until full details of a remediation strategy detailing how the unsuspected contamination shall be dealt with has been submitted to and approved in writing by the Local Planning Authority. Thereafter the remediation strategy shall be carried out in accordance with the approved details.

Reason - To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with Policy ENV12 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

37. Prior to the commencement of the development hereby approved, full details of the fire hydrants to be provided or enhanced on the site shall be submitted to and approved in writing by the Local Planning Authority. Thereafter and prior to the first occupation of the development, the fire hydrants shall be provided or enhanced in accordance with the approved details and retained as such thereafter.

Reason - To ensure sufficient access to water in the event of fire in accordance with Government guidance contained within the National Planning Policy Framework.

38. The development shall be constructed so as to achieve a demand for potable water that does not exceed 110 l/p/d and details of measures to be used to achieve this demand shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of each phase. The development shall be carried out in accordance with the details so approved.

Reason: The site is located in an area of water stress and therefore reaching a higher level of water efficiency is required to comply with Policy ESD3 of the Cherwell Local Plan 2011-2031.

39. The dwelling(s) hereby approved shall not be occupied until domestic bins for the purposes of refuse, food waste, recycling and green waste have been provided for each of the approved dwellings, in accordance with the Council's current bin specifications and requirements.

Reason - To provide appropriate and essential infrastructure for domestic waste management in accordance with the provisions of Policy INF1 of the Cherwell Local Plan 2011 - 2031.

Planning notes:

1. Please note the Advanced Payments Code (APC), Sections 219-225 of the Highways Act 1980, is in force in the county to ensure financial security from the developer to off-set the frontage owners' liability for private street works, typically in the form of a cash deposit or bond. Should a developer wish for a street or estate to remain private then to secure exemption from the APC procedure a 'Private Road Agreement' must be entered into with the County Council to protect the interests of prospective frontage owners.
2. For roads within the proposed development to be offered for adoption to the Local Highway Authority a S38 Agreement will be required. For any private roads a

Private Road Agreement will be required between the developer and Oxfordshire County Council. For guidance and information on road adoptions please contact the County's Road Agreements Team 01865 815700 or email Road.Agreements@oxfordshire.gov.uk

3. A landowner is responsible for the vegetation alongside a public footpath and for clearing back any vegetation that overhangs it. The management of the vegetation alongside Bourton Footpath 5 will need to be included within the management plan for the site.
4. The applicant is advised that in respect of Surface Water, Thames Water have recommended that it should be ensured that storm flows are attenuated or regulated into the receiving public network through on or off site storage. Where it is proposed to connect to a combined public sewer, the site drainage should be separate and combined at the final manhole nearest the boundary. Connections are not permitted for the removal of ground water. Where the developer proposes to discharge to a public sewer, prior approval from Thames Water Developer services will be required. They can be contacted on 0800 009 3921.
5. Thames Water will aim to provide customers with a minimum pressure of 10m head (approx 1 bar) and a flow rate of 9 litres/minute at the point where it leaves Thames Waters pipes. The developer should take account of this minimum pressure in the design of the proposed development.

Agenda Item 11 16/02295/OUT Land off Mill Lane, Kirtlington

- Comments have been received from Planning Policy and the response received concludes that there is no objection to the principle of residential development in Kirtlington given that it is a Category A village, but they have noted the development would extend beyond the built up limits of Kirtlington. They go on to note that detailed consideration of the impact on the countryside, the existing settlement pattern, and the justification for a lower density development on this site is required.
- Furthermore, a Design Guide has been submitted to the Local Planning Authority by the applicant's agent and an **additional condition** has been recommended which states that:

"The reserved matters shall be in general accordance with the 'design principles' section of the 'Outline Application Design Guide' received by e-mail from the applicant's agent on 15th February 2017.

In order to achieve a satisfactory form of development, in the interests of the visual amenity of the area and to comply with Policy ESD15 of the Cherwell Local plan Part 1, saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the NPPF."

KIDLINGTON PARISH COUNCIL

Exeter Hall, Oxford Road, Kidlington, Oxon. OX5 1AB



Parish Council: 01865 372143; Exeter Hall: 01865 373691

Fax: 01865 842308

E-Mail - clerk@kidlington-pc.gov.uk

Clerk: Mrs Patricia Redpath D.M.A.

Bob Duxbury BA (Hons) MRTPI
Development Control Team Leader
Development Management
Cherwell District Council

Dear Bob,

14th February 2017

Application 15/01872/F: Midlands Cooperative Society and Cantay Estates Ltd

The Parish Council has seen the email dated 25th January 2017 from Tony Nolan, Managing Director of Cantay Estates Ltd in relation to the above application. It has consulted with its retained planning consultant and makes the following comment on Mr Nolan's observations:

1. Much of the email criticises the Kidlington Framework Masterplan SPD, saying that "there is no evidence of demand for retail development in the village centre", "no provision is made for servicing" and the Masterplan "has no regard for the prospect that the site currently has an intrinsic value". These are all matters which CDC will need to consider when determining the planning application.
2. However, it needs to be emphasised that the Masterplan is now adopted policy, so it carries full weight in the determination of the planning application. The Masterplan is also more specific adopted policy than the general policies of the adopted Local Plan Part 1. So, if there is any conflict between adopted policies, greater weight should be afforded to the specific policies of the Masterplan than the more general policies of the Local Plan.
3. Whilst the applicant's criticisms of the Masterplan SPD are understood, it is not felt that they could be described as "objective scrutiny".
4. It is also not known to be correct to say that the retail use of the site has "no immediate or likely future demand" given that Kidlington is very likely to grow over the next 15 years or so to help meet Oxford's unmet housing needs. The Masterplan SPD is not setting out the policy framework just for now - but for the future to 2031. In addition, it is well recorded that the village centre has an extremely low vacancy rate which indicates that it is in very good health.
5. Practical issues such as making provision for servicing will need to be built into any scheme design, and CDC will be able to comment on the likelihood of such issues being achievable.
6. Issues relating to scheme viability will also need to be considered by CDC, taking into account any evidence submitted by the applicants and / or any marketing of the site which may have been carried out.

Furthermore Mr Nolan refers to a "without prejudice" offer to provide discount market housing that he says would be revisited if the developer was forced to appeal. The Parish Council has always objected to the minimal level of so called affordable housing to be provided by this proposal. With the permission of Cherwell District Council, the Parish Council commissioned an

independent assessment of the developer's submitted viability appraisal which showed that the valuation is based on potential rents being applied to the **existing** accommodation. The utilisation of this approach may be an acceptable one, but to the Parish Council appears contradictory in that it applies an existing use value at one point whilst stating at another that the store is *'no longer viable in its current form and does not respond to current retail requirements for stores of this nature'*.

One thing that Kidlington does need is affordable housing and the Local Plan requires 35% of affordable units for a development of this size.

Yours sincerely



Clerk to the Council

MP/P17-0042

06 February 2017

FAO Stuart Howden
Planning
Cherwell District Council
Bodicote House
Bodicote
Banbury
OX15 4AA

Dear Sir/Madam,

**Representations to Planning Application Ref 16/01780/F
Land West of M40 adjacent to A4095 Kirtlington Road, Chesterton.
Pegasus Group acting on behalf of a number of local residents (Please see end
for list of residents)**

Local residents have asked that Pegasus Group consider the substance of the planning application and to submit representations as necessary. We have considered the submitted documentation, including the application form, supporting documentation, the committee report dated 15th December 2016, the provision of Government Advice and Development Plan and have no option other than to formally object to the application proposal. A copy of this representation has also been provided to the Legal Department of the Council with regards to circumstances where the application, as submitted, is misconceived and raises substantive matters of law.

The objection relates to a number of policy and material reasons set out below, but we also assert that at this time the application fails to meet the basic information requirements set out in policy and guidance¹ in order for a proper assessment to be made of the proposed scheme. It should also be noted that the Council has failed to fulfil its own requirements as set out in its own Statement of Community Involvement (SCI), which raises specific legal issues.

This representation notes the recommendations made to Cherwell District Planning Committee on the 15th December. Reference is made to the committee report and, while the Officer's recommendation to refuse the application is acknowledged, my clients believe

¹ Cherwell Local Validation Checklist Part 2 & Development Management Procedure (Order) 2015

that aspects of the report and the interpretation of policy within are incorrect and therefore wish to reinforce a number of important considerations.

Further it is noted that revised site plans and elevations, and various correspondence has been uploaded to the website on the 30th January. Comments on these matters have been included in the following statements in light of the permission now potentially being temporary in nature and the apparent acceptance that key mitigation could be omitted from the scheme.

This objection is accompanied by a peer review of the submitted Noise Assessment by LF Acoustics which highlights the serious health affects likely to be suffered using the reports own acoustic findings.

Procedural Matters

Description of Development

The description of development reads as follows; -

Change of use of land to use as a residential caravan site for 9 gypsy families, each with two caravans and an amenity building. Improvement of existing access, construction of driveway, laying of hard standing and installation of package sewage treatment plant.

It is understood that this application seeks full planning permission for the provision of 9 static homes with each plot supported by a car parking area, amenity building and touring caravan plot and this should have been reflected in the original description. Various plans have been uploaded on to the website, with the latest now appearing to indicate that the option of temporary permission is now being pursued.

It is our opinion that this scheme should not be subject to a temporary permission. PPG advises that 'A condition limiting use to a temporary period (should) only (be used) where the proposed development complies with the development plan' and only where there is a need to assess the effect of the development or the requirement/need for that development. Therefore, a temporary solution should only be considered where the either the need or the effect of the development is unclear. As will be made clear in the following paragraphs, the development does not comply with the development plan and it is unlikely that at the end of the temporary period planning conditions will have changed, in terms of the both the site, which will always be unsuitable for development, or the need for pitches

which will still occur and will not be resolved by a temporary permission. It is considered that when the final scheme is agreed this should be reflected in the description of development to properly inform third parties.

Information requirements and validation

It is noted that the application was made valid on 2nd September and included the following documents;

- Location Plan
- Site Layout Plan
- Floor Plans/Elevations
- Waste Water Treatment System Details
- Design and Access Statement (now redacted)
- Supporting Letter from Tom Smith (now redacted)

We consider the applicant failed to provide sufficient and correct details to make the application valid as per Council's local validation requirements and the national guidance on information requirements and validation. We make the following observations. First, it is clear that the planning application drawings do not meet the Council's own validation requirement or national requirement as the paper size is not stated and the scale bars do not match the scale on the drawings. The lack of elevations for the 9 static homes is a clear omission and elevations of these permanent structures should be required.

Second, the original Design and Access (DaS) statement has been redacted and the application now has no relevant DaS. The required validation documents for this site include a DaS. As such, it is considered that the current application fails to provide a sufficient level of information in order for any interested parties to be able to view and comment on the application.

Third, as noted in the committee report, no flood risk assessment has been undertaken by the application. **Policy ESD6** of the Cherwell Local Plan 2011 states that all major development must be accompanied by a Flood Risk Assessment.

Fourth, under section 66(i) of the Planning Act (listed buildings and conservation areas) Act 1990 the Council has a duty to have special regard to the desirability of preserving the listed building in the vicinity of the site. A listed barn is located at the adjoining Chesterton

Fields Farm. The National Planning Policy Framework (NPPF, para 128) sets out that *'In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance'.*

There is no heritage statement submitted with the application and this has been overlooked by the DaS and application as submitted, nor has this been picked up / assessed through the Council's committee report. Accordingly, there is no evidence at this stage that proper and due regard has been given to assessing and balancing the harm to the setting against any public benefit of the development.

As a minimum we would expect accurate submitted plans and a revised DaS to be formally consulted upon in order for there to be adequate community involvement. It is not clear from the website whether a formal consultation has taken place on the revised plans and reports. However, it is noted that in uploaded correspondence the Council Officer himself notes (on 19th December) that in terms of the noise report and then proposed mitigation measures that;

'In terms of timescales, once the above information is received the description of development will need to be amended to reduce the number of pitches and include the bund, and the application will have to be re-publicised'.

It is clear that the proposal is still going through fundamental changes and the final proposal and correct supporting information must now be formally consulted upon with all interested parties to ensure legitimate expectations for consultation are met in line with planning law. Numerous court judgements demonstrate that third parties have legitimate expectations on consultation and that public bodies should act consistently, and should not break "promises" they have made. Attention is drawn to R (Bhatt Murphy) v Independent Assessor [2008] EWCA Civ 755 and R (Majed) v London Borough of Camden [2009] EWCA Civ 1029, that highlight the importance of consultation expectations being met, particularly with regard to the acting in conformity with the SCI.

Notwithstanding the above deficiencies with the information provided and the Council's consultation on these matters, it is further considered that a number of issues which require key submissions from the applicant have been overlooked and could cause the Council to be deficient in its decision making process.

While the committee report states that the Environmental Health Officer (EHO) has not objected to the application on air quality (AQ) grounds, it is noted that the EHO's response has not indicated whether this matter has been considered. The committee report further refers to the proposed (but unconfirmed) bund and dominant wind direction as mitigation factors. However, given the sites location next to a motorway it is clear that NO₂ and potentially particulate emissions from vehicles are likely to have a significant effect on air quality of the site.

The NPPF (para. 124) states that development should sustain compliance with national and EU limits on air pollution. The National Planning Practice Guidance (PPG) also advises against locating polluting development in sensitive locations where national pollution limits are likely to be exceeded. The DEFRA Dec 2015 report 'Improving air quality in the UK' reinforces this and requires planning to sustain compliance with EU limit values. It is reasonable to expect any major residential scheme next to a motorway to be accompanied by an AQ assessment to demonstrate that the levels on the site would be acceptable and that the site would not be exposed to poor AQ.

Furthermore, should limits be breached the Council is legally required to take measures to improve the AQ. At this stage the Council cannot be sure that a suitable environment can be achieved for residential development on the site, or that they may be required to implement (potentially costly) measures to improve AQ on the site after construction if it is shown to breach AQ limits. In *Crown Wstates Commissioners v. Secretary of State for the Environment and Holderness Borough Council* (1994) J.P.P B113, where there is evidence on a material issue; it is incumbent upon the Council to make a finding on that evidence, within reasons. The Council must be in a position to understand all live issues and thus be able to deal with them accordingly.

Noise Survey

Ion Acoustics have been commissioned to carry out a desktop review of the noise assessment prepared by LF Acoustics Ltd for a proposed residential caravan site. Broadly, the report concludes that even with the mitigation measures in place, external noise levels would still exceed noise guidelines. The exceedances are such that they would fall in to the '**Significant Observed Adverse Effect Level**' raising the prospect of future health effects as a result of noise. This would be contrary to national noise standards and planning policy which states that this outcome should be avoided (NPPF, Para 123). The

LF Acoustics report justifies this breach because the development is considered '*necessary and desirable*' in line with advice set in Planning Practice Guidance (PPG). The development is not considered either necessary or desirable. The development would need to demonstrate that it could not be physically accommodated anywhere else within the District and as such, it is clear even when measured by its own supporting document the site fails to provide a satisfactory living environment for potential occupiers. It would now appear that the proposal may omit the bund entirely clearly exposing the site to dangerous levels of noise in both internal and external settings.

Furthermore, it is noted that even when the more robust facades afforded in BS3632, the ambient noise climate within the static homes would not be achieved at night. No information has been provided for the touring caravans on site but the report makes it clear that given the external noise levels, it is unlikely that the internal noise climate within touring caravans would be appropriate and would likely result in significant adverse effects.

The report supports the Council Officers opinion that the site would not provide sufficient amenity for the site. It highlights that even with mitigation measures the level of exceedance is so severe that it will result in significant adverse impacts on health and wellbeing and also highlights that the required policy criteria to allow such sites is clearly and demonstrable not met by this site.

In summary on procedural matters, it is our contention that in the evidence submitted to date, that the applicant has failed to provide sufficient supporting information to judge the impacts of the proposal. Further, as the applicant has not understood the live issues and has failed to deal with them, any grant of consent (based on that failure) may well fall foul of the tests laid out in case law and if approved may be susceptible to a claim for Judicial Review.

Planning Policy Matters

Notwithstanding the deficiencies in the information submitted, it should be noted that while the recommendation of the committee report was for refusal, my client believes that aspects of policy have been incorrectly interpreted and wishes to outline a number of errors in this statement. Of particular importance is the assumption that the site is acceptable 'in principle'

The relevant policy documents by which the application is assessed are:

Local

- Cherwell Local Plan 2011 - 2031 (CLP 2011)
- Cherwell Local Plan 1996 (Saved Policies) (CLP 1996)

National

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Planning Policy for Traveller Sites (August 2015) (PPTS).
- Gypsies and Travellers: Planning Provisions – Briefing Paper January 2016.
- The Mobile Homes Act 2013

Whether the applicant qualifies as a 'gypsy and traveller' for planning purposes

The committee paper makes reference to the relevant national documents and then concludes that the January 2016 briefing paper carries very little weight. It is not clear why this is the case as the paper seeks to provide further interpretation of the Governments stated planning policy for traveller sites in the PPTS. The briefing paper sets out a clear emphasis on determination on whether a persons are 'gypsy and traveller' for the purposes of planning policy. The DAS submitted in support of the application states that the development includes 9 pitches, each accommodating two caravans including one static caravan/mobile home. Furthermore, in the (now redacted) letter from Tom Smith he states that there will *'but a small few (who) will be desperate to find some where (sic) in the local area as to continue with their jobs that they hold locally or for schooling for their children.'*

The Council's legal duty under section 38(6) of the Planning and Compulsory Purchase Act is to determine the application for planning permission in accordance with the development plan unless material consideration indicate otherwise. It is clear that the emphasis on this site is to provide long term static homes. The committee report specifically notes that the *'site is proposed to be used as a long term residence'*. The application should therefore be considered on the basis as they are for a settled community, rather exclusively on the PPTS. This correct shift in emphasis has significant impacts on the interpretation of policy and the assessment of planning balance in regard to amenity for future occupiers and the

suitability and sustainability of the site. Policy is clear from this perspective that development should therefrom be focused on brownfield sites or within or on the edge of settlements.

Principle of the development - assessment against national policy and local policy

The committee report (para 8.21) concludes that '*in principle*' the site complies with **Policy BSC6** of the Cherwell Local Plan Part 1 (CLP 2011) and national policy. This seems to be largely based around the shortfall in supply of sites and unmet need, and its location in regard to Bicester.

While these are important material considerations both national and local policy include further criteria which both policies set out '***should be given weight***' in the consideration of whether a site is suitable for development. The committee report is silent on a number of these matters of policy. These criteria form a fundamental part of relevant policies, and there is no indication that more weight should be given to the above matters, over these listed criteria.

Because these policy issues have been overlooked in the committee report it is therefore misleading when applying weight to the '*principle*' of the scheme in its assessment of compliance with local and national policy. It should be made clear to members how these policy requirements have been assessed, and how much weight they have been given when applying this assessment to the proposed scheme. Especially given the undoubted permanence of the development.

In my client's opinion even when applying more limited weight to these issues over the matters listed above, the site is clearly and demonstrably unsuitable for development and therefore cannot be considered to '*in principle*' complying with either **Policy BSC6** or national policy.

National Policy

Policy H of the PPTS which sets out guidance on how to determine applications for traveller sites. Paragraph 26 advise that LPAs should strictly limit new traveller site development in open countryside and highlights a number of issues which should be given weight when considering applications. These are considered in turn below;

- a) *Effective use of previously developed (brownfield), untidy or derelict land;*

The site is a greenfield site. It should also be noted that the application fails to acknowledge the NPPF policy requirement that seeks to avoid development on higher grade agricultural land (the site is classified as undifferentiated grade 3 land) and the onus is on using previously developed land. The application submission does not provide any justification for the use of greenfield and (potentially) higher grade agricultural land.

b) sites being well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness effective;

It is noted that landscape is one of the grounds for refusal as recommended in the committee report and therefore it is considered that the site cannot be considered well planned nor positively enhance the environment. There are no details of the proposed (now removed) bund/acoustic fence and the site plan does not show any proposed boarder treatments on the wider site outside of the pitches themselves. The majority of views of the site will come from persons travelling from the west where little or no screening exists.

c) promoting opportunities for healthy lifestyles, such as ensuring adequate landscaping and play areas for children; and,

It is clear that the applicant has failed to demonstrate that the site can provide an acceptable living environment in line with required standards for noise and nuisance, and this remains a reason for refusal. Furthermore, there is no information on the likely air quality at the site which if above safe levels can have sustained and long terms effect on the health. As noted already the site is not adequately landscaped and there are no play areas proposed.

d) not enclosing sites with excessive hard landscaping, high walls or fences that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community.

The lack of details regarding the proosed bund/acoustic fence and wider site boundaries means it is difficult assess whether the site will be enclosed by any hard landscaping features. However, a large fence is a hard landscaping feature and while this may be serving a wider purpose the LPA should be satisfied that such a feature has no further implications for this rural setting. The Landscape Offcier has not provided any comments on the revised scheme.

Local Policy

Policy BSC 6 of the CLP 2011 sets out the local policy in relation to Travelling Communities. In identifying suitable sites with reasonable accessibility to services it states that the following sequential approach will be applied:

1. within 3km road distance of the built-up limits of Banbury, Bicester or a Category A village
2. within 3km road distance of a Category B village and within reasonable walking distance of a regular bus service to Banbury or Bicester or to a Category A village.

It is acknowledged that Chesterton (a Category A village) is 1.7km from the site, with Bicester some 2.5km from site. However, Chesterton Parish Council have raised concerns with regard to the sustainability of the village and the committee report notes that the village does not have the same level of facilities as other Category A villages and that public transport is poor. Therefore, it appears that because the site is 2.5km from Bicester the site is judged as sustainable.

However, again as with national policy, Policy BSC6 sets out a series of criteria that should also be considered when assessing sites. These are assessed in turn

- a) *access to GP and other health services*

There are no GP services in Chesterton, the nearest service is likely to be in Bicester some distance from site and not accessible by public transport.

- b) *access to schools*

The local school does not have sufficient spaces for the proposed attendees which would accompany the proposed development. Again it is likely that places will be sought in Bicester.

- c) *avoiding areas at risk of flooding*

As noted above, no Flood Risk Assessment has been provided in order to prove that the site is not at risk during the lifetime of the development

- d) *access to the highway network*

The site appears to have acceptable access to the highway network. It is noted that there is no access to public transport from the site.

e) *the potential for noise and other disturbance*

Again as noted above, the site does not meet the minimum standards with regard to noise levels and that the levels found on site even after mitigation measures (now potentially not proposed) will cause significant adverse effects on health and wellbeing.

f) *the potential for harm to the historic and natural environment*

No assessment of harm to the historic environment has been undertaken. Neither has been consideration given properly to the landscape treatment or the effect of potential mitigation measures on the natural environment

g) *the ability to provide a satisfactory living environment*

The reasons why the proposed development fails to provide a satisfactory living environment has been covered in extensively earlier in this submission.

h) *the need to make efficient and effective use of land*

The site is an undeveloped greenfield site on higher grade agricultural ground

i) *deliverability, including whether utilities can be provided*

It is clear that utilities cannot be provided without large infrastructure work.

the existing level of local provision

j) *the availability of alternatives to applicants*

It is acknowledged that there is an unmet need in the Local Planning Authority

Planning Balance

Paragraph 14 of the NPPF states that a presumption of sustainable development should be seen as a golden thread running through decision taking. There are three dimensions to sustainable development, as defined in the NPPF, which require the planning system to perform economic, social and environmental roles. These roles should be sought jointly

and simultaneously through the planning system. Paragraph 8.2 of the committee report identifies the presumption in favour of sustainable development (economic, social and environmental) and how these should be sought jointly and simultaneously through the planning process. It considered that the committee report has misapplied paragraph 14 of the NPPF and that a number of important policy considerations have not been taken into account when judging the principle of the development.

It is clear that the site would not be suitable for a permanent housing development and is only under consideration due to it meeting Traveller needs. It is apparent that the site is clearly designed for long term residences and therefore the impact on occupier's health and well-being over sustained periods must be assessed. The issues highly lighted above clearly demonstrate that the site does not provide a suitable environment for residential development. Furthermore, the effect on landscape and visual impact of site, already considered by the committee report to be not policy compliant, coupled with the unknown effects on a listed heritage asset further undermine the sites suitability in environmental terms. The economic benefits of the site and those usually associated with residential development must be considered limited given its location and the acknowledged discrepancy between facilities at most 'Category A' villages and those at Chesterton. Finally, the social benefits of the site are limited to meeting the shortfall in provision of Travellers sites and there is no clear mechanism for how the site will provide for the required school places or any other social infrastructure that will be required to facilitate 'permanent' residence of the site.

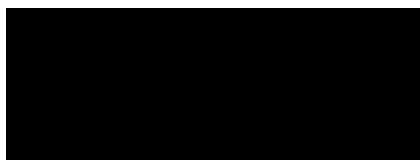
The application clearly fails to meet a number of policy requirements in relation to;

- promoting brownfield land;
- harm to the landscape;
- harm to built heritage and historic environment;
- promoting healthy lifestyles and providing a satisfactory living environment;
- noise and other disturbance; and,
- flood risk.

Therefore, as set above and with the presumption for sustainable development in mind, it cannot be concluded that '*in principle*' the site is suitable and in compliance with national and local policy. The nature of the likely occupiers means that such a permission would have significant and adverse long term impacts on the health of residents. The site will

also have an adverse impact on landscape and have unknown impacts heritage assets, air quality and flooding. The application fails to fulfil any number of criteria which must be given weight and fails on any test in regards to sustainability. It is clear that the site should not be considered suitable for the provision of residential accommodation of any sort.

Yours faithfully



Colin Virtue
Executive Director

List of Residents

Mr T Abernethy, Chesterton Fields Farm
Mr D Abernethy as above
Ms C Homewood, as above

Mr P Crozier, 1 Chesterton Fields Farm Cottage
Mrs J Crozier, as above
Mr D Paxton, as above
Mr T Paxton, as above

Mr A Glossop, 2 Chesterton Fields Farm Cottage
Mrs L Glossop, as above

Mr J Deeley, Simms Farm

Mr C. Lane Fox, Bignell Park Farm
Mrs C. Lane Fox, as above

Mr E. Lane Fox of Park House
Mrs E. Lane Fox, as above

Date: 25th January 2017
Ref: A1114/TN01
By: Mark Harrison, Ion Acoustics
To: Thomas Abernethy

Scheme: Land Adjacent to M40, Chesterton
Title: Residential Noise Assessment Review

Introduction

Ion Acoustics have been commissioned by Thomas Abernethy to carry out a desktop review of the noise assessment prepared by LF Acoustics Ltd for a proposed residential caravan site on land adjacent to Kirtlington Road, Chesterton. LF Acoustics were appointed by Phillip Brown Associates to carry out the noise assessment, and a report dated November 2016, was submitted as part of a planning application under application reference 16/01780/F. Ion Acoustics have also received and reviewed comments on the LF Acoustics report made by Neil Whitton, an Environmental Protection Officer as reported in an email to Stuart Howden, Senior Planning Officer both at Cherwell District Council. This technical note documents Ion Acoustics' review of both documents.

Proposed Development

The proposed development is for a residential caravan site for up to nine mobile home plots. Each plot would include space for a mobile home (static caravan), parking for a touring caravan, a utility building and a grassed area for each plot.

Figure 1 shows the development site (hatched) adjacent to the M40 Motorway.



Figure 1: Site Location Plan (Map Ref. Google Earth)

The latest iteration of the site layout is presented in Figure 2 below. The site boundary is approximately 13~15m from the nearside carriageway of the motorway, which runs in a shallow cutting in this area. The A4095 runs along the southern boundary of the site and is elevated relative to the site level, with a road bridge traversing motorway. The road bridge is unmarked, indicating it is at least 5m above the motorway carriageway level.

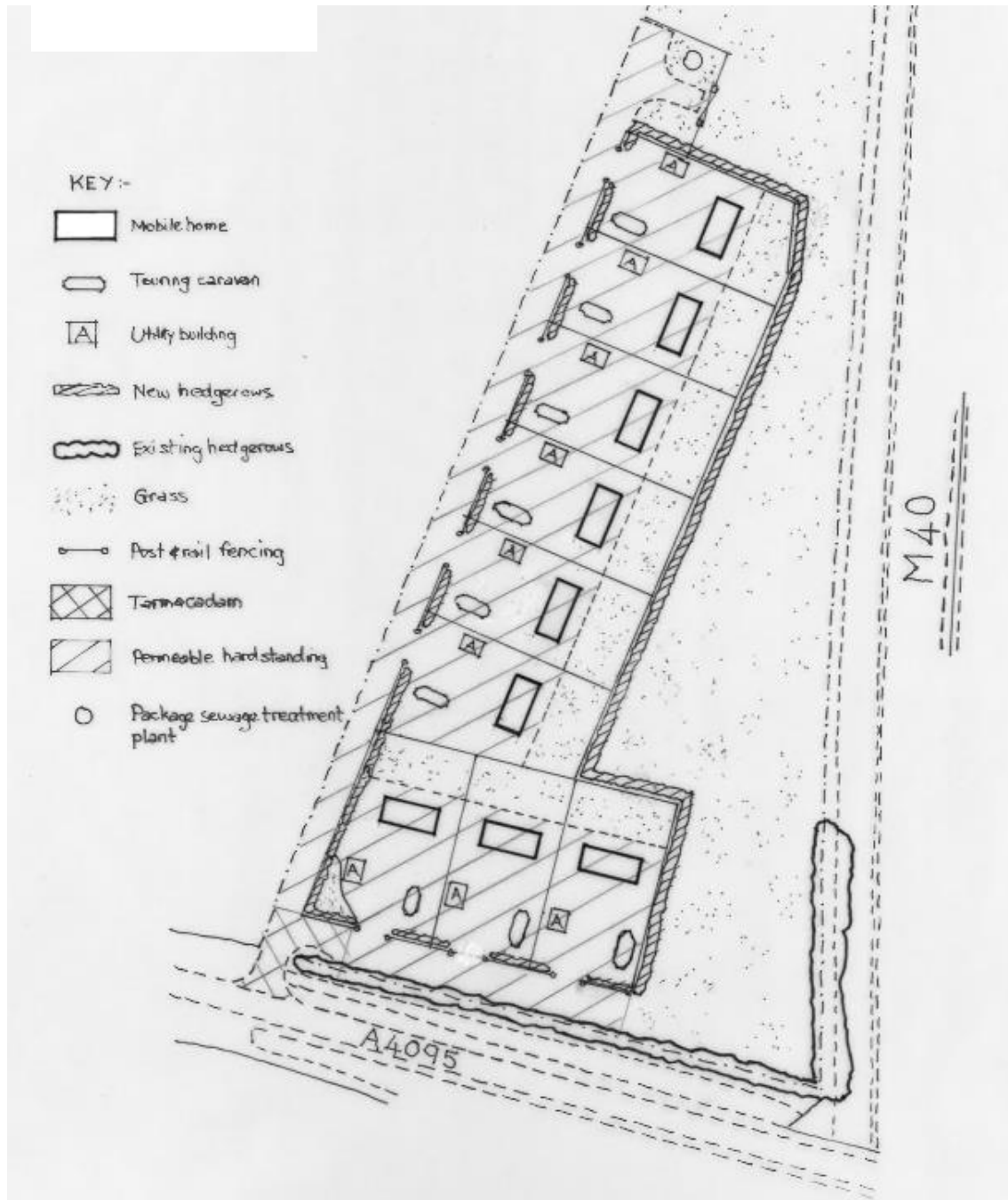


Figure 2: Site Layout Plan

The layout presented above indicates that mobile homes will be located between 40m and 80m from the nearside carriageway of the M40 motorway.

Planning Guidance

In 2012, the National Planning Policy Framework (NPPF)¹ replaced a number of Planning Policy Statements with a single document which is intended to promote sustainable development.

The NPPF sets out the Government's policies for the planning system in England. The document is generally not prescriptive and does not provide noise criteria. Instead, it places the onus on local authorities to develop their own local plans and policies as follows: *"In preparing Local Plans, local planning authorities should:*

...set out environmental criteria, in line with the policies in this Framework, against which planning applications will be assessed so as to ensure that permitted operations do not have unacceptable adverse impacts on the natural and historic environment or human health, including from noise..."

The document further states that: *"Planning policies and decisions should aim to:*

- avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development;*
- mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions".*

Noise Policy Statement for England (NPSE)

The Noise Policy Statement for England (NPSE) sets out the Government's policy on environmental, neighbourhood and neighbour noise for England. The policy sets out three aims:

*"avoid significant adverse impacts on health and quality of life;
mitigate and minimise adverse impacts on health and quality of life; and
where possible, contribute to the improvement of health and quality of life."*

The NPSE introduces the following terms which are also used in the NPPF Planning Practice Guidance:

"NOEL – No Observed Effect Level

This is the level below which no effect can be detected. In simple terms, below this level, there is no detectable effect on health and quality of life due to the noise.

LOAEL – Lowest Observed Adverse Effect Level

This is the level above which adverse effects on health and quality of life can be detected.

SOAEL – Significant Observed Adverse Effect Level

This is the level above which significant adverse effects on health and quality of life occur."

Neither the NPSE, nor the NPPF Planning Practice Guidance, define numeric criteria for the NOEL, LOAEL or SOAEL. Instead, it is recommended in the NPSE that the limits of each effect level should be defined for each situation and location. However Defra have commissioned a report from AECOM

¹ National Planning Policy Framework. March 2012

which sets out options for the SOAEL and LOAEL thresholds². The suggestions for road noise are given in Table 1 below.

Table 1: Suggested Values and Range of Values for LOAEL and SOAEL for Road Traffic Noise from AECOM report for Defra

Annoyance L _{Aeq} , 16h dB		Sleep Disturbance L _{night}		Stress		Cardiovascular Effects		Quality of Life	
LOAEL	SOAEL	LOAEL	SOAEL	LOAEL	SOAEL	LOAEL	SOAEL	LOAEL	SOAEL
56 (53-59)	66 (64-68)	46 (43-52)	56 (51-64)	A	A	58	67	Q	Q
A – Significance of Impact can be based on Annoyance Thresholds Q – Significance of Impact based on qualitative assessment									

Planning Practice Guidance – Noise (Web Publication)

The planning practice guidance website³ provides advice on the application of the NPPF and NPSE. The noise page “Advises on how planning can manage potential noise impacts in new development”.

Where residential development is planned close to sources of noise, the guidance gives examples of mitigation which may be included at the design stage: “including noise barriers; and, optimising the sound insulation provided by the building envelope”.

In a “Noise Exposure Hierarchy Table” the SOAEL as the level at which noise is noticeable and disruptive and the following outcomes are expected:

“The noise causes a material change in behaviour and/or attitude, e.g. avoiding certain activities during periods of intrusion; where there is no alternative ventilation, having to keep windows closed most of the time because of the noise. Potential for sleep disturbance resulting in difficulty in getting to sleep, premature awakening and difficulty in getting back to sleep. Quality of life diminished due to change in acoustic character of the area.”

The planning action associated with the SOAEL is that that these outcomes should be avoided.

Other Guidance

The WHO “Guideline for Community Noise”⁴ and BS 8233:2014⁵ recommend internal noise design targets for habitable rooms for the avoidance of negative health effects and to promote quality of life. The internal noise targets from BS8233 are summarised in table 2 below for reference.

² Possible options for identification of SOAEL and LOAEL. AECOM report for Defra December 2015

<http://randd.defra.gov.uk/Default.aspx?Module=More&Location=None&ProjectID=18157&FromSearch=Y&Publisher=1&SearchText=soael&SortString=ProjectCode&SortOrder=Asc&Paging=10>

³ <https://www.gov.uk/guidance/noise--2>

⁴ World Health Organisation: Guidelines for Community Noise. 1999

⁵ BS8233:2014 Guidance on sound insulation and noise reduction for buildings

Table 2: Internal Noise Targets – BS8233:2014: Table 4

Activity	Location	07:00 to 23:00	23:00 to 07:00
Resting	Living room	35dB L _{Aeq} , 16hr	--
Dining	Dining room/ area	40dB L _{Aeq} , 16hr	--
Sleeping (daytime resting)	Bedroom	35dB L _{Aeq} , 16hr	30dB L _{Aeq} , 8hr

Draft Pro PG

More recently the Association of Noise consultants and the Institute of Acoustics have prepared a document known as ProPG: Planning and Noise⁶. The consultation draft from January 2016 includes planning guidance for proposed new residential development affected by existing transport noise sources. The document acknowledges and reflects the guidance of the NPSE, the NPPF and PPG-Noise.

The ProPG follows a two stage approach:

- Stage 1 – An initial assessment where external noise is rated against four Noise Risk Categories (NRCs);
- Stage 2 – A systematic consideration of four key elements;
 - Element#1 – demonstrating a “Good Acoustic Design”;
 - Element#2 – Observing “Internal Noise Level Guidelines”;
 - Element#3 – Undertaking an “External Amenity Area Noise Assessment”; and,
 - Element#4 – Consideration of “Other Relevant Issues”.

The stage 1 Noise Risk Assessments Categories presented in the ProPG are presented below:

⁶ ProPG: Planning & Noise. Professional Practice Guidance on Planning & Noise. New Residential Development. Consultation Draft Jan 2016

Table 3: Initial Site Risk Assessment Data from ProPG (Figure 1)

Noise Risk Category*	Potential Effect if <u>unmitigated</u>	<u>Pre-Planning</u> Application Guidance
0 – Negligible L _{Aeq, 16hr} <50dB L _{Aeq, 8hr} <40dB	May be noticeable but no adverse effect on health and quality of life	In this category the development is likely to be acceptable from a noise perspective, nevertheless a good acoustic design process is encouraged to improve the existing environment and/or safeguard against possible future deterioration and to protect any designated tranquil areas. A noise assessment may be requested to demonstrate no adverse impact from noise. Application need not normally be delayed on noise grounds.
1 – Low L _{Aeq, 16hr} 50 – 63dB L _{Aeq, 8hr} 40 – 55dB	Adverse effect on health and quality of life	In this category the development may be refused unless a good acoustic design process is followed and is demonstrated via a Level 1 Acoustic Design Statement which confirms how the adverse impacts of noise on the new development will be mitigated and minimised and that a significant adverse noise impact will not arise in the finished development. Planning conditions and other measures to control noise may be required.
2 – Medium L _{Aeq, 16hr} 63 – 69dB L _{Aeq, 8hr} 55 – 60dB L _{AFmax} >80dB **	Significant adverse effect on health and quality of life	In this category the development is likely to be refused unless a good acoustic design process is followed and is demonstrated via a Level 2 Design Statement which confirms how the adverse impacts of noise on the new development will be mitigated and minimised, and clearly demonstrates that a significant adverse noise impact will not arise in the finished development. Planning conditions and other measures to control noise will normally be required.
3 – High L _{Aeq, 16hr} >69dB L _{Aeq, 8hr} >60dB L _{AFmax} > 80dB**	Unacceptable adverse effect on health and quality of life	In this category the development is very likely to be refused on noise grounds, even if a good acoustic design process is followed and is demonstrated via a Level 2 Acoustic Design Statement. Applicants are advised to seek expert advice on possible mitigation measures. Advice on the circumstances when the refusal of new housing on noise grounds should normally be anticipated is included in the ProPG.

The notes appended to Figure 1 indicate that the NRCs use the combined free-field noise level from all sources of transport noise and may include some aspects of industrial noise though not where industrial noise is dominant. It is important to note that this guidance is still in draft form.

Local Planning Authority Response

Following the submission of the LF Acoustics noise report, an email response was issued by Neil Whitton, Environmental Protection Officer at Cherwell District Council which highlighted two areas of concerns: firstly the residual internal noise levels; and secondly, the predicted external noise levels.

Mr Whitton's response highlights that the predicted internal noise levels, during the period 23:00 to 07:00 are (just) above the recommended internal limits of BS8233. The LF Acoustics report rationalises these internal noise levels through reference to note 7 of paragraph 7.7.2 which states:

Where the development is considered necessary or desirable, despite external noise levels above WHO guidelines, the internal target levels may be relaxed by up to 5dB and reasonable conditions still achieved.

The response from Mr Whitton also highlights that the noise levels in outside amenity areas are well above those recommended in the WHO, by between 5 and 8dB. The report further rationalises this exceedance through reference to the development being '*considered necessary and desirable*'.

Mr Whitton highlights the LF Acoustics report's reliance on the assertion that the noise limits may be relaxed where the development is considered necessary or desirable. The response from Mr Whitton details the first paragraph under section 7.7.3.2 which states:

*"...However, it is also recognised that these guideline values are not achievable in all circumstances where development might be desirable. **In higher noise areas, such as city centres or urban areas adjoining the strategic transport network, a compromise between elevated noise levels and other factors, such as the convenience of living in the locations or making efficient use of land resources to ensure development needs can be met, might be warranted.**"*

Mr Whitton continues and states that, in his opinion, the site is not a city centre or an urban area adjoining the strategic transport network. Mr Whitton concludes that, given the external noise levels and the elevated internal noise levels, the site would not be appropriate for the proposed development and that noise 'would give rise to significant adverse impacts on health and wellbeing'.

Given this, Mr Whitton has objected to the scheme.

Noise Survey

As part of LF Acoustics' assessment, a noise survey was undertaken on the site between 8th and 10th November 2016. The monitoring survey was comprehensive and included a combination of both attended and unattended noise monitoring locations. Ion Acoustics have not sought to validate the measurements as part of this desktop review and have no reason to doubt them.

The results of the unattended survey are summarised in Table 4.1 of the LF Acoustics report. For reference they are summarised below in terms of the ambient noise level L_{Aeq} . The L_{Aeq} is defined as the steady-state noise level with the same energy as the actual fluctuating noise over a stated time period. It is effectively the average noise level.

Table 4: LF Acoustics Noise Survey Results (Table 4.1)

Period	Period $L_{Aeq, T}$ Noise Level (dB)	
	Daytime (07:00 – 23:00)	Night-time (23:00 – 07:00)
Tuesday 8/11/16 / Friday 11/11/16*	67*	67
Wednesday 9/11/16	66	62
Thursday 10/11/16	68	66
Average	67	65

Note: *Daytime Period comprised 10:00 – 23:00 hours Tuesday and 07:00 – 10:00 hours Friday

The LF Acoustics report indicates that maximum noise levels as presented by the $L_{Amax, F}$ parameter during the survey were typically of order 70 – 75dB $L_{Amax, F}$ during the day, which were 'typically' attributed to sirens of emergency vehicles. The report does not indicate the frequency of these occurrences nor does it indicate the level or frequency of $L_{Amax, F}$ levels during the night-time period. The chart presented as Figure 3 in the back of the report indicates that the L_{Amax} noise levels were rarely below the 70dB L_{Amax} level with maximum levels over 80 dB L_{Amax} during the noisiest period at

around 7am. It is noted however that these are only reported as the L_{Amax} level for an hourly period and not for each 5minute periods measured at the site.

The report further states that the noise levels during the night-time period were 'substantially lower' than the daytime period. The data presented within Table 4.1, Figure 3 and that tabulated in Appendix B would not corroborate this statement. Between 6am and 7am on Friday, a maximum noise level of 91 dB L_{Amax} was logged. This was the highest value logged over the survey. The 6am to 7am period would still be counted as the night-time period.

The report indicates that the higher noise levels during the night-time period of the 8th November are attributed to a period of heavy rain and the subsequent effect of wet roads. It might be considered more prudent to omit these periods from the survey and include a note explaining why portions of the survey were excluded. It is noted however that the night-time noise levels during on the Tuesday period are not substantively different to those on the Thursday night / Friday morning period (when it is assumed no rain fell). Indeed, the night noise levels on the Wednesday period stand out as being markedly lower than those on either the Tuesday or the Thursday period. No reasoning is provided for the variance in the night-time noise levels on the Wednesday period compared to the rest of the survey.

Noise Modelling Assessment

External Noise Climate

LF Acoustics have used the noise monitoring data to inform a computer model of the site using the SoundPlan noise modelling software. No information is presented within the report as to the specifics of the noise model i.e. the noise source level, location and height, the resolution of the ground contours used within the digital terrain model or any margin of error between the noise model and the measured data. However the report states that the noise monitoring results have been used to calibrate the noise model.

Paragraph 5.1 refers to external amenity area which is assumed to be the 'grassed area' referred to in section 3.

The noise model presented in figure 4 indicates noise levels at the façade of the northern most caravan of around 74 – 76dB $L_{Aeq, T}$. This significantly exceeds the SOAEL threshold identified in the AECOM report for Defra. Furthermore, this noise levels would place the site in the **high** noise risk category in accordance with the draft ProPG and the following statement would apply if unmitigated:

In this category the development is very likely to be refused on noise grounds, even if a good acoustic design process is followed.....

The noise level at the southern facades would be between 64 and 68dB L_{Aeq} and would fall within the **medium** noise risk category to which draft ProPG would state:

In this category the development is likely to be refused unless a good acoustic design process is followed.....

Based on this initial assessment, the report suggests mitigation measures are required. The recommended mitigation measures in the LF Acoustics report are twofold: firstly the relocation of the three most northern mobile home plots; and, secondly; the recommendation of a 5m noise bund / barrier within the site area. Note that since the bund is effectively part of the planning application, the feasibility of building such a bund on the site would need to be investigated including the footprint required to give the appropriate slope.

With the mitigation measures in place, the report indicates that free field noise levels in the vicinity of the mobile homes would be between 60 – 63dB L_{Aeq} during the daytime.

An external noise level of 60 - 63dB L_{Aeq} would still be considered high and, if taken in the context of the WHO Guidelines for community noise, would be well above the noise limit for an outdoor living area. It is noted that the nature of the 'grassed area' is ambiguous in the noise report, being referred to as both a 'grassed' area and an 'external amenity area'.

If the 60 – 63dB L_{Aeq} noise level were assumed to represent a daytime condition and the 2dB differential between daytime and night-time were applied, it could be concluded that the external noise level during the night would be between 58dB and 61dB L_{Aeq} . This remains above the centre value of the SOAEL threshold given in the AECOM report (56 dB L_{Aeq}). Indeed, the predicted noise levels would be between 5 and 8dB above the interim target (55dB $L_{night, outside}$) from the World Health Organisations Night-noise Guidance⁷ (NNG) and the following statement would apply:

The situation is considered increasingly dangerous for public health. Adverse health effects occur frequently, a sizeable proportion of the population is highly annoyed and sleep-disturbed. There is evidence that the risk of cardiovascular disease increases.

Noise levels of this magnitude during the night-time period, with the mitigation measures in place, are considered to indicate significant adverse effects would occur indicating that noise would exceed the SOAEL threshold.

With reference to the National Planning Policy Framework, Paragraph 123 states:

123. Planning policies and decisions should aim to:

- *Avoid noise from giving rise to significant adverse impact on health and quality of life as a result of a new development.....*

Furthermore, the stated first aim of the Noise Policy Statement for England (NPSE) is as follows:

Avoid significant adverse impacts on health and quality of life from environmental, neighbour and neighbourhood noise within the context of Government policy on sustainable development.

Based on the external noise criteria alone it is not recommended that the proposed site be permitted for residential development.

⁷ World Health Organisation: Night Noise Guidelines for Europe 2009

Internal Noise Climate

The LF Acoustics report recommends that the mobile homes be constructed meet the BS3632 criteria which states in section 4.9.4:

In order to minimize the transmission of airborne noise, the external walls (excluding doors and windows) shall have a sound reduction index (R) of 35dB over a frequency range of 125Hz and 4000Hz.

Testing shall be carried out in accordance with BS EN ISO 10140-2.

According to the calculations presented in Appendix D of the noise report, the more robust facades of the static homes and suitably robust trickle ventilation would result in internal noise levels of between 32dB and 35dB $L_{Aeq, 16hr}$ daytime and 30 and 33dB $L_{Aeq, 8hr}$ night-time.

This would meet the internal noise limits for the daytime period but exceed the levels during the night-time period, in accordance with BS8233:2014 and the World Health Organisation. The report indicates that this would be acceptable in instances where the development were *necessary or desirable* however, it is not confirmed whether this development would qualify as either, though admittedly, this is not a factor which would be determined in a noise assessment.

It is noted however that the touring caravans are not likely to be as robust as the static caravans and therefore would exceed the internal noise limits regardless of the external mitigation measures. To that end it is likely that the noise impact on any occupants of the touring caravans is likely to be higher and result in adverse effects.

Maximum Noise Levels at Night

The latest revision of BS8233 no longer states a noise limit in terms of the L_{Amax} value at night, however, the previous version detailed an internal noise limit of 45dB L_{Amax} which is common to both BS8233 and the WHO guidelines for community noise.

The LF Acoustics report only indicates a range of values for the L_{Amax} level which it states, typically fall between 70 – 75dB L_{Amax} throughout the day. Analysis of the data presented in Appendix B of the noise report indicates that the night-time L_{Amax} regularly exceeds 70dB L_{Amax} during the night-time period with over 63% of the measured hourly periods being equal to or exceeding 73dB L_{Amax} .

In spite of the high night-time L_{Amax} levels, the LF Acoustics report does not address the ingress of L_{Amax} noise levels in to the proposed residential aspects of the site during the night-time period. Notwithstanding this, it is possible to estimate the ingress of L_{Amax} noise levels using the calculations summarised in Appendix D and the calculated level of reduction afforded by the static caravans, - 28.2dB. With this information it is possible to calculate that external noise levels of 73dB L_{Amax} would result in noise levels within the static caravans of approximately 45dB L_{Amax} for more than 63% of the hourly periods during the night.

Summary

The desktop review of the LF Acoustics noise report for the proposed residential development on Land off Kirtlington Road has highlighted a number of points. These include:

- External, unmitigated noise levels at the site are very high given the proximity to the M40. The monitoring survey undertaken by LF Acoustics indicates that the northern portion of the site would fall in to the **high** noise risk category in accordance with the draft ProPG guidance. Southern portions of the site would fall within the **medium** risk category but would still require the developer to implement a good acoustic design process;
- The LF Acoustics report recommends a number of mitigation measures including;
 - 5m high noise barrier / bund combination; and,
 - Relocating the residential properties from the northern portion of the site to a location parallel to the A4095;
- With the mitigation measures in place, external noise levels would still exceed the daytime criteria from the WHO Guidelines for Community Noise and during the night would exceed the WHO Night Noise Guidelines;
- The exceedances are such that they would fall in to the Significant Observed Adverse Effect Level raising the prospect of future health effects as a result of noise. This would be contrary therefore to the NPSE and Government planning advice which states that this outcome should be avoided;
- The LF Acoustics report recommends that the static homes adhere to the guidance of BS3632 which stipulates a minimum level of façade attenuation against external noise. With the more robust facades afforded in BS3632, the ambient noise climate within the static homes would achieve an appropriate internal noise climate during the daytime but would exceed the typical criteria at night unless the development were considered 'necessary and desirable'. No information whether this is appropriate for this development;
- Given the external noise levels it is unlikely that the internal noise climate within touring caravans would not be appropriate and would result in significant adverse effects;

Given the above it is considered that the site would not be appropriate for a residential development of this nature and that it would likely fall within the Significant Observed Adverse Effect Level category. Government planning advice states that this should be avoided.

Planning Application 16/01979/F
Land to the west of Garners House, Main Street, Great Bourton

I am a resident of Great Bourton, and I am writing to ask you to vote against this application at the meeting this Thursday, 16 February. Unfortunately, I will not be there. However others from our community, including my husband, Steven Warr, will be speaking against the application.

In this document I deal with the question of whether permission should be granted, given the policy and legal context. I will leave it for others to deal with specific issues as to design and layout, housing mix, and transport arrangements, and for that reason I make no comment on paragraphs 7.23 to 7.45 of Ms Ford's report.

1 Summary

The planning officer, Ms Ford, identifies numerous reasons to refuse permission, but only three for granting permission. In two of those she is wrong, especially as to the law. The third is trivial. The correct decision is to refuse permission.

2 Planning Officer's Reasons to reject

Ms Ford's report is a long and thorough document. It explains clearly that the application is contrary to the Cherwell Local Plan, adopted in 2015. It identifies numerous reasons to reject the application, including the following:

- Local Plan – Policy Villages 1 – see for example paragraph 7.10 – village suitable only for small development.
- No pressing need for additional land beyond the 5 year housing Land Supply.
- Great Bourton is a Category B village, the application site is outside village limits, and not allocated for development. The application is therefore contrary to policy – see paragraphs 7.1, 7.2 and 7.10.
- Development for Category B villages limited to conversions, infill and minor development – paragraph 7.5, so this is contrary to policy.
- Great Bourton is unsustainable for residential development, including because of the lack of public transport, for example, paragraph 7.15.
- The Local Plan anticipates that only 750 homes are to be built “elsewhere” in Cherwell, which would include Category B villages. Sites to be determined through Local Plan 2 – paragraph 7.4.
- The overprovision of rural housing at an early stage of the 5 year plan would be prejudicial – paragraph 7.14.
- The application conflicts with Policy Villages 1 and 2 in the Local Plan – paragraph 7.17.
- The application is not supported by a LVIA – see paragraph 7.21. This is surprising, given that the site is within an area of high landscape value.
- The application is contrary to policy- paragraph 8.2.

3 Other reasons to reject

3.1 In addition there are other reasons to reject this application, which Ms Ford has not mentioned. It is appropriate to remind committee members of the importance of consistency in

decision making. At the very least, inconsistent decisions and those contrary to policy open the door to other unsuitable applications and may create unwelcome precedent.

3.2 In that respect it is appropriate to draw your attention to the recent unsuccessful application for outline permission for 60 homes in Cropredy (our nearest Category A village). That was rejected on Ms Ford's advice, which included, at Section 5, a detailed explanation why that proposal was unsuitable and too big for Cropredy.

3.3 It is also worth reminding committee members of the terms of the 2015 Decision Notice for outline consent on this site, which explained that *"no more than 33 dwellings shall be accommodated on the site. Reason - In order to achieve a satisfactory form of development, to ensure that the site is not overdeveloped and to comply with Policy C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework"*

3.4 There is no cogent reason to depart from those previous conclusions. This development is too big and permission should be refused.

4 Available reasons to approve

4.1 Against that weighty background, it is startling that Ms Ford recommends approval of this application. That conclusion is contrary to the majority of her reasoning, as she acknowledges, particularly at her paragraphs 8.1 and 8.2. She gives only three reasons for recommending approval. They are each very slight, and in two of the three what she says is wrong.

It is necessary to examine why she recommends that permission be granted.

4.2 "Principle of Development"

At paragraph 7.12 and again at paragraphs 8.3 to 8.4, Ms Ford mentions that there is extant outline permission for the site. As she also made clear in her letter to the developers' agents of 18 November 2016, she considers this to be a reason why this application should be granted. Again, and with the greatest respect, she is wrong in her analysis.

4.2.1 Ms Ford is correct to acknowledge, at paragraph 7.12, the circumstances in which outline permission was granted in 2015, that there was no five year housing land supply in place at the time. The application presumably would otherwise have been rejected as it was contrary to policy. Ms Ford was the planning officer involved in that earlier matter.

4.2.2 Ms Ford asserts, in the same paragraph, that *"This has established the principle of a residential development for 33 dwellings on this site"*. But this application is concerned neither with the determination of reserved matters for the extant outline consent, nor with permission for a site already allocated for development. On the contrary, it is a new and entirely separate application

4.2.3 The concept of *"permission in principle"* has no real meaning in planning law. It may be a convenient shorthand to describe the situations mentioned above, but it has no place in the proper consideration of a new application like this one. (As it happens, legislation in 2016 introduced the concept of Permission in Principle, but it has no application here.)

4.2.4 It follows that the comment, at paragraph 7.13 that the extant permission “*must set the context for the consideration of a proposal for 43 dwellings*” is also entirely incorrect.

4.2.5 It is worth noting that Ms Ford makes no effort to support her reasoning on this central and important point. The reason is clear, there is no policy, legal, or professional support for her conclusion. Her view is unsupported, entirely arbitrary, subjective, and consequently irrational. It is no basis for an approval of this application.

4.2.6 It may be that the idea of “*development in principle*” derives from the applicants, Hayfield Homes, in the person of Mark Booth, the sole director and shareholder. In a note circulated to some (but, it seems, not all) residents of Great Bourton on about 12 October 2016, following submission of this application on 30 September, Mr Booth claimed “*...outline permission has therefore established the principal [sic] of development on the site*” He was wrong to make that claim, as I pointed out to Ms Ford as long ago as 28 October 2016. There is no applicable concept of “*permission in principle*” (with or without spelling mistakes).

4.2.7 Ms Ford is correct to acknowledge that the extant permission is a material consideration for planning purposes. However she is entirely mistaken as to how the materiality operates.

4.2.8 The previous outline permission is relevant or material only to the question of whether, absent the current application succeeding, the alternative lawful use for the land would be more harmful or contrary to policy, in planning law terms. If a decision maker is required to determine an application for development which would otherwise be harmful or contrary to policy, it is material to have regard to any extant permission – the applicant’s ‘fall-back position’ – that would result in development that would be even more harmful, or even more contrary to policy. Obtaining an outcome which is the lesser of two evils is a legitimate balancing exercise for the relevant decision maker.

4.2.9 However, even then, it is well established that the fall back position must be a realistic possibility to be material. In this case it probably is not: the outline permission granted in 2015 expires in April 2017, a matter of weeks away; the previous applicant, One Property Group is insolvent and is being wound up and is therefore unable to deal with the outstanding reserved matters; and the current applicant, Hayfield Homes, has indicated that it does not wish to pursue the outline consent – hence the new application.

4.2.10 Even if that were all wrong, which it is not, then the extant permission could only serve to justify a recommendation to approve a development no larger and less harmful than the extant permission, that is for 33 homes, for the reasons set out above.

4.3 “Additional harm”

4.3.1 At paragraphs 8.3 to 8.4, Ms Ford considers the question of whether a further r 10 dwellings beyond the 33 for which outline permission was granted in 2015 “*could be accommodated on the site without additional serious harm being caused*”.. With the greatest respect to her, that is entirely the wrong question. As explained above, committee members are required to make a new decision on a new application. This is not merely the determination of reserved matters for outline permission already granted.

4.3.2 The question of harm therefore must be considered as a whole, not just the marginal harm that would be caused by the increase in the size of the development by 10 units, or 30%. Self evidently, development is by its nature harmful, although in many cases necessary. A bigger development will necessarily cause greater harm, especially on a green field site, as this is. (The land in question is currently an agricultural field.)

4.3.3 Even if that were wrong, which it is not, Ms Ford's assessment of the question of additional harm is entirely subjective and not supported by anything she says in her report or other material. On the contrary she merely expresses her own subjective opinion. That is no basis for such an important decision, and, as explained at paragraph 3.3 above, it is contrary to her own previous professional advice expressed on at least two relevant occasions.

4.4 Efficiency of land use

At paragraph 7.16, Ms Ford attempts to justify a larger development by pointing out that "*Policy BSC2 of the Cherwell Local Plan 2011-2031 confirms that housing development in Cherwell will be expected to make effective and efficient use of land*". As to which:

4.4.1 As pointed out below, her own Decision Notice in 2015 for the same site specifically limited the development to 33 homes to avoid over development.

4.4.2 There is no need to build on the entire site, which is currently an agricultural field. Some of the land could be left in its current condition, green field, or could be treated as public open space, possibly being voluntarily registered as a village green.

4.4.3 The application land does not have a separate legal title. It forms part of the same title as Garners House, Main Street, Great Bourton OX17 1QU. The registered proprietors are Mr and Mrs Townsend. Plainly it is open to them to sell, retain or seek planning permission for only part of their land.

5 The law

It is worth mentioning that Ms Ford makes no mention of the applicable legal framework.

5.1 At her section 4, Ms Ford refers to my letter of 11 January 2017, explaining that the position revealed by her letter of 18 November 2016 was wrong in law. That remains the case, following publication of her report on 9 February. While I accept that Ms Ford has attempted accurately to summarise my letter, with the greatest respect, she has not done so. In particular, she has characterised binding legal decisions only in the most general terms. For those who might be interested, a copy of my letter is attached. As you will see, specific statutory provisions and binding case law are cited. The position is also summarised below:

- (a) The starting point for planning decisions is the local plan.
- (b) Cherwell's local plan points towards the rejection of the application.
- (c) Decisions can be made contrary to the policy in the local plan if material considerations require.

(d) In this case the previous outline planning permission is not material in the way Ms Ford has looked at it. It is relevant only to the question of a "fall-back position", i.e. would the situation be worse (in planning terms) if this application were rejected and the previous one implemented? Plainly the answer to that is no, because this application is so much bigger.

(e) Since 2015 there has been a change in planning circumstances, i.e. the adoption of the local plan. So this application should be decided in accordance with those new circumstances rather than simply following the previous decision.

5.2 It is important to realise (by way of information and not a threat) that a decision to approve on the basis outlined in Ms Ford's report would be unlawful and irrational. This would expose Cherwell to a risk of challenge by judicial review proceedings. It might be thought that this is not a realistic prospect. However in the current climate, there is protection for costs liability to claimants in environmental cases, barristers are available by direct access, solicitors available to work at modest rates, and there are online services by which funding for public law litigation can be raised. Therefore the prospect of judicial review is realistic.

5.3 These are not merely theoretical lawyers' points. They are also matters of professional practice for town planners. I also consulted the RTPI, via their Planning Aid service. They advised that, in circumstances where a five year housing land supply is in place, the relevant question is "*whether the entire development now proposed is necessary in order to meet that capacity*". From what Ms Ford says in her report, the answer is plainly "No". The RTPI also say that the next step is "*to test whether it is sustainable*", as to which the answer is again plainly "No".

6 Other matters

There are a few further points that ought usefully to be made:

6.1 Timing

6.1.1 There is a feeling within the village that this application has been rushed, at least in the past few weeks. Presumably, the application having been made on 30 September 2016, Ms Ford was mindful of the possibility of an appeal for non-determination if normal time limits were exceeded. However, the fact of a complete resubmission of the design and layout of the proposed development has cut very short the time for consultation and consideration of the application, to the point of unfairness, and possible failure to follow due process.

The relevant dates in the progress of this matter are as follows:

30/09/2016	Submission of application
14/10-11/11/2016	Responses from statutory consultees
18/11/2016	Letter from Ms Ford to developers' agent, Framptons, requesting revised plans by 19/12/2016
28/11/2016	Agreement to extend time for submission of revised plans to 13/01/2017

16/01/2017	Revised plans submitted – 3 days late. Completely new plans, drawn up by new consultants.
01/02/2017	Date requested for response from Bourtons Parish Council to revised plans.
21/01-09/02/2017	Responses from other statutory consultees
08/02/2017	Agenda published for February meeting, including officer's report

6.1.2 As you will see, the time between the delivery of the revised plans and the date of this meeting is only 31 days, a very short period for proper consideration and consideration of an application of this magnitude, in the context of the community on whom it is proposed it is to be imposed. In particular, the Parish Council was asked to respond within only 16 days (16 January to 1 February), leaving no time for proper local consultation. The matter was mentioned in the Parish Council minutes for January, circulated to residents in our newsletter, the Bourtons Broadsheet, in the last week of January (we received ours on Monday 23 January). The village website was updated on this topic only on Thursday 26 January. So many people in the village were probably unaware of the revised plans until it was too late to participate on any meaningful consultation or discussion.

6.1.3 Further presentations and updates promised by the applicants, Hayfield Homes (a company with only one director and one shareholder, Mr Mark Booth) have, probably unsurprisingly, not materialised.

6.1.4 For these reasons, while of course it is accepted that planning decisions are properly made by the relevant planning authority and not local opinion, the timing adopted, where the applicants took 9 weeks and 3 days (11 November to 16 January) to revise their plans but this village was given only a maximum of 16 days (and then only if we happened to be looking on Cherwell's website on the day the new plans were published) is unfair.

6.2 Parish Council

As you know, the Bourtons Parish Council is a statutory consultee. PC members have tried to gather the views of local residents before responding to the application. As Ms Ford acknowledges the Parish Council were in favour of the application for which outline permission was granted in 2015 (and which expires in a few weeks, in April 2017). Their position on this application has been much more ambiguous. However at their meeting on Tuesday 7 February the Parish Council agreed that they are opposed to this application. Cllr Atack was present at that meeting and presumably can verify this if necessary.

6.3 Section 106

6.3.1 As committee members will know, the operation of Section 106 of the Town and Country Planning Act 1990 is an important factor in development decisions, to ensure that there is proper compensation to the local community for the burden and harm of development. In this case there is no Section 106 agreement in place, and no draft available. In particular it is entirely unclear whether any Section 106 obligations will be sufficient to provide proper compensation. This application is for 30% more homes than the outline permission granted in 2015. It is unclear whether Ms Ford will seek a correspondingly larger S106 contribution.

6.3.2 With great respect to Ms Ford, the description of the proposed S106 arrangements at paragraphs 7.65 to 7.68 is so vague as to be unhelpful. It seems to be largely based on the arrangements negotiated in 2015 for the previous, smaller, outline permission. It takes no account of the fact that this development includes 30% more homes, nor of the fact that the contribution to bus services is entirely redundant, there being no meaningful service in this village (as to which see the conclusion from OCC that development here would not be sustainable).

6.3.3 The lack of detail is also illustrated by the reference to a contribution of “£5000 towards the potential running costs of the new hall for a period of 3 years” from which it is unclear whether the sum involved is £5000 spread over 3 years or £15,000. These things matter.

6.3.4 In the absence of proper detail as to the form and value of Section 106 arrangements, it is submitted that this application should be rejected.

6.4 **Landscape**

At the time of the previous outline permission, consideration was given to the fact that the site is within an area of High Landscape Value. It is striking that such consideration is entirely missing from this application. If anything, this aspect is of greater significance than previously, because of the creeping extension of Banbury north along the Southam Road, now as far as the motorway.

Conclusion

The report recommending approval identifies only three very slight reasons for that conclusion. Of those, two are based on errors as to the legal position and the third is very weak. There are many reasons to reject the application. Permission should be refused.

I am sorry to have to give you more material to read. However this is important to the residents of this small village. More generally, all electors and Council Tax payers in Cherwell are entitled to know that planning decisions made on our behalf are made properly and in accordance with the democratically produced local plan

If you have read this far, then thank you.

Jacqueline Fry
13 February 2016