



## Appeal Decision

Inquiry Held on 19 to 21 and 26 June 2018

Site visits made on 18 and 25 June 2018

**by Richard Schofield BA(Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 16 July 2018**

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**Appeal Ref: APP/C3105/W/17/3189611**

**Land west of Langford Brook and east of railway line, Gavray Drive, Bicester, Oxfordshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Gallagher Estates, Charles Brown and Simon Digby against the decision of Cherwell District Council.
  - The application Ref 15/00837/OUT, dated 8 May 2015, was refused by notice dated 22 June 2017.
  - The development proposed is residential development including affordable housing, public open space, localised land remodelling, compensatory flood storage and structural planting.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. In advance of the inquiry an application for costs was made by the appellants against the Council. This application was expanded upon during the inquiry. It is the subject of a separate Decision.

### Preliminary Matters

3. Notwithstanding the text set out in the header above, the parties agreed, prior to determination of the application, that the description of development should be changed to, "*residential development of up to 180 dwellings to include affordable housing, public open space, localised land remodelling, compensatory flood storage and structural planting*". This is a more precise description of what is proposed and is that which was used for consultation on the appeal proposal. As such, I have considered the appeal proposal on this basis.
4. The application was made in outline with all matters other than access reserved for future consideration. Again, I have considered the appeal on this basis, treating the illustrative layout, as set out in the parameters plan, as such.
5. An Environmental Statement (ES) and a subsequent addendum to it were submitted as part of the planning application. I have had due regard to both documents in my considerations.

6. Prior to the inquiry I undertook an extensive, unaccompanied site visit. This took in the appeal site, the wider allocation site (including the Local Wildlife Site) and the area of open space to the south of Gavray Drive. I also drove up and down Mallards Way. I undertook a further unaccompanied visit to the appeal site and the wider allocation site on 25 June. All parties agreed at the inquiry that an accompanied site visit was unnecessary.
7. The Council's second reason for refusal concerned the absence of a means of securing affordable housing delivery and necessary on and off-site infrastructure. Following the submission at the inquiry, by the appellants, of a S106 agreement and Unilateral Undertaking the Council stated that it would no longer be pursuing this reason for refusal. I consider this to be a reasonable position and, thus, do not address the matter further.

### **Main Issue**

8. The main issue, therefore, is whether the appeal proposal accords with the requirements of the Cherwell Local Plan and relevant national planning policy and guidance, with particular regard to a) the necessity for a comprehensive development proposal for the wider allocation site and b) its effect upon, and the future management of, the Gavray Meadows Local Wildlife Site.
9. For ease of explanation I have addressed this issue under a number of headings below.

### **Reasons**

#### *Context*

10. The development plan for Cherwell District is the Cherwell Local Plan 2011-2031 Part 1 (the Local Plan). The Local Plan was adopted in July 2015. It is up-to-date, reflects national planning policy<sup>1</sup> and attracts full weight. It is the starting point for the consideration of the appeal scheme.
11. The most pertinent Local Plan policy in relation to the appeal scheme is Bicester 13<sup>2</sup> (which cross-references Local Plan policies ESD10 and ESD11, cited in the Council's decision notice). This policy allocates a 23 hectare site, named Gavray Drive, for development for 300 dwellings. The appeal site lies within this Gavray Drive allocation.
12. For ease of identification, the appeal site was referred to by all parties as Gavray Drive West (GDW) with the remainder of the Gavray Drive allocation being referred to as Gavray Drive East (GDE). For the sake of consistency, I have followed this nomenclature where appropriate.
13. Gavray Drive is comprised of an open arable field partly divided by a mature hedgerow (GDW (being around 7 hectares)), and an extensive area of more intimate fields divided by groups of mature trees and hedgerows (GDE). These latter fields are a mix of lowland meadow and scrubland vegetation and are, in large part, covered by the Gavray Drive Local Wildlife Site (LWS) designation. In addition, much of the allocation site falls within the River Ray Conservation Target Area (CTA), with its own specific conservation aims (including creation of five hectares of lowland meadow, focusing on MG4 hay meadow). Langford

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<sup>1</sup> As set out in the National Planning Policy Framework at the time of writing

<sup>2</sup> As amended and adopted on 19 December 2016

Brook flows roughly north-south through the allocation site and has been used to define the eastern boundary to the appeal site.

14. There is no dispute between the parties that the general principle of residential development on Gavray Drive, and thus the appeal site within it, in accordance with the requirements of the Local Plan, is accepted. Based on all that I have read and heard, I see no reason to depart from this consensus.

*Local Plan Policy Bicester 13*

15. Bicester 13, like other allocation policies within the Local Plan, sets out a comprehensive suite of requirements to which a development proposal for the allocation site would be expected to adhere. They are clear, precise and robust. While they are not statute, I do not consider that they can reasonably be reduced to the status of “*guidelines*”, as suggested by the appellants<sup>3</sup>. To assume such an approach would be to diminish the role of a plan “*led*” system<sup>4</sup>, which is there to provide clarity and assurance to the wider public about the approach that will be taken by local planning authorities when determining planning applications.
16. It is quite correct that there is nothing within Bicester 13 requiring a single planning application for the entire Gavray Drive allocation<sup>5</sup>. Thus, the fact that an application for only part of the site has been made is not, of itself, a breach of policy. This is, however, a point of little merit as, conversely, there is nothing within the policy expressly requiring or encouraging a phased approach to the initial planning of the allocation site. It is also correct that Bicester 13 does not require a masterplan for the whole site. Neither, however, is the allocation split into two discrete parts named Gavray Drive West and Gavray Drive East, as one might be forgiven for thinking if listening to the rhetoric surrounding discussion of it.
17. In short, one could examine what Bicester 13 does not require or does not state *ad infinitum* and still be no further forward. What matters is what Bicester 13 does require, rather than exercises in linguistic gymnastics of the sort discouraged by the Courts.
18. Bicester 13 is self-evidently a carefully considered policy to deliver housing against a background of ecological (and, indeed, other) site constraints, seeking to balance these two pressures. The appellants<sup>6</sup> noted that it was a housing allocation required to deliver ecological enhancements and that there has never been any doubt about the Council’s aspirations for the allocation site.
19. The policy’s requirements are clear and unambiguous, being couched in terms of their application to “*the site*”, which was agreed by the appellants<sup>7</sup> as being, without doubt, the allocation site. They cannot be read as applying, in isolation, only to those bits of the allocation for which an outline planning application is being made at any given time. Indeed, for the reasons set out below, it is difficult to see how they can be so applied with any efficacy.

If one took the appellants’ approach, whereby plans for individual parcels of Gavray Drive were considered independently of the whole allocation, it could

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<sup>3</sup> Mr Keene cross examination by Ms Buckley-Thomson

<sup>4</sup> National Planning Policy Framework paragraphs 17 and 196

<sup>5</sup> Albeit that Mr Keene agreed that such an approach would be the ideal.

<sup>6</sup> Mr Keene cross examination by Ms Buckley-Thomson

<sup>7</sup> Ibid

very well mean that a requirement, which the appellants<sup>8</sup> regarded as a "*major policy objective of Bicester 13*", would never be delivered. Indeed, the appellants agreed<sup>9</sup> that this would certainly be the case if the rest of the allocation site, outwith GDW, never came forward for development. That is the requirement for:

*"The preparation and implementation of an Ecological Management Plan to ensure the long term conservation of habitats and species within the site [my emphasis]"*.

20. Given the emphatic statements by the appellants<sup>10</sup> about the uncertainty of GDE coming forward in the near future; the widely accepted view of the ecological sensitivity and importance of what is a complex allocation site; and the agreement that the LWS within the allocation is in need of active management (i.e. "conservation") to prevent its degradation, this seems to me to be a significant failing of the appeal proposal.

21. Bicester 13 also has a requirement for:

*"detailed consideration of ecological impacts, wildlife mitigation and the creation, restoration and enhancement of wildlife corridors<sup>11</sup> to protect and enhance biodiversity"*.

22. The appeal proposal seeks to create some grassland and aquatic habitats, along with additional hedgerow planting. There is no evidence, however, to suggest that there has been a detailed consideration of allocation wide opportunities to create, restore and enhance "*wildlife corridors*". These corridors must, by definition, join two or more areas of similar, separated habitat. If anything, by looking at GDW in isolation from the rest of the allocation the opportunity to create such corridors is, potentially, lost. This is particularly apparent when one notes that there are no up-to-date ecological surveys for GDE, which would form part of the foundation for any assessment of such linkages.

23. Similarly, Bicester 13 requires a well-connected network of green areas within the allocation site, suitable for formal and informal recreation. The appeal proposal would deliver a lone green area within GDW along with some formal play equipment in a combined LAP/LEAP. This, quite clearly, would not constitute a "*network*" under any commonly understood definition of the word. Indeed, the appellants have been at pains to highlight the proposal's separation from, and thus an alleged lack of impact upon, the rest of the allocation site generally and the LWS particularly. The proposal quite deliberately makes no attempt to establish connections between green areas across the allocation site. Such an approach could not reasonably be considered as being conducive to, or resulting in the achievement of, this Bicester 13 policy requirement.

24. A further requirement for "*a structural landscaping scheme, which incorporates and enhances existing natural features and vegetation*", which "*should inform the design principles for the site* [my emphasis]" is set out in Bicester 13. Such

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<sup>8</sup> Ibid

<sup>9</sup> Dr Rowlands in response to my questions

<sup>10</sup> Mr Keene cross examination by Ms Buckley-Thomson and Mr Woodfield

<sup>11</sup> Also referenced in Local Plan policy ESD 10 so as to "*avoid habitat fragmentation*" and "*ensure habitat connectivity*".

a scheme should provide “*a central area of open space either side of Langford Brook...*”. No such scheme is before me and there is no attempt to address the allocation site east of Langford Brook.

25. It may be that the detailed implementation of such a scheme could be left to a reserved matters stage but, in my judgment, design principles need to be set at outline stage in order to inform the detailed design. Irrespective, once again, a single scheme is expected for the whole allocation site. Without considering the site as a whole, and so taking an informed overview of its existing natural features and vegetation, it is difficult to see how a coherent set of design principles can be established.
26. With these policy breaches in mind, the debate about whether or not GDE could deliver the remaining 120 units of the 300 unit allocation becomes rather academic. Nonetheless, it was a point of some contention and I address it here.
27. The Inspector examining the Local Plan considered that the Gavray Drive allocation could deliver 300 dwellings. The appeal proposal is, self-evidently, not for a quantum approaching even close to 300 dwellings. Of itself, this might not be considered a breach of policy. Indeed, there could well be, ultimately, good reasons why 300 dwellings could not be delivered on the allocation site (e.g. an expansion of the LWS designation or the further spread into the site of protected species and/or habitats).
28. However, if the *effect* of an application for 180 dwellings on part of Gavray Drive, in isolation from consideration of further delivery on the rest of the allocation site, is a failure to engage properly with the full suite of Bicester 13 policy requirements then a breach arises.
29. That said, without any substantive evidence to the contrary one would presume that Bicester 13 was adopted on the considered conclusion that 300 dwellings could be delivered alongside the other policy requirements. If not, it is unlikely that the policy would have been found sound. This being so, I do not find convincing the appellants’ argument that a significant under delivery against the policy, which would arise if GDE never came forward, would be a consequence of *applying* Bicester 13 rather than being a departure from it.
30. Thus, it seems to me to be perfectly reasonable for a decision maker to expect to see evidence that something approaching 300 dwellings, with satisfaction of all of the other Bicester 13 policy requirements, could be delivered across Gavray Drive on the basis of a site wide consideration of how this would be best achieved. One cannot just take it as read that 120 dwellings can be delivered on GDE at some undefined future point and would satisfy those Bicester 13 requirements neglected by the appeal proposal.
31. Significantly, in this regard, the appellants acknowledged<sup>12</sup> that GDE was an “*extremely intricate system of fields and hedgerows*” that had not been considered in anything like the level of detail applied to GDW. In addition, as noted above, there are no up-to-date ecological surveys for GDE to provide a basis for wider consideration of the delivery of Bicester 13’s requirements.
32. As such, although 180 units for GDW could be “*about right*”<sup>13</sup>, it has certainly not been proven with any degree of confidence that the standalone appeal

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<sup>12</sup> Ibid

<sup>13</sup> Mr Silk cross examination

proposal is the only and most appropriate response to the GDW area of the allocation site if the Bicester 13 policy requirements are applied properly, on a site-wide basis, as they clearly should be, rather than piecemeal, as here.

33. Thus, in short, I cannot accept the appellants' view that granting planning permission for the appeal proposal would have no logical bearing on whether the balance of 120 houses can be delivered on GDE in a manner that would adequately protect and enhance locally significant ecological interests<sup>14</sup>.

*Policies ESD 10 and ESD 11*

34. Turning to Local Plan policy ESD 10, this has a number of requirements. Notwithstanding that noted above, the requirement most pertinent to this proposal is that which 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.*

35. Local Plan policy ESD 11 requires development to identify opportunities for biodiversity enhancement, which will be secured to help achieve the aims of the relevant CTA within which development sites may fall.
36. It was common ground between all parties that the appeal proposal would result in damage to the LWS, arising from increased recreational use of it. The ES considers this to be of significance at a local level. It ultimately considers it to be of negligible impact and the ecologist advising the Council at the time of the determination of the application also considered the impacts to be less than significant<sup>15</sup>. This view was not shared by the Rule 6 parties.
37. It was very clear from my site visits that the LWS is used, frequently, recreationally. As well as the formal public right of way (PROW), there are a number of well-used informal paths crossing the LWS and clear evidence of people forging their own *ad hoc* routes through the grassland. I also observed a tent<sup>16</sup>, graffiti on trees, signs of fires and not inconsiderable evidence of littering (from drinks cans to an old bicycle). This all chimes with the evidence provided by local residents and interested parties about the issues affecting the LWS. In the absence of any active management of the area, I see no reason why such trespass and its associated adverse impacts would not continue.
38. The LWS is easily accessible from the appeal site, either by stepping or jumping over Langford Brook (which I achieved with little difficulty) or by walking into it from the PROW a short distance away. Human nature, being inquisitive and explorative, and the very close proximity of the appeal site to the LWS would, in my view, mean that, at best, some future residents of the appeal site would venture regularly into the LWS. Some would no doubt stick to the well-trodden paths but others would certainly venture 'off-piste'.

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<sup>14</sup> Appellants' Closing Submissions

<sup>15</sup> Albeit that the Council's own ecologist submitted an objection, before going on maternity leave.

<sup>16</sup> I did not investigate whether it was in use.



39. It is also reasonable to consider that there would be increased cat incursions (arising from pet ownership on the appeal site), and thus predation, and an increase in those walking dogs on the LWS, resulting in wildlife and habitat disturbance.
40. The evidence provided by the Berks, Bucks and Oxon Wildlife Trusts (BBOWT)<sup>17</sup> about the adverse impacts of human activity on local wildlife sites, in addition to BBOWT's evident experience in managing such sites in close proximity to housing development, is, in my view, compelling. I see no reason to consider that such impacts would not materially exacerbate issues here. Nor was it disputed that BBOWT does not object in principle to *any* residential development near *any* local wildlife site. Specific circumstances and likely impacts are relevant, as here.
41. Thus, BBOWT's view<sup>18</sup> that damage to this LWS is, at present, "*not that bad*" but will get materially worse seems reasonable in context. Existing residential development is further away, south of Gavray Drive, rather than immediately adjacent to the LWS. The natural space for recreation for residents of this area is the so-called Bicester Fields, adjacent and directly linked by footways and bridleways to existing residential streets.
42. By contrast, the ease of access to the LWS from the appeal site, coupled with the potential frustration at the lack of functional open space on the appeal site (see below) would give rise to levels of human and domesticated animal incursion that would, in my view, have the potential to result in a significant exacerbation of the current problems, to the detriment of the LWS.
43. The appeal proposal would provide two hectares of public open space, which is above and beyond that which is required by Local Plan policy, if one is judging the appeal proposal as a standalone scheme. Of this, 1.59 hectares is proposed as wildflower grassland meadow. The two hectare area will also need to provide a buffer to Langford Brook, accommodate flood attenuation and provide, according to the ES, areas of rough, tussocky grass too. In addition, a significant area of the land where the open space is proposed already holds water in the wetter months of the year<sup>19</sup>. There is no suggestion that this would change<sup>20</sup>.
44. This multi-functionality would, in my view, clearly compromise the ability of future residents to use the open space in any meaningful way for considerable periods of time. It may be that at a certain time of year they could wander through mown paths in the otherwise protected wildflower grassland area (albeit that it would need to be fenced off for, potentially, several years while it was established) but there would be little room for more expansive activities, such as ball games, or for dog walking.
45. Residents may turn to Bicester Fields for some activities (ball games, for example), as the LWS would be equally unsupportive of them. They should not have to though. It is evident that the multi-functionality of the open space arises because of the need to mitigate harm to the LWS and to meet the

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<sup>17</sup> Ms Breith's Proof Appendices 2 & 3

<sup>18</sup> Ms Breith XX

<sup>19</sup> Evidence of Dr Glissold; Flood Risk & Drainage Assessment April 2015 (JBA Consulting)

<sup>20</sup> It may be that areas of the LWS are also wet for parts of the year. Nonetheless, there is no substantive evidence before me to suggest that this is anything approaching the waterlogging evidenced on the appeal site, such that it would deter incursions.

Bicester 13 policy requirement to secure a net biodiversity gain. If the allocation site were to be considered in its entirety, it is abundantly clear that a robust ecological management plan would deliver biodiversity gains<sup>21</sup> for Gavray Drive. This would mean that if open space needed to be provided on GDW it would be unlikely to be necessary for 1.59ha of it to be given over to wildflower grassland, which would be off limits to future residents for considerable periods of time with the attendant adverse knock-on impacts upon the LWS. That said, the issue of waterlogging would remain.

46. Thus, I turn to the question of whether those effects can be mitigated by the appeal proposal in order to achieve a net gain. It was common ground that if there was any net biodiversity gain arising from the appeal proposal it was, at best, "*modest*"<sup>22</sup> or "*marginal*"<sup>23</sup>. This conclusion was informed by the use of a Biodiversity Impact Assessment (BIA) tool. Its limitations are, however, evident, with shifts in inputs resulting in shifts in outputs. If, for example, the expectations about the likely quality of the wildflower grassland are downgraded (which is not unreasonable – see below) and recreational impacts upon the LWS are factored in (which also seems sensible), any gains fall away or become, at best, very marginal.
47. That said, the expert ecology witnesses<sup>24</sup> debating this point both agreed that BIA was not the be all and end all of a net gain/net loss assessment but, rather, a tool (and a blunt one at that, in the view of Ms Breith). Professional judgement was regarded as the underpinning factor.
48. It is never easy to reach a view when expert witnesses have opposing judgments. In this instance, however, I lean towards that of Mr Woodfield. Namely that when the various factors are taken in the round, an overall biodiversity gain from the appeal proposal appears unlikely.
49. I have noted above my concerns about the adverse impacts of increased recreational activity upon the LWS, which I consider have been underestimated by the appellants and which cannot be regarded, in the final assessment, as "*negligible*". In addition, during the inquiry the appellants began to downplay the proposed wildflower grassland from a type that could make a contribution<sup>25</sup> to the CTA target (focused on MG4 type lowland meadow) to "*the best grassland that we can achieve*"<sup>26</sup>.
50. Evidence provided by Mr Woodfield<sup>27</sup> clearly showed that, while meadowland creation is achievable on previously farmed arable land, it is a significant challenge and can take many years of careful management. Thus, while meadowland creation is a laudable ambition, one must question whether such habitat can also double up as a functional area of informal public open space, rather than being a discrete, set aside, area.
51. Indeed, it was evident that no detailed thought had gone into how, exactly, such grassland was to be established or managed in the longer term or even if

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<sup>21</sup> All the ecology witnesses were clear that active management of the LWS would result in significant gains, as degradation was halted and reversed.

<sup>22</sup> Dr Rowlands

<sup>23</sup> Mr Woodfield

<sup>24</sup> Mr Woodfield was appearing as an interested party but his expert ecology credentials and experience were not in dispute.

<sup>25</sup> ES 9.9.6; ES Addendum 9.9.7

<sup>26</sup> Dr Rowlands' cross examination by Mr Woodfield

<sup>27</sup> Mr Woodfield Proof Appendix 9



it would, really, be possible to deliver to any great quality given, in particular, the soil conditions and the prolonged waterlogging of a large area of the appeal site. Given the rationale driving the meadowland creation proposal, putting such considerations off to a reserved matters stage would, in my view, be short sighted. As such, I do not consider that it has been proven with any certainty that the appeal proposal would deliver against the requirements of ESD 11.

52. Dr Rowlands stated<sup>28</sup> that the appellants had “*squeezed as much as we can out of the lemon*” with regard to opportunities for ecological enhancement on GDW. That is rather the point. The need for such squeezing, giving rise to evident conflicts of use, would not be necessary if the Bicester 13 requirements for Gavray Drive were applied in the round as they should be. To paraphrase Local Plan policy ESD 10, the benefits of the proposed development clearly do not outweigh the harm it would cause to the LWS.

### *Initial Conclusions*

53. Bicester 13 very clearly expects development proposals for Gavray Drive to address a range of requirements, which are quite deliberately, and without equivocation, applied to the allocation site as a whole. It is evident that this is in order to secure ecological enhancements in tandem with housing delivery, having regard to the entire site context.
54. The appeal proposal attempts to address Local Plan policy requirements on a small piece of the allocation site. In my judgement, however, by considering part of the site in isolation it very clearly falls short of what is required by adopted development plan policy. This would give rise to adverse impacts upon ecological interests and fails to demonstrate with any degree of certainty how a central plank of Bicester 13 would be delivered.
55. It is not unusual for large allocation sites to be developed in phases, but those phases are in the context of coherent site wide planning. Taking the appellants’ arguments to their logical conclusion, one could carve the allocation into discrete parcels, and submit standalone applications for residential development upon each of them, claiming to comply with Bicester 13 solely in the context of those parcels, without ever having to deliver what are clearly allocation wide requirements. This would serve to hollow out the policy, the clearly articulated ambitions of which would fall by the wayside.
56. I conclude, therefore, that the appeal proposal fails to accord with the requirements of the Cherwell Local Plan and relevant national planning policy and guidance, with particular regard to a) the necessity for a comprehensive development proposal for the wider allocation site and b) its effect upon, and the future management of, the Gavray Meadows Local Wildlife Site. It would conflict with Local Plan policies Bicester 13, ESD 10 and ESD 11, the requirements of which are set out above.

### **Other Matters**

57. I am mindful that housing delivery from the appeal site is factored into the Council’s forward supply of housing and that refusal of planning permission may put its five-year supply of deliverable sites at risk. I also note the

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<sup>28</sup> Dr Rowlands evidence in chief

appellants' assertion<sup>29</sup> that dismissing the appeal could result in the Council "*losing the lot*" (i.e. *any* housing from the allocation site).

58. The latter comment smacks of brinkmanship, which is not a sound basis upon which to grant planning permission. With regard to the former point, the Council's decision to refuse planning permission was taken in full knowledge of this fact. There is no substantive evidence before me to suggest that dismissing the appeal will fundamentally jeopardise the Council's housing land supply position. Even if it did, there is no reason to suppose that proposals for inappropriate development elsewhere should or would be approved by default.
59. Much was made of the appellants' lack of control of the entirety of the allocation site, which appeared to be the only cogent reason given for a lone application for GDW. Again, however, issues of land ownership are not a sound basis upon which to grant planning permission. I am also mindful that Gavray Drive was promoted through the Local Plan process as a single entity, rather than as a range of discrete allocations based upon different land ownerships (which do not appear to have altered).
60. Reference was made by both main parties to a previous appeal decision<sup>30</sup>, from 2006, for the allocation site. It was agreed, however, that this related to a very different application to that being made now, was of some vintage and had little bearing on my considerations<sup>31</sup>. Based on what I have read and heard I see no reason to depart from this position.
61. Bicester's status as the UK's first Garden Town, and the Eco Town development to the northwest of Bicester, were drawn to my attention by the appellants and by those opposing the appeal proposal, each in support of their case. Neither designation is determinative but both appear to be allied to the aim of Bicester 13, namely securing sustainable development on sustainable sites by balancing housing delivery with (among other things) environmental enhancements. The appeal proposal does not achieve this.
62. There was discussion at the inquiry about whether or not it would be lawful to impose a condition or secure a planning obligation, upon a grant of planning permission for the appeal site, requiring a management plan for the LWS. As I have found that the appeal proposal is in breach of development plan policy in the round, and there are potential landownership issues, such a condition or obligation would not make the application acceptable or be workable anyway. As such, this matter is moot and I do not consider it further here.

### **Planning Balance & Conclusion**

63. The proposal would deliver a reasonable amount of both market and affordable housing. Given the Council's undisputed five-year supply of deliverable housing land, these are benefits attracting moderate weight. There might also be some modest benefits arising from additional spend in Bicester town centre, from construction jobs during build out of the appeal scheme and from a construction apprenticeship scheme (secured by planning obligation).
64. Alleged benefits in relation to open space provision and planning contributions towards local infrastructure are policy and/or mitigation requirements. Those

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<sup>29</sup> Mr Keene evidence in chief

<sup>30</sup> APP/C3105/A/05/1179638

<sup>31</sup> Mr Keene cross examination by Ms Buckley-Thomson

relating to design and highways impacts are basic expectations of any development proposal.

65. The appeal proposal is clearly in conflict with the development plan when taken as a whole. This is a matter that attracts very significant weight against the scheme. Government planning policy seeks to boost significantly the supply of housing. It also firmly favours a plan-led system. In these circumstances there is not, in my judgement, a body of material considerations powerful enough to override the appeal proposal's conflict with the adopted development plan.
66. Thus, for the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*Richard Schofield*

INSPECTOR

## APPEARANCES

### *FOR THE COUNCIL:*

Ms Leanne Buckley-Thomson of Counsel      Instructed by Cherwell District Council

### *She called:*

Mr Sean Silk MRTPI      Blake Morgan LLP

### *FOR THE APPELLANTS:*

Mr Satnam Choongh of Counsel      Instructed by Gallagher Estates

### *He called:*

Dr Rob Rowlands BSc(Hons) MCIEEM CEnv      The Environmental Partnership Ltd  
Mr David Keene MRTPI      David Locke Associates

### *FOR CPRE:*

Mr John Broad

### *FOR DOMINIC WOODFIELD:*

Mr Dominic Woodfield MCIEEM CEcol CEnv

### *FOR BBOWT:*

Ms Haidrun Breith

### *FOR SAVE GAVRAY MEADOWS CAMPAIGN:*

Dr Patricia Clissold  
Dr Pamela Roberts

### CONTRIBUTING TO S106/CONDITIONS:

#### *Oxfordshire County Council*

Ms Joy White  
Mr Tim Peart

#### *Cherwell District Council*

Mr Matthew Parry  
Mr Ben Arrowsmith

#### *Gallagher Estates*

Mr Glen Langham

*INTERESTED PERSONS:*

Cllr Dan Sames (Cherwell District Council)  
Cllr Nick Cotter (Bicester Town Council)

## **DOCUMENTS SUBMITTED DURING PROCEEDINGS**

1. Opening Submissions for the Council
2. Draft S106 agreement & Unilateral Undertaking; Oxfordshire County Council CIL Statement
3. Opening Submissions for the appellants
4. Opening Submissions for BBOWT
5. Opening Submissions for Mr Dominic Woodfield
6. Opening Submissions for CPRE
7. Opening Submissions for Save Gavray Meadows Campaign
8. List of proposed conditions
9. Transport Statement of Common Ground
10. Appeal Decision APP/C3105/A/05/1179638
11. Gallagher Estates' submissions to the Local Plan Examination
12. Open Space and Housing Density Calculations for the appeal proposal
13. Email from Cllr Lucinda Wing (Cherwell District Council)
14. Closing Submissions for the Council
15. Closing Submissions for CPRE
16. Closing Submissions for Mr Dominic Woodfield
17. Closing Submissions for BBOWT
18. Closing Submissions for Save Gavray Meadows Campaign
19. Closing Submissions for the appellants
20. Costs application for the appellants
21. Costs response by the Council
22. Engrossed S106/Unilateral Undertaking