

FAO: Mr Andrew Lewis  
Cherwell District Council

The Lodge  
1 Armstrong Road  
Littlemore  
Oxford  
OX4 4XT

**By email only**

2<sup>nd</sup> February 2015

Dear Mr Lewis

**Planning application ref: 14/02025/HYBIRD**

**Application location: OS Parcel 1570 Adjoining And West Of Chilgrove Drive And Adjoining And North Of Camp Road Upper Heyford**

**Proposal: FULL - Phase 1 - 9,844 sq.m. warehouse; service yard for loading and unloading of HGVs and parking provision for 6 No cars, 4 No HGV lorries, 8 No trailers and a bicycle shelter; new vehicular access at northern end of site off Chilgrove Drive; improved visibility splays onto Camp Road and new landscaping treatment around the boundary of the site;**

**OUTLINE - Phase 2 - 9,137 sq.m. manufacturing and storage facility; 3,000 sq.m. two storey office and training school; new vehicular parking area incorporating car parking, motorcycle spaces and a bicycle shelter and new vehicular access onto Camp Road**

I have recently become aware of the above referenced planning application and wish to submit the following comments on behalf of the Berkshire, Buckinghamshire and Oxfordshire Wildlife Trust (BBOWT). As a wildlife conservation charity, our comments relate specifically to the protection and enhancement of the local ecology on and around the application site. BBOWT **objects** to this application due to the lack of survey information and appropriate mitigation for protected species.

The Ecological report submitted with the application makes recommendations for further species surveys to be carried out:

- Breeding bird surveys
- Bat activity surveys if hedgerows are to be affected
- Badger surveys

As the applicant is only seeking Outline consent for Phase 2 of the proposals, the potential impact on the hedgerows is not clear within the information submitted, and could change through a Reserved Matters application.

Under Section 1 of the Wildlife and Countryside Act 1981 (as amended), all wild birds are protected from being killed, injured or captured, while their nests and eggs are protected from being damaged, destroyed or taken.

All species of bat are protected under Schedule 5 of the Wildlife and Countryside Act 1981 (as amended) and Schedule 2 of The Conservation of Habitats and Species Regulations 2010 making all species of bats European Protected Species.

Badgers are protected under The Protection of Badgers Act 1992. Under the Act, it is an offence inter alia to wilfully kill, injure or take a badger, or attempt to do so; cruelly ill-treat a badger; or, intentionally or recklessly interfere with a badger sett by damaging a sett or any part of one, destroying a sett, obstructing access to or any entrance of a sett, causing a dog to enter a sett or disturbing a badger when it is occupying a sett.

ODPM Circular 06/2005 , which supports the National Planning Policy Framework, states that:

*“The presence of a protected species is a material consideration when a planning authority is considering a development proposal that, if carried out, would be likely to result in the harm to the species or its habitat.”* (para 98)

It continues at paragraph 99:

*“It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision”*. [our emphasis]

With regards to European Protected Species; bats in this case, there is a legal duty under Regulation 9(3) of The Conservation of Habitats and Species Regulations 2010 (as amended) which states that:

*“a competent authority, in exercising any of their functions, must have regard to the requirements of the Directives so far as they may be affected by the exercise of those functions.”*

Reference to the Directives includes the Habitats Directive (Regulation 3(1)) and reference to a competent authority includes the planning inspectorate (Regulation 7). Case law (Morge V Hampshire County Council ) reiterates the above legal imperative for local planning authorities to have regard to protected species as a material consideration.

The additional surveys recommended in the Ecology report for breeding birds, bats and badgers must be carried out and submitted to the local authority prior to planning permission being granted.

Due to the proximity of the development site to Upper Heyford Airfield Local Wildlife Site where significant numbers of great crested newts have been recorded, we would recommend that a precautionary method of working with regards to GCN should be submitted to prevent impacts from the development on this protected species.

If would like to discuss this further please do not hesitate to get in touch.

Yours sincerely,

**Penny Silverwood**

Conservation Officer  
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