

Little Tew Conservation Group

Re: West Oxon Ref: 24/01861/FUL

**Land At E437424 N228877 Chipping Norton Road Little Tew
Oxfordshire**

**Erection of a country house and gardens, stables courtyard, new
highway accesses, solar array, drainage works and landscape
proposals, including a new lake.**

**Reply to Applicant's Update Review and OCC Statutory Consultation
Response**

1. Introduction

As was the case with the Representations made in 2024, this Reply is made on behalf of the Little Tew Conservation Group and drafted by John Steel KC, including legal advice and opinion. It replies to the 'Summary of Documents Being Submitted to WODC for Update Review Ahead of Planning Determination' dated 23 January 2025 ("the Update Review") prepared by Martin Leay Associates and documents submitted by the applicant and therein referred to.

It also considers the points made in Statutory Consultation Response of the County Archaeologist received after submission of the Conservation Group's Representation dated 04 October 2024.

Not every point is replied to as this would require a lengthy statement which would not be helpful to the Council. Where no response is made, it shall not be taken that the applicant's submissions are accepted or agreed.

2. OCC Consultation Reply - Archaeology

The potential impact on archaeology is a material consideration in any planning application and here has been inadequately assessed by the applicant. It is the subject of the submitted Desk Based Assessment (DBA) of Oxford Archaeology which is the first stage of such assessment. A DBA can in appropriate cases be in itself adequate, but not where harm to archaeological interests of potential importance have been identified.

As stated in NPPF 2024 para-207, “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.” It is to be noted that even though the impact upon archaeology is of serious concern in the instant case, it is not mentioned or considered in any of the other documentation submitted by the applicants including that of Charles Banner KC, Worlledge Associates, Asset Heritage Reports and Martin Leay Associates. This is surprising, especially given the clear evidence and comments in the applicant’s own archaeologist’s July 2024 DBA report.

Having regard to the comments of the County Archaeologist and reference to the findings within the DBA, applying NPPF policy at paras 207 – 210 it is inevitably to be concluded that to grant planning permission on the limited and inadequate information currently before the Local Planning Authority would be contrary to national policy and unlawful.

The lack of archaeological information is specifically a criticism made by the County Archaeologist, a statutory consultee. The application site is a ‘site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest’, as the County Archaeologist concludes in their Statutory Consultation Response:

“The applicant has submitted an Archaeological Desk Based Assessment which highlights the planned development will involve extensive groundworks which will have a negative effect on any surviving archaeology (Oxford Archaeology 2023). The DBA is limited in that the ‘nature and survival of archaeological deposits within

the site is uncertain due to lack of data.’ There have been few formal archaeological investigations undertaken in Little Tew, and few cropmarks suggestive of archaeological remains have been recorded in the area. There is potential for features related to a possible Iron Age multi-vallate hillfort to exist on the site (as observed in the LiDAR data), with the possible hillfort located at The Manor House, Little Tew, 720m southeast of the development site (OA 2023). Though the applicant has submitted a DBA, this is limited without any fieldwork being undertaken.”

A DBA is insufficient in circumstances where there could be potentially important archaeological remains on the site, such as where extensive ground works are proposed as part of the development which could, and here admittedly would, have a significant adverse impact if such remains may exist on the site (DBA para 11.1.2). The information available is clearly insufficient for the Local Planning Authority to reach a considered conclusion on the harm which could be caused to archaeological assets potentially present. To quote the DBA:

“11.1.2 The planned works are likely to involve extensive ground works throughout the site, especially concentrated in the north-east portion of the site. These might include, but are not limited to, the excavation of foundations for buildings, excavation of soil for negative landscaping features (e.g. the ha-ha and swimming pool), terracing and ground levelling for landscaping features, and the excavation of service trenches. The development plans provided for this report suggest the main concentration of groundworks in the north-east will be located to the north of the known earthwork bank identified from aerial photographs and LiDAR data (Figs 13 and 14). However, if groundworks were to take place in this location this would cause a significant adverse impact.”

These works could and, in this case, would have a negative effect on any surviving archaeology affected by such ground works, as accepted by the DBA (para 11.1.3):

“11.1.3 Given the relative lack of archaeological evidence within the site, partially due to lack of previous archaeological investigation, it is not possible to get a fully

accurate understanding of the extent of impact of the planned development upon archaeological remains. However, any ground disturbance within the site has the potential to disturb, truncate or remove previously unknown archaeology.”

To require identification and assessment, the existence and predicted impact on potential archaeological remains does not have to be certain or even likely; it merely has to be possible – for some evidence to exist which requires further investigation. As required by national policy NPPF 2024 para-208, it is incumbent on local planning authorities to identify and assess the particular significance of any heritage asset that *may* be affected by a proposal (including by development affecting the setting of a heritage asset). They should take this into account when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset’s conservation and any aspect of the proposal.

Of particular relevance too is that there is admittedly conceded by the DBA to be uncertainty due to a lack of data of the nature and survival of archaeological deposits (para 11.1.3).

The DBA also includes the following:

“12.1.1 The effect of the planned development upon potential remains will be a material consideration in the determination of a submitted planning application. The study has identified earthworks indicative of later prehistoric activity within the site. There is also evidence for agricultural land use within the site from at least the medieval period to the present day. The available evidence from known archaeology suggests a low to medium archaeological potential for all periods and a local or regional significance.”

Clearly, in the absence of any fieldwork being undertaken it is impossible for the local planning authority properly to assess, in accordance with NPPF 2024 para-207, the significance of any heritage assets which may be affected, here the potential existence of an iron age fort and other archaeological remains. It is incumbent upon the local planning authority in accordance with NPPF paras 207 – 210 to identify and assess the

particular significance of any heritage asset that may be affected by a proposal before any decision is taken to grant planning permission.

A field evaluation is here clearly required to be carried out prior to any decision being taken by the local planning authority to grant planning permission, as anticipated in the DBA:

“12.1.3. Given the size of the site and the extent of the planned groundworks, it is likely that further archaeological works throughout the site will be requested by the county archaeologist as part of the planning process in order to determine the presence, nature and extent of any unknown archaeological remains within the site.”

“13.1.3 In general, the recorded evidence suggests the site has low to medium archaeological potential of local or regional significance, although the character and preservation of the possible hillfort should be established. Furthermore, this study has shown that there has been a lack of previous archaeological events within the study area and therefore an accurate understanding of the archaeological potential within the site has not been achieved.”

It is not possible to rely on a planning condition which would require evaluation after the grant of planning permission. There is no good reason why a field evaluation should not be conducted and every good reason in accordance with national policy that one should be conducted. In the circumstances, given its archaeological potential as stated in the DBA and alluded to by the County Archaeologist, to grant planning permission without first conducting proper archaeological fieldwork evaluation of the site and taking into account the results would be directly contrary to national policy and unlawful.

It is to be noted that national policy requires great weight is to be given to the conservation of non-designated heritage assets of archaeological interest, and any harm must require clear and convincing justification (NPPF paras-212-215).

Footnote 75 is of relevance here:

⁷⁵Non-designated heritage assets of archaeological interest, which are demonstrably of equivalent significance to scheduled monuments, should be considered subject to the policies for designated heritage assets.

Unless and until a proper evaluation is carried out, which in this case can only be as a result of at least a field evaluation, it is not possible to determine the weight of any harm to the significance of the asset to weigh in the heritage and planning balances, as required by national policy – see NPPF 212 et seq.

Martin Leay Associates' Update Review

3. The points made by Martin Leay Associates in their Update Review are now considered in order under their headings (in parentheses).

'Legal Opinion from Charles Banner KC'

1. (i) To be clear, the Representation dated 04 October 2024 on behalf of the Conservation Group ("the Representation") and this Reply were drafted by John Steel KC acting professionally as a planning barrister formally instructed under the Bar Council direct access scheme through his Chambers on instructions received from the Conservation Group and the named expert consultants. They contain statements of professional legal opinion and highlight matters contained in the expert reports of the Conservation Group's consultants. John Steel KC acts independently with no personal interest in the case and with no conflict whatsoever. The Representation drafted by John Steel KC contains statements of professional legal opinion which are to be given full weight as such. The rather surprising comments by Charles Banner KC in relation to this point, without first contacting John Steel KC to ascertain the true facts, are rejected.

(ii) The Representation drafted by John Steel KC refers to relevant case law determined by the High Court and Court of Appeal which are to be followed as a matter of law. Matters of planning judgement are those of the experts referred

to. It is not understood that Charles Banner KC disagrees. As stated on page 9 of the 4 October 2024 Representation drafted by John Steel KC, interpretation of policy is a matter of law; its application to the facts is a matter for the decision-maker, here the local planning authority. Charles Banner KC comments on the Chadwick Planning submission; however the Conservation Group's planning consultant is David Keyte of DK Planning. His report includes analysis and judgement of an expert planner, seeking to assist the planning officers to reach conclusions on matters of planning judgement.

(iii) NPPF para 84 – 'isolated'

The reasoning why the application site is not 'isolated' within the meaning of NPPF para-84 is set out in the October 2024 Representation. Reference by the applicant to four cases decided in other parts of England has no bearing on the matters here to be determined which are clearly dependent upon the facts and matters relevant to the location in question. They are not a matter of distance alone but are site specific and must be seen in context, which requires matters such as topography, setting and landscape character to be taken into account, and not merely distance and intervisibility, all of which differ between cases. The analysis submitted by the applicant in the form of basic annotated Google Maps of different examples of development granted planning permission elsewhere by various Local Planning Authorities is potentially highly misleading as it fails to consider such other highly relevant matters mentioned above, which in any event would require a site visit in each case to make any reasoned judgment by the decision maker. The analysis is unhelpful, flawed in its approach, and should be rejected.

(iv) NPPF para 84e - Design

The Design South East Panel Review Report is by no means all positive as is sought to be made out by Martin Leay Associates. For example, the Panel states: "Whilst the applicant argues that the proposal is not within the setting [of the Conservation

Area], this contradicts the definition of setting as set out within the document 'The Setting of Heritage Assets' by Historic England." In addition, "It is essential that this scheme is bolstered by further public benefit in terms of views, access and what it could give back to the community." There is nothing material which is able to be said to be of public benefit sufficient to begin to offset the harm to interests of acknowledged planning importance which would be caused.

NPPF para-84(e)(ii) states that to be of exceptional quality, the design would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area. As stated by officers in their report to members in relation to a very similar proposal on the site submitted and refused planning permission in 2022 (application 22/01785/FUL):

"Further, the site falls outside of, but in close proximity to the largely unspoilt village of Little Tew and officers are of the opinion that, due to its nature and scale, this proposal would have a truly urbanising and transformative impact on this open countryside location which forms an important setting to the village."

In terms of its location, nature and scale, there is no material difference between the current proposal and that refused planning permission by the Council in 2022. The same conclusions of its officers are again to be reached in relation to the harm it would cause to interests of planning importance.

(v) Heritage.

The analysis of Worlledge Associates and Asset Heritage Reports do not provide a legally sound evidence basis for the Council to grant planning permission. They fail properly to assess the true impact on the setting of the Conservation Area which is fundamental to the planning application. they also fail properly to assess the potential impact on archaeology, as to which see above.

2. 'Response to Objectors'

The Conservation Group does not accept that the applicant's responses rebuts, undermines, or invalidates the matters set out in and conclusions drawn by the documents listed and submitted by the Conservation Group. The Conservation Group's comments and evidence are not repeated here.

3. 'MLA Update Policy Review'

It is not accepted that the applicant's Policy Review and Commentary demonstrates that the development would comply with policies in the Local Plan and national policy in NPPF. The previously submitted Representation on behalf of the Conservation Group dated August 2024 together with the reports of DK Planning, Bioscan Ltd, MHP Design and Water Resource Associates (WRA) make this clear. They are not repeated here. The information provided by Bioscan in its original representations and reply more recently submitted in February 2025 makes this clear.

If the development fails to accord with NPPF and Local Plan policy, including Local Plan Policy EH3 , it is unsustainable and does not accord with Local Plan Policy OS1. The same is true if there is potential detrimental impact on biodiversity and the significance of the Little Tew Meadows SSSI which, at 40ha in area, is one of the largest in Oxfordshire.

There is potentially severe negative impact on highly important archaeology, failed to be properly and adequately assessed by the applicant contrary to NPPF and Local Plan Policy EH9, Historic England Planning Advice Note 17 (2022), as well as failing to recognise the importance of the conclusions of their own professional archaeological advisers.

In addition, as set out and explained in the Representation and evidence previously submitted by the Conservation Group, the proposed development would cause harm to the landscape and its character, contrary to Local Plan policy EH2, harm to the historic environment – not merely to the archaeological heritage but also to

the setting of the Little Tew Conservation Area contrary to Policies EH9 and EH10 (there is no such term as an 'enclosed' setting of a Conservation Area which is recognised by Historic England in their Good Practice Advice Planning Note 3 (2nd ed) on 'The Setting of Historic Assets' Dec 2017), as put forward by Martin Leay Associates in their recent 'Policy Review' paper – this is artificially contrived).

It is claimed that the potential impact of the scheme proposals has been identified from all considerations on the site and surrounding context, as required by NPPF 205, 206 and 208, and 'very carefully considered' by the applicant. This is clearly wrong, both in respect of the impact on archaeology, on the adjacent SSSI, and more generally.

4. 'MLA Commentary on DSE Review Panel'

This has been referred to and commented upon above under 1(iv). It is not repeated here.

5. 'Examples of 'isolated' dwellings'

This has been referred to and commented upon above under 1(iii). It is not repeated here.

6. 'FTA Comparison Drawings'

Although the architectural detail differs, the proposed building's scale, massing, height and form is very similar to the design submitted in 2022 (22/01785/FUL) and refused planning permission. The comparison drawings of the front elevation of the new house makes this clear. The same is true of the floor plans, the principal difference being the detail of the rear (south) which extends the floors to the rear to include curved wings on each side within an irregular semicircle, increasing the scale and massing of the building from that submitted and rejected by the Local Planning Authority in 2022 on the same site in relation to its nature, siting, scale, massing, design and form.

7. 'Clarification on ecology'

The following points are limited to matters concerning the impact on Little Tew Meadows SSSI. They are answered more fully in the February 2025 Response of Bioscan in reply to the applicant's Update Review documents. Further comments on BNG +10% are reserved.

The potential impact on the adjacent SSSI has been inadequately assessed and on this ground alone the proposal should be rejected. The Local Planning Authority cannot lawfully grant planning permission without taking into account all material considerations, including being satisfied that the SSSI would not be harmed by the proposed development and, if so how it can be avoided or sufficiently mitigated if there are public benefits which outweigh the need to avoid harm and to seek mitigation. This requires obtaining the relevant information upon which a decision can properly be made and analysis of the results. Despite having been pointed out in earlier representations of the Conservation Group, that information is still not available.

The evidence on hydrology should be read in conjunction with that relating to ecology and biodiversity, see below.

8. 'Flood Risk and Hydrology', (linked to Biodiversity)

These points are answered in the January 2025 report of Water Resource Associates and the supplementary evidence of Bioscan dated February 2025, both reviewing the applicant's Update Review documents. The conclusions in short are that the FRA is poor and missing key information on material matters. This includes in particular but is not limited to the potential impact on the adjacent SSSI.

The lack of other supporting documentation and other information referred to by WRA and Bioscan including the total absence of any field testing of ground conditions and measurement of infiltration/seepage/permeability rates permitting pollution to enter the SSSI and cause harm, not merely give cause for concern but

result in there being inadequate information before the Local Planning Authority for a proper lawful decision to be made in accordance with policy.

An SSSI has a special status in planning policy and law. NPPF footnote n68 cross refers to Circular 06/2005 concerning statutory obligations placed upon the decision-maker in planning concerning biodiversity. Paras 57-61 are of particular relevance:

“57. The Wildlife and Countryside Act 1981, as amended, (hereafter referred to in this Part as “the Act”) imposes an important general duty on a range of authorities exercising functions which are likely to affect SSSIs. This general and overarching duty requires an authority to take reasonable steps, consistent with the proper exercise of the authority’s functions, to further the conservation and enhancement of the features for which sites are of special interest. It applies whenever an authority is exercising its functions, including when it has the power to take action, and applies at every stage from the formulation of plans, to the carrying out of operations and the making of decisions.

...

60. A planning authority exercises many functions and in doing so will need to take into full account its duty to take reasonable steps to further the conservation and enhancement. It will need to decide what it considers are ‘reasonable steps’ to be taken and in doing so may wish to consult English Nature. At the strategic level, regional spatial strategies and local development documents must be prepared in accordance with this duty. At the local level, the duty applies to individual decisions on planning applications, including the consideration of whether to impose conditions on a planning decision, on the monitoring of compliance with planning obligations and any subsequent enforcement action a planning authority may consider necessary.

61. The Government expects all section 28G authorities, including planning authorities, to:

a) apply strict tests when carrying out any functions within or affecting SSSIs, to ensure that they avoid or at least minimise adverse effects;”

National and Local Plan policy follows the statutory provisions. NPPF 2024 paras-187a),d) and 192 require that all planning decisions should seek to enhance the natural and local environment by protecting and enhancing sites of biodiversity value and minimising impact on them. Remaining neutral is not the policy objective; they seek enhancement of the natural environment and avoiding harm. NPPF para-182 requires that development incorporating sustainable drainage systems should provide multifunctional benefits wherever possible, through facilitating improvements in water quality and biodiversity.

It is imperative in accordance with the above policy and law that the potential for harm to the SSSI is fully and properly considered before planning permission is granted. While flow rates and seepage rates both describe water movement they occur in different contexts and scales. Flow rates pertain to the movement of water through defined channels or systems; seepage rates concern the infiltration and percolation of water through porous media. Both are crucial considerations and hydrology and pollution control to ensure the protection and management of water resources as well as sensitive ecological areas into which water and contaminants may flow.

The lack of such supporting documentation and other information, referred to by WRA in their report, results in there being inadequate information before the Local Planning Authority on which a proper lawful decision can be made.

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6 February 2025