

Our Ref: NW/am/PF/10528
(Please reply to Banbury office)

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Mr Andy Bateson
Development Management Team Leader
Planning Department
Cherwell District Council
Bodicote House
Bodicote
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Dear Sir/Madam

**TOWN AND COUNTRY PLANNING ACT 1990
DISCHARGE OF CONDITIONS RELATING TO 22/01144/F**

'Full planning application for the erection of a new high quality combined research, development and production facility comprising of Class B2 floorspace and ancillary office floorspace with associated infrastructure including: formation of signal-controlled vehicular access to the A41 and repositioning of existing bus stops; ancillary workshops; staff gym and canteen; security gate house; a building for use as an energy centre (details of the energy generation reserved for future approval); loading bays; service yard; waste management area; external plant; vehicle parking; landscaping including permanent landscaped mounds; sustainable drainage details; together with the demolition of existing agricultural buildings within the red line boundary; and the realignment of an existing watercourse' **At Symmetry Park, Oxford North.**

Further to the submission of the discharge of pre-commencement conditions (LPA Ref; 23/00415/DISC) and (23/00417/DISC) at Symmetry Park Oxford, comments have now been received from the Environment Agency on the discharge of these conditions.

The legal advice that we have received from Counsel confirmed that there is no statutory requirement to consult the Environment Agency for the discharge of conditions.

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Notwithstanding this, the comments received from the Environment Agency are dated 30th and 31st March and were provided after the statutory 30-day consultation period which expired on the 25th March.

We have provided the below response to the comments received from the Environment Agency relating to Condition 13 (LEMP) and Condition 14 (CEMP). While separate conditions, and separate information has been submitted to discharge both, clearly the application information is to be read as a whole, and the two conditions ‘talk to each other’ (e.g. the reference to the role and responsibilities of the Ecological Clerk of Works (ECoW) are required to be set out in the CEMP, but more detail is provided in the LEMP).

It is also worth noting that the LEMP and CEMP have both been updated following the submission of these conditions in response to comments raised by Cherwell District Council’s Ecology Officer. These documents now address matters to their satisfaction.

Comments received from the Environment Agency set out below, with our response following in italics.

Condition 13 (LEMP)

We welcome the thorough consideration of terrestrial ecology and the inclusion of good practice in the design of the attenuation features including the broad, undulating draw down zone. However, the watercourse and its corridor have not been adequately considered. This is part of the headwaters of the Wendlebury Brook and therefore, has significant ecological importance in terms of both aquatic and corridor habitat as well as the vital role of connectivity. For this reason, it warrants explicit reference in each of the sections so that the maintenance of the channel and corridor can be specifically designed to promote healthy habitats and connectivity.

In particular, a more detailed/quantified description of how much scrub will be removed and number of trees thinned from the river corridor is required, some shade is essential for the health of the watercourse and a quantity of scrub provides essential and valuable habitat for the corridor. This needs to be outlined in the LEMP.

We welcome the EA’s recognition of the “thorough consideration of terrestrial ecology and the inclusion of good practice in the design of the attenuation features” – this has been carefully considered from the outset of the project.

There are overall calculations of scrub loss/gain within the Biodiversity Impact Assessment Report (which also shows the locations of this habitat loss and gain) approved as part of the original consideration of the application.

The Wendlebury Brook and its proposed diversion have been considered throughout the LEMP, with appropriate cross-references provided back to the approved Environmental Statement and Ecology Baseline Report that formed the basis of granting planning permission for the proposals (see para 3.6 of the LEMP).

Para 3.7 specifically identifies the watercourse as an ecological feature to be retained and enhanced:

The creation of sustainable drainage features (swales and watercourses) which will be subject to new planting with an appropriate wetland flora, so as to diversify habitats suitable for protected species

The LEMP then has numerous other references to measures relating to the watercourse to prevent pollution incidents (para 4.38); measures relating to removal of scrub and design principles to be followed (paras 5.23-5.25 – which were specifically updated in response to comments received from Cherwell District’s Ecology Officer); and ongoing management and maintenance (paras 6.49 and 7.21).

Detailed landscape plans, approved with the grant of Planning Permission and which were amended following comments from the Environment Agency during the determination period of the application, are also included in the LEMP.

In addition, the following issues should be addressed:

- *The Biodiversity Protection Zones plan and Appendix 2: Landscape Planting plan in the CEMP show some protective fencing on the bank top of the Wendlebury Brook, this should be revised to allow mammal passage along the river corridor by setting any fences back from the bank top. The positioning of this fencing should be accurately identified in the CEMP and LEMP and not left as a decision for the contractor.*

The scale of the plan may suggest that protective fencing is located directly on the bank top, but this will not be the case. The comments from the EA seem to miss a key controlling element of the LEMP, namely that an Ecological Clerk of Works will be appointed and present (see paras 4.3-4.6), and they will be responsible for ensuring ecological measures are fully and properly implemented, rather than leaving them open to interpretation from the contractor.

The reasoning for showing protective fences along the edges of the watercourses rather than the boundaries of the ‘habitats to be retained or enhanced for biodiversity’ is that the habitats in the areas to be enhanced will need enhancement works carried out, such as regrading, seeding and planting, following realignment of the watercourse. Locating fencing here will therefore maintain the greatest level of protection to the watercourse, and detailed ‘operational’ issues can be controlled via the Ecological Clerk of Works and further Risk Assessment in response to detailed project programme issues during construction.

- *There is no sheet to cover the furthest extent of the brook before it crosses the main road (i.e., Northeast of sheet 7). The LEMP should cover the maintenance of an ecological buffer zone for the entire length and both banks of the watercourse where it is not culverted.*

No amendments are proposed to the watercourse (which remains on its existing route) to the north of the new estate road. Details of this are shown on Sheet 1 of 17, with a continuation of the proposed species-rich meadow grass between the southern side of the watercourse and the A41 boundary and existing hedgerows being clearly shown. Again, these are matters that were shown on

the detailed Landscape Plans approved as part of the determination of the original application, and form the basis on which planning permission was granted.

- *Medallion turf is not suitable for an ecological buffer zone as it contains aggressive grass species which would dominate native plants and prevent their establishment. The ecological buffer zone should only be planted with native species and include some trees and shrubs to provide habitat, refuge, food and some shade along the corridor. Quercus Ilex is naturalised in the UK but not native to the UK. Native species are preferred due to their increased benefits for wildlife.*

Very limited localised areas of Medallion Turf are provided on either side of the main estate road access into the scheme in proximity to the watercourse. This requires in order to present a commercially attractive and professional gateway to the development, with extents kept to a minimum. Again this matter was shown on the detailed Landscape Plans approved as part of the determination of the original application, and which was considered to be acceptable in determining that planning permission was granted.

Condition 14 (CEMP)

The CEMP should include how the ecology of the Wendlebury Brook is to be protected during the re-alignment of the watercourse, with particular focus on the exact position of the new channel and ecological buffer zones, cross sections and depth of the new channel, how silt mobilisation will be controlled, any planned dewatering activities and mitigation for fish passage/spawning.

As set out earlier, there is overlap in Conditions 13 (LEMP) and 14 (CEMP), and the two necessarily need to be ‘read together’. The CEMP specifically requires “The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person” to be set out and agreed.

This is set out in Section 10 of the document:

10.0 Roles and responsibilities of the onsite ecological clerk of works or similarly competent person:

- Management of the implementation of physical protection measures
- Training of staff with regard to the CEMP control measures
- Inspection and maintenance of the physical protection measures and monitoring of working practises.

The design of the realigned watercourse has been approved as part of the planning application, and subsequent grant of Ordinary Watercourse Consent for the diversion (the watercourse is not Main River).

Additional Risk Control/Risk Assessment measures are set out throughout the CEMP where they relate to specific activities. The ditch is usually dry through the majority of the year, and as set out in the originally approved application material, it therefore does not currently

allow fish passage for spawning opportunities, so no mitigation measures are therefore required.

The ecological buffer zone is required along the entire length of the watercourse and on both banks except where a culvert takes the flow under the access road and main road. The Biodiversity Protection Zones plan and Appendix 2: Landscape Planting plan in the CEMP appear to show the ecological buffer stopping short of the access road and not continuing between the culverts despite there being a retained part of the watercourse which will not be culverted.

These plans also show that the buffer is often only on one side of the watercourse and likewise the section north of the Ancient Semi-natural Woodland is not coloured to show habitats to be retained but appears to be within the site boundary.

The plans only specifically denote a buffer zone on the western side of the route as it runs along the A41 boundary up to the estate road access. The detailed Landscape Plans approved as part of the determination of the original application identify the extent of the corridor that was considered to be acceptable in the decision taken to grant planning permission.

The Ancient Woodland was not included within the 'Red Line' boundary of the application, but rather within the wider 'Blue Line' ownership. A separate Woodland Management Plan was conditioned, and this is under discussion with the District's Arboricultural Officer.

Furthermore, the plans show fences on the bank top, this is unacceptable. All fences need to be moved back to the edge of the ecological buffer zone to allow movement of fauna through the river corridor.

This point is addressed under the response on the LEMP above.

In addition to the above, the submitted CEMP has the following issues:

- *Section 5.0 (page 8) describes debris netting on the boundary fence. However, this should not prevent fauna accessing the brook or reduce connectivity along the corridor. Protective fencing should be around the source of debris and dust instead of along the brook.*

Comments on Section 5 are noted, and the Ecological Clerk of Works will manage this accordingly. Section 11 clearly identifies protective fencing measures around sources of debris and dust.

- *It is not acceptable for the contractor to decide on an appropriate buffer for the ecological buffer zone (as stated in section 6), particularly around the watercourse. This should be decided prior to any work and must be included in the CEMP submitted for the discharge of condition.*

Buffers will be identified between the Contractor in collaboration with the Ecological Clerk of Works, as set out in the document.

- *Netting should not be used along the bank of the Wendlebury Brook (as stated in section 11), and the Biodiversity Protection Zone plan shows fences too close to*

bank top. The position of these fences is critical and should be confirmed prior to the contractor initiating work.

The reference to netting relates to “where additional containment is required”. Location of fences has been addressed above, as has the collaboration between the contractor and Ecological Clerk of Works.

Environmental permit - advice to applicant

The Environmental Permitting (England and Wales) Regulations 2016 require a permit or exemption to be obtained for any activities which will take place:

- *On or within 8 metres of a main river (16 metres if tidal)*
- *On or within 8 metres of a flood defence structure or culverted main river (16 metres if tidal)*
- *On or within 16 metres of a sea defence*
- *Involving quarrying or excavation within 16 metres of any main river, flood defence (including a remote defence) or culvert*
- *In a floodplain more than 8 metres from the river bank, culvert or flood defence structure (16 metres if it's a tidal main river) and you don't already have planning permission*

Environmental Permitting is separate to the planning process. Notwithstanding, the watercourse within the site is not designated as Main River, and Ordinary Watercourse Consent has subsequently been approved for the diversion. It is therefore not considered that any Environmental Permit is required from the Environment Agency.

Accordingly, we consider all matters raised by the EA to have already been considered appropriately in the submitted documents, and to the satisfaction of the Council's Ecology Officer. We therefore request prompt discharge of these matters in order to prevent delays to the commencement of development.

Yours faithfully



Nick Wyke
Associate Director
FRAMPTONS