

Cherwell District Council

By email only

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21st January 2025

Dear Sir/Madam

24/03243/OUT

Location: Land North West Of Railway Farm Station Road Hook Norton

Proposal: Outline application for the demolition and re-building of former railway abutment wall and erection of up to 55 dwellings with associated infrastructure. All Matters Reserved except for means of access

Objection:

- 1. Application does not provide evidence of a net gain in biodiversity**
- 2. The importance of a net gain in biodiversity being in perpetuity**
- 3. Potential hydrological (water quality and water quantity) impact on lowland fen irreplaceable habitat at Cradle and Grounds Farm Banks LWS**
- 4. The importance of avoiding impact on UK priority species including breeding birds**
- 5. Lighting and potential impact on priority species bats**
- 6. Application does not provide evidence that it will help achieve the aims of the Conservation Target 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. Application does not provide evidence of a net gain in biodiversity

The Environment Act 2021 requires a Biodiversity Gain Plan to be submitted and approved prior to the commencement of development. The Biodiversity Gain Plan must demonstrate a minimum 10% biodiversity net gain measured against the baseline value of the on-site habitats.

The BNG metric submitted by the applicant is indicating a 10.71% net loss in habitat units. The applicant states at paragraph 5.15 of their Ecological Appraisal:



“Overall, the proposed development does not have the capacity to result in an on-site biodiversity net-gain in terms of habitats. The development will seek to provide compensation through a financial contribution, or third party biobank provider, to be secured through planning obligations such as a S106 or through an appropriately worded condition”

It is our opinion that details of the proposed off-site solution to generate the unit shortfall should be submitted at this stage so that they can be analysed and commented on since the potential to achieve a minimum 10% Biodiversity Net Gain is fundamental to the acceptability of the application.

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. Potential hydrological (water quality and water quantity) impact on lowland fen irreplaceable habitat at Cradle and Grounds Farm Banks LWS

The application site is located in close proximity, and uphill from the River Swere, which then flows soon after into the Cradle and Grounds Farm Banks LWS. We are concerned about potential indirect impacts on the nature conservation interest of the LWS, and the River Swere, due to possible changes to the hydrology (water quality in particular and water quantity). The LWS contains Lowland Fen habitat which is extremely vulnerable to changes in both water quality and water quantity. ESD 10 of the Cherwell local plan part 1 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”

Paragraph 4.2 of the applicant’s Ecological Appraisal states:

“The Cradle Grounds Farm Banks Local Wildlife Site (LWS) is over 500m from the Site. Given this distance it is unlikely that there will be any direct affects to the conservation value of the LWS during the construction period.”

However, we are concerned that there a possibility that the development could impact negatively on the LWS and the rare and fragile fen habitat that it contains, by means of hydrological impact, in terms of water quantity, and in particular water quality, during either or both of construction and operation. This is due to its close proximity in a downstream direction from the proposed development site.

We are concerned that the ecology report does not appear to us to have considered this possibility and there is no description of mitigation measures to ensure that there is no impact on the LWS and the fen habitat that it contains. We do not consider that the application has demonstrated that it will not result in any deterioration of the lowland fen habitat in Cradle and Grounds Farm Banks LWS. As such we consider that at present it is contrary to Policy ESD 10 of the Cherwell Local Plan.

Irreplaceable Habitats

The NPPF states:

“193. When determining planning applications, local planning authorities should apply the following principles:.....

c) development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists; and”

The revised NPPF (2018) Glossary states (with our underlining):

“Irreplaceable habitat: Habitats which would be technically very difficult (or take a very significant time) to restore, recreate or replace once destroyed, taking into account their age, uniqueness, species diversity or rarity. They include ancient woodland, ancient and veteran trees, blanket bog, limestone pavement, sand dunes, salt marsh and lowland fen.”

This suggests that the lowland fen habitat of Cradle and Grounds Farm Banks LWS meets the definition of irreplaceable habitat. The application has not demonstrated that potential indirect impacts will not result in the deterioration of the fen habitat and the LWS. As such we do not consider that it is compatible with the above-mentioned paragraphs of the NPPF.

We would ask that detailed information about the measures in place to ensure that there is no negative impact (temporary or permanent) on the LWS are submitted at this stage including information about monitoring and enforcement protocols to monitor changes in hydrology or

recreational impact on the LWS and to the measures to be taken to address them if there is evidence of negative impact

4. The importance of avoiding impact on UK priority species including breeding birds

Given the habitats present on the site, we share the concern of the Cherwell District Council Ecologist that no breeding bird surveys have been undertaken. See **Consultee Comment for planning application 24/03243/OUT** dated 19/12/24.

POLICY ESD 10 of the Cherwell Local Plan quoted above requires that impact on UK priority species should be avoided. We therefore consider it extremely important that appropriate bird surveys are undertaken. The results of surveys should be made available for analysis and comment prior to the application being determined and if necessary the applicant will need to demonstrate that the potential impact on priority species is outweighed by the importance of the development and that the harm can be mitigated through appropriate measures and that a net gain in biodiversity will be secured in accordance with Policy ESD 10 of the local plan quoted above.

DEFRA has 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.”

Depending on the outcome of appropriate surveys the applicant will also need to 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”

5. Lighting and potential impact on priority species bats

It is our view that the introduction of lighting into this rural-edge area could potentially have a negative impact on the foraging and commuting bats (and potentially also on breeding and wintering birds see above). The applicants EA states at paragraph 3.37:

“During the activity surveys, six species of bats were recorded on Site. These included barbastelle, Brown long-eared, common pipistrelle, Myotis species, noctule and Nycatulus species.”

We note that the applicant intends to implement a sympathetic lighting scheme stating at paragraph 4.31:

“Lighting used during construction and the design of the lighting scheme that forms part of the proposed development will both be designed and implemented such that light spill onto potential foraging/commuting habitats or roost sites within and adjacent to the Site is avoided wherever possible or is otherwise minimised in terms of brightness and extent to the lowest possible levels.”

And at 4.32:

“An unlit buffer will be maintained at all times along retained and newly established habitats at the Site perimeter, with any use of lighting to be in accordance with the Bat Conservation Trust and Institute of Lighting Engineers guidance. Appropriate measures for consideration include;...”

However, the words “for consideration” mean that there is no certainty provided, and we therefore consider it essential that a detailed lighting strategy is submitted at this stage, setting out how the impact of light spill will be minimised in a form that can be conditioned.

6. Application does not provide evidence that it will help achieve the aims of the Conservation Target Area (CTA)

The application site is very close to the **Swere Valley and Upper Stour** CTA which covers the Swere Valley from Barford St Michael to its source southeast of Great Rollright. The area includes tributary valleys extending west of Hook Norton and then north across the watershed to the valleys and quarries at Sibford Ferris where the source of the River Stour is found. The Oxfordshire Biodiversity Action Plan Targets associated with this CTA are:

1. Lowland meadow – management, restoration and creation.
2. Fen (and swamp) – management and restoration.
3. Limestone (lowland calcareous) grassland – management, restoration and creation (particularly on the steep banks).
4. Wet woodland (adjoining the rivers) and lowland mixed deciduous woodland - management

5. Rivers – management (resource protection of the high quality limestone rivers, including the tufa deposits; protection, management and monitoring of white-clawed crayfish).
6. Arable field margins (and arable in-field options) – management and creation (with particular emphasis on arable wildflowers and farmland birds on arable fields and margins).
7. Hedgerows – management and creation.

Policy ESD 11 of the Cherwell Local Plan 2011 – 2031 states

“Where development is proposed within or adjacent to a Conservation Target Area biodiversity surveys and a report will be required to identify constraints and opportunities for biodiversity enhancement. Development which would prevent the aims of a Conservation Target Area being achieved will not be permitted. Where there is potential for development, the design and layout of the development, planning conditions or obligations will be used to secure biodiversity enhancement to help achieve the aims of the Conservation Target Area.”

It is possible that the development might prevent the aims of the CTA being achieved due to the risk of water pollution and we also consider that a great deal more information should be provided to illustrate how the development will “secure biodiversity enhancement to help achieve the aims of the Conservation Target Area” in line with Policy ESD 11.

Green roofs

In order to increase the potential net gain in biodiversity resulting from the development, the applicant should be required to maximise the provision of green roofs and install solar panels on roofs which are not green roofs. 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. 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.

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