



Butterfly Conservation

Saving butterflies, moths and their habitats

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President Sir David Attenborough CH, FRS

Ms R Horley
Planning and Development Services
Cherwell District Council
Bodicote House
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Banbury
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OX15 4AA

25th July 2012

Dear Ms Horley

TOWN AND COUNTRY PLANNING ACT 1990

Application No: 12/00850/OUT
Applicant's Name: Gallagher Estates Ltd
Proposal: Extension of time limit of 09/00584/F – Variation of Condition 8 of planning permission 04/02797/OUT
Location: Land between Birmingham/London Railway Line & Gavray Drive, Bicester, Oxfordshire.

Thank you for consulting Butterfly Conservation on this planning application. Butterfly Conservation wish to object to this planning application for the following reasons.

Although a signatory of the S106 agreement attached to planning permission 04/02797/OUT, Butterfly Conservation were never informed that the mere variation of Condition 8 constituted a new planning permission. Thus this extension of time application comes as a surprise and Butterfly Conservation can only wonder at its validity as others have already done.

Butterfly Conservation are perplexed on the need for Gallagher Estates Ltd to make this application and concerned what their motivation might be in doing this. The applicant has already made a successful application for extension of time limit for planning permission 04/02797/OUT (Application 10/01667/OUT made in November 2010, granted by Cherwell District Council in February 2012.) In content and purpose this application appears identical to 10/01667/OUT. It is noted that the applicant appears to be having problems meeting the conditions attached to planning permission 10/01667/OUT as shown by their withdrawal in May 2012 of their attempt to satisfy just 10 of the 29 conditions. Butterfly Conservation trust that this application is not an attempt by the applicant to get less stringent conditions attached to any ensuing planning permission.

This application is supported by an Environmental Impact Assessment drawn up in 2004 and a supplementary Ecological Impact Assessment drawn up in 2010. These documents are identical to those submitted in support of application 10/01667/OUT. Butterfly Conservation objected to application 10/01667/OUT and their objection was largely based on the inadequacy of these documents. These arguments still hold and we have attached our letter of objection to application 10/01667/OUT, dated 14th February 2011 as an appendix to this letter as it constitutes a material part of this objection.

To further illustrate the inadequacy of the ecological aspects of the Environmental Impact Assessment we would like to refer to section 7.143 of this document. This very short section considers the butterflies to be found within the proposed development site and claims just 6 common species as definitely being present and a seventh possibly being present. Since Butterfly Conservation became involved with the site in 2005 they have identified the presence of some 28 species of butterfly including all five of the British Hairstreaks. The presence of these 5 Hairstreak species makes the site almost unique in the UK.

One of the five Hairstreak species, the White-letter Hairstreak (*Strymonia w-album*), which is a UK Biodiversity Action Plan priority species and listed as a species of principal importance for conserving biodiversity under section 41 of the NERC Act, does not even get a mention in either the Environmental Impact Assessment or the supplementary Ecological Impact Assessment. Perhaps not surprising as its presence was not confirmed until after both documents were drawn up and as a result of a Butterfly Conservation survey carried out in response to condition 25 of planning permission 10/01667/OUT. This omission only serves to further emphasise the inadequacy of the supporting ecological documentation.

Finally Butterfly Conservation would like to remind Cherwell District Council (CDC) that this application seeks to significantly damage a Local Wildlife Site (designated in 2002) by developing about half its area. CDC's emerging Local Plan has the following to say about the proposed development of Local Wildlife Sites – "Development which would result in damage to or loss of a site of biodiversity of 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."

In Butterfly Conservation's opinion the proposed development goes against Cherwell District Council's own stated policy in their emerging Local Plan and the development should exclude the whole of the Local Wildlife Site as designated in 2002.

Yours sincerely

David Redhead
Upper Thames Branch, Butterfly Conservation

Rebecca Horley
Planning and Development Services
Cherwell District Council
Bodicote House
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14th February 2011

Dear Rebecca

**Re: Land North of Gavray Drive Bicester
Section 73 application (ref: 10/01667/OU) for extension of outline consent 04/02797/OUT**

We write to **object** to the granting of the above application (ref: 10/01667/OU) for extension to the outline consent permission 04/02797/OUT.

Butterfly Conservation base this objection on the number of material considerations that have changed significantly since the original granting of permission at appeal in July 2006. We have major concerns with the existing Environmental Statement (ES) submitted with the previous application and which now requires revision and updating. There are a number of omissions and errors with the Ecological Impact Assessment (prepared by EDP and dated October 2010 but which has only just become available on the CDC website). Mitigation and enhancement measures should be reviewed, particularly regarding the section 106 agreement, to ensure that there is a net biodiversity gain both on and off-site.

Since permission was granted in 2006 it has become clear that the land in question is a significant habitat resource for a number of protected butterfly species in addition to the Marsh Fritillary (*Euphydryas aurinia*). The value of the on-site Lepidoptera resource has increased as the site is now known to support regionally significant and sustainable populations. These being the Brown Hairstreak (*Thecla betulae*), a UK Biodiversity Action Plan priority species and listed as a species of principal importance for conserving biodiversity under section 41 of the NERC Act 2006. The Black Hairstreak (*Satyrrium pruni*) is a highly restricted species and listed as 'endangered' in the 2010 Butterfly Red List for Great Britain. The grassland also supports the Small Heath (*Coenonympha pamphilus*) again a UK Biodiversity Action Plan priority species and listed under section 41 of the NERC Act 2006.

Since 2005 Butterfly Conservation have carried out a number of surveys of the site which demonstrate the lack of detail, regarding the increased biodiversity interest at the site, contained within the various documents including the Environmental Statement and the Ecological Impact Assessment and form the basis of our objection. These omissions are highlighted as follows but we can provide further details if required.

- **Brown Hairstreak.** The first eggs of this species were found in October 2005 by members of Upper Thames Branch of Butterfly Conservation and further surveys during that the winter found a total of 18 eggs. Eggs were then found in all subsequent winter recording visits. During January 2011 a comprehensive survey was carried out recording 478 eggs across the site, at a find rate of 12 eggs/hour. All but two of the Blackthorn rich hedgerows at the site are now being used for breeding. The species depends on hedgerows and woodland edge where it breeds on Blackthorn (*Prunus spinosa*). The population at Gavray Drive is very large and is significant both regionally and nationally.

- **Black Hairstreak.** The species was first recorded at the site in June 2006 and adults have been recorded during the June breeding season in all years since 2006. The Black Hairstreak is one of the UK's most highly restricted species with less than 100 colonies known. The conservation of the species is dependent on the protection and appropriate management of mature Blackthorn stands and the breeding area for this species at the site would be adversely affected by the development.
- **Marsh Fritillary.** The Ecological Impact Assessment states that Marsh Fritillary was last recorded in 2005, this is incorrect as both larvae and adults were recorded during 2006 by Upper Thames Branch members. We have serious concerns about EDP's monitoring methods in subsequent years and the assumption that no Marsh Fritillary were recorded since 2005 is questionable based on this monitoring. The dates during which the larval monitoring surveys were carried out are too late in the season (varying between 11th and 27th September) for the Marsh Fritillary in southern counties. We have extensive data to show that the optimal time for surveying is during August and by the second week of September the larvae will have entered hibernation and therefore not visible. We dispute the statement in the Ecological Impact Assessment, paragraph 4.17 that states that the mitigation, compensation and enhancement measures proposed for this species are no longer necessary. The committed sum to Butterfly Conservation and associated Marsh Fritillary mitigation, as set out in the section 106 agreement, was taken into the balance by the Inspector at appeal in assessing the acceptability of the ecological impacts by the development on species. The delivery of the Marsh Fritillary project was a positive material consideration at the appeal and should not be withdrawn but reviewed to ensure that it takes into consideration the increased biodiversity value of the site which would be detrimentally affected by the development.
- **Small Heath.** During the period from 2007 to 2009 the site has been surveyed by members of Butterfly Conservation and a further 24 additional species have been recorded including the locally significant Small Heath butterfly.

In summary, we object to the granting of an extension to outline permission 04/02797/OUT as it is clear that the value of the site for biodiversity has increased. Indeed we would expect any changes to the section 106 agreement to reflect this increasing biodiversity interest. The site is now known to support nationally and regionally significant and sustainable populations of butterfly species on which there is a statutory duty under the NERC Act to protect.

Yours sincerely

Dr Caroline Bulman
Senior Species Ecologist, Butterfly Conservation

Mr David Redhead
Upper Thames Branch, Butterfly Conservation