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Cherwell District Council

FAO: David Lowin

**By email only:** David.Lowin@cherwell-dc.gov.uk

18<sup>th</sup> November 2021

Dear David,

**21/03268/OUT**

Proposal: Outline planning permission (all matters reserved except for access) for the erection of buildings comprising logistics (Use Class B8) and ancillary Office (Use Class E(g)(i)) floorspace; construction of new site access from the B4100; creation of internal roads and access routes; hard and soft landscaping including noise attenuation measures; and other associated infrastructure

Location: OS Parcel 2636 NW Of Baynards House, Ardley

And:

**21/03267/OUT**

Proposal: Outline planning permission (all matters reserved except for access) for the erection of buildings comprising logistics (Use Class B8) and ancillary Office (Use Class E(g)(i)) floorspace and associated infrastructure; construction of new site access from the B4100; creation of internal roads and access routes; and hard and soft landscaping

Location: OS Parcel 0006 South East of Baynards House Adjoining A43, Baynards Green

**Objection:**

- 1. Loss of hedgerow priority habitat**
- 2. Insufficient evidence that populations of farmland bird species will be maintained, contrary to the NPPF, Cherwell Local Plan, and the [Conservation of Habitats and Species Regulations 2010](#) as amended by paragraph 9a of the [Conservation of Habitats and Species \(Amendment\) 2012 Regulations](#).**
- 3. The importance of a net gain in biodiversity being in perpetuity**
- 4. Cumulative effect on farmland birds in the context of other infrastructure proposals for the area**

Thank you for consulting us on the above application. As a wildlife conservation charity, our comments relate specifically to the protection and enhancement of the local ecology on and around the application site.

## 1. Loss of hedgerow priority habitat

We are greatly concerned by the significant loss of wildlife habitat that this development would lead to with the current design. The ecological survey describes significant areas of priority habitat hedgerow within the site e.g.

12.4.7 *“Five hedgerows are present within the Eastern Site, forming the boundaries around the Eastern Site and partly demarcating the boundaries between arable fields”* and

12.4.45 *“Nine hedgerows are present within the Western Site, forming the boundaries around the Western Site and partly demarcating the boundaries between arable fields.”*

Hedgerows are listed in Section 41 of the NERC Act 2006 as a priority habitat

In addition, the NPPF states:

*“179. To protect and enhance biodiversity and geodiversity, plans should:*

*..... b) promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species; ...”*

Policy ESD 10 Protection and Enhancement of Biodiversity and the Natural Environment of the adopted Cherwell Local Plan states:

- *Development which would result in damage to or loss of a site of biodiversity or geological value of regional or local importance including habitats of species of principal importance for biodiversity will not be permitted unless the benefits of the development clearly outweigh the harm it would cause to the site, and the loss can be mitigated to achieve a net gain in biodiversity/geodiversity*
- *Development proposals will be expected to incorporate features to encourage biodiversity, and retain and where possible enhance existing features of nature conservation value within the site. Existing ecological networks should be identified and maintained to avoid habitat fragmentation, and ecological corridors should form an essential component of green infrastructure provision in association with new development to ensure habitat connectivity*

Paragraph 12.6.6 of the ecological survey states;

*“Construction will require the removal of the defunct species-poor hedgerows within the centre of the Eastern Site, H12 and H13”.*

And paragraph 12.6.32 states:

*“Construction will require the removal of the defunct species-poor hedgerows within the centre of the Site, H3, H4, H5 and H6.”*

We do not accept that the benefits of the development outweigh the harm it would cause to the site in relation to the loss of hedgerow and we do not accept that the mitigation proposed will achieve a net gain in biodiversity (see below). In addition, ecological networks provided by the hedgerows will be fragmented as a result of the development and for these reasons we believe the development would be contrary to Policy ESD 10 of the local plan which states that *“ecological corridors should form an essential component of green infrastructure provision in association with new development to ensure habitat connectivity”* (see above).

**2. Insufficient evidence that populations of farmland bird species will be maintained, contrary to the NPPF, Cherwell Local Plan, and the [Conservation of Habitats and Species Regulations 2010](#) as amended by paragraph 9a of the [Conservation of Habitats and Species \(Amendment\) 2012 Regulations](#)).**

We are greatly concerned by the significant loss of wildlife habitat used by farmland birds that this development would lead to with the current design. Paragraph 12.3.46 of the ecological survey states:

*“It was not possible to complete breeding bird surveys in 2021 due to project timescales given breeding bird surveys must be completed between April and June in accordance with best practice guidance”.*

However, TVERC records include lapwing and lesser spotted woodpecker within 2km of the Eastern site (para 12.4.49) and lapwing within 0.04km of the Western site (para 12.4.70)

In addition, marsh tit and yellow hammer have been recorded at Stoke Bushes LWS 1.3km from the Eastern site and 1.5km from the Western site and skylark, curlew and grey partridge at Upper Heyford Airfield LWS 1.9 km from the Eastern site and 1.8km from the Western site (see tables 12.4 and 12.7).

Paragraph 12.3.72 states *“Skylark were incidentally recorded during the extended Phase I habitat survey and records of other farmland bird species such as yellowhammer and linnet were returned from the data search, indicating their likely presence within the Western Site.”*

Paragraph 12.4.31 and 12.4.72 state that the sites are *“likely to support a small breeding and wintering assemblage of farmland birds, such as lapwing, skylark *Alauda arvensis*, yellowhammer *Emberiza citrinella* and linnet *Linaria cannabina*”*

Paragraph 12.3.32 states *“Overall, it is assumed that the Eastern Site supports a small assemblage of farmland bird species”* and Paragraph 12.3.72 states *“Overall, it is assumed that the Western Site supports a small assemblage of breeding and wintering bird species including some farmland species such as lapwing, skylark, yellowhammer and linnet.”*

12.6.19 states *“Approximately 22 ha of arable habitat will be removed which is considered to provide foraging and nesting opportunities for farmland birds such as skylark.”* Paragraph 12.6.44 states *“Approximately 41ha of arable habitat will be removed which is considered to provide foraging and nesting opportunities for farmland birds such as skylark”*. Therefore, a total of 63 ha of arable habitat will be removed from the two sites.

It therefore seems extremely likely that red list species such as lapwing, skylark, yellowhammer, linnet are to be displaced by the proposed development. In fact, paragraphs 12.6.44 and 12.6.46 acknowledge that the proposed development would *“result in a permanent moderate adverse effect on breeding and overwintering farmland birds present at the .... Site which would be significant at district level”*.

The importance of avoiding impact on the UK priority species is backed up by planning policy e.g. the NPPF states: *“179. To protect and enhance biodiversity and geodiversity, plans should: ..... b) promote..... the protection and recovery of priority species; ....”*

Policy ESD 10: Protection and Enhancement of Biodiversity and the Natural Environment of the Cherwell Local plan states:

*“Development which would result in damage to or loss of a site of biodiversity or geological value of regional or local importance including habitats or species of principal importance for biodiversity will not be permitted unless the benefits of the development clearly outweigh the harm it would cause to the site, and the loss can be mitigated to achieve a net gain in biodiversity/geodiversity”*

We do not accept that the benefits of the development outweigh the loss of red listed farmland bird species and we do not accept that the mitigation proposed will achieve a net gain in biodiversity (see below).

DEFRA have provided guidance to competent authorities (including local authorities) on how to comply with the legal requirements of the [Conservation of Habitats and Species Regulations 2010](#) as amended in paragraph 9a of the [Conservation of Habitats and Species \(Amendment\) 2012 Regulations](#)). The guidance is available at: <https://www.gov.uk/guidance/providing-and-protecting-habitat-for-wild-birds>

The guidance states that *“You must, as part of your existing duties as a competent authority, take the steps you consider appropriate to preserve, maintain and re-establish habitat that is large and varied enough for wild birds to support their population in the long term....*

*You must use your powers so that any pollution or deterioration of wild bird habitat is avoided as far as possible.....*

*There are no national population targets for wild birds. However, you must aim to provide habitat that allows bird populations to maintain their numbers in the areas where they naturally live. ....*

*You should focus on habitats for wild birds in decline but also maintain habitats supporting wild birds with healthier populations.” .....*

*consider bird populations when consulting on or granting consents, such as planning permissions, environmental permits, development or environmental consents, and other consents*

This application currently does not provide sufficient evidence that it will *“provide habitat that allows bird populations to maintain their numbers in the areas where they naturally live”* in relation both to *“wild birds in decline”* and to *“wild birds with healthier populations”*

### **3. The importance of a net gain in biodiversity being in perpetuity**

Policy ESD 10: Protection and Enhancement of Biodiversity and the Natural Environment of the Cherwell Local plan states:

*“In considering proposals for development, a net gain in biodiversity will be sought by protecting, managing, enhancing and extending existing resources, and by creating new resources”*

The NPPF states:

*“174. Planning policies and decisions should contribute to and enhance the natural and local environment by...*

*d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;*

*179. To protect and enhance biodiversity and geodiversity, plans should: ...*

*b) promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable net gains for biodiversity.”*

12.5.11 of the applicant’s ecological survey states:

*“As shown in Appendix 12.3, following implementation of both on-site and off-site habitat creation and enhancement, it is anticipated that the Development will be able to achieve a net gain of over 10% with initial calculations resulting in an +11.96% gain in habitat units and an +11.17% gain in hedgerow units. This assumes the creation of 20ha of neutral grassland and 1.5km of hedgerows at the Piddington site in addition to on-site creation of neutral grassland, street tree, mixed scrub, hedgerows and broadleaved woodland habitats where possible (as shown on Parameter Plans SK019 and SK025: Vegetation Retention and Removal). The completed Defra 2.0 metric is set out in Appendix 12.3”*

Once built, if approved, the development can be reasonably assumed to be there for ever, since even when the buildings are replaced it would be likely to be replaced by other forms of development. Therefore, the wildlife habitat will be lost for ever and any compensation must be provided for ever. Otherwise the result is to simply defer a significant loss of biodiversity that should not be occurring either now or in 25 years’ time.

The most effective method to ensure that any compensation is provided for ever would be for the land identified for off-site habitat creation and enhancement (the Piddington site) to be managed for wildlife in perpetuity with money provided by an endowment fund. Such an endowment fund is already commonly used within the Milton Keynes area when agreements are made involving the Parks Trust taking on land.

In perpetuity is considered to be at least 125 years in accordance with legislation which defines the ‘in perpetuity’ period (Perpetuities and Accumulations Act 2009). There is a precedent for this approach in relation to the Thames Basin Heaths SPA. Para 3.1.5 Thames Basin Heaths Special Protection Area Supplementary Planning Document states:

*“The avoidance and mitigation measures should be provided in order that they can function in perpetuity which is considered to be at least 125 years. An ‘in perpetuity’ period of 125 years has been applied in this SPD in accordance with the legislation which defines the ‘in perpetuity’ period (Perpetuities and Accumulations Act 2009.*

Offsite compensation that involves only a 25- or 30-year agreement on private land with no guarantee of the long-term security in perpetuity of the wildlife habitat created would not be appropriate. The loss of wildlife habitat on the site will be permanent so the compensation must be permanent. The offsite compensation must be agreed through a S106 agreement.

It is also important that the land should be managed by a reputable conservation organisation with considerable expertise in the management of habitat for wildlife.

#### **4. Cumulative effect on farmland birds in the context of other infrastructure proposals for the area**

Paragraph 12.8.4 of the applicant's ecological survey states:

“Based on the information available for the other cumulative schemes, potentially significant effects on farmland birds have been identified for the Heyford Park scheme (ref: 18/00825/HYBRID), which is located approximately 2.8km south west of the Development. The Heyford Park ES acknowledges a permanent residual adverse significant effect at the Site level for breeding birds utilising grassland habitats, including skylark, during the construction phase in the absence of mitigation. Given a permanent residual minor adverse significant effect of the local level is also anticipated for the Development on breeding birds, it is therefore possible that a cumulative effect may occur, with displaced birds from the local area seeking suitable habitat elsewhere. As a result, a permanent minor adverse cumulative effect may occur of the local level”.

Para 12.8.7 states:

*“a permanent residual minor adverse cumulative significant effect of the local level is anticipated even with the implementation of the specified mitigation measures. It is anticipated that the provision of mitigation measures off-site will reduce the residual adverse cumulative significant effect on farmland birds from district to local level.”*

Given the proximity of the proposed sites to BBOWT Ardley Quarry and Upper Heyford LWS (and a number of other LWSs see tables 12.4 and 12.7) the application should be looked at in the context of other infrastructure proposals for the area. The cumulative effect of the proposed developments together with the Heyford Park scheme (ref: 18/00825/HYBRID) and the Proposed Oxfordshire Strategic Rail Freight Interchange (Case Reference: TR050008) will mean a huge cumulative effect especially on farmland birds (see above). This cumulative effect on farmland birds is of great concern and needs to be addressed.

#### **Solar Panels on warehouse roofs**

Given that we regularly see applications for solar panels in fields, we believe that in order to make most efficient use of available space, much needed solar panels should be included on the roofs of large buildings wherever possible. If the local authority decides to grant permission for this application, we consider that the applicant should be required to include solar panels on the warehouse roofs, in addition to the mitigation measures set out above.

However, for the reasons described above, it is our opinion that this application should not be approved, and certainly not so in its current form. We hope that these comments are useful. Please do not hesitate to get in touch should you wish to discuss any of the matters raised.

Yours sincerely

Nicky Warden

Public Affairs and Planning Officer

Berkshire, Buckinghamshire and Oxfordshire Wildlife Trust

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