

FAO: Linda Griffiths
Cherwell District Council

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3rd August 2015

Dear Linda

15/00001/SCOP

**Scoping Opinion - Proposed Network Rail East West Railway Phase 2 Order
East West Rail Network Phase 2 The Scheme Railway From London Road Bicester
To Station Road Launton**

In relation to the above scoping opinion request we have the following comments on behalf of the Berks, Bucks and Oxon Wildlife Trust. As a wildlife conservation focused organisation, our comments refer specifically to impacts on species and their habitats which may occur as a result of the proposed development.

Any application will need to be accompanied by a full ecological assessment including a suite of surveys, mitigation proposals, and evidence that the proposal would result in a net gain in biodiversity. We provide further details on this below.

Avoidance of impact on priority habitat and protected and priority species

NPPF paragraph 117 states:

"To minimise impacts on biodiversity and geodiversity, planning policies should.....: promote the preservation, restoration and re-creation of priority habitats, ecological networks and the protection and recovery of priority species populations, linked to national and local targets, and identify suitable indicators for monitoring biodiversity in the plan;"

Policy ESD10 of the Cherwell Local Plan states:

"Development which would result in damage to or loss of a site of biodiversity or geological value of national importance will not be permitted unless the benefits of the development clearly outweigh the harm it would cause to the site and the wider national network of SSSIs, and the loss can be mitigated to achieve a net gain in biodiversity/geodiversity."

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."

Any application must include appropriate surveys, an assessment of impact, and details of avoidance, mitigation, compensation and enhancement measures.

The EIA must consider the following designated sites:

SACs (if appropriate)

SSSIs

Local Wildlife Sites (LWSs)

and must also consider impacts on habitats and species including in particular priority habitats and priority species.

The mitigation hierarchy (avoid, mitigate, compensate, enhance) must be followed for the above.

Net Gain in Biodiversity

NPPF paragraph 109 states:

“The planning system should contribute to and enhance the natural and local environment by:

minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government’s commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;”

Policy ESD10 of the Cherwell Local Plan states:

“In considering proposals for development, a net gain in biodiversity will be sought by protecting, managing, enhancing and extending existing resources, and by creating new resources

Development proposals will be expected to incorporate features to encourage biodiversity, and retain and where possible enhance existing features of nature conservation value within the site. Existing ecological networks should be identified and maintained to avoid habitat fragmentation, and ecological corridors should form an essential component of green infrastructure provision in association with new development to ensure habitat connectivity

Planning conditions/obligations will be used to secure net gains in biodiversity by helping to deliver Biodiversity Action Plan targets and/or meeting the aims of Conservation Target Areas. Developments for which these are the principal aims will be viewed favourably.”

Any application will need to demonstrate that a net gain in biodiversity is to be achieved. This will require both actions that will serve to mitigate any impacts on habitats and species, and enhancements. The NPPF states in paragraph 117:

“To minimise impacts on biodiversity and geodiversity, planning policies should.....: identify and map components of the local ecological networks, including the hierarchy of international, national and locally designated sites of importance for biodiversity, wildlife corridors and stepping stones that connect them and areas identified by local partnerships for habitat restoration or creation; promote the preservation, restoration and re-creation of priority habitats, ecological networks and the protection and recovery of priority species populations, linked to national and local targets;”

Policy ESD 11 of the Cherwell Local Plan states

“Policy ESD11 Conservation Target Areas

Where development is proposed within or adjacent to a Conservation Target Area biodiversity surveys and a report will be required to identify constraints and opportunities for biodiversity enhancement. Development which would prevent the aims of a Conservation Target Area being achieved will not be permitted. Where there is potential for development, the design and layout of the development, planning conditions or obligations will be used to secure biodiversity enhancement to help achieve the aims of the Conservation Target Area.”

The EIA should therefore consider opportunities for habitat protection, restoration and creation in the appropriate local ecological networks, which in the case of Cherwell are the Conservation Target Areas. The Phase 2 line runs very close to the Ray Conservation Target Area (CTA) so this is the CTA that is most appropriate in Oxfordshire for the location of habitat restoration and creation. More details on the Ray CTA, including the priority habitat targets, can be found at:

<http://www.wildoxfordshire.org.uk/wp-content/uploads/2014/02/Ray-CTA.pdf>

We greatly welcome the commitments in section 9.6.2 to 1: Use a biodiversity unit calculation (the trialled DEFRA calculation tool) to measure losses and gains in biodiversity; and 2: achieve a measurable net biodiversity gain. Details of the metric calculations to show a measurable net biodiversity gain should be included within the EIA.

Scope of Surveys

Policy ESD11 of the Cherwell Local Plan states:

“Policy ESD 11: Conservation Target Areas

Where development is proposed within or adjacent to a Conservation Target Area biodiversity surveys and a report will be required to identify constraints and opportunities for biodiversity enhancement. Development which would prevent the aims of a Conservation Target Area being achieved will not be permitted. Where there is potential for development, the design and layout of the development, planning conditions or obligations will be used to secure biodiversity enhancement to help achieve the aims of the Conservation Target Area.”

The selection of appropriate surveys should be informed by a desk-top survey, including a request for existing records from the Thames Valley Environmental Records Centre (TVERC), and other local groups who may hold existing information (BBOWT submits all its records to TVERC). The phase 1 habitat survey should also inform the need for further survey work.

However, the scope of surveys should not only include features receiving statutory protection, but should also pick up on species and habitats listed by the Secretary of State as being of principal importance under section 41 of the NERC Act 2006.

Species surveys should be designed to identify priority species (or species of principal importance) using the site, in addition to protected species. The need to conserve species and habitats of principal importance is stated in paragraph 117 of the NPPF as follows:

“promote the preservation, restoration and re-creation of priority habitats, ecological networks and the protection and recovery of priority species populations, linked to national and local targets”

A full suite of surveys as appropriate should be carried out depending on the results from Phase 1 surveys. Further comments with respect to particular species are given below.

Timing of surveys: it is important that all potential biodiversity impacts and enhancement opportunities are informed by full survey information. Surveys should be undertaken at the optimal time of year for each species using the best practice methodology. It would be particularly useful for surveys to identify any existing wildlife corridors connecting to features within the wider countryside, for example watercourses, ditches, hedgerows and railway embankments so that these can be taken into account in the design of the restoration and aftercare schemes.

The outcomes of the ecological surveys should then be used to inform and develop appropriate mitigation and enhancements (see above). Any application should be accompanied by a Mitigation and Enhancement Plan, and a Biodiversity Management Plan.

Some specific points regarding surveys for particular species are as follows:

Reptiles

Whilst we appreciate that in legal terms adders are no more protected than the other reptile species we would emphasise that we consider the fact that two separate adder records have been recorded along the mothballed line between Bicester and Milton Keynes as being of exceptional interest. There are very few sites known for adder in Buckinghamshire and Oxfordshire. As such we would suggest that particular emphasis is placed on assessing the line for adders.

In addition to what is proposed, our reptile specialist is of the opinion that a survey along the length of the mothballed line in April will be of immense importance for spotting potentially very localised and unrecorded colonies of adder basking as they emerge from hibernation. Direct observation surveys by someone suitably experienced before post-hibernation dispersal and vegetation growth will be invaluable, in addition to the proposed surveys with artificial refuges. They recommend walking the length of the mothballed line several times in appropriate weather looking out for adders basking after coming out of hibernation. As the route of the line is by nature largely east-west in orientation, particular attention should be paid to suitable hibernation sites on the south facing embankment.

For the artificial refuge surveys we are not clear what type of refuge is proposed. In our opinion corrugated tin is much more effective for surveying snakes so consider that a mixture of corrugated tin and roofing felt is needed.

Breeding Birds

We welcome the proposals for surveys for both breeding and wintering birds. We consider that the route, particularly the mothballed route, is likely to support along much of the line a significant range of breeding birds. We would emphasise that in our

experience it is vital the non-presence of an existing record should not in any way be taken as unlikely that a species is present and that where there is habitat that is likely to support bird species as follows:

listed on Schedule 1 of the Wildlife and Countryside Act (1981) (as amended) or on Annex 1 of the Birds Directive;

Species of Principal Importance listed on Section 41 the NERC Act (2006);

and listed on the RSPB's Birds of Conservation Concern register;

then breeding / wintering bird surveys should take place. We would suspect that this should result in the vast majority of the line, particularly the mothballed line, being surveyed for breeding birds. For the mothballed line in particular, in our opinion rather than focusing too much on selection of sites that walking along the line doing territory mapping along the full length is likely to be the best option.

Invertebrates

Much of our response on this is similar to breeding birds e.g.:

We welcome the proposals for detailed invertebrate surveys. We consider that the route, particularly the mothballed route, is likely to support along much of the line a significant range of invertebrates and you of course are already aware of the position regarding black and brown hairstreak, dingy skipper and wood white but we would expect numerous other species meeting the criteria given.

We would emphasise again that in our experience it is vital the non-presence of an existing record should not in any way be taken as unlikely that a species is present and that where there is habitat that is likely to support invertebrates meeting these criteria: protected species / Species of Principal Importance (SPI) / UK Biodiversity Action Plan (BAP) / Red Data Book (RDB) / Scarce invertebrates then invertebrate surveys should take place. These surveys should include black and brown hairstreak, dingy skipper and wood white.

With respect to assessing habitat we would emphasise that we consider that the vast majority of the line, particularly the mothballed line, will be of significant value to invertebrates.

I request that the Berkshire, Buckinghamshire and Oxfordshire Wildlife Trust (BBOWT) be consulted on any Network Rail East West Rail Development Order so that we can comment on the EIA once produced.

Please contact us if you have any queries on this response.

Yours sincerely,

Neil

NEIL ROWNTREE
Senior Conservation Officer