

Town and Country Planning Act 1990 (as amended)

Section 78 Appeal

PINS reference APP/C3105/W/17/3189611

(Cherwell District Council Reference: 15/00837/OUT)

by

Gallagher Estates, Charles Brown & Simon Digby

Site at

Gavray Drive, Bicester, OX26 6SU (nearest)

PROOF OF EVIDENCE

of

DOMINIC WOODFIELD

BIODIVERSITY AND RELATED POLICY MATTERS

May 2018

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Appendices DW1-DW16 in separate bound document

1. WITNESS CREDENTIALS AND BACKGROUND

- 1.1 My name is Dominic Woodfield. I am a professional environmental planning and ecological consultant of 24 years standing, and Managing Director of Bioscan UK Limited, a long-established environmental consultancy held in high regard by both the private and public sector. I am a Chartered Ecologist (CEcol), Chartered Environmentalist (CEnv) and a full member of the Chartered Institute of Ecology and Environmental Management (MCIEEM). The majority of my work is assisting developers such as the appellants with the resolution of policy or legal conflicts with environmental resources, as well as conducting environmental assessments at all scales up to formal SEA, EIA and Habitats Regulations Assessments, including for projects falling within the NSIP regime. I have provided expert ecological evidence to over thirty public inquiries and public examinations, as well as to the High Court, Court of Appeal and First Tier Tribunal. I have delivered presentations on brownfield ecology and wind energy assessments to Inspector Training events held by PINS and have led training workshops and seminars for other bodies, including town planners, companies and to masters students studying Biodiversity at Oxford University. I have also carried out peer-reviewed studies for Natural England, including studies of the plant ecology and community dynamics of ancient lowland meadows¹, a habitat with which I have a very high degree of familiarity.
- 1.2 I have maintained a close and long-standing interest in the development proposals for the land at Gavray Drive, Bicester ever since the appellants first applied for planning permission for residential development on the site in 2004. My previous involvement includes as an independent expert witness in previous inquiries and Examination hearings and as a successful litigant in the High Court. The history of my involvement, and the relevance of that history to the current appeal proceedings, is set out more fully in Appendix DW1 in order to assist the Inspector with putting my evidence into the appropriate context.
- 1.3 At all times I have sought to work towards a sensible compromise between development and protection of the rare combination of habitats and species that makes much of this site special, not just scientifically, but to a burgeoning number of local people too. I want to see a sensible resolution of the tension between those two objectives, and I share the Council's obvious frustrations with the appellants' approach to this site. I believe that attitude is the principal reason why the issues in question have not been resolved to the satisfaction of all parties before now.
- 1.4 My proof of evidence seeks to expand on the issues set out in brief in my statement of case, and to thereby provide support to my case that this appeal should be dismissed. I

¹ Woodfield, D. M. G. (2010b). *Lugg Meadows Vegetation Study*. Natural England Commissioned Reports, Number 071

² Some relevant information on these matters is however provided in the case history I attach at Appendix DW1

also respond to various matters that have emerged latterly, including the direction of emerging national policy on nature conservation (including the draft replacement NPPF), the further information provided by the appellants in relation to their submitted Biodiversity Impact Assessments using offsetting metrics and the ES Addendum recently submitted by the appellants.

- 1.5 As in my statement of case, I use the terms Gavray Drive West (GDW) and Gavray Drive East (GDE) to refer to the two parts of the Bicester 13 allocation site that are separated by the Langford Brook (with GDW being the Appeal Site).

2 SCOPE OF EVIDENCE

- 2.1 My Statement of Case addresses the policy context for the principle of development on the land encompassed by Policy Bicester 13 of the adopted Cherwell Local Plan. In doing so it corrects some errors advanced in the appellants' statement of case about that context and the background to that Policy. It also briefly sets out how, in the absence of the management plan required by Policy Bicester 13, the appeal proposals would (even considered alone) give rise to 'net loss' of biodiversity over the wider Policy 13 allocation site and how this would not accord with Policy Bicester 13, nor indeed Local Plan policies ESD10 and ESD11, nor national policy enshrined within the NPPF.
- 2.2 In **Section 3** of this proof of evidence, I will expand on the crucial test of biodiversity loss or gain in further detail, and demonstrate why the appellants' case that 'net gain' can be achieved on both GDW and GDE does not withstand scrutiny. I discuss how 'net gain' or 'net loss' of biodiversity can be measured, and present evidence as to how the approach adopted by the appellants has been incorrectly applied, with the consequence that the results are not reliable (even without the necessity of applying due cautions to what is a blunt system). I show how when omissions or inaccuracies are duly corrected, even the appellants' chosen system shows a "net loss to biodiversity" result that is consistent with the professional opinion of not only myself but all relevant consultees and stakeholders. I also provide evidence by reference to the same system as to how allowing this appeal would have further knock on consequences in compromising the potential for a future phase of development on the remainder of the Bicester 13 allocation site, to achieve a 'no net loss' or 'net gain' result.
- 2.3 In **Section 4** of my proof I briefly discuss the direction of newly emerging government policy, including the draft replacement NPPF, and the extent to which this has a bearing on the appeal case.
- 2.4 In **Section 5** of my proof I comment, again briefly, on the appellants' addendum ES and whether it materially changes the merits or otherwise of the appellants' case. I also draw attention to how it does not bring the submitted environmental information up to conformity with relevant standards and how this has resulted in omission of matters capable of being a material consideration.
- 2.5 Finally, in **Section 6** of my proof I revisit the Council's reasons for refusal and whether they are justified, and offer my overall conclusions as to the compliance, or lack of, of the appeal proposals with local and national policy.

2.6 In the course of defining the scope of my evidence I have liaised with other Rule 6 parties (and have sought to liaise with CDC) in order to minimise overlap. Consequently I do not intend to go into any great technical detail about the high intrinsic ecological interest of the eastern part of the Policy Bicester 13 site (including but not limited to the Local Wildlife Site), nor the degree to which that land is valued by local people (those being matters seemingly not in any substantive dispute and/or dealt with by others)². Nor do I intend to provide detailed technical evidence on the negative impacts those interests stand to suffer in the absence of a management plan being secured for the LWS as part of the appeal scheme (evidence on which is I understand being provided by BBOWT). However if it is necessary for me to engage on those issues in oral evidence I will do so.

² Some relevant information on these matters is however provided in the case history I attach at Appendix DW1

3 NON-COMPLIANCE WITH THE “NO NET LOSS” (NPPF) AND “NET GAIN” (POLICY BICESTER 13/ESD11) TESTS

3.1 Introduction

3.1.1 In my Statement of Case I touched upon the appellants’ use of ‘Biodiversity Impact Calculators’. The appellants seek to rely on these to support their case that the appeal proposals comply with the specific policy requirement for development on the Bicester 13 site to ensure ‘no net loss of biodiversity’ generally (per the NPPF) and in this particular case, ‘net gain’ (as required by Local Plan Policy Bicester 13 and through Policy ESD 11). I outlined my case that the appellants’ claim of no net loss/net gain for the appeal proposals (both in isolation and in respect of future development phases) and the stated position of ‘satisfaction’ of the Council’s ecologist (as referenced in the quote from the officer’s report at para 3.10 of the appellants’ SOC) was open to question and/or challenge, and I undertook to elaborate on this issue in witness evidence. I now do so in this section of my proof.

3.2 The use of ‘Biodiversity Impact Calculators’

3.2.1 Biodiversity impact calculators seek to simplify the process of ecological impact assessment and make it more objective by using a form of numerical accounting. This is based around the application of scores to different habitat types to represent their intrinsic habitat interest. These scores can then be multiplied by the area of that habitat to provide a cumulative numerical value for a given area of land. In the context of assessing impacts from development, such calculators or metrics can be used to provide a simplified balance sheet of habitat losses and gains from changes in land use, taking into account influencing variables such as ‘lead-in’ time for the creation of new landscaping or compensatory habitats, and the varying difficulty and risks associated with successful creation of different types of habitat.

3.2.2 The origin of the system lies in the interrelated concepts of ‘biodiversity offsetting’ and ‘habitat banking’, where developers can theoretically ‘offset’ damage to habitats on a site through trading or purchasing ‘conservation credits’ with the intent of delivering habitats of equivalent value elsewhere. In this context, biodiversity impact calculators or metrics provide a means to quantify impact into a number which can then be translated into a ‘price’ - being the number of ‘conservation credits’ needing to be purchased to offset that impact. The concept originates from overseas, and from 2012-2014 was trialled by Defra and Natural England in six biodiversity offsetting pilot areas in England (one of these being Warwickshire). Following the trial, the Government elected not to afford offsetting any statutory or official policy basis, but the accounting tools associated with it have nevertheless been appropriated and adopted by a number of local authorities as an ancillary tool to assist in testing

development proposals against national and local policies for biodiversity, in particular policies anchored in avoiding ‘net loss’ or delivering ‘net gain’.

- 3.2.3 The potential benefits of an accounting-type system for repeatability, consistency, transparency and accessibility (in particular in terms of ease of understanding by non-experts) are beyond dispute. It is this that has led to the enthusiastic uptake of biodiversity calculators by more and more planning authorities up and down the country. Use of such calculators is attractive as it can simplify and speed up the process of weighing biodiversity into the planning balance. It can help decide whether planning proposals are compliant with national and local policy objectives and can thus make the job of development control officers in particular simpler, easier and (crucially) faster in resource-strapped times.
- 3.2.4 However, biodiversity offsetting generally, and the use of biodiversity calculators specifically, is not without controversy. Many in the UK conservation sector expressed alarm at the Government’s initial enthusiasm for the concept. At the outset it was accused of being a ‘licence to trash’ by some, while others argued (and continue to argue) that it is not possible to “monetise” or “commodify” natural capital. The concern of such parties peaked when the then Secretary of State for the Environment, Owen Paterson, appeared to suggest in 2014 that losses of habitats such as ancient woodland, generally regarded as ‘irreplaceable’ (including in national policy), could be offset. Many ecological practitioners have expressed more specific and technical concerns that the calculators in current use can grossly over-simplify value judgments, for example in being unable to take into account individual species. Common habitats that are known to support rare species (such as a blackthorn hedge that supports black hairstreak butterflies) are therefore at risk of being undervalued in the accounting process, as compared with more established forms of evaluation such as those that still form the basis of formal EcIA³. Other critics point to the heavy reliance on sometimes very optimistic assumptions about both the ease of creating replacement habitats of equivalent value to those lost, and the time taken to do it.
- 3.2.5 For such reasons, while the use of calculators is broadly accepted to be of use in ecological impact assessment (and in my professional capacity I am regularly required to use them), it is accepted at the same time that the outputs have to be treated with significant caution and should only be used as a first step that then needs to be calibrated by reference to any non-standard species interest. It is also accepted that while calculators can support expert technical assessment, they are not a substitute for it. Even where calculators are in established use, they are generally under constant refinement in an attempt to improve them. I am aware for example that in Oxfordshire a system bespoke to the county is currently being designed by the Thames Valley

³ CIEEM (2016) Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater and Coastal, 2nd edition. Chartered Institute of Ecology and Environmental Management, Winchester.

Environmental Records Centre to try and address problems of geographical incompatibility with systems adopted from elsewhere.

3.3 The Warwickshire calculator and its application to the appeal proposals

- 3.3.1 The biodiversity impact calculators in common use today are invariably either an interactive on-line tool or an Excel spreadsheet with drop down menus and cells for input values. The latter approach is in established use in Warwickshire. In early 2017, apparently on the recommendation of Cherwell District Council's outsourced ecological advisor (at the time the local government ecologist for Warwickshire due to Cherwell's own ecologist being on maternity leave), it was used by the appellants to assemble and submit evidence that the appeal proposals on GDW would not only result in no net loss to biodiversity on their own terms, but would also (by reference to an indicative masterplan for GDE) not prevent a similar positive outcome being achievable on the remainder of the Bicester 13 allocation site.
- 3.3.2 The Warwickshire system is one of those that uses drop-down menus to allow one to select from a pre-defined list the different habitats present on a site that is being assessed (the list closely allied to Phase 1 habitat survey terminology), and to rate the quality of these habitats by reference to 'distinctiveness' (i.e. how good an example of the type is it) and 'condition'. Once this has been done for all habitats, and the extent of each habitat calculated, an output figure of 'Site Habitat Biodiversity Value' is delivered⁴. One then goes through the same process for what will be left after the site is developed, taking into account landscaping and other measures, including habitat creation or enhancement. This gives a second output figure. In simple terms, the difference between the 'before' and 'after' number provides a net positive or net negative result which can be used to test whether the development delivers 'no net loss', 'net loss' or 'net gain'. Taking it a bit further, one can use the deficit indicated by the calculator, when one is in a net loss position, to help decide how much habitat may need to be delivered elsewhere (in other words, biodiversity offsetting).
- 3.3.3 Using this system, calculator outputs for GDW and GDE were provided to CDC by the appellants in March 2017 under the title Biodiversity Impact Assessments (BIAs). For ease of reference I have included these submissions in full as Appendices DW2 and DW3 to this proof of evidence. The net change after development was calculated by reference to the ES parameters plan for the appeal proposals on the land at GDW, and to an indicative masterplan for the land at GDE. I have attached these plans at Appendices DW4 and DW5 respectively. By reference to the "bottom line" outputs from the calculator, both the appellants' BIAs show a positive output – in other words 'no net loss' and indeed 'net gain'. The 'workings out' behind these outputs could not

⁴ Note the emphasis on 'Habitat'. This is because the system does not and cannot account for species, even where rare and/or protected species are known to be present and add substantively to the value of the site in question, as is the case at Gavray Drive. It is one of the many drawbacks of the system.

however be tested as both BIAs were submitted to CDC as non-interactive print-outs with little supporting justification other than a few notes on the spreadsheet.

3.4 Efforts to obtain essential contextual material to understand the appellants' BIAs

3.4.1 The Inspector will be aware from correspondence since the opening of the inquiry process that I have repeatedly sought to understand from the appellants (and the Council before them) how they arrived at the calculator outputs indicated in their submitted BIAs. I think it is relevant to touch on my pursuit of that information as I believe the inability to understand the calculator outputs played a significant role in CDC officers recommending the application for approval in 2017.

3.4.2 My pursuit of that information began shortly after the original submission of the BIAs in March 2017, and prior to the planning decision. I sought this information as I found that these outputs conflicted with my own professional assessments as both a highly experienced ecologist and a professional practitioner in environmental impact assessment. For example, the habitat classifications did not appear to me to accurately reflect either the situation on the ground nor indeed that in the submitted environmental information. The logic and justification for the outputs could not be understood without essential background explanatory material (in particular the maps used to derive areas for each habitat), and I recognised that if this was the situation I faced, even with my extensive experience of these tools, it would certainly be the case that the process by which the BIA outputs were arrived at would be completely unintelligible to others, including officers and interested members of the public. Given that officers at the Council appeared, from my correspondence with them, to be minded to place significant weight on the appellants' submitted calculator outputs, I suggested to the Council that this was a matter that required both greater transparency and due publicity and consultation. I also requested via the Council the background information to the inputs so that they could be independently tested and verified, and expressed concerns that without such contextual information, the outputs could not and should not be taken simply at face value by officers.

3.4.3 It is unfortunate that I then had to enter into a period of protracted correspondence with the Council's case officer to be satisfied firstly that the Council intended to consult on the BIA submissions at all (as material relevant to the determination process), and secondly to argue the case that the appellants' 'workings out' behind the BIA outputs needed to also be obtained and publicised in order for any independent sense to be made of the calculator outputs. This rather lengthy correspondence trail is attached at appendix DW6. Officers did, ultimately, decide to consult on the material, but in respect of the background essential to the understanding of it, I was eventually told, in an e-mail from the case officer dated 19th April 2017, that "*With respect to the BIA submitted in relation to development proposed on the application site [the current appeal site], the information necessary to adequately interpret it can be found within*

the BIA itself (and associated guidance notes) as well as in the GIS habitat information contained in the Environmental Statement” and that “No further additional information will be supplied by the applicant on this matter”. (Appendix DW6)

- 3.4.4 I explained to the officer in return correspondence how the ES material he was referring to did not actually permit understanding of the BIA outputs, but the position of officers (I assume based on that of the appellants) appeared final. This left me with no option other than to try and second guess how the BIA outputs had been arrived at through a time-consuming and unavoidably imprecise process of reverse calculation. Despite these drawbacks, I found clear grounds in the course of this exercise to further question the veracity of the calculator outputs, and made these known to officers in further correspondence.
- 3.4.5 I also brought these concerns to the attention of the Warwickshire ecologist David Lowe, who up to that point officers were claiming was ‘satisfied’ with the BIA outputs, despite his predecessor at CDC (by then on maternity leave) maintaining a position of objection to the scheme. Mr Lowe responded via e-mail on 20th April 2017 saying *“it is becoming apparent that public access on the neighbouring LWS needs to be restricted in order to maximise its biodiversity potential (for all interested biodiversity stakeholders)”*. On the same day I sought absolute clarification from Mr Lowe’s that his advice should be taken by CDC as indicating *“the need for provision for secured and funded management of the LWS at Gavray East to be an integral part of any permission for 15/00837/OUT”* and he responded the same day to say *“This is exactly what my advise (sic) is and is being cemented into the applicant’s understanding of future requirements. The ‘front-loading’ of this work is also being considered”* (Appendix DW6). I draw the Inspector’s attention to the position this conveys as compared with the suggestion, in the appellants’ statement of case, that Mr Lowe’s final position was one of satisfaction. I have since further established that Mr Lowe was not provided with copies of the maps I sought and which have only recently been provided by the appellants, showing the areas of the various habitats, and he was not made aware in his discussions with the appellants that they did not control the entirety of the land for which enhancements were being claimed (Appendix DW7).
- 3.4.6 Having received confirmation from Mr Lowe in April last year that his advice to CDC was that a management plan for the LWS should be provided, it appeared that a consistent position had been reached amongst all ecology consultees and stakeholders: this was that a management plan for the LWS was required if the appeal proposals were to be policy compliant. However, the case officer at CDC, who had been copied in to the above-quoted correspondence with Mr Lowe on 20th April 2017, stated in an e-mail on the same day that *“Officers are currently not of the view that it is necessary for an ecological management plan or funding of any kind to be secured in relation to the adjacent LWS as part of this planning application”* (Appendix DW6). Despite

further exchanges of correspondence challenging the officer's grounds for taking that position, and including the submission of further evidence of the need for secured management of the LWS from multiple parties, that position was maintained by officers up to determination of the application. It is to the planning committee's credit that they saw the policy compliance problems more clearly than officers, and took a different view.

3.4.7 The Inspector will be aware that I raised this issue of the need for all stakeholders to understand the BIAs again in January and February 2018, when in the preparation for this appeal inquiry, I repeated the requests for the background material essential to the understanding of the calculator outputs. This time, I requested the material from the appellants via the appeal case officer. I did so as it was clear the appellants continued to seek to rely on the BIA outputs in making their case that the appeal proposals should be allowed. Once again, I received an unsatisfactory answer seeking to rely on the ES material, this time from the appellants' agent (David Keene e-mail of 5th Feb 2018). Ultimately I was left with no option but to draw attention in my Statement of Case and in separate correspondence to the hindrance to the inquiry process that this continued withholding of essential information posed. Following submission of my SOC, I finally received (on 1st March 2018) and via copy of a letter and attachments sent to PINS from David Lock Associates, two drawings (drawing no.s edp0124_d123 and edp0124_d124) stated to be "Biodiversity Impact Assessment plans" that "set out the area and linear measurement calculations which were used as a basis for the BIA calculations". It had taken almost exactly one year to obtain this information. It has not been explained why this information was not made available to David Lowe in March 2017.

3.5 Critique of the Appellants' Biodiversity Impact Assessments

3.5.1 The Biodiversity Impact Assessment plans (drawing no.s edp0124_d123 and edp0124_d124) are reproduced at Appendix DW8. In the first instance I have been able from these to check, from the classifications and area measurements, that they do tally with the input figures in the appellants' submitted BIAs, albeit that a glitch in the Warwickshire calculator means that small deviations in numerical outputs are observed each time the calculator is re-run⁵.

3.5.2 For each of the two BIAs submitted by the appellants (the one for GDW/appeal site and that for GDE), there are three critical questions that need to be asked in order to determine the weight that the calculator outputs should be given as evidence in support of the appellants' case. These three questions are as follows:

⁵ These appear to relate to inconsistent rounding of decimal places by the program. However the resulting discrepancies are very minor in terms of effect on outputs (usually no more than 0.1) and therefore not especially significant for the purposes of the matters before the appeal nor for discussing and understanding the overall BIA outputs.

- Do the calculator inputs accurately reflect the baseline conditions and existing value?
- Are the calculator inputs for the post-development scenario accurate and/or realistic?
- Does the impact calculation factor in indirect effects on adjoining land (e.g. from recreational pressure)?

3.5.3 I will explore each question firstly in respect of the appeal proposals on GDW and then the indicative masterplan for future development on GDE.

3.6 The BIA for the Appeal Proposals (Gavray Drive West)

1) Do the calculator inputs for GDW accurately reflect the baseline conditions?

3.6.1 The answer for the GDW calculator is not entirely, but in comparison with the much more fundamental problems I will come on to, this is a comparatively minor criticism. The main problems appear to be with evaluation of linear habitats, including an existing hedgerow which (being known to support the scarce white letter hairstreak butterfly) arguably merits a greater value attributed to it than afforded by ‘medium’ distinctiveness and ‘poor’ condition. Similarly, the 250m or so of the Langford Brook and adjoining vegetation that falls within the Appeal Site arguably merits higher than ‘medium’ distinctiveness and ‘poor’ condition given that it forms part of the designated LWS – a material fact that appears to have escaped the appellants’ attention (see section 5 of my proof). However the effect of such bias on the BIA output figure is relatively slight. Indeed the modest intrinsic ecological interest of GDW in the baseline state, it being dominated by an arable field, is not a matter in particular dispute, and indeed I and others have made the case that the density of development here ought to be looked at again and increased so that more of the Bicester 13 housing allocation is delivered on this lower value part of the allocated site. In short, misclassification of the baseline conditions is not the major problem with the BIA output for GDW. Of far greater influence in biasing the BIA output for the appeal proposals is the overly optimistic assumptions and omissions discussed at 2 and 3 below.

2) Are the calculator inputs for GDW in the post-development scenario accurate and/or realistic?

3.6.2 The answer, in my opinion, is a very clear ‘no’. In order for the appeal proposals to deliver no net loss and the claimed Habitat Biodiversity Impact score of +2.90 (i.e. marginal ‘net gain’) shown in the BIA (Appendix DW2), very heavy reliance is placed on extremely optimistic input data related to the habitats intended to be created as part of the new landscape and open space associated with the appeal proposals.

- 3.6.3 In particular, it is claimed that the development will deliver 1.59ha of ‘semi-improved neutral grassland’. This would amount to over 80% of the area of public open space that, (by reference to the parameter plan at Appendix DW4) is expected to perform multiple amenity and flood compensation/storage functions, including informal and semi-formal recreation areas (hard-wearing turf mixtures for which would be required to perform parkland and ‘kickabout area’ functions), a formal play area (although the current intention is for this to be moved to ‘a position within the residential area’ on the request of CDC (ES addendum para 1.15)) and a significant area of land that will be required for flood storage and will therefore be flooded or waterlogged for periods of the year (as it is at present). The last of these will further increase seasonal use-pressures on that part of the open space that doesn’t flood, and will further increase overspill of recreational pressure into the adjoining LWS.
- 3.6.4 Furthermore, the semi-improved neutral grassland habitat will, according to the notes in the calculator, be created by wildflower seeding into former arable land. The soils here are thus likely to have high soil fertility which is well known to significantly retard the prospects of successful wildflower meadow creation. Appendix DW9 is an extract from the Floodplain Meadows Handbook which details the multiple considerations, pitfalls and challenges in successful creation of new species-rich flood meadow grassland, even without the added factor that would apply here of overlapping demands for use of the same land as public open space. Once factors such as recreational demand and inability to carry out traditional management on recreation sites are added in, it is most unlikely that any significant quantity of semi-improved grassland habitat of substantive biodiversity value can be delivered here.
- 3.6.5 In short, given the multiple functions the open space is intended to perform, the concept that over 80% of it could support wildflower grassland consistent with the description ‘semi-improved neutral grassland’ is optimistic to the point of fanciful. A much more realistic outcome is that this land, which is intended primarily for amenity purposes, will become something close to ‘amenity grassland’.
- 3.6.6 The effect of changing ‘semi-improved neutral grassland’ to ‘amenity grassland’ in the appellants’ calculator is indicated at Appendix DW10. It changes the Habitat Biodiversity Impact Score from a marginal ‘net gain’ (+2.90) result to a ‘net loss’ (minus 4.43). The degree of net loss increases if other overly optimistic assertions are also adjusted to be somewhat more realistic (for example if the target habitat condition of ‘lawns and planting’ is downgraded from ‘moderate’ to ‘poor’ to reflect the more restricted diversity likely to result, the ‘net loss’ figure worsens to -6.75).
- 3.6.7 These corrections indicate that even a slightly more measured and realistic use of the calculator to assess the biodiversity impact arising from the appeal proposals at GDW points to a net loss result. This underlines the importance of the management plan for the adjoining LWS. In other words, delivery of the management plan for the LWS is

essential to avoid the appeal proposals resulting in net loss to biodiversity on their own terms, even without the consideration of off-site impacts I discuss at (3) below.

3) *Does the impact calculation for GDW factor in indirect effects on adjoining land (e.g. from recreational pressure)?*

3.6.8 Critically (and in my contention, fatally), the answer to this question is again an emphatic ‘no’. The appellants’ submitted ES and ES addendum clearly states that there will be a net negative effect on the adjoining Local Wildlife Site that is significant at local level (see e.g. ES addendum para 9.5.18), and that this would only be ‘partially reduced’ by the on-site open space provision (ES addendum para 9.6.18), yet the BIA for the appeal proposals ignores this net negative effect. This is despite the Warwickshire system including a specific section on the first worksheet titled ‘Indirect Negative Impacts’ which allows such effects to be factored in (see non-completed cells in appellants’ submitted version at Appendix DW2). The failure to factor in negative indirect impacts, even where these are identified in the appellants’ submitted ES, further undermines the reliance that can be placed on the appellants’ BIA outputs for the appeal proposals. As a very broad and extremely conservative illustration of the effect on the calculator output of rectifying this omission, Appendix DW11 shows the relevant section of the calculator corrected to include completed sections for indirect negative effects (from recreational and other pressures, such as increased pet pressure) on a limited selection of the habitats on GDE (using the appellants’ own input data from the GDE calculator). The resulting Habitat Biodiversity Impact Score (-17.26) indicates a clear net loss to biodiversity. I stress this is an extremely conservative illustration as not all affected habitats on GDE have been factored in. Thus, the BIA calculator, if completed more correctly, confirms that management of the LWS is required to be secured as part of the appeal proposals in order to combat negative effects from recreational pressure, and that this is necessary in order for the appeal proposals even considered in isolation to have any chance of achieving ‘no net loss’ quite apart from the ‘net gain’ required by Policy Bicester 13.

3.6.9 In conclusion, no reliance can be placed on the appellants’ submitted BIA for GDW as evidence in support of their case that the appeal proposals would comply with local and national planning policy on biodiversity. If the clear errors in the use of the calculators are corrected, they indicate that the opposite is true. Net negative effects on the LWS are indicated in both the appellants’ ES and ES addendum, and (in the absence of secured management to address the indirect impacts on the adjoining LWS) a net loss of biodiversity is the conclusion indicated by the calculator outputs. That is, furthermore, a conclusion consistent with the position of all relevant and expert stakeholders.

3.7 The BIA for future development on the remainder of the Bicester 13 allocation site (Gavray Drive East)

- 3.7.1 Because the appeal proposals represent an advance phase of development on the wider allocated Bicester 13 site, it is necessary to consider whether they would assist or hinder the prospects of future phases achieving compliance with the various overarching design requirements of Policy Bicester 13. The appellants rely upon the submitted BIA for GDE (Appendix DW3) as support for their case that allowing the appeal proposals would not compromise the delivery of a sustainable and policy-compliant future phase of development on the remainder of the allocation site. The reliance that can be placed on that BIA is thus also highly relevant to this appeal and in particular to the determination of whether the Council's RFR1 is justified.
- 3.7.2 GDE harbours much the greater part of the biodiversity interest of the Bicester 13 site. It contains neglected but still readily 'restorable' representations of rare Lowland Meadow habitats comprising unimproved grassland as well as ancient species-rich hedges (some dating back to Saxon times), green lane features representing survivals of a post-Medieval field pattern and areas of marshy grassland with ponds. As well as being one of very few sites nationally that can lay claim to supporting all five British hairstreak species of butterfly, it supports a suite of other scarce and protected species, including excellent populations of reptiles, great crested newts, bats and declining birds. The interest is not confined to the designated Local Wildlife Site. The south-eastern field (for example) supports at least four species of orchid (common spotted, pyramidal, early marsh and bee), plus 'wasp orchid' (a rare variety of bee orchid) and it is possible or even likely that review of the LWS boundaries could result in their being expanded to encompass such areas.
- 3.7.3 I and others, including BBOWT, Butterfly Conservation and Save Gavray Meadows, have long maintained that the appeal proposals, by only delivering 180 units of the 300 unit allocation on GDW, prejudice the ability for a future phase of development on GDE to meet all the policy obligations required of it – in particular the net gain requirement. This has formed a further ground of objection to the appeal scheme in representations I and the other Rule 6 parties (and a further number of local residents) made prior to the refusal of the scheme. While officers may not have taken the same view, it would appear that the planning committee were also not satisfied on this issue given the Council's RFR1 which regards the 'piecemeal' nature of the appeal proposals as 'inappropriate' because "*it leaves the Council unable to satisfactorily determine whether the proposals would enable development across the whole of the site to properly meet the overall objectives and requirements of Policy Bicester 13*".
- 3.7.4 I therefore revisit the same three critical questions that need to be asked of this second BIA below:

1) *Do the calculator inputs for GDE accurately reflect the baseline conditions and existing value?*

3.7.5 The answer in respect of the GDE calculator is emphatically ‘no’. This applies most particularly to certain habitat classifications and the ‘distinctiveness’ and ‘condition’ assessments applied to them. To take one example, the Lowland Meadow priority habitat resource on the LWS (which, in case of any doubt, was re-confirmed in the detailed botanical studies by Broadview Ecological Consultants (BEC) that are appended to the 2015 ES⁶ as having its origins in the rare hay meadow community MG4 and which is transitional to other communities merely through management neglect), has been inexplicably downgraded in the calculator to “semi-improved neutral grassland”. To have made the transition from unimproved grassland to semi-improved grassland, this habitat would self-evidently have had to have been subject to attempts at agricultural ‘improvement’. That has not happened. Semi-improved grassland is defined in the Phase 1 Habitat Survey Handbook (from which the calculator classifications are derived) as grasslands “*which have been modified by artificial fertilisers, slurry, intensive grazing, herbicides or drainage, and consequently have a range of species which is less diverse and natural than unimproved grasslands*” (Appendix DW12). None of these modifications have been applied to the Lowland Meadow habitats at GDE in the 20-odd years that I have known them, and the spectacular condition and quality of the habitats 20 years ago was consistent with a long history as unimproved species-rich grassland. Thus the Lowland Meadow resource on the site is not, and has never been, “semi-improved grassland”. It is possible that the appellants have sought to find a way to reflect the transition away from the highest quality hay meadow communities that has come about from the neglect of the site since the early 00s (and which itself underlines the importance of securing management), but this would be more appropriately achieved by use of the ‘condition’ categories. The Phase 1 handbook states, of unimproved grasslands “*they may be rank and neglected*”. Whilst a “poor” condition is attributed to these habitats in the calculator, this has the effect of imposing an artificial double negative on the scoring of a rare habitat that, under the NERC Act, is a priority for biodiversity conservation and which is the basis for many SSSIs. The Lowland Meadow habitats at GDE are still unimproved neutral grasslands and should be classified as such. There is no justification for artificially downgrading their classification to an intrinsically more common and less valuable habitat type, and as these are the most important (and valued) grasslands on the site, it is difficult to conclude other than this represents an attempt to depress the baseline value of the site while at the same time inflating the comparative weight of new habitats that it is claimed will be created in the post-development scenario, in order to secure the desired calculator output. If it is not intentional, that has nevertheless been the result.

⁶ Annex EDP2 of the 2015 ES: ‘Analysis of grassland plant communities at Gavray Drive, Bicester’.

- 3.7.6 The same problem arises in relation to other habitats. While some of the central (and still managed) semi-improved grassland fields at GDE have clearly been subject to past attempts at agricultural improvement, this has not been complete and their origins as neutral grassland are clearly evident in the species assemblage, with a good complement of herbaceous species, including a suite of indicator species of unimproved neutral grasslands surviving⁷. A further misclassification has therefore been made in the decision to downgrade these to ‘poor semi-improved grassland’. The Phase 1 handbook advises (with regard to the distinction between ‘semi-improved grassland’ and ‘poor semi-improved grassland’), that “*Good semi-improved grassland will have a reasonable diversity of herbaceous species, at least in parts of the sward, and is clearly recognisable as acid, calcareous or neutral in origin. Such grassland should be left in the semi-improved categories of acid neutral and calcareous grassland*” (Appendix DW12). There is therefore again no justification for artificially downgrading the status of this habitat to a lower value category.
- 3.7.7 The effects of such bias are compounded by overly optimistic assumptions about the post-development phase. The few remnants of semi-improved grassland that would survive the future phase of development, as indicated by the appellants’ indicative masterplan (Appendix DW5), are miraculously turned into ‘unimproved neutral grassland’ in the post-development section of the calculator. While an improvement in condition of semi-improved grasslands due to management change is possible over a significant timeframe, a wholesale and rapid transformation from a not uncommon habitat type to one that is rare, precious and a product of long continuity of undisturbed soil conditions, is quite implausible. It would also need to take place in the face of increasing and competing pressures for use as open space.
- 3.7.8 The effect of rectifying these aggregated sources of bias in the calculator inputs can be seen at Appendix DW13. The baseline ‘Site Habitat Biodiversity Value’ doubles from 75.04 to a far more realistic 146.88 and the ‘Habitat Biodiversity Impact Score’ (which gives a measure of the negative impact of the development) jumps from 37.59 to 59.01. The effect of these corrections on the post-development output is discussed under (2) below.

2) *Are the calculator inputs for GDE in the post-development scenario accurate and/or realistic?*

- 3.7.9 Again, the answer is emphatically ‘no’. As discussed above, there is heavy reliance on assumptions about frankly miraculous transformations of habitats, made all the more significant in terms of the calculator outputs by these having been subject to artificially suppressed classifications and condition judgments in the baseline state.

⁷ Examples include yellow oat-grass *Trisetum flavescens*, field wood-rush *Luzula campestris*, meadow vetchling *Lathyrus pratensis*, rayed knapweed *Centaurea nigra*, lady’s smock *Cardamine pratensis* and lady’s bedstraw *Galium verum*. BEC also found the extremely strong indicator of Lowland Meadow habitat, great burnet *Sanguisorba officinalis* in one of these fields.

Poorer quality habitats have thus been assumed by the appellants to undergo a rapid transformation in the post-development state to extremely high value habitats. At best, this is extremely optimistic to the point of fanciful. There has been no attempt to qualify the extremely ambitious nature of these objectives by recognition of the suite of practical and technical challenges that apply to such transformation (where it is even possible in a meaningful timescale) nor the urban fringe pressures that will increase in the post-development phase and which will significantly retard the prospects of success. Nor indeed is there any real engagement with the challenge presented by multiple and conflicting functions for amenity, open space, surface water drainage and attenuation and nature conservation that both the retained habitats, and especially the new ones, are intended to perform. It is clear that the retained LWS, with its hay meadow habitats sensitive to trampling, and its need for livestock grazing, is intended to perform the bulk of the open space functions required for the remaining balance of the development.

3.7.10 Further correcting the calculator inputs to a more realistic reflection of the above factors, and returning to the grasslands as an example, if one changes the objective to create unimproved neutral grassland to creation of the more realistically attainable semi-improved neutral grassland, this immediately changes the Habitat Biodiversity Impact Score output to -5.09 (net loss of biodiversity) (Appendix DW14)

3.7.11 A further critical factor that the submitted calculator for GDE does not take into account is the fact that we now know that the appellants do not have control over some 3.5ha of the LWS on GDE, and therefore the claimed benefits from management of that part of the LWS have been erroneously included in the calculator inputs. Correcting the matrix to account for this either requires removing this London & Metropolitan (L&M) owned component or, more accurately, factoring it in as an area that is likely to be subject to indirect negative effects but which will not receive the benefit of any future management secured by the development. This is dealt with under (3) below.

3) *Does the impact calculation for GDE factor in indirect effects on adjoining land (e.g. from recreational pressure)?*

3.7.12 Yet again, the answer is ‘no’. There has been no attempt made in the BIA to factor in indirect negative effects on the land within or adjoining the Policy Bicester 13 site over which the appellants have no control – specifically the c.3.5ha of the northern part of the LWS that is controlled by London & Metropolitan. The appellants exclude this land from the ‘blue line’ plan provided at Appendix 01 of their SOC. No explanation has been given for why this land is now divested from their control, given that L&M were a partner applicant in previous development proposals for what is now the Policy Bicester 13 site (see Appendix DW1). In the absence of any explanation from the appellants, it cannot be assumed that this part of the LWS stands to benefit from any secured management associated with a future phase of

development, and such benefits should not have been factored in to the BIA calculator.

- 3.7.13 The effect of correcting these aggregated errors on the BIA calculator outputs can be seen at Appendix DW15. Critically, the removal of the L&M land from the equation confirms that the benefits of secured management associated with a future phase of development along the lines indicated by the appellants' indicative masterplan, would not outweigh the negative impacts that would arise., the calculator indicates that net loss of biodiversity (-14.88) would result. That is a more realistic output on the basis of my own professional judgment, and given my extensive experience of developments in such situations.
- 3.7.14 The implications of this for good and proper planning are clear. In order for the various requirements of Policy Bicester 13 to be properly reconciled, and in particular the requirement to deliver 300 homes alongside net gain in biodiversity, an integrated and holistic approach to the allocation site is, at the very least, highly desirable. Ideally, this would comprise an outline or full application for the whole Bicester 13 site, as the appellants have advanced in the past, but at the very least it requires that any phased development clearly demonstrates that it is not compromising the ability of sustainable forms of development to be delivered on the remainder. As London and Metropolitan are no longer a joint applicant, then collaborative working with them is clearly required, as it is integral to the delivery of the policy requirement for no net loss and net gain that their part of the LWS also benefits from any management secured by development. This may mean that the appellants have to concede some percentage of development value to L&M in return for use of their land for the enhancements that management would bring, and which would enable delivery of the full quota of housing for which the Bicester 13 site is allocated. The alternative would appear to be delivery of a reduced quantum of housing on the site.
- 3.7.15 In the specific context of determination of the current appeal proceedings however, the implication is more straightforward. If the appeal proposals are granted permission as a first phase of development, they are not only non-compliant with the applicable policy requirements to avoid net loss of biodiversity and secure net gain on their own terms, but they also set up a situation of irreconcilable conflict whereby the full housing allocation cannot be delivered alongside those same policy objectives. The appeal should be dismissed on these grounds alone.

4 EMERGING GOVERNMENT POLICY – THE DRAFT NPPF

4.1 Status of the draft NPPF

4.1.1 The Inspector will be aware that the Ministry of Housing, Communities and Local Government recently consulted on draft revised text for the National Planning Policy Framework. While this does not yet replace the incumbent version of the NPPF, it indicates the future direction of travel of Government policy, and I therefore offer some comments on the extent that this engages with or is otherwise relevant to this appeal.

4.2 Relevance to the appeal

4.2.1 At para 168, the draft NPPF carries forward the objective set by the current NPPF para 109 that “planning policies and decisions should contribute to and enhance the natural and local environment” by (*inter alia*) “minimising impacts and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures” (my emphasis). Thus, the national policy support for Policy Bicester 13 afforded by the current NPPF para 109 continues in emerging national policy. This has direct relevance to the need for a management plan for the LWS to improve the resilience to current and future pressures of the green infrastructure immediately adjoining the appeal site. I contend that the appeal proposals offend both the existing NPPF para 109 and the draft NPPF para 168.

4.2.2 At para 169 of the draft NPPF, it is indicated that plans should “take a strategic approach to maintaining and strengthening networks of habitats and green infrastructure”. This reflects para 114 of the current NPPF provision and indicates that national policy will continue to offer support for the holistic approach afforded by Policy Bicester 13. It further underlines why a piecemeal response to Bicester 13, seeking to deal with the site in isolated silos, is unsatisfactory and not in the interests of good and proper planning.

4.2.3 At para 172 of the draft NPPF, continuing support is offered for the approach the Council’s strategic planners took in devising Policy Bicester 13, with that policy’s recognition of the high importance of the land at GDE, including the LWS, and the need for development proposals to secure its management, and the importance of the recognition and due protection of Conservation Target Areas (CTA) in the Local Plan for securing wildlife corridors and stepping stones between important biodiversity hotspots, as part of a coherent and resilient ecological network. In this, it carries forward the commitments in incumbent national policy (NPPF para 117). The importance of the River Ray CTA in securing resilient ecological networks that maintain the importance of designated sites is highlighted by the imminent

development at Bicester 12 to the east of the A4421 Charbridge Lane (to the east of GDE). This could have threatened to isolate the LWS at Gavray Meadows had the CTA policy not been in place, been given due weight by the Council in its negotiations with the developer and had the developer of that site not ultimately responded positively to it as a design criterion. The development of Bicester 12 will now see a broad wildlife corridor encompassing the LWS at Gavray Drive and connecting right through the Bicester 12 allocation to the open countryside and continuing CTA beyond. This is good strategic and joined up planning for green infrastructure and coherent and resilient ecological networks. However the contribution this corridor will make to the future resilience of the Gavray Drive Meadows LWS in the face of existing and future pressures will be undermined by ongoing lack of management if the appeal proposals are allowed and the pressures on the LWS are exacerbated by an additional 180 units on the doorstep of the designated site, with no mitigation or compensation in place.

4.2.4 Para 173 of the draft NPPF closely follows para 118 of the incumbent version. It indicates that planning permission should be refused if significant harm to biodiversity resulting from a development cannot be avoided, mitigated or compensated (the mitigation hierarchy). In the case of the appeal proposals, the appellants' submitted environmental information itself points to a net negative impact on the LWS that is further stated to be significant. It cannot do otherwise as in the absence of a management plan for the LWS, there can be no doubt that additional pressure on the LWS from the development will occur and that this will exacerbate, compound and expand existing 'urban fringe' problems. While the appellants seek to present a different conclusion from the ES and ES addendum in their BIA for the appeal proposals, as I have discussed at section 3 of my proof, this includes clear omission of any consideration of off-site negative effects on the LWS which would otherwise convert the outcome to 'net loss', and it therefore cannot be given any positive weight. The appeal proposals therefore offend both the draft NPPF para 173 and the current NPPF para 118.

4.2.5 Para 173 (c) of the draft NPPF also makes reference to 'irreplaceable habitats' and while it does not specifically list 'ancient grasslands', there is a growing body of evidence that where such habitats have developed over similar extended periods (perhaps centuries) of long continuity, they should be regarded as effectively irreplaceable. The Lowland Meadow habitats of GDE (although their former quality is currently masked by neglect and growing problems of scrub invasion), retain many of the hallmarks of such ancient grasslands, and sufficient of the botanical interest remains to suggest that restoration of their former glory would be possible in a relatively short space of time (over a few seasons). It is important for the future success of the development of the Bicester 13 site and the achievement of the objective of 'net gain' that this management is carried out sooner rather than later such that restoration efforts are not compromised by or conflicting with management of the site as an extension to local open space provision.

4.2.6 Para 173 (d) states (in continuation of the current NPPF para 118) that “opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for the environment”. Policy Bicester 13 seeks to do this, but the appellants appear to be seeking to thwart this objective by pursuing consent for only part of the site and refusing to have regard to any biodiversity considerations not immediately within the development boundary, nor the opportunities to deliver the policy objective of ‘net gain’.

5 THE RELIABILITY OF THE SUBMITTED ENVIRONMENTAL INFORMATION FOR ROBUST DECISION MAKING

5.1 Status of the ES and ES addendum

- 5.1.1 In early May 2018, the appellants submitted an addendum to the 2015 Environmental Statement that accompanied the original planning application. The purpose of the ES addendum was essentially to update the assessment of environmental effects in the light of the passage of time and any changed circumstances since 2015, and it thus constitutes formal Further Environmental Information.
- 5.1.2 The ES addendum states as an overall conclusion that “*impacts have not significantly altered from those identified in the 2015 ES*” (ES addendum para 1.32). On ecology specifically, the ES addendum states “*The summary and conclusions of the original chapter... have been reconfirmed during the update of the chapter during 2018*”.
- 5.1.3 In my submissions to CDC on the outline planning application in 2015 to 2017, I raised significant concerns about the alignment of the original (2015) ES with good practice standards for ecological impact assessment. While those concerns still stand, I do not intend to revisit them in detail, other than to say in summary that they centred around matters such as the approach to screening and scoping in or out of Valued Ecological Receptors, and how this resulted in ecological issues clearly capable of being a material planning consideration being disregarded in the appellants’ impact assessments (Appendix DW16)
- 5.1.4 The same methodological approach appears to have been taken with the recent ES addendum, however, the main concern with the adequacy of the ES addendum for sound and robust decision making is the absence of adequate and up to date ecological information for the appeal site itself and (more particularly) the absence of any up to date information for much of the zone of influence of potential impacts. This zone of influence clearly includes the adjoining land at GDE and the LWS within it.

5.2 Implications of departure from accepted standards and guidance for ecological impact assessment

- 5.2.1 There is a wealth of guidance on survey and methodological standards for ecological impact assessments, especially where forming part of formal EIA. For example overarching methodological guidance is provided by CIEEM (2016)⁸ and the relevant British Standard⁹. Species-specific guidance includes guidance on bat surveys such as BCT (2016)¹⁰

⁸ CIEEM (2016) Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater and Coastal, 2nd edition. Chartered Institute of Ecology and Environmental Management, Winchester

⁹ Biodiversity: Code of practice for planning and development published by the British Standards Institute (BS 42020:2013)

- 5.2.2 All of this guidance consistently reflects and supports the principle, as enshrined within current planning policy and practice guidance, that planning decisions should be based on ‘up to date’ information. For example, Paragraph 165 of the NPPF states that planning policies and decisions should be based on up-to-date information on the natural environment and other characteristics of the area.
- 5.2.3 Despite the age of the ES surveys (dating back to 2013, so now five years old) and the opportunity presented by there being a year between refusal of the planning application in May 2017 and the submission of the ES addendum in May 2018, all that has been attempted by the appellants is an ‘update extended Phase 1’ field survey on 07 March 2018 (ES addendum para 9.2.11) and an update desk survey that was ‘initiated’ during February 2018 (ES addendum para 9.2.6).
- 5.2.4 It is only necessary for me to draw attention to one example to illustrate why the appellants’ decision to rely on data that industry standards and national guidance on good planning practice would universally regard as ‘out of date’, has relevance to this appeal. The example is provided by the records of bat roosts referred to in the submissions from Save Gavray Meadows to PINS dated 18th May 2018. These roosts were found on GDE in 2017 by a third party (an experienced and licensed bat worker) and the records were submitted to TVERC in February 2018. They should therefore have been available to the appellants’ ecologists had an up to date desk survey and data trawl been carried out, or followed up beyond being just ‘initiated’. In the first instance it would have been in accordance with industry practice to have carried out an update data trawl of this type – particularly in respect of bats which regularly move roosting sites.
- 5.2.5 The presence of these confirmed bat roosts on Gavray Drive East constitutes relevant and important information concerning European Protected Species that is not considered by the developer anywhere in its ES and/or ES addendum. The fact that these roosts have escaped attention in both the desk-based and field surveys carried out by the developer in 2013, and in surveys since, (ES addendum para 9.4.1) calls into question both the adequacy of the developer’s original field surveys for bats, and the rigour applied to updating the baseline in 2018. It also calls into question the reliance on out of date environmental information in assessing impacts on bat species more generally. These roosts escaped detection in the developer's 2013 tree-roost surveys of Gavray Drive East (as reported in Appendix 9.1 of the developers Environmental Statement and ES addendum), despite these surveys covering precisely the same trees where they were found in 2017. Whilst it is at least possible (albeit highly unlikely) that three roosts of at least two different bat species have become

¹⁰ Collins (2016) Bat Surveys for Professional Ecologists: Good Practice Guidelines (3rd edition). BCT publication.

established in that area since 2013, this merely underlines the need for surveys to be up to date. Industry practice is that surveys for protected species should be no more than two or two-three years old, and this accords with the NPPF and Planning Practice Guidance which requires that decisions be made on up to date environmental information, itself in recognition of applicable case law. The presence and close proximity of these confirmed bat roosts is not recognised in the statements on bats in either the developer's original Environmental Statement paras 9.4.19-9.4.23, nor the ES addendum paras 9.4.21-9.4.25. The use of the site by brown long-eared bats is similarly not recognised, and nor is the presence of *Myotis* species (which could include rare and very rare species) given the further consideration that is merited given the possibility of such rarer species being present, and the significance that this would have for the overall assessment.

- 5.2.6 As a result, the developer's assessment that "the overall bat assemblage is of no more than local value" is simply not supported by the available evidence. The statement that 'no conclusive evidence' of bat roosting was found in the trees with the potential for roosting that are on and adjacent to the appeal site boundary and at risk of negative effects (as described in ES para 9.4.20) needs therefore to be treated with caution: it can be afforded little weight on grounds of the age of the data alone. The Inspector is being asked to rely on data that is not only old, but also derived from less than current best practice assessments for tree roosting in 2013. It has taken third parties to properly search for and confirm roosting sites for bats on land adjoining the appeal site, when such surveys ought to have been done to inform the impact assessment process. These roosts are in locations low to the ground and therefore at risk from negative effects due to increased recreational pressure. This is a potential impact that has not been assessed.
- 5.2.7 I would also draw the Inspector's attention to the appellants' failure to recognise in the ES and ES addendum that the appeal site includes part of the Gavray Drive Meadows LWS. The ES addendum states, at 9.4.7, that "no part of the LWS falls within the [appeal] Site". By reference to the definitive designation boundary available from TVERC, the appellants have overlooked, in making this statement, that the designation boundary encompasses the Langford Brook and thereby the appeal site includes a narrow strip of land associated with the western bank and part of the stream course of that feature.
- 5.2.8 There may be other omissions or errors in the ES material that are germane to the appeal and I would like to reserve the right to draw attention to these in oral evidence should that become necessary. However for the present purposes I would conclude on the point that more effort should have been made to render the ES addendum a reliable and robust basis for decision making.

6 SUMMARY AND CONCLUSIONS

- 6.1.1 The appellants' submitted ES recognises that the appeal proposals would result in net negative effects on biodiversity due to recreational pressure on the adjoining Local Wildlife Site. The appellants contend in their ES material that the magnitude of the net negative effect is slight, based on what I believe to be highly optimistic assumptions as to the performance of overlapping open space and habitat creation proposals, but in any event it does not appear to be a matter of dispute that the result is net negative. The appellants' recently submitted ES addendum does not seek to change that impact assessment conclusion. The appeal proposals therefore result in net negative effects on biodiversity by reference to the EIA material. This does not comply with applicable policy.
- 6.1.2 Notwithstanding the contradiction with the position advanced in the ES material, the appellants appear to also be advancing a separate case that net loss of biodiversity can be avoided by the appeal proposals, based on numerical outputs from a biodiversity impact calculator. These outputs were submitted to CDC in May 2017 under the title 'Biodiversity Impact Assessments' (BIAs). They rely on a spreadsheet tool adapted for use in Warwickshire.
- 6.1.3 I set out in my evidence why such tools are a blunt metric and why they need to be used and interpreted with caution. In this case, through at best imprecise or erroneous, and at worst deliberately prejudicial, use of this tool, the impacts of the appeal proposals on biodiversity have been grossly underplayed and the scope for enhancements massively overplayed, such that the appellants' calculator outputs are subject to huge bias. They cannot be relied upon in decision making. Critically, the impacts on the adjoining Local Wildlife Site from increased recreational and other urban fringe pressures arising from the appeal proposals have not been accounted for in the appellants' calculations at all. When such errors are corrected, the calculator for the appeal scheme returns a result of clear net loss to biodiversity. For reasons I set out in my evidence, biodiversity calculators are not a reliable substitute for considered expert assessment, but in this instance, this corrected 'net loss' result is in any event consistent with the broad array of expert opinion that has led to consistent and repeated objections to the appeal proposals from BBOWT, Butterfly Conservation and myself. Many other parties and individuals have objected on similar grounds.
- 6.1.4 When the outline planning application was first taken to committee in May 2017, the then applicants were directed by CDCs planning committee to address this net loss to biodiversity through delivery of the management plan for the adjoining Gavray Meadows Local Wildlife Site and a decision was deferred to allow them to do so. I emphasise that this is a management plan that is required, in any event, under the applicable local plan policy for the Bicester 13 allocation site of which the appeal site is an integral part. The appellants control all of the remaining developable parts of the

allocation site outside the appeal site. The appellants recognise that management of the LWS is necessary to protect its very significant nature conservation interest from further decline. The appellants say they have no remaining aspiration to build on the LWS.

- 6.1.5 The need for a management plan for the LWS to make the appeal proposals policy compliant, even in isolation, is consistently agreed by all nature conservation consultees and interested parties. It is the stated position of Natural England¹¹. It is also the position of the Council's external ecological advisor, as I set out in my evidence. The need for the very same management plan to make the development of the wider Bicester 13 allocation acceptable on biodiversity and sustainability grounds is enshrined within adopted Local Plan policy Bicester 13. As the appellants control most of that land, and have controlled all of it in the recent past, it is difficult to understand why they are so inimical to the delivery of the management plan that the policy requires, and that they will be required to deliver at some stage in any event. The longer the site is allowed to slide into neglect, the more expensive the effort to restore it will become.
- 6.1.6 A further cause for objection to the appeal scheme is the concern that it would compromise sustainable and policy compliant delivery of the remaining 120 units of the local plan housing allocation on GDE, given the much more highly constrained nature of that land.
- 6.1.7 In an attempt to demonstrate that allowing the appeal proposals would not do this, the appellants submitted alongside the BIA for the appeal proposals, a further BIA for GDE using the same calculator. This BIA is subject to even more fundamental errors and bias in the input values, and again, when these are corrected, it is clear that future development of GDE in accordance with the appellants' current intentions for that land (in the event the appeal proposals were allowed) would also result in clear net loss to biodiversity, and a failure to comply with applicable national and local policy. Allowing the appeal proposals would therefore create a future irreconcilable conflict with the requirements of Bicester 13 in respect of any future phase of development. There would be a need either to reduce the number of houses to below the allocation to achieve no net loss and net gain of biodiversity, or to compromise the policy objectives of achieving no net loss and indeed net gain.
- 6.1.8 After CDCs planning committee deferred the application to allow the appellants time to commit to the necessary management of the LWS, the appellants pressured officers at CDC to take the application back to committee with no management plan for the LWS offered. The committee then refused the application in June 2017. I believe for the reasons set out above, and in more detail in my evidence, they were absolutely

¹¹ Letter from Beccy Micklem of Natural England to Leanne Palmer of PINS dated 2nd February 2018 and follow up clarification letter dated 02 March 2018

right to do so, and I invite the Inspector to similarly dismiss this appeal. The appellants should be directed to submit a new application that responds positively to the design criteria and requirements of Policy Bicester 13. That is the outcome that I believe the Council, consultees and local residents all want, and it is the common sense outcome in the interests of good and proper planning. It is an outcome that would clearly be best served by a holistic and fully integrated proposal for the entirety of the allocation site. The appeal should be dismissed.