

Application No: **Ward: Bicester South** **Date Valid: 03/11/10**
10/01667/OUT

Applicant: Gallagher Estates Ltd, Mr David Keyes, Gallagher House, Gallagher Business Park, Warwick, CV34 6AF

Site Address: Land Between Birmingham London Rail Line and Gavray Drive, Bicester

Proposal: Extension of time limit to 04/02797/OUT: Residential Development

1. Site Description and Proposal

1.1 Site

This 24.5 hectare undeveloped site is situated to the east of Bicester town centre within the urban area. It is bound by railway lines to the north and west. Langford village residential area lies to the south of the site. Access to the site is directly off the ring road to the east.

1.2 Proposal

This application seeks an extension of time limit for the implementation of the application 04/02797/OUT which was allowed at appeal for residential development in outline only with all matters reserved. The Inspector's decision, dated 12 July 2006, is attached at Appendix A, together with the conditions imposed which included the requirement for the submission of a masterplan, design codes and an ecological construction method statement. There is also a Section 106 agreement related to this decision (not appended). Due to the nature of this application, the detail of the proposal is not repeated in this report. The extant permission (04/02797/OUT) expired on 12 July 2011.

1.3 Relevant Planning History

- 05/01035/F – this was a duplicate application to 04/02797/OUT and submitted whilst that application was under consideration at appeal. The application was refused.
- In November 2007 Planning Committee considered a report on the submissions made by the developer to seek approval for the Master Plan, design codes and the ecological construction method statement (ECMS). Committee approved a wildlife management plan, the design code document and the Master Plan in all respects other than the drainage strategy which had attracted objections from ecologists who had been involved in the appeal. Approval of the ECMS was withheld until the drainage matters were resolved and encouraged an application under Condition 14 relating to drainage matters.
- 09/00584/F – As the Master Plan was not approved, condition 8 of the original permission was not cleared. The applicant wished to apply for a reserved matters submission to establish the roads and drainage layout and the details of this would allow the clearance of condition 8 but the wording of condition 8 precluded this submission as a reserved matter. Application 09/00584/F sought to amend this dilemma and permission was granted to vary condition 8 (relating to drainage) of the 04/02797/OUT consent allowing the wording to be changed so that the submission of a roads and drainage application could be made prior

to the approval of the Master Plan. All other reserved matters applications will still have to await the clearance of the Master Plan.

- 09/00909/REM – as yet undetermined application for the roads and drainage infrastructure.

2. Application Publicity

- 2.1 The application has been advertised by site notice, neighbour letter and press notice. The final date for comment was 10 December 2010. No third party representations have been received from neighbouring properties representing private interests but the following comments have been received from various bodies representing ecological interests including BBOWT, Natural England, Butterfly Conservation and a third party representation from Bioscan (UK) Ltd.
- 2.2 Objections have been raised on the following grounds:
- i. Insufficient up to date baseline information with respect to protected species
 - ii. Insufficient information and assessment with respect to the downstream impacts on two SSSIs.
 - iii. Insufficient information regarding the potential hydrological effect of the proposed development on the retained Local Wildlife Site
 - iv. Insufficient consideration of the butterfly interest.
 - v. The assessment does not provide full, secured mitigation and enhancement measures.
 - vi. The proposals do not demonstrate a net gain in biodiversity.
 - vii. The proposals do not accord with current legislation and policy.
 - viii. The Extension of Time application process has been misunderstood.
 - ix. The housing need case no longer exists
 - x. A new Environmental Impact Assessment should be undertaken.
 - xi. The site is not in a sustainable location
- 2.3 Butterfly Conservation's latest formal correspondence was received on 2 August and later followed up by email mainly regarding the White-letter Hairstreak on 9 August. This organisation is in fundamental disagreement with the conclusions of the applicant's ecologist (EDP) in terms of the proposed developments impact on the butterflies.
- The Black Hairstreak will be adversely impacted and will almost certainly die out. The colony is nationally important. The mitigation programme will not provide any benefit for at least 10 years and will be too late to save the colony. The Brown Hairstreak will be similarly affected though the colony will not die out completely. The 9 August survey revealed its continued presence. To this end it is recommended that the proposed development east of the Langford Brook needs to be downsized.
 - Small Heath has a low presence and is likely lost at this site and whilst this is not desirable Butterfly Conservation accept it does not alone justify modification of the development proposals.
 - White-letter Hairstreak is likely to be present owing to the amount of elm on the site and other sitings to the west of Bicester. A hatched egg was found on 9 August which was likely to have been laid in the summer of 2010 (not this summer). This is proof that it breeds at the site and not just frequents it.
- Butterfly Conservation hold the view that the presence of the White-letter Hairstreak along with the Brown and Black Hairstreaks and the commoner Green and Purple

Hairstreaks makes Gavray Drive one of the few sites in the UK where all five can be seen. Alongside the Greater Crested Newts this would make the site worthy for consideration as an SSSI.

- 2.4 Berks, Bucks & Oxon Wildlife Trust (BBOWT). The site has significant local wildlife interest and the development proposes direct land take from a designated Local Wildlife Site (LWS). The biodiversity value of the site should be assessed in the light of complete baseline information in order to ensure compliance with PPS9. The previous decision in 2006 concluded the harm to the LWS was outweighed by the need for new housing.

3. Consultations

- 3.1 Whilst all the responses to the consultation exercise are detailed on the core file, available electronically via our website, a summary of the submissions received is provided below. It should be noted that the government advice on this type of 'renewal' application is that the Council has discretion on whom to consult and should adopt a proportionate approach.
- 3.2 Bicester Town Council: No objection. Concerns are expressed that the application is not being progressed within the original timeframe and if it should go on for longer than 24 months the land ought to revert to employment use
- 3.3 Environment Agency: No objection. It is understood that the sequential and exceptions test issues have now been satisfactorily addressed. The remaining issues can be achieved through conditions.
- 3.4 Thames Water: The existing waste infrastructure is not able to accommodate the needs of the application unless a Grampian style condition is imposed regarding the drainage strategy detailing any on and/or off site works. Matters relating to water supply can be dealt with by informative.
- 3.5 Oxfordshire County Council (Planning Policy): No objection provided that the permission is subject to the existing Section 106 being varied and amended so that the proposed indicative school site is on a part of the site that is not within the 1:50 year flood zone. Also a revised master plan should be submitted that takes into account the relocation of the school site and the latest ecological information. A condition should be imposed so that flood remediation works on the school site is approved prior to the development taking place. The County Council also state that ecological matters should be resolved in accordance with their Annex 1. The latest advice is that CDC should seek an updated Environmental Impact Assessment.
- 3.6 Oxfordshire County Council (Highway Authority): No objection, subject to Section 106 requirements.
- 3.7 The Council's Head of Planning & Affordable Housing Policy: No objection, subject to consideration of material policy changes. This site is included as a deliverable site in the district's housing supply in view of its status as an approved, available and achievable site. It is currently part of the district's 5 year land supply and as a strategic site for some 500 dwellings it is significant. It remains a suitable location for residential development and the LDF work on employment land issues assumes that this site will be developed primarily for housing. The development will need to

comply with the requirements relating to sustainability found in Policies NRM11 and CC4 of the SE Plan and the Council's adopted Planning Advice Note on Sustainable Construction Dec 2009.

- 3.8 Natural England: A holding objection was issued on 19 May recommending that the Environmental Statement be updated or supplemented to ensure that the issues of the Greater Crested Newt and the Brown and Black Hairstreak butterflies have been dealt with. At the time of writing Natural England still have an outstanding objection to the application based on the drainage and qualities of the stone to be used in the foundations of the road and drainage areas. It is Natural England's advice that all of the issues need to be weighed in the balance when considering the appropriateness of the scale and extent of the proposed development for this site. They make it clear that because there is no recourse through criminal proceedings if habitat is destroyed or butterfly populations wiped out, it is all the more important that these species are properly considered in the planning process.
- 3.9 The Council's Ecologist: Comments that having reviewed all the latest information regarding protected species there is no objection to the application subject to conditions to ensure surveys are undertaken just prior to development particularly with regard to the European Protected Species and the White-letter Hairstreak butterfly.
- 3.10 Launton Parish Council: No objection

4. Policy Considerations

National Policy Guidance

- PPS1 (Jan 2005) and Climate Change Supplement published Dec 2006 – Delivering Sustainable Development
- PPS3 (as amended June 2011) - Housing
- PPS4 (Dec 2009) – Planning for Sustainable Economic Growth
- PPS9 (Aug 2005) – Biodiversity and Geological Conservation sets out the Governments objectives for conserving and enhancing biological diversity in England to ensure that planning permissions not only avoid mitigation or compensate for harm but always seeks ways to enhance and restore biodiversity.
- PPG13 – Transport
- PPG24 – Planning & Noise
- PPS25 (March 2010) – Development & Flood Risk – provides advice on assessing flood risk in connection with development and requires the provision of FRAs and sequential tests where development occurs in Flood Zone 3
- Draft National Planning Policy Framework – July 2011

South East Plan
2009 Policies

- Spatial Strategy - SP3 urban focus and renaissance
- Cross Cutting - CC1, CC2, CC3, CC4, CC6 and CC7 – sustainable development & communities, climate change, resource use, construction and character of the environment
- Housing - H1, H2, H3 and H5 – deliverability, affordability, design and density
- Transport - T1 & T4 – management, investment and parking
- Natural Resource Management - NRM1, NRM2, NRM4, NRM5 & NRM11 – sustainable water resources, ground water quality, flood risk management, conservation & improvement of biodiversity, design for energy efficiency and renewable energy
- Countryside & Landscape Management - C4 and C5 – landscape and countryside management and rural/urban fringe
- Management of the Built Environment - BE1 - management for an urban renaissance
- The Secretary of State's intention to withdraw all RSS's in accordance with the Localism Bill

Adopted Cherwell
Local Plan 1996
saved policies

- EMP1 – Employment site
- TR1 – Transport
- R12 – Public open space provision in housing developments
- C1 – Nature conservation
- C2 – Development affecting protected species
- C4 – Promotion and creation of new habitats
- C28 – Design, layout etc standards
- C30 – Housing standards

Cherwell Local
Development
Framework (LDF)
Draft Core
Strategy 2010

The draft document went through the first round of public consultation in the Spring of 2010. The second draft is due out shortly for further public comment. It indicates the strategy that the Council is putting forward and contains a series of key objectives and a number of policies highlighting a focus of growth in and around Bicester with limited growth elsewhere. Policies seek to mitigate and adapt to climate change and ensure sustainable construction methods including SuDs.

- SD1 – Mitigating and Adapting to Climate Change
- SD5 – Sustainable Construction
- SD6 – Sustainable Drainage Systems
- SD8 – Protection and Enhancement of Biodiversity & the Natural Environment
- SD11 – Local Landscape Protection and Enhancement
- SD13 – The Built Environment

5. Appraisal

5.1 Extension of Time Limit Applications

An extension to the time limit for implementing planning permission is a relatively new and temporary procedure designed to make it easier to keep planning permissions alive for longer during the economic downturn. It grants a new

permission for the development authorised by the original permission but differs from an ordinary planning permission in terms of the amount of information required to be submitted by the applicant, the consultee requirements and the fee. It is still considered against the development plan and material considerations under s.38(6) of the 2004 Act.

- 5.1.1 As the application has been previously approved, this application is to be assessed in terms of whether any material change in circumstances have occurred since the last permission which would lead the Council to form a different opinion thereby altering the decision. Where a s106 agreement relates to the land, the Communities and Local Government (CLG) Guidance recommends that a short supplementary deed be prepared and signed which links the new application to the previous obligation.
- 5.1.2 With regard to Extension to Time applications, Local Planning Authorities should '*focus their attention on development plan policies and other material considerations which may have changed significantly since the original grant of permission*'
- 5.2 Changes to Development Plan Policy since Approval of Previous Application
With regard to the development plan, the Oxfordshire Structure Plan 2016 is no longer in force. The South East Plan Regional Spatial Strategy May 2009 has been reinstated as part of the development plan and this document is now a material consideration. Insofar as the policies of the SE Plan which replace those of the Structure Plan, there is no significant altering of the position which would materially affect the outcome save those which relate to the greater emphasis on sustainability. Furthermore, some of the adopted Cherwell Local Plan Policies previously referred to have not been saved.
- 5.3 Government Guidance
PPS1 establishes the overarching objectives of land use planning in facilitating and promoting sustainable development. It also outlines the importance of good urban design as an essential component in improving the quality of the environment. PPS1 illustrates the importance of bringing forward suitable land in appropriate locations. The inspectors report on the previous permission considered the sustainability issue of this site concluding that it was a 'relatively sustainable location, with reasonably good links to the town centre and other facilities....by means other than the private car'. The proposal is also considered to be compliant with PPS1 as it provides good connections between homes and jobs, thereby promoting opportunities for local employment and sport and recreation.
- 5.3.1 There is also now a supplement to PPS1 relating to climate change (published in 2007) which seeks to ensure that development is delivered more efficiently, thereby producing less harmful emissions. Again sustainability is key to this and as the site is considered to be a sustainable location, further improved efficiency levels can be pursued at the detailed stage.
- 5.3.2 PPS3 relates to housing and states that sites should be available, suitable and achievable, all of which apply to this site. The deliverability has, we are advised, only been affected by the difficulties in the housing market which have affected sites across the country. The proposal aims to deliver 500 dwellings which would make a significant contribution to the Cherwell's 5 year housing land supply. The

LDF work undertaken to date assumes that this site will be developed for housing and not employment. With sufficient employment land available, the development of this site also complies with PPS4's particular requirements to deliver sustainable economic growth.

5.3.3 PPS9 sets out the Governments objectives for conserving and enhancing biological diversity in England to ensure that planning permissions not only avoid mitigation or compensate for harm but always first seek ways to enhance and restore biodiversity. Compliance with this policy is addressed under separate heading (paragraph 5.5) below. Similarly PPS25 relating to flood risk is considered under a separate heading (paragraph 5.6) below.

5.3.4 The thrust of government guidance continues to be geared towards ensuring the developments are sustainable. The previous decision was undertaken under regional guidance which had key principles which sought to use urban areas as the main foci for development, to provide sufficient dwellings (especially affordable housing) for those who need to live and work in the region and more sustainable use of transport facilities and natural resources. Access to jobs, services and facilities should be less dependent on longer distance movement. Another key principle was that there should be continued protection and enhancement of the region's biodiversity.

5.4 New Material Considerations to be Taken into Consideration

Referring to this extension of time limit application, the documents that are being considered are identical to those submitted with the previous application (04/02797/OUT). Having visited the site there appear to be no on site material changes in circumstance and the site contains no built structures. In terms of planning policy and guidance up to date consultation responses have been received in relation to more detailed matters including protected species, contaminated land, flood risk and developer contributions. Within the fundamental requirement to consider the development plan policies, the key issues which have emerged are considered to be ecology, flood risk, highways and Section 106 requirements. Consultations on these matters have been carried out under the government guidance which advises that the Council has discretion on whom to consult and should adopt a proportionate approach.

5.5 Ecology/Protected Species

PPS9 places a duty upon Local Planning Authorities to ensure that a protected species survey be undertaken prior to determination of a planning application. The presence of a protected species is a material consideration when a planning authority is considering a development proposal. PPS9 states that "It is essential that the presence or otherwise of a protected species, and the extent to that they may be affected by the proposed development is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision."

5.5.1 Local Planning Authorities must also have regards to the requirements of the EC Habitats Directive when determining a planning application, as prescribed by Regulation 3(4) of the Conservation (Natural Habitats etc) Regulations 1994 (as amended). Under art.12(1) of the EC Habitats Directive, Member States requires that a system of strict protection of animal species be established to prohibit the deterioration or destruction of their breeding sites or resting places. The result is

that there is in practice two linked systems of regulation. First under reg. 39(1)(d) it is a criminal offence to damage or destroy a breeding site or resting place but under reg.44 this does not apply if a licence has been granted for such operations and Natural England being that licensing authority. Secondly where planning permission is required reg.3(4) provides that local planning authorities must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions and also the derogation requirements might be met.

- 5.5.2 Para. 98 of Circular 06/05 states that Local Planning Authorities should consult Natural England before granting planning permission and the views of Natural England would clearly have to be given substantial weight. The Circular at para 121 affords protection to specific species of animals listed in Schedule 5 (see Table 2, Annex A of this Circular) under Part I of the Wildlife and Countryside Act 1981 (as amended). The Circular at para 123 also advises that Natural England is responsible for issue licences under section 10(1)(d) of the Protection of Badgers Act 1992 where it is necessary to interfere with a badger sett in the course of development.
- 5.5.3 It is clear that ecological matters are a material consideration that requires up-to-date assessment under the Wildlife and Countryside Act. Consideration is needed to be given on the impact of a development upon protected species and their habitats. Great Crested Newts, which are a protected species, have been identified on an adjacent site. Natural England refers to the Ecological Survey Report which identified the newts, which was submitted with the previous application and requires further information from the applicant to satisfy three tests which are required to be met under Regulation 53 of the Habitats Regulations. Further information is also required which sets out how Great Crested Newts fit into the wider management regime of the Informal Open Area. The applicant has provided further information in response to Natural England's comments and those from other ecology groups.
- 5.5.4 It is noted that since the approval of the original outline application some work has taken place to prepare a detailed Ecological Construction Method Statement (ECMS) and Wildlife Management Plan (WMP) which has involved all interested ecology groups. This work will inform the Reserve Matters application and the level of information now available is greater so we are better informed about likely impacts as fewer assumptions are made. Natural England's original holding objection recommended that the Environmental Statement be updated or supplemented to ensure that the Great Crested Newt and the Brown and Black Hairstreak butterflies have been adequately dealt with. This has been done and your officers hold the view, therefore, that it is unlikely that any further ecological information is required that would significantly or materially alter the outline proposals. An ECMS is still required by condition on this permission.
- 5.5.5 With regard to impacts on the nearby SSSI's these are some 5.5km and 7.5km away and in normal circumstances this Authority would not seek further comment on this if developments are more than 2km away. Nevertheless, Natural England has objected considering that the SSSI's will be harmed (consistent with their comments on the Reserve Matters application). The issues raised are very detailed matters relating to the use of certain materials which may affect the water quality and changes in water flows. These can be adequately conditioned at

Reserve Matters stage and ought not to affect the principle of development at the site. A similar conclusion is drawn in relation to impacts on the Local Wildlife Site and which cannot be wholly concluded without reference to the detailed drainage design proposals and SUDs techniques.

- 5.5.6 Turning to the butterfly interests, both the ECMS and WMP include specific and detailed measures to protect their habitat including section 106 obligations with respect to the Marsh Fritillary Butterfly. It should be noted that the Brown and Black Hairstreaks and Small Heath butterflies are not legally protected (other than from sale only) under the Wildlife and Countryside Act. The Black Hairstreak is not listed as an important species in the NERC Act nor is it a UK Biodiversity Action Plan Species. The Brown Hairstreak and Small Heath are listed under the NERC Act such that reasonable steps should be taken to conserve them but there is no specific national or local Biodiversity Action Plan for them. Whilst over time their importance or otherwise may change and professionally ecologists may debate this, for the purpose of an extension to time outline application such as this, there has to be a sensible line drawn whereby we can allow for the time for that debate to continue. Indeed, since this report was last prepared for Committee in May, Butterfly Conservation have very recently notified us of confirmation that a White-letter Hairstreak egg has been found. It is considered that this can be appropriately be dealt with by Grampian style condition given that it is not a legally protected species.
- 5.5.7 Of greater interest is the effect on the European Protected Species (EPS) as it is these that require a licence from Natural England and the Council's ecologist has confirmed that this is not likely to be refused. This is backed up by the technical approval given from Natural England in 2007 regarding the greater crested newts (GCN) which have been taken account of all the way through.
- 5.5.8 This Council has a duty to determine whether any proposed development meets the requirements of the EC Habitats Directive if there is a likelihood that there are EPSs present. There are 3 derogation tests, the first two of which (that of imperative reasons of overriding public need and there being no satisfactory alternative) are often difficult to reconcile with private developments but in this case this is a consented site for housing which will contribute to the Council's housing land supply and provide affordable housing and schooling within a sustainable location and which has been allocated for development in any event. The third test relates to there being no detriment to the 'favourable conservation status' of the identified species (most notably the GCN). Again there is evolving evidence and there are measures in place to protect the GCNs during the construction phase and to deliver ecological enhancements and habitat creation. These will be detailed in the ECMS, subject to condition.
- 5.5.9 Bats and otters are also EPS's and very recently (Easter 2011) further survey work has been undertaken on the latter despite the site conditions not suggesting a likely presence. It has been found that there is no significant evidence of their presence so there would be no contravention to their strict protection. That same survey also revealed no significant evidence of water vole (a UK protected species). As for the badgers, again ground conditions would preclude their likely presence and no evidence has ever been found of badger setts within the site. There is no apparent reason or indication that a licence from Natural England would be refused for any of the work that would have implications for the EPSs.

5.5.10 The view is held that art.12(1) of the EC Habitats Directive has been duly considered in that the welfare of any protected species found to be present at the site and surrounding land will continue and be safeguarded notwithstanding the proposed development. The Greater Flexibility for Planning Permissions guidance suggests that on extension of time applications we should seek further information if the EIA for the original application needs updating and that we should consult Natural England and other agencies which we have done. It concludes that any updated environmental information can normally be done by means of a supplementary ES and again this advice has been followed. The view is held that the proposal accords with PPS9 and policies C2 and C4 of the Adopted Cherwell Local Plan.

5.6 Flood Risk

PPS25 was introduced in December 2006 to address Development and Flood Risk. As a result there is a need to apply a 'sequential test' approach to the site. Of particular interest is that the development proposed is classed as a 'more vulnerable development' and as such the Exceptions Test must also be completed and be acceptable to the Council. The Environment Agency has withdrawn its objection on grounds of flood risk to this outline planning application subject to conditions which are to be finalised once the EA are confident that the sequential and exceptions test issues have been addressed.

5.6.1 Your officers are confident that the report prepared by the applicants adequately addresses the pertinent issues identified by the EA. The sequential test is designed to ensure that sites that are at a lower risk of flooding are developed in preference to higher risk areas and the exceptions test (applied only after the sequential test has been applied) provides a method of managing flood risk while still allowing necessary development to occur.

5.6.2 In its current state the site partially lies within Flood Zone 3 though the very recent EA approved Flood Risk Assessment would put the entire site in Flood Zone 1. The Cherwell and West Oxfordshire Level 1 Strategic Flood Risk Assessment was published in April 2009 reviewing all sites including existing commitments benefitting from planning permission and allocation and sites proposed for development through the LDF. This noted that this site at Gavray Drive included land within all 3 zones. The highest classification of zoning in the site (a very small area) has been given over to provide open space only so not a vulnerable use. This acknowledges the adopted Local Plan policy EMP1 which identified a central recreational area dividing the site and containing the floodplain of the Langford Brook.

5.6.3 The Gavray Drive site has been allocated for development in one form or another since 1987 and is still an allocated site in the adopted Cherwell Local Plan (albeit for a less vulnerable use). That part of the site most at risk from flooding is given over to less vulnerable uses and although part of the development site is within the existing floodplain it is a site where floodplain compensation can be undertaken to ensure no loss of floodplain volume takes place. The proposal has clearly sought to avoid development almost entirely from zones 2 and 3 and in seeking to apply a flood risk based approach the risk of flooding at Gavray Drive is very small and therefore acceptable in this regard.

5.7 Highway Safety

The application has been supported by design information explaining the layout of the site and updated traffic data. It is agreed that this site is a sustainable location and the County Council, as highway authority, note that since the change in the status of Bicester in relation to its Eco status a town wide approach to changing travel and promoting sustainable modes should be encouraged in line with Cherwell's One Shared Vision document. This does not affect the principles of the sites development or the progress of this application to extend the life of the application but more a suggestion as to the transport mitigation that might be sought through the Section 106 contributions.

5.8 Requests for Developer Contributions

Although no specific requests have been made in writing, consideration has been given to up-dating the financial developer contributions, but these cannot be reasonably required given the existing s106 which relates to the land and the CLG guidance referred to above. The existing s106 agreement secures the following: affordable housing and contributions to CDC in the form of indoor and outdoor sport, provision and maintenance of children's play space and amenity and public open space and village hall. Contributions are also payable to the County for education, the Bicester Integrated Transport and Land Use Strategy, library infrastructure, social and health care provision, waste management and museum services. This agreement is still binding on this application and at this time there is no intention to alter the clauses of the s106 agreement which will link to any new permission by simple supplementary deed. Whilst the County Council would like the Section 106 agreement to be reviewed as they feel that the existing layout to which it refers cannot adequately protect the school playing fields from flooding, this is considered to be a detailed matter and should not unduly influence the decision to approve this outline application. The flooding issue is considered to be adequately addressed above and that there are sufficient mitigation measures in place.

5.9 Conclusions

This application was deferred from the 19 May Planning Committee due to late representations from two principle consultees, namely the Environment Agency and Natural England and the view is held that these matters have now been properly addressed and the issues resolved. Given the above assessment, it is concluded that there have not been any material changes in circumstances that would alter the outcome for permission to be granted at this site for the development proposed subject to various conditions some of which are new or have been revised from the previous decision notice.

5.10 Given the requirements set out in Regulation 53 of the Habitats Regulations, further assessment of the impact of the proposal upon Great Crested Newts and bats may be required closer to the time that the development is actually due to start. This action is also recommended with regard to badgers and the White-letter Hairstreak. The documents submitted with this application are identical to the scheme which was previously approved in outline. The proposed scheme remains in accordance with Government Guidance, including the principle guidance on such extension of time applications and the Council's Development Plan in principle as it meets sustainable objectives and would be developed at an appropriate density within an existing residential area. The proposal would not result in a risk to highway safety or flooding and would result in securing developer contributions towards Local

Infrastructure.

6. Recommendation

Approval, subject to:

- a) the applicant entering into an agreement to link the existing Section 106 to this permission to secure the required contributions;
- b) the following conditions:
 1. Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the application site plan drawing no. JJG014/101 submitted with the application.
Reason: For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and to comply with PPS1: Delivering Sustainable Development.
 2. No development shall be started on any phase until full details of the siting, scale, design, layout and external appearance of all buildings, landscaping and all means of access within that phase, the provision of infrastructure and the laying out of open space, (hereafter referred to as reserved matters) have been submitted to and approved in writing by the Local Planning Authority. The reserved matters submissions shall be in accordance with the Approved Master Plan and Design Codes, unless otherwise approved in writing by the Local Planning Authority. (RC1)
 3. In the case of the reserved matters, application for the first reserved matters approval shall be made not later than the expiration of three years from the date of this permission and the last no later than five years from the date of this permission. (RC1)
 4. The development to which this permission relates shall be begun not later than whichever is the later of the following dates:
 - a. the expiration of five years from the date of the grant of outline permission
 - b. the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.
 5. No building on the site shall exceed 3 storeys in height.(RC7A)
 6. The residential development shall be at a range of densities as set out in the Design Codes but at not less than 30 dwellings per hectare in any phase and to achieve an average density of not less than 35 dwellings per hectare across the site. (RC4A)
 7. No more than 500 dwellings shall be built on the site. (RC8A)
 8. A strategy for public consultation in respect of the development shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development. This shall include details of the consultation process to be carried out whilst construction works are proposed, carried out and completed on the site including consultation on Design Codes, Master Plans, Ecological Construction Method Statement and reserved matter applications. The approved consultation strategy shall thereafter be implemented and complied with at all times unless any alteration or variation has first been agreed in writing with the Local Planning

Authority. (RC4A)

9. That with the exception of an application for the approval of the detailed design and strategy of the surface water drainage and for the layout of the internal road network no other reserved matters applications shall be made or development commenced until the submitted Master Plan has been approved in writing by the Local Planning Authority. The Master Plan shall include:
- c. an overall layout plan showing the distribution of all principle land uses throughout the site, including residential, primary school, areas of open space, the retained County Wildlife Site, and the means of access thereto, including the general alignment of the access roads and principal pedestrian and cycle routes,
 - d. the character areas to be covered by Design Codes,
 - e. details of the landscape structure, mitigation planting and hedge/tree protection corridors, including a scheme for hedgerow retention/removal if proposed and agreed,
 - f. the phases and parcels of the development to which the Affordable Housing Parcel Scheme relate,
 - g. details of the foul, surface and land drainage from the site and the development including surface water control measures and balancing, sewers and connections,
 - h. the location of the neighbourhood equipped area of play (NEAP) and the boundaries and principal features of the flood plain area.
 - i. results of the ecological surveys carried out within the 12 months preceding its submission including how any harm to biodiversity has been avoided, mitigated against and compensated for to result in a net enhancement to biodiversity.

Thereafter, the development shall be carried out in accordance with the approved Master Plan.

Reason - To prevent the increased risk of flooding, to improve water quality, to ensure that flora & fauna (in particular nationally important populations of brown hairstreak, black hairstreak and white letter hairstreak butterflies) are protected, to ensure the development does not result in a loss of biodiversity and in order to comply with Government advice in PPS25: Development and Flood Risk, PPS9: Biodiversity and Geological Conservation and Policies NRM4 and NRM5 of the South East Plan 2009.

10. No reserved matters applications shall be made or development commenced until Design Codes for the site have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the Approved Design Codes. The Design Codes shall include:
- a. the character, mix of uses and density of each phase or parcel identified on the Master Plan to include the layout of blocks and the structure of public spaces,
 - b. the character and treatment of the perimeter planting to the development areas,
 - c. the building height, scale, form, design features and means of enclosure that will form the basis of the character of each phase or parcel,
 - d. the street form, hierarchy and features that will be used to restrict traffic speeds and create legibility and requirements for street furniture,
 - e. the approach to car/cycle parking within the phases and parcels and the level of car/cycle parking to be provided to serve the proposed uses,
 - f. the materials to be used within each character area,
 - g. the treatment of the hedge corridors and retained trees and local areas of play within each phase or parcel,
 - h. measures to ensure energy efficiency and compliance with BRE Eco Homes

- good/very good ratings,
- i. measures to ensure the retention of the footpaths through the built development and their enhancement for walkers.

Reason – To ensure the satisfactory appearance of the completed development, to ensure energy and resource efficiency practices are incorporated into the development and to comply with Government advice contained in PPS: Planning and ‘Climate Change’ Supplement to PPS1, Policies BE1, CC2 and CC4 of the South East Plan 2009 and Policy C28 of the adopted Cherwell Local Plan.

11. The Master Plan and Design Codes shall be submitted to the Local Planning Authority within 18 months of the date of this permission. (RC4A)
12. The Ecological Construction Method Statement (ECMS) shall be approved in writing by the Local Planning Authority prior to any work commencing on the site pursuant to this permission. All work on site shall thereafter be in accordance with the approved ECMS, unless any alteration or variation has first been agreed in writing by the Local Planning Authority. (RC85A)
13. An implementation plan shall be submitted to and approved in writing by the Local Planning Authority prior to development commencing. This shall include the timing of the provision of mitigation planting, major infrastructure, access roads, laying out of the open spaces and the development of any proposed phases or parcels.

Reason – To ensure that any infrastructural and other requirements of the development are appropriately mitigated in order to comply with Government guidance in PPS3: Housing, Policies H3, C4 and CC7 of the South East Plan 2009 and Policies C28 and R12 of the adopted Cherwell Local Plan.

14. The development permitted by this planning permission shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) by JBA dated March 2010 and the following mitigation measures detailed within the FRA:
 1. A flood storage compensation scheme shall be provided in accordance with Section 5 of the FRA.
 2. Finished floor levels shall be set no lower than 67.3m AOD, in accordance with Section 6.1.2 of the FRA.
 3. Ground levels within the developed areas which encroach into the 1 in 100 year flood extent with an allowance for climate change shall be raised to at least 67m AOD as set out in Section 6.1.1 of the FRA.
 4. The surface water drainage scheme shall include permeable paving, water butts and ponds as detailed in Section 6.2.2.

Reason: To prevent flooding elsewhere by ensuring that compensatory storage of flood water is provided, to reduce the impact of flooding on the proposed development and future occupants, to ensure safe access and egress from and to the site, to prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site and in order to comply with Government advice in PPS25: Development and Flood Risk and Policy NRM4 of the South East Plan 2009.

15. Development shall not begin until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro

geological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed. The scheme shall also include an assessment of the capacity of the receiving drainage network.

Reason: To prevent the increased risk of flooding, to improve and protect water quality, improve habitat and amenity, and ensure future maintenance of the scheme and in order to comply with Government advice in PPS25: Development and Flood Risk and Policy NRM4 of the South East Plan 2009.

16. No development on any phase or parcel shall commence until a scheme for disposal of surface water, including phased works and maintenance thereof, attenuation and storage and on-site balancing arrangements, reflecting current best practice for sustainable urban drainage, have been submitted to and approved in writing by the Local Planning Authority. No development shall take place other than in accordance with the approved scheme.

Reason: To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site and in order to comply with Government advice in PPS25: Development and Flood Risk and Policy NRM4 of the South East Plan 2009.

17. No development shall take place within the site until the applicant has secured the implementation of a stage programme of archaeological investigation measures in accordance with a written scheme which shall be submitted to and approved in writing by the Local Planning Authority. The programme of work shall include all processing, research and analysis necessary to produce an accessible and usable archive and full report for publication. The work shall be carried out by a professional archaeological organisation acceptable to the Local Planning Authority.

Reason – To secure the provision of archaeological investigation and the subsequent recording of the remains, to comply with Government advice in PPS5: Planning for the Historic Environment and Policy BE6 of the South East Plan 2009.

18. No development shall commence until a scheme for the disposal of surface water, including phased works and the maintenance thereof, attenuation, storage and on-site balancing arrangements, reflecting current best practice for sustainable urban drainage, has been submitted to and approved in writing by the Local Planning Authority. No development shall take place other than in accordance with the approved scheme. (RC67AA)

19. Prior to the commencement of the development details of any flood storage works shall be submitted to and approved in writing by the Local Planning Authority and thereafter development shall take place in accordance with those approved details. (RC88A)

20. No development shall commence until a scheme for dealing with foul drainage from the site, including any phased works, has been submitted to and approved in writing by the Local Planning Authority. The foul drainage shall thereafter be carried out in accordance with the approved scheme. (RC23AA)

21. Details of the siting and design of the Local Areas of Play (LAPs) shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of

development in any phase or parcel and thereafter provided in accordance with the approved details, prior to the occupation of any dwelling situated within 30 metres of the perimeter of the LAP. (RC92A)

22. Prior to the construction of any dwelling in any phase of the development a noise assessment, including any necessary mitigation measures, shall be submitted to and approved in writing by the Local Planning Authority. Prior to the occupation of any dwelling any necessary mitigation measures shall be completed in accordance with the approved assessment. (RC53AB)
23. Hedges and trees identified for retention shall be protected by a buffer zone on either side measured at least one metre beyond the existing canopy spread of the hedgerow and trees prior to any agreed pruning or reduction works. The buffer zone shall be fenced prior to any work on the phase or parcel taking place, in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. The approved fencing shall thereafter be retained during all construction activity. (RC73A)
24. That within 3 to 6 months before works commence on site a survey to check for badger activity shall be undertaken and a report of the findings and recommendations shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved recommendations. (RC85A)
25. That within 3 to 6 months before works commence on site a survey to check for bat activity shall be undertaken and a report of the findings and recommendations shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved recommendations. (RC85A)
26. No works of site clearance, demolition or construction shall take place unless or until an egg search survey report for White letter Hairstreak (survey to be carried out by Butterfly Conservation on behalf of the applicant in the November/ December preceding the submission of the survey report and covering the entire proposed development site and any accessible land within a 50m buffer and the report to include details of species & population present, potential impacts and how impacts will be avoided and mitigated and compensation and enhancement measures) has been submitted to and approved in writing by Cherwell District Council. Any works must, thereafter, be carried out in accordance with the approved scheme.

Reason: To ensure the protection of a potentially nationally important population of white letter hairstreak butterflies and to ensure the development is in accordance with the NERC Act (2006), PPS9 and SE plan policy NRM5 and that the development results in biodiversity enhancement in accordance with the NERC Act (2006), PPS9 and SE plan policy NRM5.

27. A scheme for the provision of fire hydrants shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of construction of each phase and shall thereafter be implemented in accordance with the agreed details. (RC87A)
28. Details of the location of all site compounds, access thereto and construction site parking, as well as a scheme for their subsequent removal and restoration of the land, shall be submitted to and approved in writing by the Local Planning Authority prior to

their establishment. The compounds, accesses and parking shall be located and subsequently removed in accordance with the approved details. (RC91)

29. That prior to the first occupation of the development a scheme for the provision of street nameplates, including their location and full design details, shall be submitted to and approved in writing by the Local Planning Authority.

Reason - In the interests of amenity, to ensure the creation of a pleasant environment, in the interests of highway safety and to comply with Government advice contained in PPG13:Transport and Policy C28 of the adopted Cherwell Local Plan.

30. That prior to the first occupation of the development the street nameplate details approved under condition 29 shall be installed, retained and maintained in accordance with those details.

Reason - In the interests of amenity, to ensure the creation of a pleasant environment, in the interests of highway safety and to comply with Government advice contained in PPG13:Transport and Policy C28 of the adopted Cherwell Local Plan.

Planning Notes:

1. Q1 – Legal agreement
2. With regard to condition 14, the applicant is advised that the Environment Agency expects compensatory storage to be provided on a level-for-level basis to ensure that the replacement storage performs in the same way to that which is lost during a flood event. The proposed compensation scheme does not quite achieve full level-for-level compensation as there is a loss in the available storage of 59m³ below 66.65m AOD. However, this loss will not increase flood risk to nearby properties because the lost volume is replaced between 66.65 and 66.7m AOD. This volume will become available before any properties are put at risk. An overall slight betterment in flood storage is being offered of 20m³.
3. With regard to condition 15, the applicant is advised that for the Environment Agency to find free discharge beyond the 1 in 30 year storm event acceptable, it must be demonstrated that the receiving drainage network has sufficient capacity to receive water at unattenuated rates without causing flooding, during storm events up to and including the design storm event. Otherwise, we will expect Greenfield runoff rates to be maintained up to and including the design storm event.
4. With regard to condition 16, the applicant is advised that under the terms of the Water Resources Act 1991, and the Land Drainage Byelaws 1981, the prior written consent of the Environment Agency is required for any proposed works or structures, in, under, over or within 8 metres of the top of the bank of the Langford Brook, designated a 'main river'. Waste from the development must be re-used, re-cycled or otherwise disposed of in accordance with waste management legislation and in particular the Duty of Care. Further information can be obtained from your local Environment Agency office.

SUMMARY OF REASONS FOR THE GRANT OF PLANNING PERMISSION AND RELEVANT DEVELOPMENT PLAN POLICIES

The Council, as local planning authority, has determined this application in accordance with the development plan unless material considerations indicated otherwise. The development is considered to be acceptable on its planning merits as the proposal is acceptable in principle and pays proper regard to the character and appearance of the site and surrounding area and has no undue adverse impact upon

the residential amenities of neighbouring properties, protected species or highway safety. The proposal represents a sustainable development and will not increase flood risk. As such the proposal is in accordance with Government Guidance contained within PPS1, PPS3, PPS4 , PPS9, PPG13 and PPS25, Policies SP3, CC1, CC2, CC3, CC4, CC6, H1, H2, H3, H5, T1, T4, NRM1, NRM2, NRM4, NRM5, NRM11, C4, C5, BE1, CO1 and CO3 of the South East Plan 2009 and Policies EMP1, TR1, C1, C2, C4, C28 and C30 of the adopted Cherwell Local Plan. For the reasons given above and having proper regard to all other matters raised the Council considered that the application should be approved and planning permission granted subject to appropriate conditions as set out above.

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