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By email only

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Dear Chris

23/03428/OUT

Proposal: Outline planning application for the construction of up to 140,000 sqm of employment floorspace (use class B8) with ancillary offices and facilities and servicing and infrastructure including new site accesses. Internal roads and footpaths, landscaping including earthworks to create development platforms and bunds, drainage features and other associated works including demolition of the existing farmhouse

Location: OS Parcel 7921 South of Huscote Farm and North West Of County Boundary, Daventry Road, Banbury

Objection:

- 1. Application does not provide adequate evidence of a net gain in biodiversity**
- 2. The importance of a net gain in biodiversity being in perpetuity**
- 3. Loss of or damage to hedgerow priority habitat contrary to the NPPF and Cherwell Local Plan**
- 4. Loss of ridge and furrow grassland**
- 5. Buffer zones and management of hedgerows in order to achieve biodiversity net gain**
- 6. 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 2017 (as amended).**

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. Application does not provide adequate evidence of a net gain in biodiversity**

Our response below draws on the following planning policy and we have underlined the aspects most relevant to our response.



National Planning Policy Framework (NPPF) Paragraph 174. states:

“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;”

The Environment Act 2021 will make a 10% net gain in biodiversity mandatory in 2023, however local planning policy already requires a 10% net gain in biodiversity as illustrated below:

The Cherwell Local Plan, Policy ESD 10: Protection and Enhancement of Biodiversity and the Natural Environment state:

... “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” ...

And in addition, p15 of Cherwell District Council’s Community Nature Plan 2020–2022 A natural environment for people and wildlife refers to a target to:

“Seek a minimum of 10% net gain in biodiversity when considering proposals for development.”

A summary of the Biodiversity Net Gain metric spreadsheet has been submitted to illustrate the potential net gain resulting from this application. This shows a net gain of 23.87% habitat units and 10.61% hedgerow units.

We welcome the submission of the summary metric but it appears that the summary relating to site habitat enhancement has been omitted and we would also request that the full excel spreadsheet is submitted to allow a complete analysis of the calculation.

Whilst it is understood that it is proposed that a LEMP would be secured by planning condition, we consider that a much greater level of detail is needed to justify this proposal at this stage of the application and that this further detail should be submitted and consulted on in order to allow the consideration of the measures which will secure the success of the applicant’s biodiversity metric. We consider a detailed strategy is needed at this stage, setting out the creation and management techniques which will be used to achieve the intended outcome, together with details of long-term monitoring in perpetuity which will be carried out to assess the success of the habitat creation, and with a requirement for remediation work or additional off-site habitat creation in the event it is not successful. The Strategy should include justification for the chosen distinctiveness and condition scores. Annual reports should be required to be submitted for approval by the local authority ecologist, and consulted on more widely, so that the progress towards the proposed habitat outcome can be overseen.

2. The importance of a net gain in biodiversity being in perpetuity

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 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 will be permanent so the compensation must be permanent.

3. Loss of or damage to hedgerow priority habitat contrary to the NPPF and Cherwell Local Plan

We note that the development design has considered the existing hedgerows and retains a significant proportion of them. However, we are concerned about the loss of some of the hedgerow and the impact on species dependent on the retained hedgerows. Paragraph 7.6.11 of the applicant's Environmental Statement Chapter 7 Ecology states:

"The Proposed Development will require land take of 12 out of 42 native hedgerows either fully or partially. The retained hedgerows will retain habitat corridors around the Site. Given the length of hedgerow being retained and planted, it is unlikely that the direct permanent loss of hedgerow will have a negative effect on habitat connectivity of significance at a Site level."

Given the ridge and furrow field systems visible on aerial photography it is likely that these are ancient hedgerows whose value to many species will be greatly impacted by the development and by the loss of the field system in between them.

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*

We are concerned that newly created hedgerow will not compensate for impact on the retained hedgerow and the loss of hedgerow within the field system.

4. Loss of ridge and furrow grassland

The proposed development site contains a substantial area of ridge and furrow grassland. Oxfordshire is one of the most important counties in England for such grassland, and the ridge and furrow grassland on site represents a substantial amount bearing in mind that once ridge and furrow grassland is lost it is gone for ever. As an archaeological feature indicating a lack of ploughing or other structural management, the grassland within ridge and furrow areas can be biodiverse due to the hydrological and soil impact of the variation in height between the ridges and furrows, and because the fact that the ridge and furrow is still there from medieval times is indicative of a lack of deep ploughing over a considerable time period and therefore there is likely to be an undisturbed soil structure with diverse soil fauna. We are greatly concerned by the loss of ridge and furrow that would result from this proposal. If despite our concerns development in fields containing ridge and furrow is nevertheless pursued, then we consider that more detailed surveys on a field by field basis must be carried out, and submitted for consultation at this stage, of the ridge and furrow grassland in particular. The results must then be considered as appropriate.

5. Buffer zones and management of hedgerows in order to achieve biodiversity net gain

If the application is approved then retained hedgerows should be protected and enriched by creating buffer zones or buffers of semi natural vegetation. Buffers zones should feature:

- Minimum 10 m wide buffer zone each side of the hedgerow
- Dark corridors along the hedgerows so that both the hedgerow and the 10m buffer is protected from light
- Buffer zones should be primarily diverse grassland area alongside hedgerows so that they are suitable for invertebrates
- No built development within the buffer zone
- Positive ecological and landscape management techniques to ensure value to key species
- SuDS features such as swales and attenuation ponds
- Nesting and foraging opportunities for birds

- Provision for continued habitat and wildlife corridors for species such as invertebrates, reptiles, hedgehogs and bats
- Protection of wildlife from increased human presence, site traffic, noise and lighting during construction and operation phases
- New planting of similar species and or translocations to create new links between hedgerows and to fill gaps in the existing hedgerows

In addition, If the application is approved, then new and retained hedgerows will need to be carefully managed in order to achieve the necessary biodiversity net gain. We consider that a great deal more information in relation to the management of hedgerows is needed. In general, a rotational cutting regime on a three-year cycle will be of most value to biodiversity. This is for many reasons including allowing the formation of fruit which is a vital winter food source for birds, and allowing butterfly and other invertebrate eggs laid on branches to overwinter. This is an important issue as annual cutting would have a severely detrimental impact on the biodiversity value of the hedgerows.

Newly planted hedgerows should include a significant component of blackthorn, the primary larval food plant of brown hairstreak butterfly as this area is an important stronghold for this increasingly rare species.

6. 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 2017 (as amended).

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.

The applicant's Environmental Statement Chapter 7 Ecology paragraph 7.6.20 states:

"The Proposed Development will require loss of areas of hedgerows and scrub and grassland used by a range of bird species for foraging and breeding. B1 and B7 will be demolished which could support bird species Based on the survey data the highest value habitats for birds holding territories were the hedgerows and trees with the grassland providing limited value due to the effect of cattle grazing. Without additional mitigation nesting birds could be negatively, directly affected during the construction phase through temporary to permanent loss of habitat during breeding (vegetation removal and building demolition),

Paragraph 7.4.59 states:

"A total of 43 species were recorded during the 2021 BBS survey (see Appendix 7.1 PEA report for full details) Of these, 17 were species of conservation concern, including ten that showed evidence of breeding or holding territory within the site."

Birds of concern holding territory within the site include linnet and yellowhammer (see table 7.10) both of which are red list species, Species of Principle Importance (SPI) and protected under Section 41 of the NERC Act (2006), and are likely to be adversely affected by the loss of the field system within the retained/newly created hedgerows.

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 an adequate net gain in biodiversity (see above).

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 2017 (as amended). The guidance is available at: <https://www.gov.uk/guidance/providing-and-protecting-habitat-for-wild-birds>

The guidance states that:

“As a competent authority, you must help to provide, protect and restore habitats for wild birds. This will help to make sure there are healthy populations of wild birds in their natural habitats across England and Wales...”

...You must take appropriate steps to help:

- *preserve, manage and re-establish habitat that is large and varied enough for wild birds to support and maintain their populations in the long term*
- *avoid any pollution or deterioration of wild bird habitat as far as possible*

Your duty to provide and protect wild bird habitats applies when you carry out your functions, for example, when you:

...

- *make plans or strategies to decide where activities or development should take place*
- *take decisions that might affect wild bird habitats, such as giving permissions or consents*

...When you carry out your duties you should aim to provide or protect habitat that allows wild bird populations to maintain their numbers in the areas where they naturally live.

You should consider habitats used by wild bird species that are in decline and also habitats supporting wild birds with healthy populations.”

This application currently does not provide sufficient evidence that it will “*preserve, manage and re-establish habitat that is large and varied enough for wild birds to support their population in the long term*” in relation both to “*wild birds that are in decline*” and to “*wild birds with healthy populations*”

There is a precedent within Cherwell district for a large-scale offsite mitigation package in relation to impact on farmland birds which was drawn up in response to the North West Bicester Eco Town

proposal and it is our opinion that should the planning authority be minded to approve the application then a similar offsite mitigation package should be applied in this case.

Lighting

We are greatly concerned by the implications for wildlife from the introduction of lighting into this rural area. Invertebrates, bats and birds are all highly sensitive to the introduction of lighting into dark areas. We are particularly concerned if there is 24-hour operation or significant operation after darkness of the site. All lighting both during construction and operation must be minimised, through for example the use of low bollard lighting if needed for safety along access routes. Also, the spectrum of lighting used must be of a type with the least impact on wildlife, light intensity must be minimised, and cowls should be used to prevent light leakage. A full strategy on Lighting and Wildlife should be provided

Solar Panels and green roofs

In the event that this application is approved we would suggest that that developers should be required to maximise the provision of either green roofs or PV cells all suitable roof space. Research shows that green roofs can provide valuable habitats for wildlife <https://livingroofs.org/biodiversity-and-wildlife/> According to 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. The inclusion of buildings with green roofs would be another means of increasing biodiversity within the proposed development.

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