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Cherwell District Council

FAO: Samantha Taylor

**By email only:** [samantha.taylor@cherwell-dc.gov.uk](mailto:samantha.taylor@cherwell-dc.gov.uk)

03 December 2021

Dear Samantha,

**21/03522/OUT**

**Location: OS Parcel 3673 Adjoining and West Of 161, Rutten Lane, Yarnton, OX5 1LT**

Proposal: The erection of up to 540 dwellings (Class C3), up to 9,000sqm GEA of elderly/extra care residential floorspace (Class C2), a Community Home Work Hub (up to 200sqm)(Class E), alongside the creation of two locally equipped areas for play, one NEAP, up to 1.8 hectares of playing pitches and amenity space for the William Fletcher Primary School, two vehicular access points, green infrastructure, areas of public open space, two community woodland areas, a local nature reserve, footpaths, tree planting, restoration of historic hedgerow, and associated works. All matters are reserved, save for the principal access points.

**Objection:**

- 1. Recreational impact on Begbroke Wood Local Wildlife Site and Frogwelldown District Wildlife Site**
- 2. Impact on farmland and other birds**
- 3. The importance of a net gain in biodiversity being in perpetuity**
- 4. Biodiversity net gain**
- 5. Hydrological impact on Oxford Meadows SAC and Cassington to Yarnton gravelpits LWS**

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. Recreational impact on Begbroke Wood Local Wildlife Site and Frogwelldown District Wildlife Site**

Frogwelldown District Wildlife Site (DWS) is located ~0.2km to the south of the Site and Begbroke Wood Local Wildlife Site (LWS) is located immediately adjacent to the north-western boundary of the Site.

Para 16.13.9 of the applicant's DAS states:

*“...., there is potential for the designations to be adversely affected from pollution events that may arise, such as dust deposition, and surface water run-off of contaminants or silt.”*

16.14.12 states:

*“In regard to Begbroke Wood LWS, ...there is potential for the development to result in an increase in cat predation of wildlife within the LWS”*

16.14.13 states:

*“Frogwelldown Lane and Dolton Lane are already subject to use, and further use is expected to arise as a result of the development.”*

Cherwell Local Plan, Policy ESD 10: Protection and Enhancement of Biodiversity and the Natural Environment 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” ...*

We consider it is highly likely that there would be significant increase in the use of local paths and green spaces and we are concerned about damage to on Begbroke Wood LWS and Frogwelldown DWS, through recreational impacts plus cat encroachment and predation and, if not mitigated, this would be contrary to the Cherwell Local Plan Policy ESD 10 as quoted above. We consider that significant measures are needed to mitigate this potential impact on site including the provision of substantial green space on site in perpetuity and funding towards education/engagement activities providing information about the sensitivity of such sites.

## **2. Impact on farmland and other birds**

5.9.3 of the applicant’s Ecological Baseline report states:

*“Information from the data search included records for several bird species in the study area, including the Red Listed species Tree Sparrow *Passer montanus*, Yellowhammer *Emberiza citrinella*, Grey Wagtail *Motacilla cinerea* and the Amber listed species Bullfinch *Pyrrhula Pyrrhula* and Green Listed species Brambling *Fringilla montifringilla*. Records of Red Listed species Skylark *Alauda arvensis*, Linnet *Carduelis cannabina* and Fieldfare *Turdus pilaris* were also returned from the desktop study within the same 1km x 1km grid square containing the study area.”*

And paragraph 5.9.5 states;

*“The majority of breeding bird activity is associated with the hedgerows, particularly adjacent to Begbroke Wood and Dolton Lane, which support a number of common and widespread species. The most notable species recorded along the hedgerows is Yellowhammer, which is Red Listed as a result of declines in breeding population and range over the last 20 years”*

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”*

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*

It is important therefore, that the green spaces proposed by the applicant are managed appropriately for the benefit of these species in perpetuity This should also be considered in the zoning of the open access area as some species are particularly vulnerable to disturbance by people and dogs.

Further measures are needed to ensure that there will be no negative impact on priority species, and these measures need to be provided in perpetuity. Without such measures there is potential for negative impact contrary to Policy ESD10 since we do not consider that “the benefits of the development clearly outweigh the harm”, in this case the loss of red listed farmland bird UK priority species.

### **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.”*

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.

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).”*

We note from Appendix C of the applicant's DAS that Merton College envisages a structure whereby residents would become members of a trust that retains ownership and management responsibility for the Green Infrastructure within the scheme whilst the remaining agricultural area, meadows, footpaths and Community Woodland would be retained and managed directly by Merton College for the benefit of the wider public. We believe it is essential that this trust and the management responsibility for the scheme are set out clearly and are provided in perpetuity and that the land retained and managed by Merton College is also provided in perpetuity. In addition, we consider it essential that the organisation delivering the habitat creation and management has considerable previous experience in such delivery in circumstances where high quality biodiversity provision is a key output.

#### **4. Biodiversity net gain**

Our comments in this section relate to the document submitted as part of the application entitled: *“Technical Briefing Note 01: Biodiversity Impact Assessment - Using Defra Biodiversity Metric 2.0 Calculation Tool”*. On the Site Habitat Creation extract from the completed DEFRA 2.0 metric spreadsheet, shown on page 15, there is a row entitled “Urban - suburban / mosaic of developed / natural surface”, and this is scoring 69.91 units.

The User Guide for the most recent DEFRA Biodiversity Metric 3.0 (see <http://publications.naturalengland.org.uk/publication/6049804846366720> ) states:

*“6.19 Where it is not possible to map parcels of distinct habitat types within an area because they form a mosaic without clear boundaries, or where the habitat mix is at a scale too fine to map, you should estimate the proportion of each component habitat that makes up the mosaic. These can then be entered into the metric as separate habitats. You will still need to assess the condition of the component habitats. (See Box 6-2, Example 1.)*

*6.20 Suburban housing is a mosaic of developed land and vegetated gardens habitats. When entering post-intervention predictions for areas where there will be a small scale mosaic of developed and natural surfaces, such as housing and gardens in suburban areas, you should use a similar approach to the above and assume the ratio of developed land; sealed surface to vegetated garden is in the proportion 70:30. For particularly high or low density developments it may be possible to vary this ratio. However, this must be evidenced, justified in the assessor comments, and agreed with the determining body. (See Box 6-2, Example 2.)*

*Example 2: Suburban residential development*

*A 10ha development will create a mixture of roads, public greenspace and housing. The roads (developed land; sealed surface) will occupy 1ha, the public greenspace (modified grassland with urban trees) will occupy a further 2ha and the remaining 7ha will be private houses and gardens.*

*In the metric you would record the 7ha of housing and gardens, by applying the 70:30 ratio, as 4.9ha of ‘developed land; sealed surface’ and 2.1ha of ‘vegetated garden’. The remaining habitats (1ha developed land; sealed surface and 2ha modified grassland with urban trees) would be recorded in the normal way.”*

In addition, Leeds City Council’s Achieving net gain for biodiversity – guidance for developers (<https://www.leeds.gov.uk/planning/conservation-protection-and-heritage/achieving-net-gain-in-biodiversity-guidance-for-developers>) states:

***“Urban - suburban/mosaic of developed/natural surface***

*This category will not be acceptable for habitat creation as it generates artificially-high scores. Instead the actual constituent areas of sealed surfaces and gardens (amenity grassland) should be calculated separately.”*

Although the option of suburban mosaic is available in Biodiversity metric 2.0 it is clear from the DEFRA guidance for Metric 3.0 and from the Leeds City Council guidance that, whilst this might be technically correct it has become a problematic issue which has been resolved in Metric 3.0. We suggest that the DEFRA 3.0 guidance is used in which case our calculation indicates that, for this particular land parcel, 11.26 units would be delivered this rather than 69.91. If this is accepted, it would have a significant impact resulting in an overall net loss in biodiversity.

Even if this suggestion is not accepted by the planning authority, we would suggest the condition score is considered since DEFRA 3.0 guidance suggests that vegetated gardens should be condition “poor” and buildings have no condition score.

Biodiversity Metric 3.0 Technical Supplement (downloadable from the same page as the User Guide above) – states on page 13:

*“Urban – Vegetated garden. No assessment required – condition fixed at Poor”*

We therefore suggest the planning authority considers whether “poor” condition would be more appropriate than “moderate” if a suburban mosaic is still used in which case our calculation indicates

for this particular land parcel a delivery of 37.54 units rather than 69.91. If this is accepted, it would have a significant impact resulting in a much reduced net gain for biodiversity, somewhat lower than the 10% sought by the draft development brief.

## **5. Hydrological impact on Oxford Meadows SAC and Cassington to Yarnton gravelpits LWS**

Policy ESD 10: Protection and Enhancement of Biodiversity and the Natural Environment of the Cherwell Local Plan 2011- 2031 (Part 1), adopted July 2015 states:

- *Development which would result in damage to or loss of a site of international value will be subject to the Habitats Regulations Assessment process and will not be permitted unless it can be demonstrated that there will be no likely significant effects on the international site or that effects can be mitigated; ...*
- *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;*

The applicant's Design and Access statement, Chapter 8 states:

*16.14.4. In accordance with relevant provisions of Policies PR9 and ESD7, a Drainage Assessment (See Chapter11 – Flood Risk and Drainage) has been undertaken by WSP and sustainable urban drainage features are proposed to be incorporated into a site-wide drainage strategy to prevent adverse effects on local hydrology. As a result, hydrological changes at the SAC as a result of the development at the Site are not anticipated.”*

The Oxford Meadows SAC contains a key part of what remains and some of the best examples of exceptionally high-quality floodplain meadows (MG4 type). The vegetation of an MG4 type meadow is exceptionally sensitive to changes in water quantity and quality. In particular both summer and winter water levels need to be maintained within narrow boundaries of height level in order for the vegetation type to remain. We therefore consider a detailed ecohydrological report (e.g. one that specifically considers the hydrology in the context of ensuring that there will be impact, through water quality, water quantity (both in total and temporally) on the ecology of the SAC) will be needed to demonstrate no impact on the SAC.

The Cassington to Yarnton gravel pits LWS is one of the most important sites for birds in Oxfordshire. Its value is partly due to the relatively undisturbed complex of lakes which is used by large numbers of breeding and wintering waterbirds, as well as the marginal habitats and undisturbed scrub which also provide important nesting and foraging areas for bird species. We therefore consider a detailed ecohydrological report, as explained in the SAC paragraph above, will be needed to demonstrate no impact on the LWS.

Both sites are highly dependent on hydrology, and therefore vulnerable to any changes in it, so we consider that such an ecohydrological study, should be carried out in order to assess whether the development will result in damage to these sites which would be contrary to Policy ESD 10 which is quoted above.

There will also be a need for measures to ensure that anything put in place (such as SuDS schemes) are maintained in perpetuity, with maintenance programmes and the potential for

replacement in time if necessary to ensure that there is no reduction over time in the effectiveness of the provision.

**Biodiversity in built development**

We note the intention to include a number of biodiversity feature in the development which is important if this scheme is to set an exemplary standard. The Wildlife Trusts have published 'Homes for people and Wildlife: How to build housing in a nature-friendly way' which sets out what a good, nature-rich housing development looks like.

See: [https://www.wildlifetrusts.org/sites/default/files/2018-05/homes\\_for\\_people\\_and\\_wildlife\\_lr\\_-\\_spreads.pdf](https://www.wildlifetrusts.org/sites/default/files/2018-05/homes_for_people_and_wildlife_lr_-_spreads.pdf). According to this, 'All housing developments must result in:

- A measurable improvement for wild species and habitats, which means
  - Avoiding any loss or damage of wildlife sites
  - Designing in existing habitats
  - Creating new habitat
  - More than compensating for any habitat that is lost
- All residents having lasting access to nearby nature”

Research shows that green roofs can provide valuable habitats for wildlife (<https://livingroofs.org/biodiversity-and-wildlife/>). The extent of biodiversity will depend on the type of green roof installed. Sedum roofs benefit a limited range of invertebrates and provide foraging for pollinators when in flower. Ecologically designed extensive green roofs can provide good habitat for wildlife, but there are limitations in terms of replicating habitat at ground level due to shallow depth of soils and the drying effect of wind and sun. According to [www.livingroofs.org](http://www.livingroofs.org), a good green roof designed for biodiversity should include a varied substrate depth planted with a wide range of wildflowers suitable for dry meadows.

Wildlife connectivity between gardens can be achieved by allowing gaps in fencing and walls for hedgehogs and other small animals to roam, e.g. hedgehog streets in Kirtlington. This can be used to raise awareness of wildlife within the community.

Additional information on appropriate enhancements within the built environment can also be found in 'Biodiversity Positive: Eco-Towns Biodiversity Worksheet, produced by Town and Country Planning Association, Communities and Local Government, and Natural England', downloadable from: <https://www.tcpa.org.uk/Handlers/Download.ashx?IDMF=2e0ffaf8-24b1-45fe-a02f-505a06d72ff2>

The table below (prepared by BBOWT) sets out features in developments to encourage biodiversity, and their associated benefits for people:

	Biodiversity benefits	Reduces urban heat island effect	Reduces air pollution	Reduces water run-off
<p><b><u>Houses and Gardens:</u></b> Gardens: Fruit trees in each back garden; Wildflower turf making up part of lawn in each garden; Log piles; Hedgerows making up at least one boundary; Garden walls with overwintering shelter for insects</p>	✓	✓	✓	✓

Green roofs on garages and public buildings	✓	✓	✓	✓
Green walls	✓	✓	✓	✓
Built in bird boxes including swift bricks, swallow and house martin and garden birds.	✓			
Built in bat boxes, bricks and lofts – suitable for crevice dwellers and roof void dwellers.	✓			
<b><u>Street network and small green spaces:</u></b>				
Street trees – tree lined streets; woodland copses.	✓	✓	✓	✓
Wildflower rich road verges and green corners etc. with loggeries, hibernacula, bug hotels	✓	✓		✓
Climbing plants on fences and walls	✓	✓	✓	✓
Any shrubs chosen to maximise: berries for winter bird food; flowers for pollen and nectar.	✓			
SUDS schemes including biodiversity	✓	✓	✓	✓
<b><u>Green Spaces</u></b> (In addition to large scale habitat creation and management above):				
Wildflower edging / shrubs around sports pitches, play equipment, kick-about areas.	✓	✓		✓
Hedgerows and buffers: management for wildlife	✓	✓	✓	✓
Long grass / bare ground / rockeries / hibernacula for reptiles	✓	✓		✓
Clean-water wetlands / ponds / ditches with surrounding wildlife grass habitat for amphibians – can be part of SUDS and independent of SUDS.	✓	✓		✓
Woodland	✓	✓	✓	✓
Network of green and blue corridors without lighting	✓	✓	✓	✓
Allotments	✓	✓		✓

## **Lighting**

We welcome the measures in Chapter 14 to mitigate the impact of temporary construction lighting, and permanent infrastructure lighting however, the “aspiration for ‘dark corridors’ to be created” Chapter 14 para 7.14 is insufficient to ensure that bats using lines of trees and hedgerows as flight paths are not impacted. We would suggest that the wording should be altered to “dark corridors will be created” in order to provide certainty that this will be the case. In addition, we suggest that there should be conditions or covenants to control the type, power of and direction of security and outside lighting that can be installed on homes and other buildings.

## **Access vs. undisturbed areas**

In order to provide the substantial levels of habitat creation for wildlife that will be needed to reduce the impact on nearby designated sites, and also to achieve a net gain in biodiversity on site, there should not be public access across the entire area of the green infrastructure but rather should provide informal recreation along a network of paths and openly accessible spaces incorporated within a mosaic of areas that are closed off by appropriate use of hedgerows, screens, fencing and ditches, to allow wildlife to thrive and be observed from paths. Such control of access will allow the wildlife benefits needed in order to reduce the impact on nearby designated sites and achieve a net gain and would also create a much better opportunity for viewing wildlife for people. The farmland and other birds noted above should be considered in the zoning of the open access areas as some species are especially vulnerable to disturbance by people and dogs. The need to have some areas



without direct public access is supported by a research report published by Natural England 'Is the management of Local Wildlife Sites affected by the urban fringe?'

(NERR063) <http://publications.naturalengland.org.uk/publication/6134796821463040>

In addition, the area to be designated as a “nature reserve” should not be completely open to public access but rather should provide informal recreation along a network of paths and openly accessible spaces incorporated within a mosaic of areas that are closed off by appropriate use of hedgerows, screens, fencing and ditches, to allow wildlife to thrive and be observed from paths. Such control of access will allow the wildlife benefits needed in the nature reserve in order to achieve a net gain and would also create a much better opportunity for viewing wildlife for people. The identification of this areas as a nature reserve will also help in changing the public perception of the land so that they will be more inclined to keep to paths/keep dogs on leads as appropriate/and respect areas closed off for wildlife, which will all make a significant benefit for wildlife. We note that the size and location of the nature reserve is not yet decided but it is important the size and location are appropriate in order to achieve a biodiversity net gain on the site.

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