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Ms Rebecca Horley
Planning and Development Services
Cherwell District Council
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By email only

11th August 2011

Dear Ms Horley,

Re: OBJECTION to 10/01667/OUT Land North of Gavray Drive, Bicester. Section 73 application for extension of outline consent.

In light of recent developments and representations made to the Council by the applicant, statutory consultees and other stakeholders, I write to restate BBOWT's objection (last submitted in February of this year) to the above application for extension of planning permission for land at Gavray Drive.

Firstly, I would like to register my disappointment that Cherwell District Council has chosen to actively avoid any further consultation with BBOWT regarding this application, as can be inferred from communications posted on the Council's Public Access website (*Bioscan*, 6th June 2011). I think this is unfortunate given the usually productive working relationship that the Trust enjoys with the Council, but particularly remiss given the long history of BBOWT involvement with the site and the facts that;

- a) the site clearly has significant local wildlife interest and,
- b) the development proposes direct land take from a designated Local Wildlife Site (Gavray Meadows LWS).

In the interest of brevity, I do not wish to repeat in any great detail the ongoing concerns that the Trust has with the application in its present form which have already been submitted to the Council. [I would refer you to BBOWT's most recent submission made on 11th February 2011] I will also avoid repeating *ad nauseum* some of the issues which clearly represent common ground described at length by other biodiversity stakeholders in recent responses to the application. However, I will provide a succinct précis of the most important considerations which I believe the Council must have serious regard to when determining the application. I also wish to submit some brief comments arising from the most recent information concerning the application posted on the Public Access website.

Changes in the ecological baseline / insufficient baseline information

In his letter to the Council of 24th February 2011 (*ref: L/EDP124/RR/rc*), Dr Rowlands of the applicant's environmental consultant EDP addresses the previous round of consultation responses from various biodiversity stakeholders, including BBOWT. He repeatedly refers to the 'significant' body of ecological data gathered for the site over a period of 10 years by EDP, and states that the baseline information available for the site is "*considerably more extensive than the level of baseline information which has been available/necessary to inform any other outline planning application for a similar type/scale of proposal in my professional career*". This sentiment is repeated again in further letters to the Council of 21st July and 4th August 2011 (*both also ref: L/EDP124/RR/rc*).

I would not consider the level of ecological survey work undertaken for the site to date to be in any way remarkable (particularly given the LWS designation that applies to much of the area proposed for development), and would certainly not entertain Dr Rowlands assertion as any measure of proof that sufficient baseline information was available when permission for the scheme was granted at appeal. It is evident to me from the updated survey data submitted by EDP in support of the Section 73 application (*Supplementary Ecological Impact Assessment, October 2010*) that the necessary field work was commissioned late in the process, and the great crested newt and (particularly) the reptile surveys were undertaken rather hurriedly late in the spring survey window (which I would contend rather compromises the quality of the data obtained).

Furthermore, an otter survey was only undertaken at the site in April this year at the request of the CDC ecologist, and some survey effort for the increasingly contentious hairstreak butterfly species was only finally made by the applicant's consultants in late June of this year. I do not wish to expand on Butterfly Conservation's criticism of the methodology used or questionable handling of supplied data (*1st August 2011*), but I would conclude that surveys undertaken at the site have frequently been reactive rather than proactive. It is not clear whether this is due to reticence on the part of the applicant or a lack of sound ecological planning by EDP, but I believe it does demonstrate that effective scoping of the potential impacts of the development did not occur, and that the consent granted at appeal in 2006 is not based on sufficient or up to date baseline ecological information.

With regard to the presence of black, brown and white-letter hairstreaks, I am not personally convinced that the value of the site to hairstreak and other butterflies has necessarily increased since the extant permission was granted in 2006. I think it is equally likely that greater interest from specialist ecologists and increased survey effort has resulted in furthering understanding of the populations and distributions of the rare hairstreaks on the site. However, what is again beyond contention is that permission for the scheme in its present form was granted on deficient baseline data resulting from an incomplete ecological survey and assessment program, and that further specialist survey is still required. BBOWT supports the conclusions regarding hairstreak butterflies drawn in the responses from Butterfly Conservation (*1st August 2011*) and Natural England (*3rd August 2011*). I would also agree with the Council's own Ecology Officer (*3rd August 2011*) that the biodiversity value of the site should be assessed in the light of complete baseline information in order to ensure compliance with PPS9.

Changes in legislation / policy against which the application must be judged

In addition to the issue of changes to, or inadequate investigation of baseline conditions, I would like to make clear the changes to legislative instruments and planning policies which provide protection for biodiversity that have occurred since

the decision on the application was taken at appeal in 2006. It remains the view of the Trust that the application for extension of permission should now be judged against these changes. The technical aspects of these material considerations have been provided in previous responses by the Trust and by statutory consultees, so my intention here is only to reiterate these considerations in the clearest possible language.

NERC Act – Priority Species and Habitats

The site supports numerous species and habitats listed as being of 'principal importance' under the Natural Environment and Rural Communities Act, which became a statute in October 2006 and confers a legal duty for Local Authorities to conserve biodiversity. The NERC Act requires that *'Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity'*. The species of principal importance include several of the hairstreak butterflies, of which the presence of one species has only very recently been established. Such recent discoveries underline once again the deficiencies in the baseline data resulting from failure to scope and undertake an appropriate invertebrate survey, thus casting doubt over whether the obligations of the NERC Act have been met.

Emerging Local Development Framework

Policy SD 8 in the Council's emerging Core Strategy states that *'Development which would result in damage to or loss of a site of biodiversity value of local importance 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'*. The requirement for development to result in a net biodiversity gain is also supported in wider policy by PPS9. BBOWT does not believe that the scheme as currently proposed would be compliant with this Core Strategy policy.

European Protected Species & the Habitats Directive

Great crested newts, several species of bats (some not identified to species level by surveys undertaken to date) and possibly otters use the site. Since the scheme was originally granted consent, several pieces of case law have changed the way that the Habitats Directive is interpreted with respect to these species. Most fundamentally, the obligation now rests firmly with the Local Authority *at the planning application stage* to apply the three derogation tests set out in the Conservation of Habitats and Species Regulations 2010, which are:

- the activity must be for imperative reasons of overriding public interest or for public health and safety;
- there must be no satisfactory alternative; and
- favourable conservation status of the species must be maintained.

These are the tests that would also be applied by Natural England in consideration of whether to grant European Protected Species licences to allow the development to proceed. It is apparent from recent representations that there is some doubt as to whether the first two tests in particular could be met regarding the scheme in its present form.

Assessment of the application / summary comments

EDP's approach to the assessment of the ecological value of the site and of the adverse impacts likely to arise from the scheme appear to be consistently based on a narrow 'black or white' interpretation of wildlife protection statutes and planning policy as to whether or not the species and habitats on the site tick the 'protected species' box. I would suggest that what has emerged (through incremental advances in ecological survey) to be a reasonably diverse and interesting assemblage of national

and European protected species, and species and habitats of 'principal importance' in terms of their biodiversity value populating a designated LWS, deserves a more considered and robust approach to assessment from professional ecologists. Whilst there will always be an element of subjective judgement within accepted frameworks for determining ecological value or the likely efficacy of mitigation proposals, it is clear that there is not a reasonable consensus between the applicant and other stakeholders that the ecological baseline has been adequately determined or that the likely impacts of the scheme in its present form have been accurately assessed.

In deciding to permit the existing planning permission for the site in 2006, the Planning Inspector took into account the demand for housing, and likelihood of other development sites delivering within a short time period, and concluded the harm to the Local Wildlife Site was outweighed by the need for new housing. In light of the emerging new ecological information and the material changes to legislation and policy over the past five years outlined above, and revised housing provision requirements (and appropriate consideration of substantial forthcoming developments and applications at south west Bicester, the eco-town and the MoD Graven Hill site), it is the view of BBOWT that the whole application needs to be reassessed.

The Trust has never been against development at Gavray Drive in some form, and welcomes some of the mitigation and compensation measures proposed to date. However, I believe that the scheme requires a significantly revised layout and a reduction in the development footprint in order to satisfactorily reduce impacts on the habitats of the LWS and their attendant species. In the determination of this application, the Council must be satisfied that the extant permission would bear scrutiny against current policy and legislation in light of current and evolving knowledge of the biodiversity value of the site.

I hope that these comments are in some way useful. I would also hope that you would consider continuing to engage with BBOWT regarding the site; obviously the wildlife and biodiversity of the region is the Trust's area of expertise and it is always our intention to offer pragmatic advice. Should you wish to discuss any of the matters raised further, please do not hesitate to contact me.

Yours sincerely,

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