

Town and Country Planning Act 1990 (as amended)

Section 78 Appeal

**PINS reference APP/C3105/W/17/3189611**

**(Cherwell District Council Reference: 15/00837/OUT)**

by

Gallagher Estates, Charles Brown & Simon Digby

Site at

Gavray Drive, Bicester, OX26 6SU (nearest)

**SUPPLEMENTARY**  
**PROOF OF EVIDENCE**

of

**DOMINIC WOODFIELD**

**BIODIVERSITY AND RELATED POLICY MATTERS**

June 2018

Dominic Woodfield  
c/o Bioscan UK Limited  
The Old Parlour  
Little Baldon Farm  
Little Baldon  
Oxfordshire OX44 9PU  
(01865) 341321

[dominicwoodfield@bioscanuk.com](mailto:dominicwoodfield@bioscanuk.com)

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15 June 2017**

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**Appendix DW19 – route of Footpath 129/4/20 across Gavray Drive East**

## **1. NEED FOR SUPPLEMENTARY EVIDENCE**

- 1.1 This supplementary proof is submitted primarily as a vehicle for essential evidence that the Inspector should be aware of in his consideration of this appeal, and which does not otherwise yet appear to be before him.
- 1.2 The evidence in question is a second supplementary report to committee produced by CDC planning officers and which was distributed to members on the eve of the 15<sup>th</sup> June 2017 planning committee meeting at which the appeal proposals were refused. The report was available in paper form to attendees of that meeting but was not otherwise publicised before the committee meeting and it is not present on the on-line planning file. It can only be found on-line as an historic agenda item relating to the committee meeting last June.
- 1.3 I have noted that the evidence presented to the appeal by CDC and the appellants does not appear to include or make reference to this second supplementary officer's report (hereafter referred to as SSOR). I am not aware of it being in the core documents, although I have not been party to the assembly of that information.
- 1.4 The absence of the SSOR risks providing the Inspector with an incomplete picture of the background to the refusal and in particular the information available to members of the planning committee and the material considerations they took account of in reaching their decision to refuse permission.
- 1.5 I attach the second supplementary officer's report and the representations that precipitated it at Appendix DW17.

## **2 RELEVANCE TO APPEAL PROCEEDINGS**

- 2.1 The SSOR was written in response to representations made direct to committee members by myself and Save Gavray Meadows in June 2017. Those representations are attached to the SSOR and can also be found in appendix DW17.
- 2.2 I was compelled to make a direct representation as (on the basis of the original and first update officer's reports), I considered there was a risk of the committee being misdirected as to a) the position of the Council's outsourced ecologist; b) the options available to members as regards conditions.
- 2.3 In particular, I was concerned by e-mail correspondence between myself and the case officer Matthew Parry dated 8<sup>th</sup> June 2017 (Appendix DW18) that indicated he had no intention of reporting to the following week's committee the advice of the Council's ecologist about the potential use of a condition to secure the management plan for the Gavray Drive Meadows Local Wildlife Site.
- 2.4 After I had independently brought this advice from the Council's ecologist to members' attention by way of my direct submission to them, the SSOR was written by officers reactively, and in response.
- 2.5 The SSOR sets out officers' recommendations to members that, notwithstanding their ecologist's advice, a condition requiring a management plan for the LWS should still not be imposed. This was on the basis of officers' view that "only conditions requiring the minimum necessary to ensure that the development is acceptable in planning terms should be used". The focus appeared to be on planning practice guidance surrounding conditions generally, and not on compliance with Policy Bicester 13 which does of course require a management plan for the LWS.
- 2.6 The SSOR suggests that if members were concerned about damage to the LWS from the appeal proposals, an alternative condition could be imposed based on fencing and signage of a public footpath (129/4/20), which runs along the southern side of GDE and connects the appeal site with the A4421 and open countryside beyond. The route of this footpath is shown at Appendix DW19. Officers clearly believed this path to be the sole point of access to the LWS from the development site<sup>1</sup>.
- 2.7 In the first instance, and as was set out in my submission direct to members, this confirms that officers were prepared to accept, by the time of the committee date, that there was a threat of net harm from recreational impact to the LWS. That was also the position of the Council's ecologist. Officers' case for dismissing this threat of net harm appears to be based on a view that it fell below an EIA significance threshold that

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<sup>1</sup> A similar opinion still seems to be held by the appellants' ecology witness Dr Rowlands.

screens out impacts below (and I quote) “notable significance above the local level” (see SSOR, Agenda item 7, bullet point 3). I note that in forming that view, officers do not appear to have engaged with the requirements of Policy Bicester 13 to protect the LWS, avoid net harm and secure net gain.

- 2.8 As to the workability of the alternative condition to secure fencing along footpath 129/4/20, the Inspector will be able to draw his own conclusions on his site visits as to the extent to which the Langford Brook represents a barrier to access to the LWS from the open space proposed on the appeal site, particularly in preventing access by children and youths. I had already pointed out to the officer in question in previous correspondence that footpath 129/4/20 was not the sole point of access to the LWS from the development site, and therefore that fencing and signage along it as a means to prevent such harm was not an effective solution.
- 2.9 The officer in question had also been provided with a significant volume of evidence from other parties as to the need for management of the LWS. The officer at no point provided any evidence in support of his counter-position that “*we do not consider that this current development would materially add to recreational pressure on the LWS in the context of existing use to justify such a requirement*”. See correspondence at Appendix DW6 – main proof.
- 2.10 I was present at the Committee meeting on 15 June 2017. The discussion between members at that meeting centred around the issue of whether it was reasonable for the appellant to withhold delivery of the management plan given a) general agreement between them that the appeal proposals would inevitably increase pressure on the LWS and b) the requirements for a management plan enshrined within Bicester 13. Members had already deferred consideration of the application in May to allow the appellant to commit to that management plan and thus better align its proposals with Policy Bicester 13 and related national and local policies.
- 2.11 In essence the SSOR, in not recommending a condition requiring the imposition of the management plan for the LWS, and indeed in warning members against seeking to impose such a condition, gave them little option but to refuse the application as non-compliant with Local Plan Policy.
- 2.12 As set out in my main proof, I believe members were right to refuse the application against the recommendation of officers. I believe the SSOR provides further evidence that they were right to do so and that it is important that it is taken into account in deciding this appeal.

## **APPENDIX 17**

**SUPPLEMENTARY INFORMATION**

**Planning Committee**

**15 June 2017**

Agenda Item Number	Page	Title
18.	(Pages 1 - 31)	Written Update

*If you need any further information about the meeting please contact Aaron Hetherington, Democratic and Elections [aaron.hetherington@cherwellandsouthnorthants.gov.uk](mailto:aaron.hetherington@cherwellandsouthnorthants.gov.uk), 01295 227956*

## CHERWELL DISTRICT COUNCIL PLANNING COMMITTEE

15 June 2017

### WRITTEN UPDATES

#### **Agenda Item 5**

##### **Missing minute from page 5**

The committee considered application 15/00837/OUT and outline application for residential development of up to 180 dwellings to include affordable housing, public open space, localised land remodelling, compensatory flood storage and structural planting at Part Land On The North East Side Of Gavray Drive Bicester for Gallagher Estates, Charles Brown And Simon Digby.

Councillor Richards proposed that application 15/00837/OUT be deferred to allow the applicant to submit an appropriate ecological management plan relating to Gavray Drive Meadows LWS. Councillor Dhesi seconded the proposal.

In reaching their decision the committee considered the officers report and presentation.

##### **Resolved**

That application 16/02461/OUT be deferred to allow the applicant to submit an appropriate ecological management plan relating to Gavray Drive Meadows LWS.

##### **Members are asked to confirm the minute**

#### **Agenda Item 7 15/00837/OUT Land at Gavray Drive, Bicester**

- It is understood that Members have directly received two letters of objection, sent by email, from Dominic Woodfield of Bioscan Ltd and the Save Gavray Meadows campaign setting out concerns about the scheme together with criticisms of officers' assessment of the application and the associated recommendation. The objection letters are appended to this written updates paper as Appendix 1.
- The objection letters raised a number of criticisms of officers' conclusions in the committee report and officers respond to these as follows:
- As an EIA development (i.e. subject to an Environmental Impact Assessment), the applicant submitted an Environmental Statement to accompany the planning application. The primary purpose of an EIA is to establish the significant adverse environmental effects of the proposed development and how these could be avoided, mitigated or alternatives considered. It has a different purpose than other surveys, assessments and reports that typically accompany planning applications and is generally concerned with addressing impacts of notable significance



above the local level. The Environmental Statement submitted by the applicant has concluded that the proposed development would not have significant adverse effects on the environment for EIA purposes (on ecology or any other environmental factor) subject to incorporating the proposed mitigation measures. It does however conclude that there is the potential for minor adverse indirect impact on the Gavray Drive Meadows LWS as a result of increased usage of the public footpath to the south of the LWS and possible consequent disturbance caused by trespassing walkers and perhaps some additional littering.

- The Council's ecology service is provided by Warwickshire County Council. The Council's ecologists are not objecting to the application and neither are they recommending that an ecological management plan for the LWS has to be in place in order for the proposed development to be acceptable.
- The Council's ecologist is not recommending a condition that requires the submission, approval and implementation of an ecological management plan as suggested in the objection letter. The Council's ecologist did however have a discussion with the objector about the use of a condition if Members had genuine concerns about the potential adverse impact on the LWS. Such a draft condition had the following wording:

*"Prior to 50% occupancy of the development an Ecological Management Plan for the Gavray Drive Local Wildlife Site that is west of Charbridge Lane as indicated on plan within the Ecology Baseline Report Appendix 9.1 (2014) entitled Gavray Drive, Designated Sites, shall be submitted to and approved by the Local Planning Authority. The plan shall be carried out in full, unless otherwise approved in writing by the local planning authority."*

- Officers are not recommending that such a condition is imposed. Such a condition would not meet the long established six tests for conditions in Government guidance (as set out in the NPPF and Planning Practice Guidance) as it seeks to impose requirements on the applicant relating to land that is not within their control (only part of the land to the east of Langford Brook is owned/optioned by the developer) and as a result there is no reasonable prospect of them being able to meet its requirements. The six tests of conditions are that they must be: necessary, relevant to the development proposed, relevant to planning, precise, enforceable and reasonable in all other respects. Furthermore, as planning conditions are an interference with the rights of an individual/developer to use their land, they need to be properly justified as being necessary to make the development acceptable in planning terms rather than simply to achieve wider benefits. Government guidance in the Planning Practice Guidance states that *"any proposed condition that fails to meet any of the six tests should not be used. This applies even if the applicant suggests it or agrees to its terms or it is suggested by the members of a planning committee or a third party. Every condition must always be justified by the local planning authority on its own planning merits on a case by case basis."*
- As stated in both the original Committee Report and the Update Report, if Members are concerned about the potential for adverse impact on the Gavray Drive Meadow LWS caused by increased recreational pressure

associated with the proposed development, then officers believe these concerns could be overcome through a condition requiring the provision of fencing and signage on the land to the east of Langford Brook to prevent/dissuade trespass onto the privately owned LWS. It is well established that only conditions requiring the minimum necessary to ensure that the development is acceptable in planning terms should be used. If Members are receptive to this approach, officers suggest that the following condition could be imposed in addition to those recommended in the report:

*“No occupation of any dwelling hereby approved shall take place until details of a scheme for fencing and signage to extend along the north-eastern boundary of public footpath 129/4/20 (as far as it is located within land edged blue on the submitted site location plan (dwg no. JJG050-015 A)) has been submitted to and approved in writing by the local planning authority. The fencing and signage shall be completed as approved prior to occupation of any dwelling and shall thereafter be retained in perpetuity unless with the prior written agreement of the local planning authority.”*

- Officers continue to recommend that Members have regard to the importance of ensuring that the District continues to provide sufficient housing to meet identified local needs which is a core pillar of the Local Plan as well as Government guidance in the NPPF. The application relates to land which is allocated for housing in the Local Plan and housing completions on this site have been included in calculating the District's five year housing supply position. Refusal of the application would cause a delay in housing delivery on the site and could reduce the District's projected five year housing supply which could in turn affect the weight that could be afforded to the housing supply policies of the Local Plan – this is a material planning consideration. An application covering the whole of the site would not increase the District's five year housing supply as only a proportion of the allocated total of 300 dwellings have been projected to be delivered over the 2017-2022 period.
- In summary, officers' are comfortable with their assessment of the application proposals and the recommendation made to Planning Committee such that Members are still being recommended to resolve to grant planning permission subject to the imposition of conditions and the completion of a legal agreement. However, if Members are concerned about the potential for adverse impact on the value and integrity of the Gavray Drive Meadow LWS as result of the proposed development, officers recommend that the additional condition set out above is imposed on the planning permission.

### **Agenda Item 8 17/00455/Hybrid Land adj. Howes Lane, Bicester**

Amended recommendation to:

That permission is granted, subject to

- a) Delegation of the negotiation of the S106 agreement to include securing the construction through the application site, and the ability to construct the Strategic Road through land within the control of Albion Land (within application sites 17/00455/HYBRID and 17/01090/OUT) to Officers and; further in accordance with the summary of the Heads of Terms attached at appendix A and subsequent completion of S106 agreements
- b) Resolution of the Highway Authority objection regarding the strategic link road, including the submission of amended plans to demonstrate the provision of the strategic road widened to enable the provision of ghost island right turn lanes to facilitate future access arrangements to the residential parcels.
- c) The following conditions with delegation provided to the Development Services Manager to negotiate final amendments to the wording of conditions:

In order to explain point b):

Following the publication of the committee report, the applicant's Transport Consultant has provided a plan showing how the residential parcels could be accessed from the Strategic Link Road via two ghost right turn lane junctions as an indicative plan and this would not be for approval. Notwithstanding this submission, their view is that right turn lanes are unnecessary in the context of Manual for Streets. They also advise that the access positions into the residential land are not currently fixed and will be the subject of reserved matters.

On further discussion with the Highway Authority, the advice is that there will be an absolute requirement for ghost island right turn lanes for future residential accesses if these are to be provided from the strategic link road. The plan submitted following discussions does not form part of the current application, which seeks full planning permission for this section of the road. Given that parameter plans allow for access to be taken from the strategic link road, it is unacceptable for that road to be permitted in full without the ghost island right turn arrangements as this would potentially result in an unacceptable highway impact in the future when it comes to considering reserved matters for the residential parcels. On this basis, amended plans demonstrating the provision of the strategic road widened to enable the provision of ghost island right turn lanes to facilitate future access arrangements to the residential parcels is required in order for the Highway Objection to be removed. To reflect this, the recommendation is worded as set out above.

The attached list of Planning Conditions and Appendix A are attached at Appendix 2 which forms the Heads of Terms as referred to within the report.

**Agenda Item 9 17/00539/OUT Land adj. Jersey Cotts, Heyford Rd. Kirtlington**

**Application withdrawn**

**Agenda Item 13 17/00658/F 18 Bridge St. Banbury**

Following the publication of the committee agenda, Councillor Surinder Dhesi raised concerns about the sizes of the proposed studio flats. The studio flats are 41.6m<sup>2</sup> and 41.6m<sup>2</sup> respectively. Although the Council has not adopted any minimum space

standards, these sizes are within the range of 39m<sup>2</sup> for a 1 bedroom 1 person dwelling to 50m<sup>2</sup> for a 1 bedroom 2 person dwelling as specified within the nationally described space standards which the Council uses for guidance. The sizes of the proposed studio flats are therefore considered acceptable.

#### **Agenda Item 14 17/00813/F Land N of Milton Road , Adderbury**

- Further comments from Strategic Housing Officer

This application has come forward on land previously identified for community leisure facilities which formed part of a live current scheme for 31 dwellings at Land North of Milton Road (14/00250/F). The housing element of this scheme is now under construction.

These community facilities are now to be provided on a separate parcel of land in the ownership of the Parish Council and so the developer has agreed with the Parish Council to provide a larger funding contribution from this application towards the provision of the community facility in lieu of the previous section 106 obligation to provide the land. In order to help facilitate this contribution the developer is seeking permission for a market housing scheme.

The initial planning application for 31 dwellings provided the Council's usual policy requirement for 11 affordable homes (8 for rent and 3 for shared ownership). Although this application has come forward as a separate and new application to the existing consent, the Investment and Growth team would usually seek an increased affordable housing contribution from the higher number of market homes across the site as a whole –resulting in an additional 2 affordable units on the site.

In the light of the very exceptional circumstances and the strong need for the community facilities in Adderbury, the Investment and Growth team are prepared to accept there will not be a contribution towards affordable housing from this application. However it would be expected that the amount the developer is to contribute for the community facility includes a consideration of what would have been required for the affordable housing contribution as well as reflecting the land value of the land initially to be provided.

Furthermore we would expect that the applicant ensures that the S106 obligations for affordable housing on the original application are delivered in line with requirements.

- Additional layout and landscaping plans received from applicants to address OCC concerns
- Comments from OCC received

*Thank you for the updated drawings and having reviewed them, I wish make the following comments:*

*Site layout drawing MDL-1271-PL01 Issue B – I can confirm that the relocated access proposed to serve plots A and B has been moved a sufficient distance away from the development site's junction with the Milton Road.*

*And the same drawing (plus others attached to the email below) show the inclusion of an informal pedestrian crossing in the form of dropped kerbs across the site access.*

*These amendments overcome my highway safety concerns previously raised, and I wish to remove any objections. However, I would still recommend the condition below to be included should the LPA wish to approve planning permission.*

***Estate Accesses, Driveways and Turning Areas***

*Prior to the commencement of the development hereby approved, full specification details of the vehicular accesses, driveways and turning areas to serve the dwellings, which shall include construction, layout, surfacing and drainage, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter and prior to the first occupation of any of the dwellings, the access, driveways and turning areas shall be constructed in accordance with the approved details.*

*Reason - In the interests of highway safety, to ensure a satisfactory standard of construction and layout for the development and to comply with Government guidance contained within the National Planning Policy Framework*

- Consequent changes to conditions 2 (revised plans referred to) ; and 13 (revised plans)
- Verbal Update regarding comments from CDC's Property and Facilities Manager

To CDC Planning Committee Members  
Via e-mail

Bioscan (UK) Ltd  
The Old Parlour  
Little Baldon Farm  
Little Baldon  
Oxford  
OX44 9PU

Tel: +44 (0) 1865 341321  
Fax: +44 (0) 1865 343674  
bioscan@bioscanuk.com  
www.bioscanuk.com

12<sup>th</sup> June 2017

Dear Councillor

**Re: Planning Committee 15 June 2017: Land off Gavray Drive (15/00837/OUT)**

You will recall the Planning Committee's vote last month to defer a decision on this application and to direct the applicant to produce, in the interim, a management plan for the Local Wildlife Site that is at risk, in due accordance with Policy Bicester 13 of the adopted Local Plan.

The applicants have flatly refused to comply with your requests, and officers are returning the application to you for determination this Thursday 15 June. Officers are again recommending approval.

Once again I feel compelled to write directly to set out why the analysis presented to you in the officers' reports (both original and update) remains flawed and to reiterate that with the change you requested having been summarily rebuffed by the developer, this application remains clearly and demonstrably a departure from the adopted Cherwell Local Plan, and in particular the site-specific policy Bicester 13.

The update report cites a statement from the applicant giving their reasons for refusing to comply with your Committee's direction. That statement is not challenged by your officers, despite it containing gross errors of fact and interpretation. Furthermore, your officer's reports (original and update) continue to contain significant flaws, including continuing to incorrectly or incompletely represent the submissions that have been made to the planning department by the Council's own ecologists. In summary:

- The factual error in the original officer's report (Paragraph 7.41) which states that "*there is no evidence that the proposals would give rise to direct or indirect material harm to the adjacent Gavray Drive Meadows LWS*" has not been amended. No reference is made to the evidence of significant harm to the LWS that is provided in the applicant's own Environmental Statement (ES) (for example at para 9.5.17 of the ES).
- The Council's own ecologists, both Charlotte Watkins in the past (currently on maternity leave) and now the outsourced stand-in local government ecologist from Warwickshire (David Lowe) have consistently stated or accepted that there will be net harm to the Local Wildlife Site from a 180 unit development at Gavray Drive West. This is why the management plan is required: to address that net harm in accordance with the policy. Requiring the management plan at this stage is not in any way in contravention of the legal or policy tests of necessity, relevance or reasonableness, which appears to be the claim being made to you in para 2.5 of the update report nor indeed would it conflict with government guidance about the use of planning conditions more generally (Circular 11/95). Indeed the suggestion from officers that a condition for fencing might be acceptable indicates how the harm is recognised and thus those tests are already met, and underlines the irrationality in officers' reasoning.

- The Council's ecologist has suggested a form of words for a condition for a management plan that he feels could be attached to address the Committee's concerns about harm to the LWS. I have asked officers to make you aware of this and they have refused.
- The update report (para 2.6) seeks to 'remind' members that the housing projected to be delivered on the site is important to the Council's District supply position and states "*officers would advise that Members do not risk the Council's current housing supply position without good cause*". Yet this application is for only 180 of the allocated 300 residential units and the timetable for future delivery of the remainder is not specified. Thus the officer is actually citing reasons why the current piecemeal situation is so unsatisfactory and providing reasons for refusing this application and inviting the developer to instead submit a new or amended application with a masterplan for the whole Bicester 13 site to ensure the entire allocation of 300 is approved and delivered in short order and in due and proper accordance with the development plan policy. Alternatively, Members are likely to face a shortfall of delivery on Gavray Drive East for an undefined future period, particularly as it seems likely that the developer may seek to sell, sit on or otherwise offload the more awkward eastern area after they have 'cherry-picked' the less constrained land at Gavray Drive West. That is patently not in the interests of those seeking a sensible, rational and speedy conclusion to the development of this land, and is not in the interests of good and proper planning generally.

For the above and other reasons, your officers' conclusions and recommendations remain irrational on the facts and thus would provide firm grounds for legal challenge in the event this application is approved on Thursday. However I would trust that members are likely in any event to take a dim view of their legitimate requests for the application to be amended being summarily rebuffed by this developer. Members may be interested in my view that if refusal of this application triggers an appeal, I would be supremely confident of Cherwell successfully defending its position and I would be on-hand to assist *pro bono* in the defence of that position.

I invite you to again recognise the flaws in your officers' reasoning and have the courage to vote against the recommendation for approval on Thursday afternoon, and in so doing prevent another protracted legal wrangle. Recourse to that seems especially unnecessary in view of your Council's efforts through the Local Plan to put a policy in place for this site which can and should deliver a sensible resolution. It just needs to be adhered to properly.

With best regards

Dominic Woodfield CEcol CEnv MCIEEM

## Lesley Farrell

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**From:** Donna Dow  
**Sent:** 14 June 2017 09:57  
**To:** Bob Duxbury  
**Subject:** FW: June 18th planning c'ttee/Gavray Drive

**Categories:** Yellow Category

**Donna Dow**  
**PA to the Leader of the Council**  
DDI: 01295 221555  
[donna.dow@cherwell-dc.gov.uk](mailto:donna.dow@cherwell-dc.gov.uk)  
[www.cherwell-dc.gov.uk](http://www.cherwell-dc.gov.uk)

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**From:** JOHN ROBERTS  
**Sent:** 13 June 2017 21:51  
**To:** Councillor David Hughes; Councillor James Macnamara; Councillor Colin Clarke; Councillor Ian Corkin; Councillor Mike Kerford Byrnes; Councillor Chris Heath; Councillor Alastair Milne Home; Councillor Alan Mackenzie-Wintle; Councillor George Reynolds; Councillor Nigel Simpson; Councillor Nicholas Turner; Councillor Ken Atack; Councillor Maurice Billington; hugo.brown; Councillor Timothy Hallchurch; Councillor Bryn Williams; Councillor Barry Wood; Councillor Simon Holland  
**Subject:** June 18th planning c'ttee/Gavray Drive

Dear Councillors,

Re Application 13/00837/OUT Gavray Drive Bicester

Thank you to the planning committee for deferring this application for 180 houses on the west of Langford Brook at last month's meeting. We find it outrageous that the developers and other applicants, Brown and Digby, have ignored the committee's request and are now refusing to produce an ecological management plan, and that the Council Officer is not altering his recommendation to accept this application.

We have to say the following:

The wildlife site needs to be protected NOW. The refusal by the developers to comply with the Planning Committee's request for an ecological management plan highlights their deliberate policy to neglect the wildlife site meanwhile saying they will seek to protect it at a later date. This contravenes Policy Bicester 13 which says, "There is a risk of harming a large number of recorded protected species towards the east of the site. Impacts need to be minimised by *any* proposal". In fact, the little wildlife management developers have done, has actually been damaging to the site. Some areas have either been neglected completely and scrub



allowed to grow or elsewhere hedges and trees have been flailed so severely that wildlife such as the hairstreak butterfly egg counts are much reduced (data from Butterfly Conservation).

There is no guarantee that the development of the east site (120 houses) will follow on once the west site is developed. If the ecological management plan is not secured now its delay does endanger the wildlife site as it will be left high and dry. The longer the delay in starting management work, the longer the land will either be neglected or mistreated. Land ownership of the east site may well change and we saw from the overhead plans on the screen during the Officer's report at the last meeting, that the London and Metropolitan land was removed from the development area.

If the developers had a genuine concern for the LWS, they would be managing it appropriately now. The Council Officer also fails to understand that the continued neglect is endangering the site and this contravenes both Policy Bicester 13 and the general protection of the environment and biodiversity intended by the Cherwell Local Plan policies.

The developers and the Officer are currently of the opinion that the proposed development on the west will not harm the wildlife on the east. Our Local Wildlife Trust officers at BBOWT and other conservationists do not agree. Indeed, the developer's own environmental statement submitted with the application in 2015 states that there will be significant risk of harm to the wildlife site from increased population pressure and domestic animals. This is a reason cited twice by Bicester Town Council in their refusal to accept the plans (see letters dated 03/06/2105 and 10/04/2017 in the document list for 15/00837/OUT). The suggestion by the Planning Officer that a fence could be erected alongside Gavray Drive to keep people and cats out confirms that there is the possibility of harm and considerably weakens the argument that there is no risk.

Another area of concern is the extent of land modelling proposed in order to take land out of flood zones in the west so that the houses can be built. The plans use a stone blanket for the development and the officer also referred in his verbal presentation that land by the brook would be lowered in one part and raised in another, as part of the drainage scheme. This land is in the Conservation Target Area by the brook and it is concerning whether this will be detrimental to the wildlife there.

The people of Bicester feel strongly about preserving the wildlife site and have signed 3 petitions totalling over 2,000 signatures (one paper and two on-line) and written numerous letters of objection to the plans, so there is obvious concern and support for this application being refused. Because the refusal to submit a management plan so clearly contravenes the intention of Policy Bicester 13 to protect the wildlife site, we would again urge Councillors to refuse this application.

Finally the Council voted to ask officers to seek to designate the Local Wildlife Site and part of the Conservation Target Area as a Local Green Space as part of Local Plan 2. This is an unfulfilled commitment as LP2 is delayed. The Planning Officer brushes this aside, but should not do so as it blatantly ignores Council's wishes.

We again ask for your action to save this valuable Local Wildlife Site in our District.

Thank you,

Sincerely,

Pam Roberts on behalf of the Save Gavray Meadows campaign

9 Church Street, Bicester, OX26 6AY

## **APPENDIX 18**



Dominic Woodfield <dominicwoodfield@bioscanuk.com>

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**RE: Gavray Drive West - 15/00837/OUT**

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**Matthew Parry** <Matthew.Parry@cherwell-dc.gov.uk>

8 June 2017 at 15:42

To: Dominic Woodfield <dominicwoodfield@bioscanuk.com>

Cc: David Lowe <davidlowe@warwickshire.gov.uk>, Bob Duxbury <Bob.Duxbury@cherwell-dc.gov.uk>

Dominic

It is my understanding that our ecologist (David Lowe) is not recommending that condition but advised, following a conversation with you, that it (or a variant) could potentially be used if Members of Planning Committee were concerned about the impact of the proposed development on the LWS . This was on the basis that such a condition might have overcome their concerns without requiring refusal of the application.

We will not be recommending such a condition as not only is it unnecessary in our view, it seeks to introduce requirements on the applicant relating to land that is not within their control. Only part of the LWS on the allocated site to the east of Langford Brook is owned or optioned by Gallagher at this stage. Only negatively worded pre-commencement conditions can be used in such circumstances (i.e. no development shall commence) and only where there is a reasonable prospect of the applicant being able to comply with the requirements of the condition. There is no suggestion that this is the case. The condition as worded would not therefore accord with Government guidance and could in fact even be unlawful.

If Members are genuinely concerned about the impact of a potential increase in human associated disturbance of the LWS then we will recommend that they either:

1. Recognise this harm as part of the planning balance but determine that the benefits of the application proposals nonetheless make the scheme acceptable as it stands; or
2. Impose a pre-occupation condition seeking details of fencing and signage to run along the north of the public footpath that crosses the land to the east in order to dissuade potential trespassers (this land is within the applicant's control); or
3. Refuse planning permission on the basis that in the absence of an application to cover the whole site that it is not possible to ensure adequate mitigation/enhancement of biodiversity and the LWS.

I don't intend to include the condition as part of a written update to Members as it is not being specifically recommended to us by our ecologist. However, if you have further comments to add (on this or a related matter) we can include late third party representations as part of the written updates paper which is circulated to Members the day before the committee meeting.

Kind regards

**Matthew Parry**

**Principal Planning Officer**

Development Management

Cherwell District Council

Telephone: 01295 221837

Email: [matthew.parry@cherwell-dc.gov.uk](mailto:matthew.parry@cherwell-dc.gov.uk)

Website: [www.cherwell.gov.uk](http://www.cherwell.gov.uk)

Details of applications are available to view through the Council's Online Planning Service at <http://www.publicaccess.cherwell.gov.uk/online-applications>

Instructions on how to use the Public Access service to **view, comment on and keep track of applications** can be found at <http://www.cherwell.gov.uk/viewplanningapp>

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**From:** Dominic Woodfield [mailto:[dominicwoodfield@bioscanuk.com](mailto:dominicwoodfield@bioscanuk.com)]

**Sent:** 08 June 2017 12:45

**To:** David Lowe

**Cc:** Matthew Parry

**Subject:** Re: Gavray Drive West - 15/00837/OUT

Hi Matthew

Just to qualify, the suggestion for a 50% occupancy trigger is David's - I think it should be 'commencement of implementation prior to first occupation' myself. I also think the Reason should be "To ensure no net negative impact on the Local Wildlife Site in accordance with Policy Bicester 13"

The latter point goes to the nub of the matter. David accepts that there will be net harm to the LWS from the development at Gavray West. We may disagree on the magnitude of that net harm, but quantum is not the trigger for the management plan. The existence of that net harm therefore absolutely justifies the imposition of a condition in accordance with Circular 11/95 and in accordance with Bic 13. Without it there would be net harm to the LWS - indeed the developers state in the ES that such net harm would be 'significant' in EIA terms.

However the important point now is how and when you intend to report David's advice to you to members, as it is not in your report that I have just seen. Could you please advise?

Best regards

Dominic

On 6 June 2017 at 16:52, David Lowe <[davidlowe@warwickshire.gov.uk](mailto:davidlowe@warwickshire.gov.uk)> wrote:

Matthew

I have just had conversation with Dominic and discussed the management plan reason for deferral by councillors. We concluded that if councillors are concerned about the impact of human associated disturbance on the existing site then a triggered condition could resolve this concern and progress this policy area, which is in all our interests. A condition such as:

### **Condition**

*X Prior to 50% occupancy of the development an Ecological Management Plan for the Gavray Drive Local Wildlife Site that is west of Charbridge Lane as indicated on plan within the Ecology Baseline Report Appendix 9.1 (2014) entitled Gavray Drive, Designated Sites, shall be submitted to and approved by the Local Planning Authority. The plan shall be carried out in full, unless otherwise approved in writing by the local planning authority*

*Reason: To ensure no impact of the Local Wildlife Site.*

### **Informative**

The Ecological Management Plan referenced in Condition X will be of a minimum 25 year and is expected to include

- i) Description and evaluation of the features to be managed;
- ii) Ecological trends and / or constraints on site that may influence management;
- iii) Aims and objectives of management;
- iv) Appropriate management options for achieving aims and objectives;
- v) Prescriptions for management actions;
- vi) Preparation of a work schedule (including a 5 year project register), an annual work plan and the means by which the plan will be rolled forward annually;
- vii) Personnel responsible for the implementation of the plan;
- viii) Monitoring and remedial/contingencies measures triggered by monitoring.

Happy to discuss as always

Thanks

**David Lowe B.Sc Hons MCIEEM BES**

**Team Leader, Ecology, Historic Environment & Landscape**

Community Services

PO Box 43

Warwick

CV34 4SX

Tel: 01926 418076

On 2 May 2017 at 17:09, Dominic Woodfield <[dominicwoodfield@bioscanuk.com](mailto:dominicwoodfield@bioscanuk.com)> wrote:

Dear Matthew

I have today noted that some of my several recent submissions on the matter of biodiversity offsetting calculations and the need for management of the LWS have been uploaded, but not all.

I therefore attach again my calculation for this application (Gavray West), as was attached to my e-mail of 20th April and which draws attention to the applicant's failure to factor in any indirect impacts on the LWS from the proposed development on adjacent land at Gavray West.

We have since communicated about this further, and the latest position you provided to me was that "*We do not consider that we would have sufficiently strong grounds to demonstrate that the proposed development would materially harm the LWS*".

I and others have provided evidence that suggests that the grounds for such a conclusion are actually very strong indeed. What may have also escaped attention however is that **the applicants themselves provide clear evidence of an anticipated significant residual negative effect on the LWS from the proposed development at Gavray West.**

For example, the following statement is taken from the ES (para 9.5.17)

*"It is considered that during the post-completion stage of the Proposed Development Gavray Drive Meadows LWS is at risk of potential adverse effect as a result of increased recreational pressure resulting from increased housing provision. Increased recreational pressure has the potential to damage and degrade valuable ground flora and trees through trampling and littering, and disturb associated fauna occurring within the LWS including birds, great crested newts and reptiles. The effects of increased recreational pressure as discussed above are considered to have been partially inherently mitigated through the open space provision shown on the submitted Parameter Plan. The resulting effect is considered to be minor adverse (permanent) and of significance at the local level"*

I repeat the point that this significant negative residual net effect would not comply with Policy Bicester 13. It also corroborates the conclusion indicated by the attached calculator output I provided to you on 20th April, and further underlines the lack of weight that can be attached to the BIA submissions from EDP which can now be seen to contradict the conclusions they themselves reached in the ES.

I hope that, reminded of this information, you would agree that officers are now in possession of plenty of evidence of a likely significant net negative effect on the LWS and biodiversity, which provides ample grounds to require the applicant to deliver the Ecological Management Plan as required by the policy.

Best regards

Dominic Woodfield

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Dominic Woodfield CEcol CEnv MCIEEM  
Director

Bioscan (UK) Ltd  
The Old Parlour  
Little Baldon Farm  
Little Baldon  
Oxford  
OX44 9PU

T: +44 (0)1865 341321  
F: +44 (0)1865 343674  
[dominicwoodfield@bioscanuk.com](mailto:dominicwoodfield@bioscanuk.com)

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Dominic Woodfield CEcol CEnv MCIEEM  
Director

Bioscan (UK) Ltd  
The Old Parlour  
Little Baldon Farm  
Little Baldon  
Oxford  
OX44 9PU

T: +44 (0)1865 341321  
F: +44 (0)1865 343674  
[dominicwoodfield@bioscanuk.com](mailto:dominicwoodfield@bioscanuk.com)

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## **APPENDIX 19**



