

Berkshire  
Buckinghamshire  
Oxfordshire



**Part Land On The North Side Of Gavray Drive,  
Bicester, Oxfordshire**

(Appeal by Gallagher Estates Ltd Under Section 78 of the Town & Country  
Planning Act 1990)

**Statement of Case by The Berks Bucks & Oxon Wildlife Trust  
(BBOWT)**

**February 2018**

**PINS Appeal Reference: APP/C3105/W/17/3189611  
Cherwell District Council Application reference (15/00837/OUT)**

## Contents

1. Introduction .....	2 -
2. Background to the Appeal.....	2 -
3. BBOWT's case.....	4 -
4. Conclusion.....	7 -
5. Documents .....	7 -

### 1. Introduction

The Berks, Bucks & Oxon Wildlife Trust (BBOWT) are one of 47 Wildlife Trusts that operate across the UK to safeguard and enhance our country's wildlife.

Our planning work seeks to ensure that provisions for wildlife and nature conservation are fully accounted for within the planning system at both the strategic and development control levels.

In respect of the application forming the basis of this appeal it is, therefore, our intention to focus on the issues relating to biodiversity and nature conservation.

It is our understanding that some of the ecological investigations pertaining to this application are still ongoing, and as such we reserve the right to add to this statement of case if new evidence is brought to light prior to the commencement of the appeal start.

### 2. Background to the Appeal

This appeal has resulted from a refusal by Cherwell District Council (CDC) on an application made by Gallagher Estates to develop the Western part of Bicester 13 in Bicester for residential housing and ancillary features (Application reference no: 15/00837/OUT).

In summary the development is described as:

---

*“Residential development of up to 180 dwellings to include affordable housing, public open space, localised land remodelling, compensatory flood storage and structural planting”.*

The application was considered by Cherwell District Council Planning Committee on two occasions, firstly on 18<sup>th</sup> May 2017 when it was deferred to give the applicant the opportunity to put forward an ecological management plan for the Local Wildlife Site and secondly on 15<sup>th</sup> June 2017 when it was refused on two grounds:

- 1. The proposed development represents an inappropriate attempt at piecemeal development of the strategically allocated Bicester 13 site in the Cherwell Local Plan 2011-2031 Part 1 which, in the absence of a single comprehensive application covering the whole of the allocated site, leaves the Council unable to satisfactorily determine whether the proposals would enable development across the whole of the site to properly meet the overall objectives and requirements of Policy Bicester 13. In doing so the proposals fail to demonstrate that the allocated housing total can be appropriately provided across the allocated site in a manner that adequately protects and enhances locally significant ecological interests on the land to the east of Langford Brook which is in direct conflict with the inherent and sustainable balance contained within Policy Bicester 13 between housing delivery and biodiversity enhancement. As a result the proposals are considered to be contrary to the overall provisions of the Development Plan and the specific requirements of Policies Bicester 13, ESD10 and ESD11 of the Cherwell Local Plan 2011-2031 Part 1.*

The second reason listed as justification for refusal of this application is not directly pertinent to BBOWT’s statement of case and so is not detailed herein (although it is possible that they may be referred to in our proof of evidence should that be deemed relevant in light of new information).

### **3. BBOWT's case**

We intend to show that the proposed development forming the subject of this appeal would have unacceptable net detrimental effects on biodiversity, which is a material consideration in arriving at planning decisions.

Our case for opposing this scheme is based on the following key issues:

#### **Non-compliance with Local Plan policy**

The appeal site forms part of a larger Bicester 13 site allocation identified in the Cherwell Local Plan 2011-2031, Part 1. The proposed development seeks to develop the western part of the allocation site only but outlines in its supporting information intentions to come forward with another separate planning application for the eastern part of the site allocation at a later, unspecified date.

Bicester 13 is subject to a number of ecological constraints as large parts of the eastern part are designated as Gavray Drive Local Wildlife Site (LWS) and the majority of the site is also covered by the River Ray Conservation Target Area (CTA). The LP policy Bicester 13 recognises the ecological sensitivity of the site and includes in its wording a number of requirements relating to the consideration of ecological impacts and the protection and enhancement of biodiversity, all of which need to be met as part of development proposals on the Bicester 13 site. These requirements include amongst other things the need to secure a net gain in biodiversity, the protection of the Local Wildlife Site and the preparation and implementation of an ecological management plan to ensure the long-term conservation of habitats and species within the site, and in accordance with the objectives of Conservation Target Areas.

BBOWT is not in principle against an appropriate level of development on the Bicester 13 site but we are of the view that development of the allocated site has to be considered comprehensively as this is the only way to ensure that impacts are considered in their entirety and a judgement can be made on whether or not the requirements of policy Bicester 13 are met.

It is BBOWT's case that the Bicester 13 site needs to be considered holistically to ensure that the requirement of the policy can be adequately met. The management of the LWS and other habitats of nature conservation interest is one of the requirements of policy Bicester 13 and it is therefore our view that the production and implementation of a management

plan cannot be postponed until a potential future application for the eastern part of the site (Gavray Drive East) comes forward as there is no certainty when, or even whether, this will ever happen.

We therefore agree with the Council's decision to refuse the development on the basis that it did not offer a comprehensive approach for the whole Bicester 13 site nor did it deliver a management plan as required by policy.

Cherwell Local Plan 2011-2031 local plan policies Bicester 13, ESD10 and ESD11 require development to deliver ecological enhancements and a net gain in biodiversity. A commonly adopted approach in demonstrating a net gain in biodiversity is through the use of a Biodiversity Impact Calculator (BIC).

We welcome the submission of a BIC as part of this development and recognise it as a useful tool when considering ecological impacts. However, it is only a tool and in this instance does in our view not give a reliable answer to the question of whether a net loss or net gain is achieved. For example it only addresses impacts on habitats on site, it does neither take account of protected/notable species interest nor does it fully address indirect effects on adjacent habitats and species such as the ones found in the Gavray Drive Meadows Local Wildlife Site (LWS). As such we believe that the submitted biodiversity calculator on its own cannot give the rich species ensemble on the Bicester 13 site justice and it should be used alongside other ecological considerations.

Mr Woodfield has outlined in his comments on the application and in his Statement of Case the complexity of this tool. It is difficult to fully understand the calculation without further information and a corresponding plan, which outlines how areas have been included in the calculation. We support Mr Woodfield comments and echo his request for a corresponding plan clearly relatable to the submitted calculator to be provided for the benefit of the inquiry.

### **Local Wildlife Site (LWS) – Ecology and Impact**

Gavray Drive LWS encompasses a large part of the eastern part of the Bicester 13 allocation site (East of the Langford Brook). The LWS comprises a mosaic of habitats that supports remnants of a lowland meadow priority habitat type as well as scrub, ancient hedgerows, trees and ponds. It is rich in wildlife including protected and notable habitats and species including butterflies (including in recent years at least four of the five UK hairstreak species), scarce moths, great crested newts and reptiles.

The ecological surveys undertaken to support the Environmental Statement demonstrate the continued ecological importance of Gavray Drive Meadows LWS. The specialist

botanical surveys undertaken by BEC conclude that the site still qualifies botanically as LWS, and identify the significant changes that have occurred on the site through natural succession since its designation in 2002, since which time the site has unfortunately received no management.

This highlights the importance of management to conserve the botanical interest of the LWS, as is recognised in Policy Bicester 13. The lack of management over the years has led to deterioration in habitats, but it is encouraging that almost all of the meadow indicator species recorded in 2002 were still found to be present on the site in 2013.

Unfortunately since the production of the ES another four years have passed without any management of the LWS and much of the survey information can no longer be deemed to be sufficiently up to date. The applicant's Statement of Case indicates in para 5.3 that a partial update of survey information is proposed. This information has yet to be made available and we reserve the right to provide further comments when this information comes available.

BBOWT is concerned about the indirect impacts the appeal proposals will have on the nature conservation interest of the LWS in the long term. We note that it is recognised within the Ecology Chapter of the Environmental Statement (9.5.17) that the development will put the LWS at risk from adverse effects resulting from increased recreational pressure. To comply with Policy ESD10, mitigation is required to reduce the impact on the LWS and to achieve a net gain in biodiversity.

We do not consider the Public Open Space proposed along the Langford Brook sufficient to entirely mitigate the recreational pressure that will be generated by the development. Gavray Drive Meadows LWS is already increasingly heavily utilized by existing residents, and it is reasonable to expect that new residents of the proposed development would add to the existing number of users. It is BBOWT's experience that designated sites and nature reserves near settlements are subject to greater recreational pressure which in turn often results in a deterioration of the nature conservation interest and condition of designated sites.

Long-term nature conservation management of the Local Wildlife Site would help to mitigate the impact of recreational pressure on the site, improving the condition of the habitats and making them more resilient to recreational pressures. The need for such conservation management of the LWS is also supported by Natural England's recent advice to this appeal (NE letter to PINS, dated 2<sup>nd</sup> February 2018).

BBOWT will submit evidence that without a management plan for the LWS in place in accordance with policy Bicester 13, the development will result in an unacceptable adverse impact on the biodiversity interest of the LWS thus creating a conflict with LP policy Bicester 13, ESD10 and ESD11.

#### **4. Conclusion**

Policy Bicester 13 sets out a clear framework for achieving a balance between development and protecting and enhancing the considerable nature conservation interest within the Bicester 13 allocation site. We are not satisfied that the proposed development, which has come forward for parts of the allocation site meets the policy requirements of policy Bicester 13 as it does not allow for a comprehensive assessment of impacts nor does it fulfil the requirement for an ecological management plan.

We also consider that the impacts of the development on the nature conservation interest of the Local Wildlife Site have been insufficiently recognised and believe that in the absence of an ecological management plan the development will result in an unacceptable adverse impact on habitat and species within the LWS. As such we consider the development to be in conflict with Cherwell Local Plan policies Bicester 13, ESD 10 and ESD11 as well as the NPPF.

We request for the appeal to be dismissed.

BBOWT would like to reserve the right to amend, expand or add to the SOC in light of any further submission from the Appellant, the Council or other interested parties.

#### **5. Documents**

The following documents may be referred to in our proof of evidence and used to support our case as opponents to the application forming the subject of this appeal.

- Town and Country Planning Act 1990
- Planning and Compulsory Purchase Act 2004
- The Conservation of Habitats and Species Regulations 2017
- Town and Country Planning Regulations 2017
- Wildlife and Countryside Act 1981(as amended)
- Countryside & Rights of Way Act 2000 (CRoW)

- Natural Environment and Rural Communities Act (NERC) 2006
- Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater and Coastal. Second Edition, January 2016.
- Circular 06/05: Biodiversity and Geological Conservation – Statutory Obligations and Their Impact Within the Planning System.
- Joint Nature Conservation Committee (JNCC): UK Habitats and Species. National Planning Policy Framework (NPPF)
- National Planning Practice Guidance
- Cherwell Local Plan 2011 – 2013, Part 1
- Non-statutory Cherwell Local Plan 2011
- Biodiversity 2020: A Strategy for England's Wildlife and Ecosystem services
- British Standard BS42020:2013: Biodiversity. Code of Practice for Planning and Development.
- Jefferson, R.G., Smith, S.L.N. and MacKintosh, E.J. (2014). *Guidelines for the Selection of Biological SSSIs. Part 2: Detailed Guidelines for Habitats and Species Groups. Chapter 3 Lowland Grasslands.* Joint Nature Conservation Committee, Peterborough. [http://jncc.defra.gov.uk/pdf/SSSI\\_Chptr03\\_revision\\_2017\(v2.0\).pdf](http://jncc.defra.gov.uk/pdf/SSSI_Chptr03_revision_2017(v2.0).pdf)
- Biodiversity and Planning in Oxfordshire. (2014). Guidance document by BBOWT, Oxford County Council and TVERC. [https://www.oxfordshire.gov.uk/cms/sites/default/files/folders/documents/environment\\_andplanning/countryside/naturalenvironment/Wholedocument.pdf](https://www.oxfordshire.gov.uk/cms/sites/default/files/folders/documents/environment_andplanning/countryside/naturalenvironment/Wholedocument.pdf)
- Criteria for the Selection of Local Wildlife Sites in Berkshire, Buckinghamshire and Oxfordshire. <http://www.tverc.org/cms/sites/tverc/files/LWS%20criteria%20Nov%2009.pdf>
- Gavray Drive Local Wildlife Site citation (2002)
- Natural England (2018): *Natural England's Designation Programme.* <https://www.gov.uk/government/publications/natural-england-designations-programme-for-areas-sites-and-trails/natural-englands-designations-programme-to-march-2017#marine-conservation-zones>
- ROUTH, C. (2016). Is the management of Local Wildlife Sites affected by the urban fringe? *Natural England Research Reports, Number NERR063.* <http://publications.naturalengland.org.uk/publication/6134796821463040>.
- F Rylatt, L Garside, S Robin (2017) Human Impacts on Nature Reserves – The Influence of Nearby Settlements. In: *InPractice – Bulletin for the Chartered Institute of Ecology and Environmental Management, Issue 97, September 2017.*