



DORNEY

PARISH COUNCIL

Locum Clerk: Mrs. Holder Email: clerk@dorney.org.uk

8th July 2021

Elizabeth Aston
Buckinghamshire Council
Planning Department
By Email: Elizabeth.Aston@buckinghamshire.gov.uk

Dear Ms. Aston

PL/20/2020/OA | Outline permission for re-development of existing partial brownfield site into renewable energy park with high capacity battery storage, 416 bedroom hotel (Use Class C1), two office units (Use Class A2), biogas waste digester energy unit, advanced educational facility, two-storey car park and associated landscaping | Orchard Herbs Lake End Road Dorney Buckinghamshire SL4 6QS

We write further to our earlier objection letters dated 28th August 2020 and would like you to consider this supplemental objection in your determination of this planning application. It remains unclear if the Council is minded refusing this application. We have taken legal advice in respect of the application and this includes a review of the up to date responses from statutory consultees and the new information submitted by the applicant in May. For the reasons set out below, it is considered that any grant of planning permission would be unlawful and susceptible to judicial review.

Section 38(6) Planning and Compulsory Purchase Act 2004

This statutory provision provides that "If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

The Development Plan currently consists of the Council's Adopted Local Plan (1999), the 2011 Core Strategy together with the policies map and the National Planning Policy Framework (NPPF) is a material consideration. I am of course aware that the Chiltern and South Bucks Local Plan 2036 was withdrawn in October 2020, however, there has been little change in the Green Belt policy and there are significant concerns from statutory consultees in respect of flood risk and traffic and transport impacts.

For the reasons set out in this letter we consider the development fails to comply with the Development Plan and there are no material considerations that would justify the grant of planning permission.

Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990

Although the application site does not fall within the Dorney Conservation Area, it is adjacent to it and forms part of its setting. It enjoys a gateway status marking the approach into Dorney and its conservation area. In this regard, the Council is also obligated to consider its statutory duty under section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires that “... *special attention shall be paid to the desirability of preserving or enhancing the character or appearance of...*” the conservation area.

The application also fails to take account of a number of listed buildings in the vicinity of the site, including the Pineapple Public House, a Grade II listed building (list entry number 1124441). In this respect, the Council is under a duty to “... *have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses*”. Notably no Heritage Statement has been submitted by the applicant to assess the impact of the proposal on this designated heritage asset or the conservation area.

Continuing objection from the Environment Agency

The most recent consultation response from the Environment Agency dated 21 June confirms that they wish to maintain their objection for two reasons:-

1. The applicant has failed to submit an acceptable Flood Risk Assessment, despite numerous requests to do so.
2. The proposed development falls within a flood risk vulnerability category that is inappropriate to the Flood Zone in which the application site is located.

In conjunction with this, the Environment Agency also reminds the Council of the requirement to notify the Secretary of State of this planning application should you be minded to approve it. This will allow the Secretary of State to consider whether they would like to call in the application to determine it himself. The fact that this planning application meets the relevant criteria for a potential call in, underlines the woefully inadequate consideration of flood risk by the applicant.

National Planning Policy Framework

The applicant's Flood Risk Assessment is incomplete. It fails to consider the letter from the Environment Agency of 21 June which concludes that the hotel will be located partially within Flood Zone 3b. Paragraph 158 of the NPPF refers to the sequential test which steers new development areas with the lowest risk of flooding. Paragraph 158 states that “*Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding*”. The applicants “Main Town Centre Use Policy Assessment” refers to a number of alternative sites but concludes that each one is not suitable. Notably there is no evidence of the applicant having positively engaged with the developers of those sites, the assessment appears to be nothing more than a desktop planning analysis. Opportunities to acquire space can arise at any stage of the development process, as most experienced developers will be aware. There are

numerous examples of developers amending planning permissions with section 73 applications, particularly in a climate where market needs are continually changing.

To this end, it is remarkable that the applicant fails to have any regard to the hotel sectors “.....bleakest outlook since benchmarking began...” (PWC UK Hotels forecast 2020-2021) and in the Heathrow Corridor where there is a higher intensity of existing hotels that already meets consumer demand. The applicant notably fails to include Baylis House Hotel in Slough in its assessment of alternative sites which is currently for sale, located in an area with low flood risk and in close proximity to Heathrow.

Taking all of this into account it is clear that there is no demand for a hotel in this area, particularly when there are a number of luxury hotels within close proximity such as Cliveden, Stoke Park, Taplow House Hotel and a number of major hotel chains including the newly opened Residence Inn by Marriott, also in Slough.

The applicant contends that he should have the benefit of paragraph 160 of the NPPF which sets out the application of the exception test. This requires the development to provide wider sustainability benefits to the community that outweigh the flood risk and the development will be safe for its lifetime without increasing flood risk elsewhere and will reduce flood risk overall. Both elements of the exception test must be satisfied. There is nothing in the application (other than the installation of EV charging points which we already have at our local Tesco) that have been put forward as a sustainability benefit. In respect of the second limb, the applicant continues to neglect the provision of a suitable Flood Risk Assessment for the Environment Agency to consider. In this respect it is impossible to conclude that the “... development will be safe for its lifetime...”.

The failure to properly consider flood risks within a planning application was also the key issue before the High Court in *R. (on the application of Matthews v City of York Council* [2018] EWHC 2102 (Admin). The Court quashed the decision of the Council to construct a care home located within Flood Zones 2 and 3. This decision and the vulnerability of the planning application to a call in by the Secretary of State highlights the need to exercise great care in its determination.

Transport and traffic

We have seen the response of the Highways Development Management Team at the Council dated 25 March and share the concerns raised in that letter. As with flood risk, the applicant has elected not to provide a full assessment with suggested mitigation, but rather to carry out a full transport assessment at a later unspecified date (after the grant of planning permission) and then seek to mitigate its impacts. To take such an approach makes a mockery of the planning system, the outline application is the correct stage at which to have a thorough understanding of the traffic and all other impacts of the development.

The application site is not located in an area with good public transport links and there is nothing in the application to suggest that any meaningful contribution will be made pursuant to a section 106 agreement to address this. Paragraph 111 of the NPPF requires all developments that generate significant amounts of movement be required to provide a travel plan and that the application should be supported by a transport assessment so that the likely impacts can be assessed. The failure of the applicant to do either is a material planning consideration that weighs in favour of this application being refused.

Inappropriate development in the Green Belt

Paragraph 143 of the NPPF confirms that inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances. The proposed development does not fall into one of the recognised exceptions set out in paragraph 145 of the NPPF. It is apparent that the applicant seeks to rely on paragraph 147 of the NPPF which recognises that elements of renewable energy projects will compromise inappropriate development and any very special circumstances “may” include the wider environmental benefits associated with renewable energy.

Paragraph 147 states that any environmental benefits may, not must, be considered as a very special circumstance. The applicant seeks to promote a skewed version of the planning balance, one that seeks to overlook the harm to the openness of the Green Belt, the very obvious flood risks and the significant traffic impact but contending that renewable energy takes precedence.

No assessment has been made in respect of the impact on the openness of the Green Belt. Notably this was one of the reasons for refusal at the same site when a planning application was considered for an animal sanctuary (14/00520/FUL). There was no proposed 10 storeys building in that application, the structures were much smaller and yet the first reason for refusal stated that –

“The site is located within the Metropolitan Green Belt wherein there is a presumption against development other than for a specified list of categories such as development for agriculture or forestry. The redevelopment of this site to provide an animal sanctuary does not fall within any of these categories and as such constitutes inappropriate development, which is by definition harmful to the Green Belt. As well as being unacceptable in principle, the development does, by virtue of the number of structures on the site, adversely impact upon the open and rural appearance of the Green Belt. No very special circumstances exist in this case sufficient to warrant an exception to Green Belt policy. As such the proposal is contrary to policies GB1 and EP3 of the South Bucks District Local Plan (adopted March 1999) and section 9 (Protecting Green Belt Land) of the NPPF.”

Applicant’s reliance on appeal decision APP/N4720/A/10/2121279

Within the application, the applicant relies on the above appeal decision which granted planning permission for the construction of five wind turbines in December 2011, before the NPPF was first published in March 2012. The applicant appears to rely on this decision as an example of inappropriate development being permitted in the Green Belt. There are a number of reasons why that appeal decision is not relevant to the current application:-

- The appeal decision is not a comparable development. The appeal decision relates to a windfarm development, the application before the Council is primarily an office and hotel development.
- In the appeal decision, the landscape around the site did not have any special designation. In contrast, the application site sits at the gateway of the Dorney Conservation Area.
- The planning policy landscape in respect of the appeal decision was significantly different, indeed the NPPF had not even been adopted.
- In the appeal decision, the nearest settlement was the village of Micklefield which sat on the other side of the motorway, away from the five wind turbines. In contrast, the village of Dorney sits directly adjacent to the application site.

A more relevant and up to date appeal decision is APP/F4410/W/17/3177084 where an appeal was dismissed against the decision of Doncaster Metropolitan Borough Council to refuse planning permission for the construction of one wind turbine. The appellant relied on paragraph 147 of the NPPF, but this was not considered to outweigh the harm to the openness of the Green Belt.

Conclusion

This remains inappropriate development in the Green Belt and is a poor-quality application that fails to understand that all development impacts must be understood at outline application stage. The Environment Agency, the Local Lead Flood Authority and your highway team have yet to be provided with information to assess the flood risk and traffic impacts. This is despite the application being submitted almost a year ago.

No proper assessment of the impact on the openness of the Green Belt has been carried out. The proposed buildings are significantly larger than the structures in the application for an animal sanctuary (14/00520/FUL), yet that application was refused for its adverse impact upon the open and rural appearance of the Green Belt. No heritage assessment has been submitted with the planning application. The application site has a history of a flagrant disregard for the planning system and is the subject of enforcement notices and an outstanding application for a Certificate of Lawfulness. The applicant now seeks to capitalise on this by contending that it is a brownfield site ripe for development.

The application should be refused. If the Council is minded to grant planning permission this application should be referred to Planning Committee and we would like to be notified of the meeting date and the decision made in due course.

Yours sincerely,

Hilda Holder

Mrs. H Holder
Locum Clerk to the Council