

FAO Andrew Thompson

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Cherwell District Council

**By email only**

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Dear Andrew

**Application no: 23/02098/OUT**

**Proposal: Outline application, with all matters reserved, for a multi-phased (severable), comprehensive residential-led mixed use development comprising: Up to 215,000 square metres gross external area of residential floorspace (or c.1,800 homes which depending on the housing mix could result in a higher or lower number of housing units) within Use Class C3/C4 and large houses of multiple occupation (Sui Generis); Supporting social infrastructure including secondary school/primary school(s) (Use Class F1); health, indoor sport and recreation, emergency and nursery facilities (Class E(d)-(f)). Supporting retail, leisure and community uses, including retail (Class E(a)), cafes and restaurants (Class E(b)), commercial and professional services (Class E(c)), a hotel (Use Class C1), local community uses (Class F2), and other local centre uses within a Sui Generis use including public houses, bars and drinking establishments (including with expanded food provision), hot food takeaways, venues for live music performance, theatre, and cinema. Up to 155,000 net additional square metres (gross external area) of flexible employment uses including research and development, office and workspace and associated uses (Use E(g)), industrial (Use Class B2) and storage (Use Class B8) in connection with the expansion of Begbroke Science Park; Highway works, including new vehicular, cyclist and pedestrian roads and paths, improvements to the existing Sandy Lane and Begbroke Hill road, a bridge over the Oxford Canal, safeguarded land for a rail halt, and car and cycle parking with associated electric vehicle charging infrastructure; Landscape and public realm, including areas for sustainable urban drainage systems, allotments, biodiversity areas, outdoor play and sports facilities (Use Class F2(c)); Utility, energy, water, and waste water facilities and infrastructure; together with enabling, site clearance, demolition and associated works, including temporary meanwhile uses. The Proposed Development affects the setting of a listed building and includes potential alterations to public rights of way. The application is accompanied by an Environmental Statement**

**Location: Begbroke Science Park Begbroke Hill Begbroke OX5 1PF**

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

Objection, in relation to the following issues:

1. Application is not in keeping with the adopted local plan
2. Potential impact on Rushy Meadows SSSI contrary to the NPPF and policy ESD10 of the Cherwell Local Plan
3. Management of green space for the benefit of nature in perpetuity
4. Application fails to provide detailed requirements of section 20 of the Local Plan Partial Review PR8 policy
5. No commitment to provide a net gain in biodiversity
6. Loss of Other Neutral Grassland

1. Application is not in keeping with the adopted local plan

The Cherwell Local Plan 2011 - 2031 (Part1) Partial Review - Oxford's Unmet Housing Need includes at paragraph 8:

*"The creation of a publicly accessible Local Nature Reserve on 29.2 hectares of land based on Rowel Brook in the location shown."*

The map titled **Policy PR8 Policies Map – Land East of the A44** indicates the location of the proposed Local Nature Reserve across the northern edge of the development site.

We are very concerned that the current application proposes that the area indicated as a 29ha LNR in the local plan will include a community farm, allotments and a community orchard along with a greatly reduced area for nature which includes a woodland in the west transitioning through wildflower-rich meadows and then wetland and marsh habitats in the east (see Design and Access Statement part 7 5.15). The applicant's Outline Landscape and Ecological Management plan (OLEMP) states (p11):

*"**Rowel Brook Park** – comprises areas to the north and south of Rowel Brook in the north of the Site and west of the railway line. The southern area of Rowel Brook Park is to be improved to deliver public open space with high quality walking and cycle routes, and new habitats and enhanced biodiversity. The northern area is intended to primarily to be used for cultivation and uses related to its existing agricultural use, including (but not limited to) allotments, community gardens, farms and orchards. This is the indicative location for a proposed social farm and re-provided allotments. Structural planting to the east of Begbroke village will be delivered to provide visual screening. Parts of Rowel Brook Park will form a new Local Nature Reserve."*

And at p14:

*"47. Rowel Brook Park is to be located within the northern extent of the Site, encompassing approximately 29ha. Its objective is to provide a new public open space for recreational and educational purposes whilst being managed for the benefit of biodiversity."*

Whilst we are not opposed to the provision of community gardens, farms and orchards and recognise their value to residents we do not consider this location to be appropriate since they are not fulfilling one of the key roles of placing a 29.2 ha Local Nature Reserve (LNR) in the north part of the development as very clearly set out in the Local Plan Partial Review, which is to create natural habitat,

managed as a nature reserve, in the areas close to the SSSI. Such measures, effectively expanding the area of the SSSI habitats, are essential to make the SSSI more resilient to impact and thus mitigate for what would otherwise be a development that would create unacceptable risk of impact on SSSI.

The application takes much of the space allocated in the Local Plan as a 29.2 ha Local Nature Reserve and instead delivers agricultural habitats. But even after that, the very much reduced area which is not agricultural is described as “*public open space with high quality walking and cycle routes*”, and it is named Rowel Brook Park whereas the Local Plan requires a Local Nature Reserve. There is a significant difference between a Park and a Local Nature Reserve. It is not clear exactly which part of Rowel Brook Park will form the new Local Nature Reserve or how this will be managed for nature, or how public access will be managed and zoned to ensure that whilst people are able to enjoy the nature, the recreational access is not to the detriment of that nature.

In our response to the Partial Review consultation in September 2017 (see appendix A) we stated in relation to the proposals for PR8:

*“We welcome the provision and aspiration for a Local Nature Reserve (LNR) to mitigate adverse impacts on Rushy Meadows SSSI. The LNR has the potential to deliver ecological benefits but it is one of two main recreational open spaces in the development and will therefore be subject to a lot of recreational pressure. Much will depend on the design and management of this site but we remain concerned that the area might not be able to fully mitigate indirect impacts on the SSSI...”*

*“... It will be important that the development provides sufficient attractive open space and footpaths for informal recreation (including dog walking) in addition to nature conservation areas to limit the pressure on valuable habitats.”*

In conclusion, this application is not delivering a 29.2 ha LNR in the location set out in the Local Plan, and therefore it is not in keeping with the Local Plan policy and should not be approved. The required LNR should be made up of natural habitat, and be managed as a nature reserve, with public access managed and zoned so as to provide an opportunity for people to enjoy a nature reserve without negatively impacting on its wildlife.

## **2. Potential impact on Rushy Meadows SSSI contrary to the NPPF and policy ESD10 of the Cherwell Local Plan**

Rushy Meadows SSSI is situated 10m NE of the proposed development site. The citation for Rushy Meadows SSSI states:

*“This site consists of a series of unimproved alluvial grasslands alongside the Oxford Canal, in which low-intensity, traditional management has produced rich meadow and fen communities containing several uncommon species. Meadow habitats of this type are now both rare and under threat in Britain. Rushy Meadows represents one of the few surviving sites in a district where such grasslands have declined in area following agricultural improvement and urban development.”*

The NPPF paragraph 180 states:

*“b) development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest;”*

The applicant’s ES Table 13.11 Description of Ecological Receptors states at point 2:

*“Due to its proximity, development at the Site has the potential for significant indirect effects on this site, for example, through accidental damage during construction, changes to the SSSI’s hydrological regime, water pollution, changes in air quality and/or increased recreational impacts.”*

And Table 13.15: Operational Phase Effects states at point 2:

*“There are no current or proposed public rights of way or access within Rushy Meadows SSSI, which is a privately owned site. There are gaps in the boundary hedgerow on Begbroke Lane and along the Oxford Canal towpath which could enable trespass access to the SSSI. With the increase in residential buildings in proximity there is potential for increased levels of such trespass, and hence, increased level of recreational disturbance.”*

The applicant concludes:

*“However, given the extent of proposed greenspace in the Proposed Development, increased levels of visitors and hence of recreational pressure at the SSSI is likely to be negligible”.*

The applicant’s OLEMP p 11 states:

*“With consideration of the SSSI, strategies to prevent the deterioration of the SSSI should be implemented, such as a 15m buffer of native vegetation (such as wild flower grassland with scrub) bounding the perimeters of the Community Farm fringing the SSSI. In addition, the east of Rowel Brook Park shall be developed as a damp meadow to serve as an extension of the Rushy Meadow SSSI. This serves as a link parallel to the Oxford canal, linking the SSSI southwards to the Railway Marshes.”*

The fact that the application in its current form is not delivering a 29.2ha LNR adjacent to the SSSI is not only not in keeping with some very clear planning policy (see point 1 above), it also means that the application poses an unacceptable risk of impact to the SSSI, contrary to the NPPF and policy ESD10 of the Cherwell Local Plan. The LNR required by the Local Plan is vital mitigation for the SSSI for numerous reasons including:

- a) By greatly increasing the area of natural habitat adjacent to the SSSI it will increase the resilience of the SSSI against the possible negative impacts of the development, following the standard ecological theory that larger and ecologically connected sites provide greater resilience for both habitats and species, compared to smaller and isolated sites. Such resilience would help the SSSI resist the potential impacts of recreation, disturbance, lighting, hydrological impact, air pollution impact, and loss of connectivity;

- b) It would provide significant buffering against many of the above impacts;
- c) By providing alternative recreational access to a nature reserve rich in natural habitat, it would reduce the level of recreational access to the SSSI. There are many people who will seek out a wild, natural setting for recreation as opposed to a park.

We therefore consider that the proposed development in its current form is likely to have an adverse effect on the SSSI and we do not consider that the applicant has demonstrated that *“the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest”* as required by paragraph 180 of the NPPF.

### **3. Management of green space for the benefit of nature in perpetuity**

We note that the D&A Statement Part 7 and OLEMP both refer to restricted/limited public access to Railway Marshes in order to avoid disturbance to nature. The OLEMP also states that:

*“An 11ha part of the Canalside Park should be designed to provide habitat for skylark (a ground-nesting bird). This area should avoid public access and any management during the spring and summer breeding season.”*

In relation to Rowel Brook Park the D&A statement part 7 states:

*“Different levels of accessibility ensure a good balance between human activities and undisturbed spaces for flora and fauna.”*

In order to provide the substantial benefits for wildlife that will be needed to achieve a net gain in biodiversity that is focused primarily on site there should not be public access across the entire area of the green infrastructure, but instead there should be informal recreation along a network of paths and openly accessible spaces included within a mosaic of areas that are closed off by appropriate use of hedgerows, screens, fencing and ditches. We would request much more detailed information about how this is to be achieved.

Once built, if approved, the development can be reasonably assumed to be there for ever, since even when the buildings are replaced they would be likely to be replaced by other forms of development. Therefore, the wildlife habitat will be lost forever and any compensation must be provided forever. Otherwise the result is to simply defer a significant loss of biodiversity that should not be occurring either now or in 30 years' time.

The most effective method to ensure that any compensation is provided for ever would be for the land identified for on site or off-site habitat creation and enhancement 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). This legislation was used to define in perpetuity in this extract from the Thames Basin Heaths SPA. Para 3.1.5 Thames Basin Heaths Special Protection Area Supplementary Planning Document which 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).*

On-site or off-site compensation that involves only a 30-year agreement 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, and the potential impact on wildlife habitat away from the site, will be permanent so the compensation must be permanent.

#### **4. Application fails to provide detailed requirements of section 20 of the Local Plan Partial Review PR8 policy:**

The PR8 policy requires in item 20, a Biodiversity Improvement and Management Plan with numerous requirements as to what it includes. In the interests of certainty, we have included the whole of item 20 below. The Outline Landscape and Ecological Management plan submitted with the application does provide some information on the below but there are many aspects which we could not find covered and others were not covered to the level of detail required below.

The Outline Landscape and Ecological Management Plan states:

*“6. This document provides the information required for a proposed ‘Biodiversity Improvement and Management Plan’, as set out in paragraph 20 of Cherwell Local Plan Policy PR8, apart from assessment of impacts, which is covered by **Chapter 13: Biodiversity** of the Environmental Statement (‘ES’) (ES Volume I), and protection measures during construction and habitat creation, which are covered by the **Outline Construction Environmental Management Plan** (July 2023). “*

We request that a detailed Biodiversity Improvement and Management Plan should be written, submitted and consulted on before this application is considered for determination. We suggest it is laid out in a way that clearly shows that each of the below have been complied with in detail and, for clarity, they should all be covered within the Biodiversity Improvement and Management Plan.

There are numerous aspects of the below that are either not addressed at all or not addressed in sufficient detail in the submitted document. It is possible we may have missed something but the way the document has been laid out which is completely disconnected from the layout of the required list has made it very hard to assess this. The items which have not been addressed include, but are not limited to:

- c. Protection of nearby assets – SSSIs and LWSs;
- d. Lighting – which is only addressed very briefly;
- f. Wildlife connectivity between gardens – we could only find reference to hedgehogs; and we could not find reference to green roofs or walls;
- g. Whilst there are some references, more detail is needed particularly on links to the LNR;
- h. This is not covered in the manner that the Local Plan requires, nor in sufficient detail.
- i. This is not covered and we could only find one single reference to Local Nature Reserve.
- j. It was not clear to us that this was covered in detail.
- k. Although we could find a section on skylark it needs to be written without the use of the word “could” but instead giving surety to the proposals. We could not find references to other farmland birds.

I. We could not find any reference to this. With the amount of natural habitat required by the local plan PR8 then working with a conservation organisation is of vital importance.

In addition, much of the Outline Landscape and Ecological Management Plan is written in ways that do not give certainty. To give just two examples, with our underlining:

*“58. ....To achieve this objective, the following is recommended:.....*

*Consideration of off-site mitigation to sufficiently compensate for the loss of skylark habitat in the Proposed Development “*

and

*“4.2.4. Skylark Mitigation Area*

*82. Approximately 11ha of the Proposed Development could be managed for skylark habitat.”*

The BIMP must be written without the use of phrases or words such as “could”, “is recommended” and “consideration”. It must use phrases such as “will” and “must” so that it is creating a binding commitment which can be conditioned to ensure it happens.

The wording of item 20 in PR8 which must be addressed in full by the BIMP is as follows:

*“20. The application(s) shall be supported by a proposed Biodiversity Improvement and Management Plan (BIMP) informed by the findings of the BIA and habitat surveys and to be agreed before development commences. The BIMP shall include:*

*a. Measures for securing net biodiversity gain within the site and within the residential area and for the protection of wildlife during construction.*

*b. Measures for retaining and conserving protected/notable species (identified within baseline surveys) within the development.*

*c. Demonstration that designated environmental assets will not be harmed, including no detrimental impacts on down-canal Sites of Special Scientific Interest and Local Wildlife Sites through hydrological, hydro-chemical or sedimentation impacts.*

*d. Measures to minimise light spillage and noise levels on habitats especially along wildlife corridors.*

*e. Measures for enhancing existing designated and non-designated environmental assets.*

*f. A scheme for the provision for in-built bird and bat boxes, for wildlife connectivity between gardens and for the viable provision of designated green walls and roofs.*

*g. Measures for the protection and enhancement of Sandy Lane and Yarnton Lane as green links and wildlife corridors and wildlife connectivity from Sandy Lane to the required Local Nature Reserve.*

*h. The creation of a green infrastructure network with connected wildlife corridors, including within the residential area and alongside the railway line, and the improvement of the existing network including within the Lower Cherwell Conservation Target Area and to the Rushy Meadows Site of Special Scientific Interest, the Meadows West of the Oxford Canal Local Wildlife Site and to Stratfield Farm (policy PR7b).*

*i. A scheme and programme for the creation of the required Local Nature Reserve and nature conservation area to be agreed with the Council. The scheme for the LNR shall include habitats to be restored to SSSI quality and measures for the protection of the Rushy Meadows SSSI. Both schemes shall provide for works to be undertaken outside of the bird nesting season.*

*j. Measures for the protection and enhancement of the Oxford Canal corridor and towpath including the creation and restoration of water vole habitat in the Lower Cherwell Conservation Target Area and the maintenance of a dark canal corridor through the minimisation of light pollution.*

*k. Farmland bird compensation.*

*l. Proposals for wildlife management in conjunction with conservation organisations including for the Local Nature Reserve and nature conservation area. The proposals shall include measures for restricting public access to sensitive habitats.”*

## **5. No commitment to provide a net gain in biodiversity**

We noted the following in Appendix 13.3 - Biodiversity Net Gain Assessment:

a)

*“1.16 This assessment is based on an illustrative masterplan, and therefore it addresses the feasibility and approximate magnitude of biodiversity net gain from the Proposed Development. It does not represent a binding commitment to the creation of certain habitat types, extents, or location in the Proposed Development, or to a certain level of biodiversity gain.”*

This is a matter of concern for several reasons. In a wider sense than the metric alone, the application sets out numerous areas with habitat delivery and there does need to be a binding commitment to the delivery of that habitat. Also, the metric process only works if there is a binding commitment to the delivery of habitat in particular locations and of particular habitat distinctiveness and conditions. This is then the basis on which enforcement action can be taken in the future if those are not delivered. If the developer is not yet sure of what habitats can be delivered and where then we would suggest that the application is paused until there is certainty so that a metric without such wording as is in 1.16 can be submitted, which can then be enforced. We consider that the current stage is the stage at which that level of certainty is provided and not at a reserved matters stage.

b)

*“1.18 The full calculation spreadsheet has been provided to Cherwell District Council.”*

We were unable to find the spreadsheet in the planning documents on the website. It is important that it is uploaded so as to ensure the consultees the opportunity to properly assess the metric. If it was uploaded and we have missed it then please could it be sent to us.

## **6. Loss of Other Neutral Grassland**

Although not a priority habitat, other neutral grassland is a high-quality habitat and it is regrettable that several areas where it occurs, including several examples in moderate condition, are due to be lost. In many cases the proposals for the area concerned such as the Central Park would allow for the retention and enhancement of the habitat however it is not clear that this is proposed. We consider



that measures need to be set out in the BIMP or otherwise to indicate for each area of other neutral grassland that the loss will be minimised and the retained areas enhanced.

For the reasons described above, it is our opinion that this application should not be approved 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

**Appendix A BBOWT response to Cherwell LP partial review September 2017**