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## Appeal Decision

Hearing held on 18 January 2017

Site visits made on 17 and 19 January 2017

**by Mark Dakeyne BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 7 February 2017**

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### **Appeal Ref: APP/F0114/W/16/3142676**

#### **Land off Broadmead Lane, Keynsham**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr S Bendall against the decision of Bath & North East Somerset Council.
  - The application Ref 13/04822/EFUL, dated 6 November 2013, was refused by notice dated 19 January 2016.
  - The development proposed is a marina comprising:
    - (1) 326 berths and designed to accommodate a variety of craft sizes;
    - (2) marina facilities buildings with 24-hour access to toilets, showers and laundry, together with day time access to a reception and chandlery;
    - (3) car parking for a maximum of 144 cars; and,
    - (4) a tearoom and office included within the facilities building.
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### **Decision**

1. The appeal is dismissed.

### **Procedural and Preliminary Matters**

2. The applicant shown on the original forms (Enzygo Ltd) confirmed in advance of the hearing that the landowner, Mr Bendall, had permission to conduct the appeal on their behalf.
3. At the hearing it was agreed that (1) as a site address was missing from the application form that used on the appeal form and contained in the banner above is accurate; (2) the description of development should exclude reference to 'a series of satellite car parks' as the submitted plans showed a single car park with some 144 parking spaces; and (3) the reference for the plan showing the site access and off-site highway works is SK21225-007 Revision B.
4. An environmental statement (ES) was submitted with the application under Regulation 4 of the EIA Regulations<sup>1</sup>. Additional information was requested on behalf of the Secretary of State under Regulation 22 relating to construction impacts and ecological mitigation measures for otters. Further information was submitted by the appellant in September and October 2016. The ES meets the minimum requirements of Schedule 4 Part 2 of the EIA Regulations. I have taken into account this environmental information in determining the appeal.

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<sup>1</sup> Town and Country Planning (Environmental Impact Assessment) Regulations 2011

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5. A signed Statement of Common Ground (SOCG) between the Council and the appellant was submitted at the hearing setting out elements of the scheme that were not in contention and a list of conditions that should be imposed in the event that the appeal was to be allowed.
6. The Council referred to the emerging Placemaking Plan (PMP) at the hearing. The plan is being examined and the Inspector issued an interim report in November 2016 following hearings in September and October 2016. The Council is currently undertaking consultation on Main Modifications to the PMP. The Council advised the hearing that the most relevant policy in the plan, Policy H6 (Moorings), was not subject to modification. On that basis and having regard to paragraph 216 of the National Planning Policy Framework (the Framework) I give Policy H6 considerable weight.
7. The Town Council referred to the Keynsham Neighbourhood Plan (KNP) but it was established that at the time of the hearing no document had so far been prepared or published. No information about the issues that are likely to be addressed by the plan was put before me. Therefore I can attach no weight to the KNP.

### **Main Issues**

8. Having regard to the decision notice, the SOCG, other evidence and information before me and discussions at the hearing the main issues are:
  - (1) whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
  - (2) the effect on Green Belt openness and purposes;
  - (3) the effect on the character and appearance of the area, including existing trees and hedges;
  - (4) the effect on the ecology of the River Avon and surroundings;
  - (5) the accessibility of the development;
  - (6) the effect on highway safety;
  - (7) the effect on agricultural land; and,
  - (7) if the development is inappropriate whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations and, if so, whether this would amount to the very special circumstances necessary to justify the development.

### **Reasons**

#### *Inappropriate development*

9. The appeal site lies within the Green Belt. Paragraphs 89 and 90 of the Framework set out the forms of development which are not inappropriate in the Green Belt. The marina would be developed on agricultural land and would therefore involve a change of use of the site. It has been established by case law that paragraphs 89 and 90 are closed lists and as change of use is not included it is by definition inappropriate development<sup>2</sup>. This was accepted by the appellant at the hearing.
10. The proposal also includes engineering operations in the form of the excavation of material to create the marina; the construction of access routes, parking and other ancillary works; and the formation of bunds and raised landform, particularly on the southern field. Paragraph 90 of the Framework indicates

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<sup>2</sup> Fordent Holdings Ltd v SSCLG & Cheshire West and Chester Council [2013] EWHC 2844 (Admin)

that engineering operations are not inappropriate in the Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in the Green Belt. I will return to these matters when I consider the second main issue below.

11. Similarly new buildings for the provision of appropriate facilities for outdoor sport and recreation are not inappropriate in the Green Belt provided they preserve the openness of the Green Belt and do not conflict with Green Belt purposes. The development includes three facilities buildings which would accommodate changing rooms, showers, toilets, laundries and a small café and chandlery. On the face of it these facilities would be linked to the recreational use of the marina and would be appropriate for the intended purpose. Again I will go on to consider the effects on Green Belt openness and purposes later.
12. On the first main issue the change of use of the land would be inappropriate development.

#### *Green Belt Openness and Purposes*

13. The appeal site lies between Stidham Lane and the River Avon and comprises two agricultural fields divided by a hedgerow containing some trees. Although the southern field rises slightly towards the lane, the land is relatively level reflecting its function as part of the flood plain. There is a line of moored houseboats along the southern bank of the river with some spilling over of activities onto the riverbank such as washing lines, vehicles and a generator. However, this minor paraphernalia does not materially affect the site's overall open character.
14. The formation of a waterbody containing pontoons, ramps, and footbridge and up to 326 boats would materially alter the open character of the northern field. The hardsurfacing of the access road and car park would take up a smaller part of the southern field but it would result in development where there was none before and the presence of vehicles on the road and parking area would also affect openness. Whilst bunding would screen the road and car park from many public vantage points, the fact that this part of the development would be relatively inconspicuous would not remove the impact on openness. Moreover the significant areas of bunding and raised ground resulting from the deposit of material from the excavated marina would also materially impact on the openness of the site by leading to an artificial landform.
15. If the marina and associated development was seen to be acceptable, the three reasonably small facilities buildings dotted around the site would in themselves preserve the openness of the Green Belt and not conflict with Green Belt purposes. There would inevitably be some effect on openness from the modest quantum of development arising from the buildings. But some effect is inherently accepted by paragraph 89 of the Framework and does not necessarily lead to a finding of harm from this component of the overall development.
16. In terms of Green Belt purposes the proposal would lead to encroachment of development into open countryside. The development would be no further north than the large buildings at the former Cadbury's site at Keynsham. Although forming part of the open flood plain and agricultural land between Keynsham and the outer suburbs of Bristol at Willsbridge, the proposal would not have the characteristics of an urban built development and would be

contained by the river. Therefore, the development would not materially contribute to a merging of towns or lead to the unrestricted sprawl of a large built-up area.

17. The presence of industrial buildings near the site, the railway line embankment to the south and other urban influences such as the sewage treatment works do not significantly undermine the open character of the site itself. The corridor along the flood plain of which the appeal site forms part is an important tract of open land reaching out beyond the south-east built-up edge of Bristol as far as Bath. This importance was confirmed in the Council's Green Belt review in 2013.
18. In conclusion the engineering operations would lead to a loss of openness and conflict with one of the purposes of including land in the Green Belt, safeguarding the countryside from encroachment. Therefore, these operations would constitute inappropriate development in the Green Belt. The marina buildings would on their own preserve Green Belt openness and not conflict with Green Belt purposes and would not be inappropriate development.

#### *Character and Appearance*

19. The appeal site forms part of the valley of the River Avon which hereabouts is shallow and wide. The site shares similar characteristics to the low lying open land to the west and on the northern side of the river and together the fields form part of the flood plain. The nearby Broadmead Lane Industrial Estate has some typical riverside elements such as houseboats, boat repairs, Victorian mill buildings and cranes but overall the works have an industrial character. In addition there are the houseboats which line the appeal site's river bank, the buildings of the Avon Valley Adventure and Wildlife Park set back from the river to the east and within the wider area the urban influences referred to above. However, this stretch of the Avon is predominantly rural in character.
20. The large scale marina and other elements such as the bunding would be visible from parts of the River Avon Trail on the northern bank and the Monarchs Way and Bristol to Bath Railway Path on slightly higher ground further to the north. Elements of the development would also be seen from the lanes to the south and west of the appeal site. The River Avon Trail and Monarch's Way are long distance national trails. The Railway Path is a shared cycle and footpath of more local significance. Users of these paths would be receptors who would be highly sensitive to change. The development would not be particularly evident in longer distance views from the north and south due to topography and intervening built development and vegetation. Moreover, few dwellings have views of the site with only Avondale House to the north-west being highlighted in the Landscape and Visual Impact Assessment (LVIA).
21. However, based on the information provided in the LVIA and my own walk around the area, the marina would be perceived as a significant incursion into the open flood plain from several viewpoints on the northern side of the river. There is a backdrop of urban development, including industrial buildings, when viewed from the north but the fields are seen as a swathe of green between the river and the built up area of Keynsham. From Stidham Lane the Broadmead Industrial Estate, the former Cadbury's building, development at the Avon Valley Park and a village on higher ground some way to the north form part of the wider panorama but open fields dominate the foreground.

22. The construction of the marina and other facilities and the creation of the uncharacteristic landform of the bunding would significantly change the open low-lying character of this part of the flood plain. Most of the northern field would be replaced by a large engineered water body containing multiple pontoons with lighting and a large number of boats, surrounded by embankments, a surfaced footpath and other infrastructure such as retaining walls and ramps. The southern field would be dominated by bunding and raised plateaus sitting about 2.5m above and either side of the entrance road and car park. To my mind these large scale works could not be satisfactorily absorbed into the low lying riverside landscape.
23. Marinas are a feature seen along the river near Keynsham. The two that I saw at Portavon and Saltford were of much smaller scale than the proposal before me. They fit into the riverside scene comfortably as they are well related to existing infrastructure and buildings such as locks, weirs and public houses and have a closer connection to historic settlements by the watercourse. In contrast the much larger marina at the appeal site would not be as well related to existing riverside development and would not be as easily assimilated into the landscape.
24. The development would lead to a breach in the central hedgerow and the loss of an oak tree within the northern field. A few riverbank trees would be lost to allow the channel to be formed into the marina basin. The proposed widening of Stidham Lane would lead to the loss of a hedgerow containing a number of trees, including ash and maple. The central hedgerow, the oak tree and most of the riverbank trees have been surveyed. The central hedgerow has been assessed as not being 'important'<sup>3</sup> and in any event only a short length would be breached to form the access road. The loss of the single oak, although classified as high quality<sup>4</sup>, would not be significant in overall landscape terms. Most of the riverbank trees in the vicinity of the proposed breach appear to be classified as unsuitable for retention<sup>5</sup>. However, there is no survey of the hedgerow by the lane.
25. The marina plans show indicative planting but no details. No replacement hedge is shown to the southern boundary and in any event the bunding would be close to the widened lane so it is not clear whether there would be space for a new hedge to flourish. It would be possible to impose a condition requiring a landscaping scheme. But in the absence of details of proposed planting and because of the restricted space at the southern boundary of the site additional harm would arise from the loss of landscape features, notably the hedgerow and trees by the lane. Moreover, landscaping would not be capable of mitigating the artificial nature of the raised landform or softening sufficiently the large marina.
26. The houseboats and pontoons that line the bank are low lying and part of the riverside scene. Although some of the paraphernalia on the bank is not pleasing to the eye it is low key and the removal of the houseboats and associated 'infrastructure' and vehicles would not be a significant visual benefit.
27. Accordingly I conclude that the development would lead to a significantly harmful effect on the character and appearance of the area, including existing

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<sup>3</sup> Under the Hedgerow Regulations 1997

<sup>4</sup> Category A in accordance with BS5837:2012 Table 1

<sup>5</sup> Category U in accordance with BS5837:2012 Table 1

trees and hedges. As a result there would be conflict with Policies D.4, GB.2, NE.1, NE.4, NE.15, SR.5 and SR.11 of the Bath and North East Somerset Local Plan adopted October 2007 (the Local Plan), Policy CP6 of the Bath and North East Somerset Core Strategy adopted July 2014 (the Core Strategy) and Policy H6 of the emerging PMP as the development would not respond to the local context, would be visually detrimental to the Green Belt by reason of its siting, would have an adverse effect on hedgerow trees of value and would not conserve the character of the local landscape and the water course. For the reasons given above the LVIA conclusion that the long-term effects would be 'slight adverse' underplays the visual impact.

### *Ecology*

28. The European protected species (EPS) of horseshoe bats and otters have been identified as using the river corridor. Two Sites of Nature Conservation Interest (SNCI) lie within or straddle the appeal site boundaries, the River Avon SNCI and the Broadmead Field SNCI. An ecological appraisal was carried out but this only covers the northern part of the site.
29. There is a concentration of horseshoe bats in the Bath and Bradford on Avon Special Area of Conservation (SAC). Horseshoe and other bat species use the stretch of river by the appeal site as part of their territory for foraging and commuting from the SAC. The appellant has indicated that the construction activities could be regulated such that the bats would not be affected, for example by restricting construction to daylight hours. The appellant's bat lighting plan suggests that lighting on the marina would be low key, using 1m high bollards so that lighting levels within the riparian corridor would not exceed 0.4 lux.
30. However, there is no detailed specification of lighting or a lighting contour plan flowing from lighting details. Therefore, the effects of the lighting on the bats cannot be properly assessed. Added to that would be lights from the crafts within the marina and any reflections that arise from light spill. Moreover horseshoe bats can fly at levels as low as 1m so could be affected by low level lighting. Furthermore there is a possibility that some of the hedgerow trees on the southern part of the site which have not been surveyed contain bat roosts.
31. Surveys indicate that otters are evident on this stretch of the river but that activity is concentrated on the northern bank of the river. Both main parties acknowledge that a licence would be required for the works associated with the marina as otters would be disturbed.
32. The appellant's otter mitigation plan indicates that further surveys would be conducted prior to, during and after construction. Otherwise there is a focus on measures during construction as these are seen as the main risks and on the lighting plan referred to above. However, as with bats the level of detail is lacking to allow a long term assessment of lighting impacts. Moreover, no habitat enhancement measures are proposed in accord with Natural England's Standing Advice.
33. The existing houseboats along the river lead to some low key activities and lighting but, in the absence of a comparison of existing and proposed, it is reasonable to assume that the larger scale marina development would have more significant effects.

34. The need for a licence for the disturbance that would arise to the EPS otters and possibly bats means that the derogation tests from European Directives transposed into the Habitat Regulations<sup>6</sup> need to be considered. In terms of whether the actions would be detrimental to maintaining the population of the species concerned at a favourable conservation status in their natural range, having regard to the lack of detail provided and the views of Natural England I am not satisfied that this test would be met. I will return to the other derogation tests in the planning balance and conclusions section of this decision.
35. The River Avon is designated as an SNCI for its dark, quiet and undisturbed qualities. In addition to bats and otters it provides a habitat for birds and insects. Taking into account my conclusions on protected species the corollary is that there would be some adverse impacts on the integrity of the SNCI.
36. In terms of Broadmead Field SNCI the site lies in the south-west corner of the appeal site and comprises marshy grassland with wetland flora present. The SNCI was not picked up by the appellant during his initial scoping and survey work and was not covered by the initial ecological report. After being made aware of its existence the appellant suggested that the integrity of the SNCI could be boosted by directing land drainage to the site. However, there are no details of such measures. Moreover, the contouring plans do not recognise the SNCI's existence, with bunding running through the SNCI. The possibility of a condition was discussed reserving details of the works to this corner of the site. However, the implications of remodelling the site to allow for the retention of the SNCI go beyond what could be reasonably reserved by condition on an application for full planning permission.
37. In conclusion the development would have a significantly harmful effect on the ecology of the River Avon and surroundings and conflict with Policies NE.9, NE.10, NE.11, NE.12, NE.15 and SR.11 of the Local Plan, Policy CP.6 of the Core Strategy and Policy H6 of the emerging PMP as it would adversely affect protected species and SNCIs, would not retain and create new features and habitats and would not conserve the wildlife value of the watercourse. The appellant's suggestion that conditions can be used to require details of mitigation does not provide the level of certainty necessary when dealing with EPS.

### *Accessibility*

38. The marina is within recognised walking distances of some facilities such as the Waitrose Foodstore, Dominos and KFC on Broadmead Lane<sup>7</sup>. The frequent bus service along Bath Road is a little further away but potentially could be reached on foot. Cycling could be an option to reach the foodstore and fast food outlets and Keynsham Town Centre and railway station which are over 2km from the marina. Stidham Lane, although not part of the Council's formal cycle network, is identified as a quiet route for cycling
39. The walking route would be improved by providing a footway from the site entrance along Stidham Lane and either side of the tunnel under the railway on Broadmead Lane. However, the narrow pinch point of the tunnel could not be

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<sup>6</sup> Conservation of Habitats and Species Regulations 2010

<sup>7</sup> Distances taken from Table 1 of Council's Statement of Case which were agreed as broadly accurate at the hearing

- improved. The potential conflict between pedestrians/cyclists and vehicles, including vans and lorries accessing Broadmead Industrial Estate, would be a deterrent to users of the marina travelling by foot and cycle.
40. Moreover to reach the town centre pedestrians and cyclists would then need to use Unity Road or cross the A4. The former is an industrial estate road which lacks natural surveillance, particularly outside working hours. Beyond the industrial area users would then go under the Unity Road Underpass which has ramps, limited headroom and requires cyclists to dismount. Alternatively pedestrians would need to cross the busy A4 as it meets the roundabout at the southern end of Broadmead Lane. The dropped kerb crossings are uncontrolled. The speed and volume of traffic, the dual carriageway on the western arm and the lack of ability to see approaching traffic from the B3116 Bath Road make it a potentially hazardous crossing and would act as a deterrent to potential users.
41. That said many marinas are in rural locations. In this case the site is relatively close to Keynsham. There are options other than the private car for accessing facilities and travelling further afield. Journey distances to the shops and restaurants in Keynsham by car would not be great. Moreover, the site is only a few miles from Bristol and Bath so many potential users of the marina would not need to travel far to reach their leisure boat. It would also seem to me that once users reached the marina by car or boat they would not then be inclined to travel far from their base other than making journeys up and down the waterways when they would not rely on their cars.
42. All in all the proposed development would have reasonable accessibility. There would be compliance with Policy D.2 of the Local Plan and Policy H6 of the emerging PMP in this regard as the development would be relatively well connected to its surroundings.

### *Highway Safety*

43. As referred to above the pinch point of the tunnel on Broadmead Lane and the other constraints of the pedestrian and cycling network would act as something of a deterrent to journeys by foot or cycle. That said an increase of such journeys along Broadmead Lane would arise as a result of the development as would vehicle movements.
44. Despite traffic surveys showing limited vehicle movements along Broadmead Lane and average speeds significantly less than 30 mph, when I was in the vicinity on mid-morning and mid-afternoon weekdays there seemed to be a regular passage of vehicles under the bridge including commercial vehicles going to and from the industrial estate. In this respect I understand that a waste transfer station has been established since the surveys. Indeed I noted skip waggons using Broadmead Lane.
45. The carriageway in the tunnel is not wide enough to allow a pedestrian/cyclist and vehicle to pass safely side by side. Inter-visibility between pedestrians/cyclists and motorists is affected by the road alignment particularly where it swings to the left north of the tunnel. The vehicle speeds that I observed might make it difficult for a vehicle to evade a pedestrian or cyclist in certain circumstances.

46. Added to the particular constraints of the tunnel are the hazards for pedestrians at the roundabout on the A4. The Unity Road route is not very inviting. The alternative more circuitous route via the eastern length of Stidham Lane and then along Pixash Lane would involve walking or cycling along carriageways without pavements and over a humped back bridge where visibility is restricted.
47. I acknowledge that there was no evidence of accidents on Broadmead Lane put before the hearing. Moreover the footpath improvements along Stidham and Broadmead Lanes would benefit users as well as those associated with the marina. I also note the reference to the route falling within the criteria for quiet lanes. However, these factors do not outweigh my concerns about pedestrian and cyclist safety.
48. Accordingly I conclude that the development would not provide a safe environment for the pedestrian and cycle users which would arise from the development. There would be conflict with Policies T.1 and T.24 of the Local Plan in this regard as there would not be safe access for pedestrians and cyclists. A safe and suitable access to the site would not be achieved for all people<sup>8</sup>.

#### *Agricultural Land*

49. The majority of the appeal site is graded 3a so that it falls within the category of the best and most versatile agricultural land. The northern part of the site floods regularly but there is no specific evidence that this has significantly affected the land's ability to produce a crop or prevent the site from being used for farming. At the time of my winter visit an arable crop was being grown on the majority of the site and maize has also recently been grown. Moreover, although the site is divorced from the main land holding of the appellant, it seems to me that it is of sufficient size to be useable in its own right as shown by the current arable use.
50. Although part of the southern field could still be used for agriculture there was no indication that this would occur. Therefore, the whole site would be likely to be lost to agriculture as a result of the development.
51. The site area of some 21 hectares indicates to me that some harm would arise from the loss of the site taking into account the economic and other benefits to be derived from higher grade agricultural land<sup>9</sup>.

#### *Other Considerations*

##### *The Need for Marina Berths*

52. There is limited evidence as to the quantitative need for new marina berths at a national, regional or local level. The Canal and River Trust (CRT) or any other agency does not carry out comprehensive studies into the need for marinas. Moreover the appellant withdrew his own needs assessment as some of the assumptions were out of date. Annual boat registrations published by the CRT show a decline in recent years from a peak in 2009/10. Boat manufacture is fairly stagnant. Some new large marinas have been completed

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<sup>8</sup> See paragraph 32 of the Framework

<sup>9</sup> See paragraph 112 of the Framework

or permitted. So the indications are that supply is at least matching need at a national level.

53. However, locally the existing marinas at Portavon and Saltford appear to be close to capacity. According to the appellant the new 250 berth marina at Caen Hill, Bradford on Avon is almost full. The draft Water Space Study refers to little or no under-occupancy in marinas in the area. That said the study and the accompanying Boaters Survey is targeted at those who live on their boats, not leisure users. But it is fair to suggest that there is likely to be some quantitative need locally for additional leisure berths.
54. As with quantitative need no assessment of qualitative need is before me. That said there are a number of factors that suggest that there is a qualitative need for more leisure berths. There are some constraints on this part of the waterway network notably an effective cul-de-sac due to difficult navigation conditions in the Severn Estuary; the number of travel days to reach the wider network; a flight of locks at Bath; and river flows in the winter months. That said the number of berths between Bristol and Bradford on Avon suggests that the area is popular for moorings many of which are used for leisure. This is not surprising given the quality of the area's natural and built environment and the proximity to centres of population. An additional facility with a high standard of berths and ancillary facilities would widen consumer choice and competition.
55. However, there is no evidence as to the level of need and whether it is in the order of 300 berths which in the context of the region would be large scale.
56. Overall I give the need for some new berths and the resultant leisure and recreation benefits and ability to enjoy an outdoor lifestyle that would follow from additional provision some weight. No evidence was presented that additional supply would cause congestion on the network.

#### *Economic and Social Benefits*

57. The appellant indicates that the development would lead to some 8 full-time equivalent (FTE) jobs at the site and another 12 jobs indirectly. There would also be between 20 and 30 FTE construction jobs. The number of jobs which would be created was disputed at the hearing but I see no reason to suggest that employment would be significantly less than that put forward assuming a full marina. The figures are accepted by the Council. The users of the marina would spend money locally which would support local businesses and tourism and help to sustain jobs. The scheme would have the potential to improve the connectivity between Keynsham and the river. These economic and social benefits carry some weight.

#### *Other Issues*

58. The removal of the existing houseboats would increase the width of the channel. That said there is no evidence that the existing channel is giving rise to navigation difficulties so I give this potential benefit limited weight.
59. The appellant suggests that the marina would provide some attenuation and therefore a flood risk benefit. The response by the Environment Agency does not indicate that any flood risk benefits would arise. If anything they suggest that some minor harm could result because of the possibility of increased water levels on Broadmead Lane, albeit that overall flood risk would not change. In view of the ability to impose conditions I see flood risk and drainage as neutral

factors. Similarly although the issue of odours from the nearby sewage treatment works has been raised it is unlikely that significant nuisance would arise as a result.

60. For the reasons given earlier any benefits that would arise from the highway improvements would be outweighed by dangers and the case for ecology and landscaping enhancement is not proven.
61. There are about 25 residential moorings which would need to be removed if the scheme went ahead. Tenancies appear to be short-term. There is no obligation for the appellant to find another mooring for the houseboat residents and I was not made aware of any available moorings in the local area. Therefore, whilst the occupants could travel the waterways and would have rights to moor overnight they would lose their 'permanent' mooring. This could affect their ability to access employment, education and other services. Some weight should be attached to the economic and social harm that would arise from these effects on the residents' personal circumstances.

### **Planning Balance and Conclusions**

62. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight should be given to any harm to the Green Belt. Very special circumstances will not exist unless harm to the Green Belt by reason of inappropriateness,<sup>10</sup> and any other harm, is clearly outweighed by other considerations.
63. The change of use and engineering operations are inappropriate development and this harm attracts substantial weight. As the consideration of whether the engineering operations linked to the use would be inappropriate includes an assessment of the impact on Green Belt openness and purposes these matters are encompassed within the substantial weight attributed to Green Belt harm.
64. I give significant weight to the harm caused to the character and appearance of the area and the ecology of the site and surroundings. Considerable weight should be attributed to the harm to the safety of pedestrians and cyclists. Some weight should be given to the harm arising from the loss of agricultural land. Although the information before me was limited, moderate weight, at the very least, should be given to the harm that would arise from the loss of the residential moorings.
65. The accessibility of the development, flood risk, drainage and odours are neutral factors in the planning balance.
66. In terms of benefits I give some weight to the need for marina berths; the leisure and recreation opportunities that flow from their provision; and the economic and social benefits arising from job creation and local spend. Taken together these factors carry significant weight. Only limited weight can be given to any navigational benefits that would arise from the removal of the on-line moorings.
67. In conclusion the harm to the Green Belt by reason of inappropriateness, and the other harm that I have identified, is not clearly outweighed by other considerations. Therefore, very special circumstances do not exist to justify

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<sup>10</sup> Paragraphs 87 and 88 of the Framework

the development. The proposal would be contrary to Policy CP8 of the Core Strategy and Policy H6 of the emerging PMP as the openness of the Green Belt would not be protected and the site is in the Green Belt. There would be conflict with the development plan overall.

68. In arriving at my decision I have had regard to the other marina appeals referred to, particularly in respect of Green Belt issues. In relation to Green Belt my reasoning is consistent with that of the other Inspectors taking into account changes in national policy and caselaw that has occurred since these previous decisions. That said the particular circumstances of each case are different and I have determined this appeal on the basis of the evidence before me.
69. Returning to the derogation tests enshrined in the Habitat Regulations, my conclusions above indicate that there are no imperative reasons of overriding public interest including those of a social or economic nature to satisfy this test. So far as alternative sites of a similar size which are satisfactory, none has been put before me. The appellant's assessment of sites carried out as part of the EIA did not identify any alternatives that would be less harmful than the appeal site. The site to the east of the Avon Valley Country and Wildlife Park referred to in representations and at the hearing also lies in the Green Belt. Although it is referred to in some planning studies I have insufficient information before me to assess whether otherwise it would be a satisfactory alternative.
70. That said the assessment of alternatives did not consider whether a smaller scale development on the appeal site (or part of it) would be satisfactory or indeed whether a smaller scale development could be satisfactorily accommodated elsewhere.
71. For these reasons and those given in paragraph 34 the three derogation tests would not be met. As the competent authority there does not seem to be a reasonable prospect that a licence under the Habitat Regulations would be granted. This is a further significant factor suggesting that the development is unacceptable.
72. For the reasons given above I conclude that the appeal should be dismissed.

*Mark Dakeyne*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

|                                            |                                     |
|--------------------------------------------|-------------------------------------|
| Christopher Whitehouse MRICS<br>BSC (Hons) | Next Phase Planning and Development |
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### **FOR THE LOCAL PLANNING AUTHORITY:**

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|---------------------|--------------------------------|
| Rachel Tadman       | Senior Planning Officer        |
| Charles Potterton   | Landscape Architect            |
| Cleo Newcombe-Jones | River Avon Project Coordinator |
| Jane Brewer         | Tree Officer                   |
| Lucy Corner         | Ecologist                      |
| Howard Davies       | Highway Consultant             |

### **INTERESTED PERSONS:**

|                                |                                                                                  |
|--------------------------------|----------------------------------------------------------------------------------|
| David Laming                   | Chair of the River Regeneration Trust                                            |
| Chris Corcoran MA Dip TP MRTPI | Chris Corcoran Planning (representing Pickup Holdings owners of Saltford Marina) |
| Joanna Donoghue                | Pickup Holdings                                                                  |
| Brian Simmons                  | District and Town Councillor                                                     |

## **DOCUMENTS SUBMITTED AT THE HEARING**

1. Signed Statement of Common Ground dated January 2017
2. Policy CP8 of the Core Strategy submitted by the Council
3. Policies SR.5 and T.1 of the Local Plan submitted by the Council
4. Extracts from Water Space Study Draft December 2016 submitted by the Council
5. B&NES Water Space Study Boaters Survey Consultation Report 14 November 2016 submitted by the Council
6. Policy Update on Placemaking Plan 17 January 2017 submitted by the Council
7. Relevant policies from Placemaking Plan submitted by the Council
8. Note from Placemaking Plan Examining Inspector 19 December 2016 submitted by the Council