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For the attention of Laura Elphick

Dear Laura

Begbroke Innovation District – Cherwell District Council (23/02098/OUT) – Response on behalf of the Applicant to objection made by Natural England

I write on behalf of Oxford University Development Limited ('OUD'), the Applicant in relation to the above mentioned outline planning application ('OPA') that was submitted to Cherwell District Council ('CDC') in July 2023. This letter and its enclosure comprise OUD's response to Natural England's objection dated 8th March 2024. This followed the provision of an Information to inform a Habitat Regulations Assessment ('IHRA') by OUD to Natural England ('NE') on 31 January 2024 via CDC.

I have reviewed the contents of the objection alongside solicitors and ecology consultants appointed by OUD and provide the below response.

1 Context

The below is context that is important to the consideration of the Proposed Development.

Cherwell Local Plan Part 1 Partial Review ('LPP1PR')

The OPA has been made pursuant to a site-specific allocation through Policy PR8 of the Cherwell Local Plan Part 1 Partial Review (2020) ('LPP1PR').

As NE are aware, the LPP1PR was subject to an appropriate assessment carried out by CDC (in its capacity as the appropriate authority) which concluded there would be no significant effect on the integrity of the Oxford Meadows Special Area of Conservation ('SAC'). This conclusion was reached taking into account all the 'PR' sites and in combination with nine other plans and projects in Cherwell and adjacent Districts, for which HRAs had been undertaken. NE agreed to this conclusion via a Statement of Common Ground between CDC and NE, dated 31st January 2019.

7no. other planning applications have now been submitted to CDC pursuant to allocations made in the LPP1PR, with 3 of the PR sites having received planning permission or a resolution to grant (equating to consent for over 1,200 new homes). NE did not object to any of those other planning applications on the basis of potential significant effects to Oxford Meadows SAC. Nor has it objected





to the 'unplanned' proposals for Oxford United FC's football stadium at land to the east of Stratfield Brake.

Engagement with Natural England to date

OUD has engaged with NE during the preparation and determination of the OPA. This engagement is not acknowledged in the objection letter so a record of the engagement is set out below and is in addition to the engagement that Oxford University had with NE through the local plan process.

- NE responded to OUD's Scoping Opinion request (LPA ref: 22/03763/SCOP), dated 13th January, listing only Rushy Meadows SSSI as a nationally designated site that the Proposed Development may impact.
- Following submission of the OPA in July 2023, NE provided comments on 27 September 2023 requesting further information to determine impacts on the Rushy Meadows SSSI. No mention of Oxford Meadows SAC was made.
- OUD provided further information in this respect. Natural England confirmed via email on 6th November 2023 that the further information and proposed updates to the application would be sufficient to address the comments made on 27th September.
- OUD submitted updated documents on 30th November 2023 to CDC, triggering a 30 day re-consultation period. None of the updates changed the likelihood of any effects upon the Oxford Meadows SAC compared to what was submitted in July 2023.
- On 31 January 2024 Natural England submitted a request to CDC for an IHRA to determine impacts on the Oxford Meadows SAC. CDC issued the IHRA prepared by OUD to NE on the same date.
- On 8th March 2024 NE objected to the planning application because "*the results of the air quality modelling show significant exceedances of pollutants within the SAC as a result of the development both alone and in-combination with other plans and projects.*"

Oxfordshire County Council ('OCC') Local Transport and Connectivity Plan ('LTCP')

OCC adopted its LTCP in July 2022. It targets to replace or remove 1 in every 4 car trips in Oxfordshire by 2030 and 1 in every 3 by 2040 through a comprehensive package of infrastructure improvements to enable more people to walk, cycle and use public transport.

OUD has been part of a consortium of PR site applicants working closely with OCC to develop a strategic VISSIM model of the local and strategic highway network. It takes into account all application proposals made pursuant to allocations in the LPP1PR as well as many other committed development sites in the north Oxford area including (but not limited to) Eynsham Garden Village, Land East of Woodstock, Barton Park and Oxford North. It reflects the application proposals made by each 'PR' applicant where these differ slightly to LPP1PR allocations. That model, its inputs and outputs are fully agreed between the consortium and OCC and now supersedes the strategic model that underpinned the LPP1PR. It is a highly robust, accurate and up to date model of the highway network.



As part of this exercise and in accordance with OCC's 'decide and provide' approach, overall background growth in traffic (including delivery of all the PR sites) has been agreed as 0%. This is based on 20 years of historic traffic data and identification of the infrastructure necessary to achieve the LTCP's targets. Therefore, whilst the spatial pattern of trips may change, the overall global level of traffic that has been modelled will not increase compared to the current baseline. Given that the LTCP is seeking to reduce background traffic by 25% by 2030, 0% traffic growth is a robust assumption.

HRAs supporting emerging Development Plans in Oxfordshire

Assessments have been carried out on behalf of the local authorities to consider whether the proposals would be likely to have significant adverse effects on the integrity of the Oxford Meadows SAC. The IHRA provided by OUD captured these at the time of writing, but further assessments have been published since. A (non-exhaustive) list of HRA work carried includes:

- South Oxfordshire, Local Plan 2034 Final Public Version 2nd Habitats Regulations Assessment, March 2019;
- West Oxfordshire District Council, Salt Cross Garden Village Area Action Plan Habitat Regulations Assessment, August 2020;¹
- Oxford Core Transport Schemes (Traffic Filters) Habitats Regulations Assessment Stage 2 - Statement to Inform Appropriate Assessment, Oxfordshire County Council, November 2022;
- Environment Agency, Thames Flood Risk Management Plan Habitat Regulations Assessment, December 2022;
- Cherwell Local Plan Review 2040, Report to Inform Habitats Regulations Assessment, Atkins on behalf of Cherwell District Council, August 2023;
- Habitat Regulations Assessment for the Oxford Local Plan 2040, September 2023;
- Air Quality Screen Addendum to the HRA for the Oxford Local Plan 2040, November 2023;

All of these assessments have come to the same conclusion: that the plans or projects they are considering will not lead to adverse effects on the integrity of the Oxford Meadows SAC as a result of air pollution either alone or in combination (i.e., including growth allocated through the LPP1PR).

¹ <https://www.westoxon.gov.uk/media/wavdvkoq/habitat-regulations-assessment-report.pdf>



2 Response to Natural England objection

The issues raised by Natural England are addressed below.

IHRA Results

Air quality effects

As set out in the IHRA report, air quality modelling of traffic on the above roads was undertaken (set out in full in the Air Quality Chapter of the Environmental Statement). This compared four scenarios (1) the baseline (2019), (2) predicted 2033 baseline, (3) predicted 2033 baseline plus the proposed development and (4) an 'in-combination' scenario which was as (3) but included other PR development allocations within the Cherwell District Local Plan. The levels of NO_x, NH₃ and the loads of N and acid were modelled for scenarios 2, 3 and 4 across 13 transects extending from the A34 and A40 in the SAC. The air quality modelling was based on the North Oxford VISSIM model, referred to above.

The maximum pollutant values in the SAC are as set out in Table 1.

Table 1 - Summary of pollutant values

Pollutant	CT and unit	Maximum pollutant values in SAC			
		2019 (no development)	2033 (no development)	2033 with development in combination	% of Critical Threshold
NO _x	30 µg/m ³	141.8	57.0	58.2	3.6 %
NH ₃	3 µg/m ³	5.4	6.1	6.3	4.0 %
N deposition	10 kgN/ha/yr	39.1	36.7	37.4	7.0 %
Acid deposition	N/A kgeq/ha/yr	2.8	2.6	2.7	0.8 %

The IHRA results demonstrate that there would be exceedances of the critical threshold for all the air pollutants considered (Nitrogen Oxide, Ammonia, Nitrogen deposition and acidification) but it is not the case that this is as a result of the Proposed Development either alone or in combination with other plans or projects.

For all pollutants but Ammonia (NH₃) the 2033 with development in-combination scenario would be lower than the 2019 baseline. In the case of NO_x, significantly lower. In the case of acid deposition, the maximum value at the SAC does not exceed the critical threshold under any scenario.

There would be continued exceedances of the relevant critical threshold for the other pollutants but those critical thresholds would be breached either with or without the Proposed Development. It therefore does not follow that there would be significant exceedances of pollutants as a result of the Proposed Development, as NE's objection states.



Table 2 - Critical threshold exceedance maximum distances

Pollutant	Maximum distance in SAC at which CT is exceeded			
	2019 (no development)	2033 (no development)	2033 with development in combination	2033 with development in combination and exceedance is >1% of CT
NO _x	190 m	40 m	50 m	50 m
NH ₃	40 m	50 m	50 m	50 m
N deposition	Whole transect	Whole transect	Whole transect	100 m
Acid deposition	No exceedance	No exceedance	No exceedance	No exceedance

The exceedance of 1% of the critical threshold for NH₃ levels on the margins the SAC boundary is a highly precautionary trigger (as per Natural England's 2018 guidance) for the Competent Authority to carry out an Appropriate Assessment, and the IHRA provides the information necessary for this Appropriate Assessment.

The exceedance itself does not indicate there is an Adverse Effect on Integrity. The Competent Authority needs to consider:

- the minimal extent of the SAC affected (i.e. no exceedance adjacent to the A40 and exceedance <10m in to the SAC adjacent to the A34);
- the baseline exceedance alongside current favourable condition of the SAC;
- the contribution of the Proposed Development (and traffic sources in general, which are minor and decreasing) to total NH₃ levels; and
- whether the proposed development compromises the conservation objectives of the SAC.

On the last of these points, it should be noted that the air quality-related conservation objectives for the SAC is failed largely due to agricultural emissions of NH₃, with or without the Proposed Development. Meeting the air quality conservation objective is therefore largely dependent on improvements to local agricultural practice, which are not affected by the Proposed Development.

In-combination assessment

NE have requested that the Proposed Development is considered alongside *"likely increases in AADT on the local road network as a result of Local Plans being put forward currently that are at Regulation 18 or 19 stage..."*

OD has been provided with advice from Town Legal stating that this request is not justified and does not have a sound legal basis. Please find this advice letter enclosed.

The above notwithstanding, the following is noted:

- The OCC LTCP targets a 25% reduction in vehicular traffic across the County by 2030. The Proposed Development will contribute towards the delivery of infrastructure



necessary to achieve this. While there are expected changes in the spatial pattern of trips, the global level of traffic movement is not expected to grow;

- The Oxford City Regulation 19 Local Plan consultation and the Cherwell Local Plan Review 2040 have both been supported by Stage 2 assessments which have concluded there would be no significant adverse effect upon the integrity of the Oxford Meadows SAC, as referenced above; and
- Oxford City, the Vale of White Horse and South Oxfordshire local authorities are all consulting on a level of housing growth that is lower than their adopted plans.²

IHRA Approach

Both exceedances of the 1% critical load and the distance of exceedance threshold have been considered. This is in accordance with paragraph 5.38 of NE's internal guidance: *"when considering the impacts of a plan or project in relation to critical levels, it is important to understand the distance from the road that the critical level is exceeded and whether this represents a credible risk to qualifying features."*

It is noted that paragraph 5.42-46 of the same internal guidance advises considering whether there is evidence to indicate that background levels are decreasing. As set out in the IHRA, this is the case for NOx and N deposition.

NE's internal guidance states on page 10:

Staff should be aware that, in accordance with Government's guidance on competent authority co-ordination when applying the Habitats Regulations, it is generally permissible for a competent authority to adopt, if it can, the assessment, reasoning and conclusions of another competent authority relating to the same plan or project, thus avoiding unnecessary duplication of effort. Staff are therefore encouraged to advise competent authorities to first check, at an early stage, the extent to which this might apply in relation to assessing road traffic emissions from an individual proposal. For example, the likely effects of a development proposal might have already been considered by a HRA of a Local Plan made by the same or another competent authority. (my own emphasis)

The recent nature of the HRA work carried out by out by both Cherwell District Council and Oxford City Council is significant in this regard. There is no reason to suggest that the HRA work carried out cannot or should not be relied upon for the purposes of Cherwell carrying out their appropriate

² In the case of South Oxfordshire District Council, the reduction is significant, going from 1,544 homes per year across the adopted plan period to 853 homes per year in the new plan period. In total, circa 25,000 fewer homes are being planned for across Cherwell, Vale of White Horse, South Oxfordshire District Councils and Oxford City Council.



assessment of the Proposed Development. NE's objection does not recognise that this work has been carried out, nor does it engage with the conclusions that multiple competent authorities have reached.

The [Government's guidance](#) is clear that competent authorities should be strategic and deal "*deal with proposals that all have similar risks or impacts in the same way.*" The exceptional approach that Natural England is taking to this project contradicts Government's guidance to competent authorities. As stated above, Natural England have not raised objections on any other PR sites, nor any other large scale proposals in the area.

As is noted in Town Legal's advice letter, the advice of the JNCC is clear that strategic trunk roads (i.e., the strategic road network) should be excluded from project level HRAs. The A34 is part of the strategic road network. That guidance is more recent (2021) than NE's own internal guidance (2018).

Reliance on Previous Information

The IHRA uses data that was prepared as part of the environmental impact assessment that supported the OPA. The air quality assessment that formed part of the EIA used trip rates and traffic data derived from the aforementioned VISSIM model formulated with OCC. It is up to date and its outputs verified by an independent auditor appointed by OCC.

Proposed Avoidance and Mitigation Measures

The primary mitigation measures for avoiding harm are the delivery of sustainable transport infrastructure to help achieve the goals of the OCC LTCP. The sustainable transport infrastructure improvements are the result of robust modelling of the strategic network by OCC, in coordination with OUD and other PR site developers. The Proposed Development is essential to delivering these improvements, both through financial contributions and direct delivery.

As noted by Town Legal, the mitigation measures suggested by Natural England are strategic interventions that require either local or upper tier authorities to deliver. In any case, such mitigation measures would not be reasonably related to the Proposed Development because exceedances of critical thresholds at the Oxford Meadows SAC are not as a result of the Proposed Development.

3 Conclusion

The crux of Natural England's objection is that "*the air quality modelling show significant exceedances of pollutants within the SAC as a result of the development both alone and in-combination with other plans and projects*" (my own emphasis). The information provided in this letter and in the enclosed documents make clear that this is not the case. Whilst there will be significant exceedances of critical thresholds of some pollutants in parts of the SAC, these largely result from sources other than the Proposed Development, either alone or in combination. Successive HRAs carried out by competent authorities and have come to the same conclusion: there would be no significant effects on the integrity of the Oxford Meadows SAC either alone or in combination with other plans and projects that would undermine the site's conservation objectives. In accordance with the Government's guidance to



competent authorities, there is no reason that CDC should not be able to rely on either their own HRAs or those of neighbouring authorities in coming to a decision on the Proposed Development.

We therefore urge Natural England to reconsider their position in relation to the OPA and to remove their objection.

Yours sincerely

Gregory Blaxland
Associate

enc. Letter from Town Legal (dated 05 April 2024)
cc. Tom Clarke (OUD)
Matthew Sharpe (Quod)
Simon Ricketts (Town Legal)
Paul Arnett (Town Legal)
Dr Tom Flynn (BSG Ecology)

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11 April 2024

Private & Confidential

Dear Gregory

Begbroke Innovation District – Cherwell District Council (23/02098/OUT) –objection by Natural England

1. You have asked for our views in relation to legal aspects of Natural England's ("NE") letter to Cherwell District Council ('CDC') dated 8 March 2024.
2. For the reasons set out below, we consider that a number of assertions in the letter are ill-founded.

Natural England letter of 8th March

3. NE's letter makes the following points by way of an objection to the IHRA. First, NE is concerned with the results of the air quality modelling undertaken and notes that the results in the IHRA appear to show that there are significant changes to annual average daily traffic ('AADT') on both the A34 and A40 as a result of the Proposed Development. Second, the letter notes that the exceedances for nitrogen deposition, in particular, are considered high whether considered alone or in combination with others plans or projects. Third, the letter states that the IHRA would have anticipated assessment for acidification being reviewed in the light of the emerging local plans. Fourth, as to the cumulative effects assessment ('CEA') components of the IHRA, the letter considers that it should also have considered cumulatively likely increases in AADT on the local road network arising from other plans (e.g. the Oxford City Reg.19 Local Plan consultation, the Joint South and Vale Local Plan 2041 (Regulation 18) and the Cherwell Local Plan Review 2040 (Regulation 19)) and other projects (Bayswater Brook proposals for 1,450 dwellings). As such, NE considers that the approach to air quality assessment in the IHRA is contrary to its NEA001 Guidance and requires further information to be provided by OUD with regards to the approach to air quality assessment reflected in the IHRA. Furthermore, the letter considers that the air quality data from the 2018-2020 evidence base used for the recently adopted local plans in Oxfordshire is out of date and should not be relied upon to inform the air quality assessment for the BID proposals.
4. From a planning legal perspective, we make the following (non-exhaustive) points in response.
5. First, and as agreed with the highway authority, Oxfordshire County Council ('OCC'), the traffic model only included traffic in the future baseline that is committed development within the modelled area but the overall background growth (based on 20 years of historic data and the Local

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Transport and Connectivity Plan ('LTCP' targets) has been agreed with OCC to be 0%. As such, this means that the spatial pattern of trips changes due to the committed development and new accesses but the overall global level of traffic in the model does not change. Therefore, adding further Local Plan traffic would not change this agreed approach – OUD would still be modelling 0% growth. The objective of the LTCP is a 25% reduction in traffic and, therefore, modelling 0% growth is considered not only appropriate but an entirely robust approach to take.

6. Second, it is important to note that OUD submitted its Application for the Proposed Development in July 2023 which was before either the Oxford City Regulation 19 consultation (November 2023) and/or the Joint South and Vale Local Plan 2041 Reg. 18 consultation had started (January 2024). Therefore, even if (which we do not consider is correct for the reasons set out below) it was appropriate to include such emerging plans in the scope of the CEA exercise, at the time of submitting the Application, the Regulation 18 and Regulation 19 consultations information was not in the public domain. As such, and entirely properly, the cumulative traffic impact assessment considers the cumulative effects of the Proposed Development with the other allocated PR sites in the LPP1PR. It was not the role of OUD in its IHRA and/or transport planning material to be casting around for unforeseeable and inchoate plans and projects to include in scope of its CEA which is unnecessary and disproportionate and contrary to the case law on the scope of CEA (see further below).
7. Third, in addition to the plan level HRAs undertaken by CDC for the LPP1PR and LP Review plans as noted above, it is important to note that the HRA prepared by Oxford City Council from November 2023, concludes that their Local Plan 2040 is not, either alone or in combination with other plans and projects, likely to have a significant impact on the integrity of the Oxford Meadows SAC in relation to air quality. This HRA relies on the same conclusions reached by CDC in their latest HRA, as well as the HRA produced by OCC for their LTCP, which showed a reduction in background concentrations of NOx levels over time.
8. Fourth, the references in the letter to the need to consider the A34 trunk road at the project level is directly contrary to the Joint Nature Conservation Committee Guidance ('JNCC') the Guidance (<https://data.jncc.gov.uk/data/6cce4f2e-e481-4ec2-b369-2b4026c88447/JNCC-Report-696-Main-FINAL-WEB.pdf>) which states, for present purposes, at page 20 that "When undertaking a project level HRA to consider the effects of an individual development proposal on traffic related emissions on the existing road network, strategic 'trunk roads' should be excluded from the scope of the assessment. The trunk road network forms the core of the national transport system. Trunk roads are central to long distance travel and connectivity across the UK and traffic patterns on trunk roads are a consequence of predicted growth across the UK generally. It is not practically feasible to include a trunk road when considering the indirect effects of traffic from an individual development proposal. The effects of development on traffic flows on trunk roads are more appropriately taken into account as part of national and regional strategic plan level HRAs".
9. Fifth, NE's suggestion that both the IHRA by OUD and AA by CDC needs to consider the Regulation 18 and 19 consultation plans as referenced above is contrary to the correct legal position for the scope of the CEA requirement for HRAs and AAs which is required to consider the cumulative effects of "other plans". In this regard, the Commission Guidance on Article 6 of the Habitats Directive is relevant. While this states that the reference to plans in the Habitats Directive (transposed into domestic law in Regulation 62 of the Habitats Regulations) includes "proposed plans", such proposed plans are defined as "plans which have been actually proposed, i.e. for which an application for approval or consent has been introduced". Whereas, of course, as in the case of the Oxford City Regulation 19 consultation and/or the Joint South and Vale Local Plan 2041 Reg. 18 consultation they are plainly just consultations on early stage emerging draft plans and are not actually

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“proposed” plans as defined in the Commission Guidance unless and until they have submitted to the Secretary of State for examination. As such, and applying the Commission Guidance, neither the emerging draft Oxford City and/or Joint South and Vale plans are in scope of the CEA.

10. Furthermore, relevant case law has concluded that cumulative assessment should not cause undue delay to the planning system and the obligation is only to consider cumulative impacts so far as is reasonably possible (R (Together Against Sizewell C Ltd v SSESNZ [2023] EWCA Civ 1517). It has held that a disproportionate interference with both the public interest and private rights of the developer would occur if, as NE seems to be suggesting in its letter, every relevant project and/or plan had to be definitively assessed before any of them could be allowed to proceed. Both the emerging draft Oxford City and the Joint South and Vale plans, which are both at very early stages in their respective plan processes, are far too inchoate and, in practice, impossible to assess in relation to individual projects such as the Proposed Development. As such, and as the law wholly permits, the scope of the CEA for the HRA and AA for the Proposed Development should be assessed as undertaken in the IHRA (which draws on the plan level HRAs and AAs) and, if consented, in due course, other such plans and projects would, in the usual way, be able consider the impacts of their plans and projects with the Proposed Development forming part of their baseline. Accordingly, it was a wholly reasonable and proportionate approach for OUD to take to regard the other PR sites as cumulative projects and not to cast around and include in scope of the CEA for the IHRA other such inchoate plans and projects.

Conclusion

11. For the reasons set out above, we disagree with the premise of NE’s objection. The conclusions of the relevant plan level and project level HRAs and AAs are clear which is, in summary, that there are likely to be exceedances of nitrogen in the Oxford Meadows SAC but these are not exceedances arising from the Proposed Development and will exist without the Proposed Development.
12. In addition, and as illustrated above, the Proposed Development is fully planned growth and has been the subject, among other things, of robust plan level HRAs and AAs. In this regard, NE’s current project level position is particularly surprising when at the plan level in the LPP1PR HRA it signed a Statement of Common Ground with CDC agreeing how the HRA impacts were assessed by CDC, the approach to which was adopted at the project level in the IHRA.
13. Furthermore, and as indicated above, the lawful scope of the CEA for the project level IHRA and AA is not required to include either (a) the A34 trunk road and/or (b) the inchoate Regulation 18 and Regulation 19 draft emerging plans- which are not “proposed plans” for the purposes of the Commission Guidance/Habitats Regulations.
14. Therefore, if it is considered that further mitigation measures are considered necessary to address such air quality exceedances then this could and should be potential strategic level mitigation measures to be considered at a strategic level in plan level HRAs and AAs and not in project level HRAs and AAs in circumstances when they are not project level impacts arising as a consequence of the project being assessed being the Proposed Development. Indeed, it is conspicuous that no project level mitigation is mentioned in the letter which is, of course, because the exceedances are a strategic level issue required to be addressed at a strategic level.
15. Overall, therefore, in our view we consider that it would be appropriate for NE to reconsider its position such that it withdraws its project level objection to the IHRA and enable CDC as competent authority to carry out its project level AA for the Proposed Development.

Gregory Blaxland

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16. We are content for this letter to be shared with NE and to respond to any queries arising. In the event of an appeal becoming necessary because of a result of a maintained objection, you would no doubt wish to draw this correspondence to the Inspector's attention, among other things, for the purposes of a costs application.

Yours faithfully

A handwritten signature in grey ink that reads "Town Legal LLP". The script is cursive and somewhat stylized.

Town Legal LLP