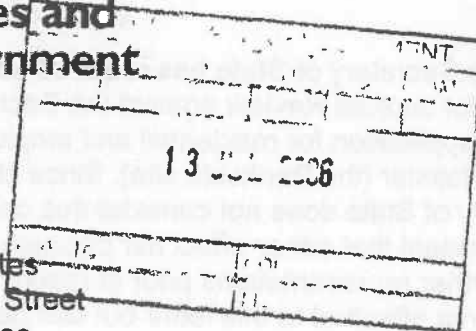


Department for
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Our Ref APP/C3105/A/05/1179638

12 July 2006

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)
APPEAL BY GALLAGHER ESTATES LIMITED
LAND NORTH OF GAVRAY DRIVE, BICESTER, OXFORDSHIRE
APPLICATION REF: 04/02797/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Nigel Payne, BSc (Hons) DipTP MRTPI MCMI, who held a public inquiry between 14 March 2006 and 24 March 2006 into your client's appeal against Cherwell District Council's failure to determine an application for outline planning permission. The development proposed is residential development (including affordable housing) incorporating a county wildlife site together with land reserved for a primary school, community facilities, public open space, rail chord and structure planting, in accordance with application number 04/02797/OUT, dated 24 December 2004.
2. On 7 June 2005, the Secretary of State recovered the appeal for her own determination, in pursuance of section 78 of the Town and Country Planning Act 1990.

Inspector's Recommendation and Summary of the Decision

3. The Inspector recommended that outline planning permission be granted subject to conditions. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, and agrees with his recommendation to grant outline planning permission subject to conditions. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural Matters

4. In reaching her decision, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. The Secretary of State is content that the Environmental Statement complies with the above regulations and that sufficient information has been provided for her to assess the environmental impact of the application.

5. Since the close of the Inquiry, the Secretary of State has received correspondence relating to a Pre-Action Protocol for Judicial Review against the Secretary of State's decision not to call in a planning application for residential and employment development on another site in Bicester (the Bankside site). Since she is proposing to allow this appeal, the Secretary of State does not consider this challenge to raise any new issues relevant to this appeal that either affect her decision or require her to refer back to the parties for further representations prior to reaching a decision. The relevant correspondence is not attached to this letter but can be made available upon request to this office.

Policy Considerations

6. In deciding the application, the Secretary of State has had regard to section 38 (6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
7. In this case, the development plan comprises the Regional Spatial Strategy (RSS) for the area in the form of Regional Planning Guidance Note 9 (RPG9), approved in March 2001; the Oxfordshire Structure Plan (OSP) 2016, adopted in October 2005, the Cherwell Local Plan, adopted in November 1996. The Non-Statutory Cherwell Local Plan (NSCLP) was adopted as interim policy for development control purposes by the Council in December 2004. For the reasons given in IR85, the Secretary of state agrees with the Inspector that the weight that can reasonably be attached to its proposals and policies is materially reduced. The Secretary of State considers that the development plan policies most relevant to the appeal are those set out by the Inspector at IR10-21
8. The Secretary of State notes that the RSS for the South East is currently under review. However, as this is at an early stage in its preparation, she affords it limited weight
9. Other material considerations that the Secretary of State has taken into account include Planning Policy Guidance note 3 (PPG3): *Housing*; Planning Policy Statement 6 (PPS6) *Planning for Town Centres*; Planning Policy Statement 9 (PPS9): *Biodiversity and Geological Conservation*, Planning Policy Guidance 13 (PPG13) *Transport*, Circular 11/95: *The Use of Conditions in Planning Permission*, and Circular 05/2005. *Planning Obligations*.
10. The Secretary of State has taken into account the Consultation Paper on Planning Policy Statement 3 (PPS3) *Housing*, published on 8 December 2005 but, as the draft document may be subject to change, she affords it very little weight.

Main Issues

11. The Secretary of State agrees with the Inspector that the main considerations in determining the current application are those listed in IR83. Before turning to those matters, she has also considered the relationship of the proposals to the development plan

The relationship of the proposal to the development plan

12. The Secretary of State concludes that the site is allocated for employment use in the Cherwell Local Plan adopted in 1996 and in the Non-Statutory Cherwell Local Plan, and that this proposal would therefore conflict with those development plan policies. The Secretary of State notes that an early version of the Non-Statutory Cherwell Local Plan did allocate the site for housing and she agrees with the Inspector that it was not a matter of dispute at the inquiry that the site is suitable in principle for residential development (IR84-85).
13. The Secretary of State also concludes that the proposals do not conflict with those development plan policies identified in IR10-17, IR19 and IR21, relating to housing, biodiversity and ecology, economic development, and concentrating new development on the larger urban areas. However, given the specific allocation of this site for employment uses, the Secretary of State concludes that the proposals are not in accordance with the development plan taken as a whole. She has therefore gone on to consider whether there are any material considerations that indicate she should determine the appeal other than in accordance with the development plan.

Whether the site should be retained for future employment uses or used now for new housing

Housing

14. For the reasons given in IR84, the Secretary of State agrees with the Inspector that it is now appropriate to reconsider this site's allocation for employment, in line with national PPG3 guidance. The Secretary of State also agrees with the Inspector that the fact that the Cherwell Local Plan is now essentially out of date strongly reinforces this conclusion (IR85).
15. With regard to the housing supply situation, the Secretary of State agrees with the Inspector that the delivery of housing units in Bicester and the district as a whole has been materially below strategic requirements and there is a pressing local need for affordable housing (IR86). For the reasons given in IR86-88, the Secretary of State shares the concerns of the Inspector regarding the dependence on one large site to provide most of Bicester's new housing needs over the period to 2016.
16. The Secretary of State agrees with the Inspector that any delay in development on the South West Bicester site would exacerbate an already unsatisfactory situation in terms of underperformance against OSP requirements in 2007/8, 2008/9 and 2009/10, whereas this site could provide 500 new houses in the early years to 2016, and thereby make an important contribution to "filling the gap" (IR89).

Employment

17. The Secretary of State agrees with the Inspector that there is a more than adequate supply of employment land and premises in the area to meet Bicester's contribution to Cherwell District Council's Draft Economic Development Strategy of 6,000 new jobs across the district as a whole by 2011 (IR90). For the reasons given in IR90, she also agrees that that strategy should take precedence over the NSCLP. The Secretary of State also agrees with the Inspector that it has not been demonstrated

that there is a realistic prospect of the site being utilised for new employment provision in the foreseeable future (IR92) She has particularly borne in mind the fact that the site has now remained undeveloped for approaching 20 years, since it was first identified as suitable for employment development. For these reasons and the reasons given in IR90-95, the Secretary of State agrees with the Inspector that the local strategy for economic development would not be undermined by the early use of this site to help provide the houses needed in the town to meet the requirements of the Oxfordshire Structure Plan, and concludes that the site should be used now for new housing, to help meet strategic requirements and local needs, including for affordable housing, rather than being retained for possible future employment development.

Whether residential development would give rise to an unacceptable increase in the need to travel, particularly by private car

18. The Secretary of State agrees with the Inspector, for the reasons given in IR97-101, that residential development on this site would not give rise to an unacceptable increase in the need to travel, including by private car, particularly when compared to the alternative of mainly B1 employment use

Whether the scheme would result in significant harm to the ecological interest of the site and, if so, whether that harm is outweighed by an overriding need for the development

19. The Secretary of State notes the criticisms made regarding the Environmental Impact Assessment process and specific aspects of the proposals (IR103) and agrees with the Inspector that it is inevitable that the fragmentation of the County Wildlife Site would increase to a degree (IR104). However, the Secretary of State agrees with the Inspector that the suggestion that employment development would have less impact than housing on the environmental value of the eastern part of the site is unsupported by evidence, other than the potential effect of access by new residents over the retained County Wildlife Site (IR105).
- 20 For the reasons given in IR106-109, the Secretary of State agrees with the Inspector that no significant environmental effect was omitted from the Environmental Impact Assessment process and that the chance discovery of a marsh fritillary butterfly on the site could not reasonably have been anticipated. She further agrees with the Inspector that the baseline data provided has been adequate to assess the likely significant environmental effects of the proposals.
- 21 The Secretary of State agrees with the Inspector that, for the reasons given in IR110-116, taking into account all the planning conditions and provisions of the S106 agreement, the scheme would not result in significant harm to the ecological interest of the site. Such harm that would arise is clearly outweighed by the need for new housing to meet local requirements in this sustainable location (IR111-116).

Other matters

- 22 For the reasons given in IR117-119, the Secretary of State agrees with the Inspector, that there is no archaeological objection in principle to the development of the site, and that the surface water drainage proposals for the site are suitable and acceptable.

Conditions and Obligations

- 23 The Secretary of State has considered the proposed conditions and national policy as set out in circular 11/95. She concludes that the conditions are necessary, relevant to planning and the development permitted, and are enforceable, precise and reasonable in all other respects. She also concludes that the planning obligation submitted to the inquiry is necessary and relevant to the proposed development and meets the policy tests of Circular 05/05.

Overall Conclusion

- 24 The Secretary of State concludes that the appeal site's allocation for employment development means that the appeal proposal is not in accordance with the development plan. However, she also concludes that the proposal will contribute to the supply of housing, and particularly affordable housing, in the early years to 2016. She also concludes that releasing this site for housing will not undermine the local strategy for economic development, that the site is a sustainable one, and that the scheme would not result in significant harm to the ecological interest of the site. Overall the Secretary of State concludes that those material considerations which favour allowing the appeal are of sufficient weight to determine the appeal other than in accordance with the development plan.

Formal Decision

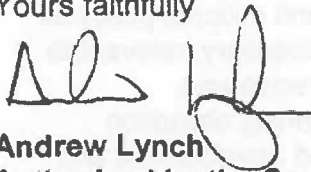
- 25 Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation and hereby allows your client's appeal and grants outline planning permission for residential development on land north of Gavray Drive, Bicester, Oxfordshire in accordance with application number 04/02797/OUT dated 24 December 2004, subject to the conditions appended to Annex A of this letter.
- 26 An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
27. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.
- 28 This letter serves as the Secretary of State's statement under regulation 21(2) of the Town and Country (Environmental Impact Assessment) (England and Wales) Regulations 1999.

Right to challenge the decision

- 29 A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within 6 weeks of the date of this letter.

30. A copy of this letter has been sent to Cherwell District Council and interested third parties

Yours faithfully



Andrew Lynch
Authorised by the Secretary of State
to sign in that behalf

Annex A

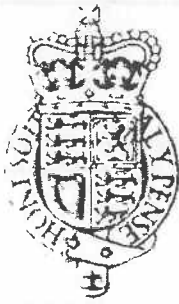
Conditions

- 1 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
- 2 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.
- 3 The development to which this permission relates shall be begun not later than whichever is the later of the following dates:
 - the expiration of five years from the date of the grant of outline permission,
 - 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.
- 4 No building on the site shall exceed 3 storeys in height.
- 5 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.
- 6 No more than 500 dwellings shall be built on the site.
7. 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.
8. No reserved matters applications shall be made or development commenced until a Master Plan has been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the Approved Master Plan. Any revisions to the Approved Master Plan shall also be made by submission in writing and shall not be implemented unless or until approved in writing by the local planning authority. The Master Plan shall include:
 - (a) an overall layout plan showing the distribution of all principal 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;

- (b) the character areas to be covered by Design Codes,
 - (c) details of the landscape structure, mitigation planting and hedge/tree protection corridors, including a scheme for hedgerow retention/removal and the timing of removal if proposed and agreed,
 - (d) the phases and parcels of the development to which the Affordable Housing Parcel Scheme relate,
 - (e) details of the foul, surface and land drainage from the site and the development including surface water control measures and balancing, sewers and connections;
 - (f) the location of the neighbourhood equipped area of play (NEAP) and the boundaries and principal features of the flood plain area
9. 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
10. The Master Plan and Design Codes shall be submitted to the local planning authority within 12 months of the date of this permission.
11. An Ecological Construction Method Statement (ECMS) shall be submitted to and 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.

- 12 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.
- 13 No development shall take place within the site until the applicant has secured the implementation of a staged 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.
- 14 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.
- 15 Prior to the commencement of 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.
- 16 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.
- 17 Details of the siting and design of 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.
- 18 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.
- 19 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.
- 20 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.

21. 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.



Report to the First Secretary of State

The Planning Inspectorate
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ GTN 1371 8000

by **Nigel Payne** BSc (Hons) DipTP MRTPI MCMi

an Inspector appointed by the First Secretary of State

Date 4 May 2006

TOWN AND COUNTRY PLANNING ACT 1990

APPEAL BY GALLAGHER ESTATES LIMITED

against

CHERWELL DISTRICT COUNCIL

Inquiry held on 14 - 24 March 2006

Land North of Gavray Drive, Bicester, Oxfordshire OX26 6EO

File Ref(s) APP/C3105/A/05/1179638

File Ref: APP/C3105/A/05/1179638

Land North of Gavray Drive, Bicester, Oxfordshire OX26 6EO.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission
- The appeal is made by Gallagher Estates Limited against Cherwell District Council
- The application ref 04/02797/OUT is dated 24 December 2004
- The development proposed is residential development (including affordable housing) incorporating a county wildlife site together with land reserved for a primary school, community facilities, public open space, rail chord and structure planting

Summary of Recommendation: The appeal be allowed and outline planning permission granted subject to conditions.

Procedural Matters

- 1 On 7 June 2005 the First Secretary of State issued a direction using his powers under Section 79 and Paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990 that he should determine the appeal as it raises issues relating to residential development of 5 or more hectares or 150 or more dwellings This followed the lodging of an appeal against non-determination of an outline planning application on 6 May 2005
- 2 Cherwell District Council (CDC) resolved on 23 June 2005 that, had they been able to do so, they would have refused the application for seven reasons
 - 1) *The proposed residential and ancillary development of this site is contrary to the allocation of this site for employment generating development in the adopted Cherwell Local Plan and the non-statutory Cherwell Local Plan 2011 which has been adopted as interim policy for development control purposes The Council does not accept that the applicant's arguments concerning alleged lack of employment land demand and the need to increase housing supply in areas of under delivery are sufficient to outweigh this policy objection*
 - 2) *The development would be likely to give rise to an increase in the need to travel, particularly by private car, contrary to the principles of sustainability guiding the location of new development in the Oxfordshire Structure Plan 2011 Policy G1*
 - 3) *In the absence of a Section 106 legal obligation the Local Planning Authority consider that the proposal is contrary to Policy G3 of the Oxfordshire Structure Plan 2011 in that the required contributions to on-site and off-site infrastructure is not guaranteed or secured*
 - 4) *In the absence of evidence to the contrary the Local Planning Authority (and the Environment Agency) are not convinced that the parts of the site proposed for development are not within the floodplain of the Langford Brook Development of such areas is contrary to Policy ENV8 of the adopted Cherwell Local Plan and Policy E7 of the non-statutory Cherwell Local Plan 2011 and the advice contained in PPG 25 "Development and Flood Risk"*
 - 5) *In the absence of evidence to the contrary the Local Planning Authority consider that the development of the site may adversely affect an area of archaeological interest and is therefore contrary to Policy C26 of the adopted Cherwell Local Plan and Policy ENV7 of*

the non-statutory Cherwell Local Plan 2011 and the advice contained in PPG 16 "Archaeology and Planning"

6) The proposal affects the possible habitat of the marsh fritillary butterfly (a species included in Annex II of the European Habitats Directive) and protected by the Wildlife and Countryside Act 1981 (as amended) Until such time as further investigation of this issue and the possible need to amend the proposal has been undertaken the Council consider that the proposal is contrary to Policy C2 of the adopted Cherwell Local Plan and Policy EN24 of the non-statutory Cherwell Local Plan 2011 and the advice contained in paras 44-48 of PPG 9 "Nature Conservation"

7) In the absence of evidence to the contrary the Local Planning Authority (and Thames Water) consider that the development may have an adverse effect upon the sewerage system and water supply to nearby communities due to the possible inability of the existing systems to cope with the increased demand placed upon by this development As a consequence, the development would be contrary to Policy EN9 and EN12 of the non-statutory Cherwell Local Plan

- 3 On 11 August 2005 the First Secretary of State, having considered the content of the Environmental Statement (ES) accompanying the planning application and having regard to Regulation 2(1) and Schedule 4 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, required the appellant to supply "further information" on the following A) the effect on the rare marsh fritillary butterfly, in view of the observed presence on the site and the potential value of the site as habitat; B) flood risk in view of objections from the Environment Agency and C) archaeology in view of the anticipated presence of Romano-British and Iron Age settlements in the area
- 4 It was confirmed at the opening of the inquiry that the application was in outline with all matters of detail reserved for subsequent determination and that plans C – F inclusive were for illustrative and/or information purposes only I have made my recommendation on this basis I undertook an accompanied site visit on the afternoon of 16 March and inspected the site, surroundings, and various locations mentioned during the inquiry in and around Bicester again, unaccompanied, on 24 March
- 5 A Statement of Common Ground (SCG) was agreed between the Appellants, Cherwell District Council and Oxfordshire County Council before the inquiry opened (Doc 3) During the giving of evidence a few minor corrections were made to the proofs and appendices and I have made the necessary alterations
- 6 A Section 106 legal agreement (Doc 5) was submitted before the end of the inquiry with signed copies made available two weeks later All the obligations and undertakings contained therein are consistent with those made known and discussed at the inquiry and I have therefore taken it into account as a material consideration
- 7 This report includes a description of the site and surroundings, the policy framework, the planning history, the proposals, agreed facts, a summary of the representations made at the inquiry and my conclusions and recommendation A list of appearances, documents (including proofs of evidence and appendices) and plans is also attached, together with a schedule of Core Documents (CDs) (Doc 6) Site and Surroundings
- 8 This essentially flat site, of approximately 24.5 ha and containing no built structures, lies on the south eastern side of Bicester, roughly 1.3 km from the town centre and to the north of Langford Village, a large modern residential area. It is bounded by the elevated

Birmingham to Marylebone rail lines to the north, with Bicester Park, a large distribution centre, beyond. The town's Eastern by-pass is to the east, Gavray Drive to the south and the Oxford to Bicester railway line at ground level to the west. Although nominally agricultural land of Grade 3b quality, the site appears to be largely unfarmed at present, with limited use for casual recreation by local residents.

- 9 It is split into two distinct parts by the Langford Brook, with a largely open field to the west comprising about one third of the total site. To the east, the land is divided into a number of smaller parcels by extensive hedges and lines of trees, some of which are the subject of Tree Preservation Orders (TPO), indicative of an older surviving field pattern and more traditional methods of farming. This area currently provides a wide variety of habitats for flora and fauna with running and standing water areas, patches of damp grass, scrub, hedgerows and grassland. This is reflected in the local designation of the central part of the site, east of the Langford Brook, as a County Wildlife Site (CWS). Two public footpaths cross the site. One runs north-south close to the western boundary from Tubbs Lane through to Bicester Park passing under the railway, whilst the other runs east-west from Gavray Drive, just east of the brook, to the site's eastern boundary.

Planning Policy

- 10 At present, the relevant regional planning guidance is contained in RPG 9, approved in March 2001, as amended. The key principles (para 3.5) include the use of urban areas as the main foci for development, the provision of sufficient dwellings (especially affordable housing) for all those who need to live and work in the region and more sustainable use of transport facilities and natural resources. In particular, access to jobs, services and facilities should be less dependant on longer distance movement, with increased ability to meet normal travel needs through safe walking, cycling and public transport.
- 11 Another key principle is that there should be continued protection and enhancement of the region's biodiversity, particularly internationally and nationally important nature conservation areas. Policy E2 seeks positive action to achieve the targets set out in Biodiversity Action Plans (BAP) through planning decisions and other measures. Development plans should give priority to specific species and habitats of international, national and sub-regional importance identified therein by conserving and enhancing existing wildlife habitats, encouraging the management of land for nature conservation as part of development proposals and identifying locations for habitat management, restoration and creation.
- 12 In the Western policy area, which includes Oxfordshire, para 4.22 encourages economic development strategies to build on existing strengths, such as the high skills and knowledge base, to ensure sustainable growth. Regarding development plans, policy RE3 says that local economic development strategies should be fully taken into account, reflecting capacity in terms of labour, land and transport, local strengths and changing work/living patterns. Policy RE4 adds that businesses should be located in areas well served by sustainable modes of transport, with forms of development that maximise environmental and social benefits, such as mixed uses, encouraged.
- 13 The Council says (Evans para 9.2) that the emerging regional spatial strategy for the South East will identify Bicester as capable of helping to realise the potential of the sub region to support high value employment, partly due to its proximity to Oxford. The appellants point out (Keene para 3.24) that the County Council is envisaging a further phase of significant new housing growth in Bicester, of either 2,000 or 4,000 more houses up to 2026, as a result

- of the emerging regional spatial strategy. However, this is at an early stage in its preparation and can therefore only be accorded limited weight.
- 14 At the time of the Council's consideration of this application, the Oxfordshire Structure Plan (OSP) 2011 was extant. However, this has since been superseded by the OSP 2016, adopted in October 2005, albeit containing similar strategic policies. In particular, policy G1 follows the key principles of RPG 9 in seeking to concentrate new development on the larger urban areas, such as Bicester, in locations where a reasonable range of services and facilities exist or can be provided and the need to travel, particularly by car, reduced with walking, cycling and the use of public transport encouraged. Policy G2 aims to improve the quality and design of schemes, whilst G3 refers to the provision of the necessary infrastructure to accompany new development and G6 seeks the incorporation of best practice in energy efficiency and resource conservation.
 - 15 In relation to housing, policy H1 makes provision for 9,350 new dwellings in Cherwell between 2001 and 2016, of which about 3,300 are identified for Bicester as one of the main locations in the county. Regarding employment, policy E1 says that, amongst other things, development should provide for activities that contribute to regional and local economic priorities, such as the educational, scientific and technological sectors. Such development should be located in or adjoining urban areas (or existing concentrations) with good access to housing by non car modes, as well as incorporating sustainable transport features.
 - 16 Policy E3, relating to the main towns, including Bicester, seeks to achieve an appropriate balance between the number and type of jobs and the size and skills of the local workforce, as well as providing for the expansion and relocation of existing businesses or those which need to be located in the area. The supporting text, at para 6.17, adds that Bicester could benefit from the expansion of knowledge and science based firms, moving on from research and development to manufacturing, due to its location close to Oxford and within the Oxford – Cambridge arc on the proposed East–West rail link.
 - 17 On biodiversity, policy E2 states that sites of at least national importance, such as Special Areas of Conservation (SAC), National Nature Reserves (NNR), Sites of Special Scientific Interest (SSSI) and those which support specially protected species, will be protected from damaging development. On other sites of acknowledged nature conservation importance, development will only be permitted if there is an overriding need or if damage to the ecological interest can be prevented by the use of conditions or obligations. Paras 5.6 and 5.7 of the supporting text refer to the Oxfordshire BAP and the need for planning policies to help safeguard, maintain and expand biodiversity resources associated with priority habitats or species, of which there should be no further net loss within the county.
 - 18 The Cherwell Local Plan (CLP), adopted in November 1996, allocates the site for employment uses under policy EMP1, with a central recreational area dividing it and containing the floodplain of the Langford Brook. Although it was prepared in a strategic context which preceded even that of the OSP 2011 and was originally intended to cover the period up to 2001, it remains the adopted Local Plan for the area. Most of its policies, including those relevant to this appeal, are “saved” under the transitional arrangements of the Planning and Compulsory Purchase Act 2004.
 - 19 Policy C1 says that development resulting in loss or damage to SSSIs or other areas of designated wildlife or scientific importance will not normally be permitted and that the Council will seek to protect sites of local nature conservation value, where the potential adverse effects of development will be a material consideration. Development that would

adversely affect any species protected under the 1981 Wildlife and Countryside Act and the EC Habitats Directive 1992 will not normally be permitted under policy C2

- 20 The Non Statutory Cherwell Local Plan 2011 (NSCLP) was adopted as interim policy for development control purposes by the Council in December 2004. Policy EMP1 continues to allocate the site mainly for employment generating development but policy T29 also reserves an area of land in the north west corner for a connecting railway and rail based multi modal public transport interchange, including a new station
21. Policy EN22 states that development proposals should retain features of nature conservation value and enhance them wherever possible. Conditions or obligations will be sought to secure protection, management or compensatory measures where appropriate. Where development may affect a known or potential site of nature conservation value, an ecological survey to establish the likely impact will be required under policy EN23. Under policy EN24, proposals that would result in damage to or loss of a site of ecological (or geological) value will not be permitted unless i) for an internationally important site there is no alternative solution and imperative reasons of overriding public interest, ii) for a nationally important site the reasons for the development clearly outweigh the ecological value and national policy to safeguard the network of such sites or iii) for a site of regional or local importance, the reasons clearly outweigh the ecological value. In all cases, damage must be kept to a minimum. Policy EN25 seeks the creation of new habitats, particularly those concerning priority habitats or species, in development proposals, including where such areas would further opportunities for environmental education and passive recreation

Planning History

- 22 The site has been identified for development since the adoption of the Bicester Local Plan in 1988 and formed part of an outline permission (CWS 329/87) for an urban extension at South East Bicester granted in July of that year. This allocated the land for employment development, with recreation on the central floodplain area, and was confirmed, in part, by a subsequent outline permission (CWS 937/88) that also covered a large area of land to the north of the railway lines in July 1991. In March 1996, the Council refused a full application (96/00321/F) by Unipart for B2 industrial buildings on the eastern end of the site for noise generation and nature conservation reasons

The Proposals

- 23 The scheme involves the erection of up to 500 new dwellings, including 30% affordable housing, with a range of size and type of units, together with land reserved for a primary school and community facilities to the west of the Langford Brook, which would be incorporated into a linear public open space. An arc of land in the north west corner of the site would also be reserved for a railway chord, to enable a link to be constructed between the two rail lines bordering the site at some time in the future, although a new station/multi modal transport interchange is no longer envisaged. To the east of the brook, in the central part of the site and dividing the residential development into two separate elements, an area of approximately 6.5 ha would be retained as a CWS, with limited public access. All vehicular access would be taken from four points along Gavray Drive, which have already been constructed as part of the Langford Village development

Other Agreed Facts

- 24 A letter dated 17 January 2006 from the Environment Agency (SCG App 2) confirms that they no longer have any objections to the scheme on the grounds of flood risk or surface

water runoff, subject to the imposition of appropriate detailed conditions. In the light of a letter dated 7 September 2005 from the Planning Archaeologist at Oxfordshire County Council (OCC) (SCG App 3), CDC acknowledged that there were no archaeological objections to a duplicate application considered on 8 December 2005. Similarly, an e-mail dated 13 January 2006 from Thames Water (SCG App 4) advises that they now have no reason to object to the surface water drainage proposals for the scheme. Accordingly, these "reasons for refusal" (nos 4, 5 and 7) are now agreed to have been overcome.

- 25 In addition, English Nature and Butterfly Conservation no longer object to the proposals, being content with the Marsh Fritillary Strategy (MFS) contained within the legal agreement (Doc 5), and CDC is also now satisfied that the overall scheme would comply with the policies referred to in "refusal reason" 6, as well as paras 44 - 48 of PPG 9. The legal agreement provides a mechanism to secure the long term retention, enhancement and management of the CWS. Hence, CDC provided no evidence on this matter for the inquiry. The agreement also confirms that all necessary on and off site infrastructure, as referred to in "refusal reason" 3, is capable of being provided and that the relevant financial and other contributions required would secure implementation at an appropriate point during the development of the site for new housing. It is also now common ground that all necessary services for 500 new dwellings and associated facilities are or could readily be made available via Gavray Drive to enable the development to commence without delay.

The Case for Gallagher Estates Limited (summary of the material points)

- 26 Although the development plan for the area consists of RPG 9 (as updated by the Regional Transport Strategy of July 2004), the OSP 2016 and the CLP, adopted in November 1996, the latter is now old and substantially out of date in many respects, not least in terms of compliance with relevant national guidance. Having been prepared to implement a structure plan approved as long ago as February 1992, CDC has recently confirmed as much in setting out their Local Development Scheme (LDS) (CD 41). In contrast, the OSP was adopted as recently as October 2005 and should therefore prevail in the event of conflict. It is noteworthy that the first "reason for refusal" does not rely on any alleged conflict with either RPG 9 or the OSP, whilst the second refers only to policy G1 of the OSP 2011.
- 27 The "reasons for refusal" also refer to the NSCLP but the history of that document, including the fact that at one stage it formally endorsed the use of this site for new housing, rather than employment, confirm that it should carry very limited weight in this case. In particular, CDC having abandoned the attempt to complete the statutory process in the face of a very high level of objections, none of which have been considered by an independent Inspector, the plan represents nothing more than an expression of the Council's view concerning the appropriate form of development on this site. Moreover, the document itself acknowledges on page 2 that it will be substantially out of date by 2006 because of the adoption of the OSP 2016. Nor is its progress being monitored for the reasons explained in para 7.3 on page 11 of the Annual Monitoring Report (AMR) (CD 40). In conclusion, it is considered that both the CLP and NSCLP should only carry weight to the extent that they are consistent with the adopted OSP 2016.
- 28 It is also relevant that OCC certified the Revised Deposit Draft Local Plan as being in conformity with the OSP 2011, with the Gavray Drive land allocated for new housing and the Pre - Inquiry Changes version, with the site returned to identification for employment development. Notwithstanding that the plan is considered as a whole in this respect, had it been regarded as a site whose location/size and/or characteristics were of strategic

importance, this could not have occurred, irrespective of land allocations elsewhere in and around the town

- 29 There is no issue between the Appellants and CDC as to the site's suitability for new housing and that it could be brought forward quickly, thereby making an early and effective contribution to meeting local housing needs (Keene para 3 39). This is important in the context of the recent failure to meet the strategic housing requirements of the OSP 2011, the need to maximise the delivery of new dwellings and the fact that new greenfield sites are agreed to be necessary. Moreover, the bulk of new housing relied on in the NSCLP is on one major, complex, site at South West Bicester (SWB), all of which is acknowledged in a recent Council Report to Committee (CD 54 paras 9 12 & 9 13). These comments reflect the Urban Potential Study (CD 15 paras 4 1 – 4 4), the LDS (CD 41 p 22) and the AMR (CD 40 paras 2 3, 4 2 & 4 3). The latter confirms the accumulative shortfall of 442 dwellings in relation to the OSP 2011 and that, without new allocations, there would be a shortfall of 505 dwellings by 2016.
- 30 With regard to new housing allocations in Bicester, even with no slippage, the relevant DPD would not be adopted until October 2009 at the earliest. It is partially dependent upon the outcome of the Employment Land Review, which is already late. The earliest any such sites could be relied upon to deliver completions would be about 2011. Nor, as the AMR makes clear (CD 40 para 10 9, p 23), is there any reserve of possible sites to make up the identified shortfalls, taking into account the relatively small amount of previously developed land available for new housing and the recent completion of the large sites at Slade Farm and Bicester Fields Farm (CD 40 Appendix 6 Table 2).
- 31 Given the very limited contribution from windfall sites of 17 units per annum (CD 40 Appendix 6 Table 5), CDC is critically dependent on the SWB site, as the new housing trajectory (Evans Appendix 5) confirms. It assumes that there will be no delays to that scheme from a "call in" inquiry or judicial review or for any other reasons. However, the optimistic completion figures for that site assumed in the NSCLP in December 2004 have since been progressively revised downwards as a result of a more rigorous assessment of deliverability. The latest estimate in September 2005 is that 620 dwellings could be built by 2011, assuming a start on site in mid 2007. Even this is highly questionable having regard to the delays that have already arisen with the development brief and submission of the planning application, as well as the complexities of development arising from the requirements of policy H13A of the NSCLP.
- 32 Assuming that the site comes forward in due course, it is not likely to be rapidly advanced and outside of SWB available contributions to local housing land supply are extremely limited. Even on the most favourable assumptions, there would be a shortfall of around 400 dwellings by 2008/9 and 2009/10 (Evans Appendix 5) against the OSP requirements. Should SWB fail to deliver as currently expected, for any number of possible reasons, an even more serious shortfall will develop with, at present, no alternatives available. In their evidence, the Council acknowledges that there has been a failure to meet the OSP requirements to 2001 and to 2011 and that without new greenfield sites coming forward there will be a failure to meet the OSP requirements to 2016, as contributions from SWB are not likely to be significant for some time to come. It is also accepted that this proposal reflects the guidance in para 31 of PPG 3 and would not undermine the housing strategy or create an over supply locally.
33. In summary, the development plan strategy for Bicester requires the provision of a significant amount of new housing in the town up to 2016, but the Council is now relying

almost entirely on one large site at SWB to achieve the OSP target, as the two large sites which have provided the majority of recent dwelling completions are both now finished. The SWB scheme is very controversial locally and will presumably continue to be opposed by many objectors. At best, this may well result in delays to the start of any development as the Council is belatedly recognising, as demonstrated in various committee reports during 2005, which clearly illustrate the decay in expectations of new housing delivery over time.

- 34 Regarding affordable housing, paras 3.30 and 3.35 of the NSCLP confirm the critical position in Cherwell, supported by the work of consultants in November 2004 (CD16) identifying an annual need of 686 units. This compares to actual delivery of only 337 over the last 4 years in the district. There is no evidence of any attempt to address this current shortfall and yet the Council resists the advice of paras 42 and 42(a) of PPG 3 in respect of this site, where around 150 new affordable dwellings could be provided quickly.
- 35 Both PPG 13 and PPS 6 are clear in relation to major generators of travel demand that they should be focused on city, town and district centres that are highly accessible and that offices are a key town centre use. If the NSCLP had been properly prepared it would have followed a sequential approach to site selection for such uses but the Council has undertaken no assessment of need for office or other B1 space. Nevertheless, it promotes out of centre development of that nature on this site. Analysis of the Urban Potential Study (CD15) shows that there are sites of varying sizes and types available for such uses in more central locations than Gavray Drive. There is no market assessment to demonstrate that the site is the only one suitable and available to meet a particular need and it is not an attractive location for the types of large office occupiers that the Council is apparently keen to attract.
- 36 The first "reason for refusal" does not allege any conflict with RPG9 or the economic strategy policies of the OSP. These aim to build steadily on local strengths and ensure that premises are available in appropriate locations for small businesses, local firms and those that need to be in Oxfordshire but not on a scale that encourages significant in-commuting, or attracts large footloose firms or B8 operations. This reflects advice in para 6 of PPG 4.
- 37 OSP policy E3 refers to an appropriate and not an exact "balance", whereas the Council's strategy at para 4.4 of the NSCLP precisely aligns the number of employed people with the number of jobs to be created. However, the Council's recent Draft Economic Development Strategy (Brisbane Appendix 11) looks for, broadly speaking, 6,000 new jobs across the district as a whole, not 6,000 in Bicester, by 2011. It is conceded by CDC that there is no support anywhere in government guidance for the approach set out in para 4.39 of the NSCLP and that these two figures are irreconcilable. As the district figure postdates that in the NSCLP it should be taken as correct. It is the "exact balance" approach that leads CDC to seek to retain this site for employment use, but if that approach is wrong in principle then the Council's stance on the future use of the site deserves to be reconsidered.
- 38 It is also relevant that independent consultants looked at the appropriate use for the site for CDC when the draft NSCLP was being prepared. Their report (Keene Appendix 5) reaches clear conclusions supporting the allocation of the site for housing and there was no criticism of their work when it was reviewed (Keene Appendix 4). In fact, it was endorsed with regard to the location and accessibility of the site and its suitability for housing. The main reason for the later rejection of their conclusions was the rail station proposal and the juxtaposition of housing and employment, but the former no longer applies as neither the new station nor the proposed transport interchange are going to come forward. The conclusions of the independent consultants, applying up to date government guidance in a clear and consistent way, were set aside on a basis which is no longer relevant or applicable.

- 39 The agreed elements of employment land supply are listed in para 9 2 of the SCG This supply, significantly supplemented by available modern premises and opportunities for redevelopment at outmoded ones (a total vacant available space of almost 42,000 sq m) appears to match well with the strategic aspirations of the OSP for the town It is fully endorsed by the Council's well advanced Economic Development Strategy (Brisbane Appendix 11), which looks to recycle urban land rather than simply provide new sites The ample current supply can meet anticipated future requirements arising from the OSP strategy, with a range of size and type of premises available to match appropriate demand
- 40 The site was fully marketed between 1996 and 1999 for new employment development The Council accepts that it would be unreasonable to have expected that to continue once the CLP review process was underway. Even so, the availability was well known, including to CDC as the site remains on their schedules. Neither CDC nor anyone else is aware of any serious interest since the refusal of the Unipart scheme or of any current enquiry that would require the use of such a site in the locality Now, employment land at SWB is also potentially available as it is being brought forward by its promoters.
41. Nor have the Council provided any evidence to demonstrate that the site will be taken up by the market or of any serious concern about employment land supply in the town In fact, their recent actions in considering the release of half of the Bessemer Road site for housing and refusing permission for a B1 scheme on land allocated in the CLP for employment at Skimmingdish Lane indicate the opposite Whilst very unfortunate that the promised employment land review is not yet available, there is no other evidence to support the claim of a shortage of employment land to meet market needs in Bicester All the market evidence, including that prepared for the Council, such as the Oxford Innovations Report (CD49), points in the other direction In these circumstances, the only result of keeping the site available for employment use would be to reinforce the negative market impression of Bicester as an unattractive location for major commercial investment
- 42 The economic analysis undertaken for the Appellants (Brisbane Appendix 8) is robust, credible and properly formulated It concludes that a balance between jobs and working population of about 82% would be achievable, without employment development on this site, and appropriate in the Bicester context Bicester is not only in the Oxford Travel to Work Area but is strategically acknowledged as a source of labour to help meet the need for employees there Consequently, the OSP and Local Transport Plan contain proposals to further improve high quality public transport links
- 43 Appendix 6 of the SCG confirms that there has been no new B1 development in the town between 2000 and 2004, but there is no suggestion that this arises from any limitation or problem with land supply. The Council accepts that there is no evidence of a current demand for employment development on this site and cannot point to any recent enquiry that would have required it to be made available Nor have they made any attempt to assess the potential viability of B1 development having regard to local rental values and site infrastructure costs
- 44 It is common ground that there has not been a single office letting of over 5,000 sq ft in Bicester in the last three years and that this is due to the market rather than any absence of premises or opportunities Accordingly, there is no basis for the assertion that a site of this size should be retained against some possible future requirement, when the range of land and premises available elsewhere in the town and on older sites suitable for redevelopment provide a more than adequate supply Any suggestion that new housing should be "back end

- loaded” over the next decade to allow employment provision in Bicester to “catch up” would be entirely inconsistent with the requirements of the OSP and should be rejected.
- 45 Notwithstanding the absence of both an up to date assessment of employment land provision and requirements in Bicester and the testing of opportunities for more centrally located sites for B1 uses, provided a realistic view is taken of achievable levels of self containment and economic growth in the town, there is a more than adequate supply of sites and premises, including for re-development. This is available to meet any reasonable requirement for employment land in the future, without this site.
- 46 Section 11 and Appendix 7 of the SCG confirm that there is no issue in relation to highways infrastructure or capacity, nor with regard to the accessibility by public transport and otherwise of the site. It is agreed that neither the new station nor the transport interchange proposal identified in the NSCLP will come forward. It is also now common ground that, even on the reduced scale now envisaged by CDC, B1 employment development on this site would generate more vehicle movements than residential use, particularly at peak hours. Despite assertions implicit in the second “reason for refusal” and identification as a key consideration in the County Council’s evidence, with the significant number of additional journeys arising from employment development on the site, there would be no reduction in the total vehicle mileage travelled when compared to residential use, rather the opposite, as indicated by the supplementary note produced at the inquiry (Doc 15 – final appendix).
- 47 Moreover, a largely B1 employment scheme, with the inevitable on site parking, would be located outside a town centre or centrally located site, with no new transport interchange or station. It would increase traffic flows on the local road network during peak times and require significant highway improvements to a greater degree than residential development. Some of those improvements cannot be guaranteed as deliverable on existing highway land. The costs involved would also have an influence on overall viability in circumstances where the economics of employment development are already unfavourable.
- 48 Taking into account current bus and rail services, especially to Oxford, and policy initiatives to assist local people who work away from Bicester to use public transport, there is no evidence to support the view that new housing, rather than employment, would produce or exacerbate unsustainable patterns of travel, particularly by private car. Both Councils accept that the juxtaposition of new employment with existing housing does not necessarily lead to lower levels of car use. National policy recognises that self containment, as regards jobs, people and dwellings, is not something to be looked at in relation to towns the size of Bicester but on a rather more strategic scale. Therefore, the advice in para 42(a) of PPG 3 should be applied and this site released for new housing, supported by appropriate transport/accessibility measures, as agreed in the Section 106 legal obligation, including enhancing public transport links to Oxford.
49. Whilst it predated the coming into force of the 2004 Act and the publication of PPS 1, the extensive pre-application community consultation conducted for the Appellants clearly followed the spirit and intentions of both. The outcome is therefore relevant and material, albeit not conclusive in itself, representing a properly established and locally informed view on the appropriate use for this land, due to the care and rigour of the exercise.
- 50 The ecological concerns raised by the BBOWT and Mr Woodfield are not shared by English Nature (EN), Butterfly Conservation (BC) or the County Ecologist (CE), each of whom has been directly involved in the formulation of the ecological strategy associated with this proposal. Unlike the objectors, these organisations have taken a holistic view of

the overall package and endorsed the positive benefits arising from the carefully formulated and fully funded proposals. The overall scheme, as now proposed, will represent a substantial enhancement of ecological resources, both within Bicester and more widely. Without it, the interest of the site will gradually expire, as evidenced by the processes already underway, with no prospect of any significant benefits enduring.

- 51 Regarding the EIA process, Schedule 4 para 4 of the Regulations requires a consideration of the "likely significant effects", not a consideration of all effects. It is also fundamental to the process that a view is taken on the scope of the EA at an early stage. In this case, the scoping was properly considered by a group of relevant and informed consultees, including EN, CE and the Council, who had the benefit of earlier survey work. It was properly conducted by suitably qualified people.
52. Paras 7.31 and 7.126 – 135 of the ES Volume 1 and Table 5 in Chapter 7 of Volume 2 demonstrate that suitably scoped and competently implemented bat surveys were carried out, the results considered and professional judgement applied to their ecological significance, all in accordance with the regulations. The full details of the surveys undertaken since the discovery of a Marsh Fritillary butterfly (MFB) on the site, as well as the ground truthing exercise, have been provided, with a judgement again applied that is not disputed by other competent bodies. The fact that it was missed in previous surveys is not indicative of a lack of competence, given that the site had been the subject of numerous extensive surveys by others, none of which had identified the MFB interest.
- 53 Paras 7.143 - 5 and 7.192 of the ES clarify the position in relation to invertebrates and none of the scoping work or comments on the scoping identified the need for any more significant surveys than were in fact undertaken. At paras 7.13 – 17 and 7.20, the ES makes clear the limitations of the surveys carried out but there was no indication of need for any more detailed work because the impact on the identified invertebrate habitat would not change and had been more than adequately addressed in the scheme.
- 54 Both the main text of the ES and appendices to Chapter 7 draw attention to the site's designation as a CWS and the reasons for that, including identification as lowland meadow. Examples include the table at p 148 of Volume 1, the reference at 7.9 (iii) to an earlier report and Appendices 1, 2, 6 and 11. The species list does not purport to be complete and the ES reaches conclusions with regard to the MG4 grassland (para 7.88 of Volume 1) that are similar to those of the BBOWT in appendix 2 of their inquiry evidence. Overall, no significant environmental effect has been overlooked in the process and, as a whole, it stands as an appropriate and legally satisfactory document.
- 55 Overall, national planning guidance encourages the reallocation of sites identified for employment, where such a use has not come forward, for new housing, in order to make full and most effective use of land suitable for development. In addition, major offices should be directed to town centre, or edge of centre, locations in accord with PPS 6. Where new housing delivery is a priority, as in Cherwell, this should be properly reflected in the decision making process to enable suitable sites to make an early and effective contribution to meeting local needs for both open market and affordable housing.

The Case for Cherwell District Council (summary of the material points)

- 56 Five of the seven grounds originally put forward as "refusal reasons" have since been resolved to the Council's satisfaction, subject to the imposition of appropriate conditions and the Section 106 legal agreement. However, the first two remain at issue between the Council and the Appellants. These relate firstly to residential use being contrary to the

allocation of the land for employment development in the adopted CLP and NSCLP and secondly, the sustainability of the location in the context of OSP 2011 policy G1

- 57 With the exception of the railway chord, recreation area and CWS, the site should remain allocated for employment as there is little other land in Bicester that could be developed immediately for this purpose. Although the Council no longer intends to reserve any part of the site for a multi-modal transport interchange, it is important for the future prosperity of the town that an appropriate supply of land for new employment remains available. The site is already served with appropriate road and sewerage infrastructure, having first been identified as suitable for employment as part of a comprehensive development of the eastern side of the town many years ago, the majority of which is now complete. If developed for housing instead, it would be to the detriment of Bicester in terms of strategic planning and economic considerations, as the Council seeks to achieve a more appropriate balance of housing and jobs and to change the dormitory character of the town by reducing out commuting. The loss of a vital element of the local employment "offer" will make Bicester less able to accommodate new and/or relocating businesses.
- 58 Commercial growth in the town has been dominated by warehousing and distribution uses in recent years. However, the Council considers that there is sufficient demand in the Bicester area to be confident that the site would be developed for mainly B1 and some B2 employment purposes in the near future, and at least within the OSP period to 2016, if this proposal is dismissed and serious marketing efforts are made, in contrast to the lack of activity since 1999. In particular, the town is in a favourable strategic position in both the Milton Keynes–Oxon–Bucks sub region and the Oxford–Cambridge arc and in a key location to take advantage of growth in the knowledge based sectors of the economy, as recognised by the County and District Councils. This is likely to give rise to increased demand for B1 space as a proportion of commercial property but much of the current local stock is old and unsuitable for modern needs, with opportunities for regeneration limited by fragmented ownerships and competition from other areas.
- 59 In accordance with the NSCLP, the use of the site should be mainly for B1 purposes, with some B2 industrial space on the eastern part of the site, away from existing residential areas and between the B1 development and the rail lines. It is not considered suitable for B8 (storage and distribution) schemes, nor mainly for B2 (industrial) use. The fact that permission was refused for a large B2 scheme on the eastern part in 1996 (Unipart) does not mean that the site is somehow inherently unsuitable for B1 offices, high tech, research and development or light industry, nor some limited B2 use on appropriate parts.
- 60 New employment land is required to meet the needs of a growing population and improve the balance between housing and jobs, thus enhancing sustainability. Essentially, this is the only site able to meet the short term requirement for new B1 development in the town. It is capable of providing for the expansion/relocation of existing local firms, the requirements of new businesses needing to locate in the Bicester area and a substantial number of jobs readily accessible from adjoining residential areas, notably Langford Village, by non car modes. The Council is concerned that much needed employment growth will not take place if current suitable allocations are lost to housing and that this would be likely to set an unwelcome precedent, encouraging owners of other employment land allocations to postpone development in the hope of obtaining a residential permission in the future.
- 61 Whilst housing delivery in the district has been below the strategic requirement, the Council is now working successfully with GOSE to resolve matters and is in a good position to meet the OSP targets to 2016. For example, last year's annual completions figure of 677 was

above the requirement of 623, with a significant urban extension on the southern edge of Banbury likely to be approved soon, as the First Secretary of State has now confirmed that it will not be "called-in" for his decision (Doc 27). Moreover, completions in recent years have on average exceeded the new OSP requirement in Bicester of 220 houses per year. The proposed SWB urban extension will provide the majority of the remaining dwellings required up to 2016. Nevertheless, the LDF Site Allocations DPD for Bicester and Central Oxfordshire, expected to be adopted in October 2009, will identify sites for more houses to ensure that delivery is not restrained by supply. This will be in time to provide for completions by 2016, if required. Consequently, there is no compelling need for new housing that should outweigh development plan policy in respect of this site. It remains needed for employment use and therefore the national policy guidance at para 42(a) of PPG 3 does not assist the case that the site should be developed for housing instead.

- 62 The Council acknowledges that there is a pressing need for more affordable homes across the district and that this site could provide around 150 such units at an early date (30% of 500). However, another way to help local people afford the housing that they need is to increase incomes and the Council's Economic Development Strategy aims to help by improving the range and quality of jobs in Bicester. This requires that land, such as this site, is readily available for modern businesses. Therefore, in this case, the need for both general market and affordable housing is outweighed by the need to preserve the land for employment uses and improve the sustainability of the town as a whole.
- 63 It is accepted that the site is in a reasonably sustainable location and that the likely weekday trip generation from employment will be greater than that from a residential use of the same site size, particularly in peak hours. Nevertheless, there are two main reasons for the Council's position that this scheme would be likely to give rise to an increase in the need to travel, particularly by private car, contrary to the principles of sustainability. Firstly, more housing will mean more out commuting, so worsening the present imbalance between jobs and housing in the town. The Census data for 2001 shows that a high proportion of Bicester's working adults travel relatively long distances to work, with over 60% going 5 km or more. If this land is used for housing, the current high rate of out commuting would increase, together with the overall need to travel. This is a prime concern of the OCC and the key reason that they support the use of the land for employment, rather than residential. In addition, other local employment sites would have to be found so that the traffic generated by those uses will be present in the town at some stage in the future in any event.
- 64 Secondly, the location and characteristics of the site make it relatively more sustainable for employment than residential. In particular, the town centre is approximately 1.3 km away and not many new residents would choose to walk, particularly with shopping, given the distance and nature of the pedestrian route, which involves crossing the railway line. Similar constraints apply in relation to links to other facilities, which would deter new residents from walking or cycling and encourage private car use for relatively short trips.
- 65 Economic growth is central to the national aim of delivering sustainable development and up to date planning and transport policies, such as those in the OSP to 2016, seek to promote modern business development in Bicester. The objective of strategic and local policies in both planning and economic fields is to create a better balance between the number of jobs and the employment needs of the population, to improve the quality and type of local work opportunities and to increase wages, so reducing out commuting and the dormitory characteristics of the town. This site remains needed for employment development, is readily available, and provides the necessary flexibility in terms of Bicester's employment offer. It has the capability of accommodating new and/or relocating

businesses of the scale and type required to make a significant change to the character and sustainability of the town and surrounding area. Accordingly, there are no material considerations arising that should outweigh the development plan policy allocation of the site as employment land and this appeal should be dismissed.

Berkshire, Buckinghamshire and Oxfordshire Wildlife Trust (the material points)

- 66 The development would result in the irrevocable direct loss and significant fragmentation of the important habitats that comprise this meadow complex and were the main reason for its designation as a CWS. The habitat that occurs on this site is a rare one, even on a European scale, with less than 1,500 ha of MG4 type (lowland meadow) grassland in the UK, and it represents a major resource in terms of Cherwell District. Contrary to popular belief, SSSIs are not necessarily the most important habitats in the UK but rather a “representative sample”, with other areas being of equal quality despite their lack of designation. Recent growing recognition of the importance of particular habitats for nature conservation and the establishment of the UK’s BAP led to the formalisation of a list of habitats deemed to be of the highest importance under the Countryside and Rights of Way (CROW) Act 2000. This requires, in Section 74, the publication of a list of habitats of principal importance for the conservation of biodiversity and imposes a duty to further their conservation.
- 67 The appellants’ ecological witness concurs with the identification of habitats within the area of the site to be developed as subject to Section 74 of the CROW Act 2000, the application of which is not limited to species. The Trust has recent experience of MG4 type grassland habitat creation in the county on a 60 ha site but does not expect plant communities there to meet the definition of Section 74 habitat for between 10 and 20 years and no other such successful projects have been documented to date. In particular, the MFS, as part of a five year proposal, is unlikely to achieve habitat restoration to compensate for the loss of species rich ancient grassland within this timeframe.
- 68 Whilst the most significant impact will be the direct loss of habitat, the proposal will also result in the fragmentation of remaining habitats, as well as the loss of important links between and around them. Ultimately, this will lead to decreased species diversity and therefore more damage to the existing nature conservation interest of the site, as has been the case elsewhere for butterfly and invertebrate populations. For example, the ES identifies areas such as fields 2 and 3, as well as hedgerow 5, as being of high importance to an invertebrate assemblage that is assessed as being of County importance.
- 69 In the Trust’s view, the lack of remaining opposition to the scheme from EN and BC does not alter the fact that the best future for the nature conservation interests on the eastern part of this site would be in the absence of any development. Notwithstanding, there is no objection to residential development west of the Langford Brook and a clear preference for employment development, rather than residential, to the east if this part of the site must be built on, as it is anticipated that less damage to nature conservation concerns would arise due to factors such as layout, density and public access.
- 70 With regard to the proposed ecological mitigation strategy, the timescale is inadequate and the resources insufficient to acquire any suitable land elsewhere in the locality. It would not properly compensate for the direct loss and fragmentation of habitats that would arise. PPS 9 (Key Principle 11) makes it clear that planning decisions should seek to “maintain, and enhance, restore or add to biodiversity conservation interests”. However, this proposal would neither protect nor enhance the biodiversity found on the site and the damage to the ecological resource has not been “kept to a minimum” in accordance with policy EN 24 of

the NSCLP. The enhancements proposed will not compensate for what will be lost, even if their secured management could be assured. Nor is it possible to prevent damage to the CWS by conditions or obligations, due to the nature and scale of the development, the only way to prevent harm to this ecological resource is to dismiss the appeal.

Mr D Woodfield (the material points)

71. The objections to this proposal are based on experience as a professional ecologist, which demonstrates that this is a site of exceptional importance to nature conservation. In this case failure to comply with professional standards has contributed to poor decisions about the type and extent of development that might be suitable for this site. Although the appellants have submitted further information since the original ES, this has not properly addressed the inadequacies of the baseline information and therefore the EIA remains unsound. In particular, the May 2005 discovery of marsh fritillary on the site, a fully protected butterfly species of national and international conservation importance, not only suggests that the evaluation of the site's ecological resource put forward by the appellants required revision but also exposed the fact that, in many respects, the earlier survey work was short of accepted standards.
72. Since then, despite the opportunity to rectify the deficiencies by undertaking further survey work to bring the ES up to standard, the appellants focussed almost exclusively on the marsh fritillary and, as previously, that work too has been based on a scientifically flawed application of inappropriate methods at the wrong time of year. The results are therefore at best inconclusive and at worst lack credibility. For example, despite strong indications of the site's wider importance for invertebrates, the failure to carry out a formal survey shows a disregard for accepted professional standards. Moreover, vegetation surveys were carried out in accordance with a substandard methodology and at an inappropriate season, resulting in key plant species being missed and nationally important grassland types being misidentified, incorrectly classified or undervalued. Similarly, critical deficiencies in relation to the surveys carried out for bats have not been rectified.
73. Amassing high quality baseline data is an essential prerequisite to a robust assessment of environmental impacts, whereas inadequate information can result in flawed assessments of value and a low level of confidence in the conclusions drawn from it. Both national guidance (Circular 06/2005) and case law (*R v Cornwall County Council ex parte Jill Hardy* – Queen's Bench Division, Harrison J – 22 September 2000) confirm the need for planning authorities to take account of "full" environmental information to ensure compliance with the EIA regulations.
74. The inadequacies of the baseline surveys provide sufficient grounds upon which to dismiss the appeal, in accord with the guidance in Circular 06/2005, for example paragraph 99. Moreover, in respect of bats and marsh fritillary, and their status under European and UK legislation, there is a legal precedent indicating that the survey work submitted does not meet the requirements of the Town & Country Planning (Environmental Impact Assessment) (England & Wales) Regulations 1999, thereby exposing any permission to possible challenge through the courts.
75. Notwithstanding the severe limitations of the original ES and later further information, it is apparent that the site contains ecological resources of substantive importance, justifying its designation as a CWS, in accordance with set criteria used in Oxfordshire. Although it is now common ground that only about 19% of the total CWS site area will be directly lost through this scheme, there would also be significant indirect impacts on the remainder, with

attendant effects on rare habitats and fauna, including specially protected and Section 74 species. In particular, the remaining portion of the CWS will be severed from the designated area to the east of the site, beyond the ring road, and the open countryside beyond, thereby compromising its ability to function as a coherent unit with habitat connections off-site. Moreover, the "beneficial" impacts anticipated for the long term assume that the ecological interest of the retained CWS can be secured through management. This is likely to be incompatible with the implicit assumption in the ES that it will be available for "informal recreation" and the pressures arising from proximity to housing, as well as its relatively small size. Consequently, it will lose both its intrinsic habitat value and its carrying capacity for individual species of interest within a few years of the first houses being occupied.

- 76 The key resource is the priority habitat "Lowland Meadow", including those communities with clear affinities to the MG4 and MG5 grasslands of the National Vegetation Classification, the bulk of which is found in fields 5, 6, 7, 11 and 12, identified in the ES. The direct loss of part of these areas of rare grassland would be a significant impact. In addition, the combined loss of adjoining fields 2, 3, and 4, which have an important role to play in supporting the site's invertebrate and herpetofauna assemblages, would have a further significant effect on a resource of county value.
- 77 In relation to national policy, para 9 of PPS 9 says that regional and local sites "have a fundamental role to play in meeting national biodiversity targets" and the around 10 ha of grassland habitats of "priority" importance under the UK BAP on this site are of "principle importance to biodiversity", in accordance with paras 11 and 14 of that guidance and paras 84 and 85 of Circular 06/2005, following the CROW Act 2000. The loss of part of the lowland meadow habitat, together with degradation of the remainder in the short to medium term, and the loss of the only currently known site for marsh fritillary in the county will be the most significant impacts.
- 78 The proposed mitigation strategy is incompatible with the other uses to which the area will be subjected and the negative effects compounded by the small size and fragmentation of the remaining resource. Moreover, the initial surveys carried out have indicated that scarce bat species could be present on the site but no further work has been carried out and no proper attempt made to assess the presence or absence of bat roosts. Legal precedent indicates that it is not sufficient to rely on a condition of permission to address this matter.
- 79 Although the land west of the Langford Brook is of minimal ecological importance and could reasonably be developed, this particular scheme would be severely damaging to biodiversity on the remainder of the site having been apparently drawn up in ignorance of key aspects of the ecological value. It conflicts with national law and local planning policies and the appeal should therefore be dismissed whilst a better long term solution is sought for the site.

Representations at the Inquiry

- 80 In response to my invitation, one local resident, Mr P Green, spoke briefly and essentially in support of the scheme and subsequently provided a written version of his comments (Doc 24). These can be summarised as follows, "The opinions of local residents regarding the real human issues involved in planning decisions need to be taken into account. It appears as though the Council's arguments for rejecting the housing option are unsupported by the facts and that there is more concern about the future of insects and amphibians than the welfare of those resident colonies of homo sapiens most directly affected".

Public Consultation

81 In relation to both the application subject to this appeal and a subsequent duplicate scheme (ref 05/01035/OUT), a large number of local residents, mainly from Langford Village to the south of the site, wrote to the Council to register their support in principle for residential, rather than industrial, development on the site

Written Representations

82 Chesterton Parish Council, in a letter of 8 June 2005 to PINS, supports the appeal confirming that they have no objections to the granting of outline planning permission for residential development (including affordable housing) and amenities.

Conclusions

83 In the light of all of the evidence and the debate at the inquiry, the written representations and my inspections of the site and surroundings, I consider that the main issues in this appeal are firstly, whether the site should be retained for future employment uses or used now for new housing, secondly, whether residential development would give rise to an unacceptable increase in the need to travel, particularly by private car and thirdly, whether the scheme would result in significant harm to the ecological interest of the site and, if so, whether that harm is outweighed by an overriding need for the development. References in square brackets give the sources in the preceding paragraphs on which they are based.

Housing

84 As confirmed in the SCG, there is no dispute that the site is suitable in principle for residential development [29], having been included in the revised deposit draft of the NSCLP for that purpose [28]. Moreover, that version of the plan was certified by the OCC as being in conformity with the OSP 2011, from which it may be taken that its use for new housing, rather than employment, did not in itself raise issues of significance for the implementation of the county strategy in relation to Bicester [28]. A report by independent consultants also endorsed the use of the site for new housing, including in terms of accessibility and location, whereas the CDC's later decision to revert to an employment allocation appears to have been strongly influenced by the transport interchange proposals, which have now been dropped [38]. Whilst I understand the preference of both Councils for mainly B1 use on a site that has been identified since 1988 and could provide a major boost to the town's employment offer, national guidance in PPG 3, notably para 42 (a), confirms that it is now appropriate to reconsider such long standing allocations that have not been taken up in the light of all relevant circumstances.

85 The fact that the CLP is now essentially out of date, having been drawn up in relation to much earlier strategic policies and before most of the currently relevant national guidance, such as PPG 3, strongly reinforces this conclusion [26]. In addition, I consider that the rather tortuous history of the emergence of the NSCLP, together with the failure to complete the statutory process so that it has not been the subject of independent examination or the testing of the many objections, materially reduce the weight that can reasonably be attached to its proposals and policies [27]. The effective abandonment of the multi-modal transport interchange proposal also suggests a certain lack of credibility in the NSCLP proposals for this site, at least in respect of the sustainability credentials for employment development comprising mainly B1 uses [46].

86 Turning to housing supply, the SCG confirms that in previous years the delivery of new units in Bicester and the district as a whole has been materially below strategic requirements, with little evidence of positive action to address the situation until very recently [61]. The CDC also acknowledges a pressing local need for more affordable homes [62] and that there are no outstanding constraints to the early commencement of housing development on this site [29]. Although efforts are now being made to bring forward the major NSCLP allocation at SWB, and a planning application is expected soon, CDC estimates suggest that, even on the most recent and optimistic assumptions of a start on site in mid 2007, only about 620 new dwellings are likely to be completed by 2011.

87 Moreover, the programme for adoption of the relevant land allocation DPD for Bicester in the LDS indicates that it would not take place until late 2009 at best, so completions on any other new sites identified therein could not be relied upon until 2011 at the earliest [30]. In

the absence of any significant areas of previously developed land within the existing built up area of the town deemed suitable for housing redevelopment [30], and a very limited supply of other/small windfall sites [31], it is clear that there is a heavy reliance on the SWB site if the OSP requirements are to be met

- 88 In the light of all the evidence, I share the concern regarding dependence on one large site to provide most of the town's new housing needs over the period to 2016, if only because experience elsewhere suggests that such schemes are often the subject of delays to commencement and completions for reasons largely unconnected to the operation of the land use planning system itself, such as valuation and negotiations between landowners and developers [31] When the present uncertainties surrounding the grant of outline planning permission, including legal agreements, major highway improvements and all other matters that have to be resolved first are taken into account, I doubt that actual delivery rates at SWB would correspond to those currently estimated by CDC, if only because of a delayed start date [32]
- 89 However, even if they do, there would still be significant short term underperformance in completions, measured against OSP requirements, of around 400 dwellings in 2007/8, 2008/9 and 2009/10, if no further greenfield sites are identified [32] Any delay, for whatever reason, at SWB would therefore exacerbate an already unsatisfactory situation, resulting in an even greater cumulative failure to meet delivery targets [29] In contrast, this site could provide 500 new houses in the early years of the remaining plan period to 2016 and thereby make an important contribution to "filling the gap" Otherwise, it is my judgement that the shortfall would be of such a scale as to raise concerns in relation to the implementation of strategic policies for the distribution and delivery of new housing around the county and meeting local needs in Bicester Similar considerations apply in respect of the provision of affordable housing, particularly in the light of the relatively poor record of provision over recent years [34]

Employment

- 90 Para 9 2 and Appendix 6 of the SCG identify a substantial supply of available land and premises in and around the town for B class employment If just the sites listed in para 9 2, including SWB, were to be developed it is estimated that over 3,700 new jobs would be provided, taking no account at all of re-use of the almost 42,000 sq m of presently vacant floorspace (or the possible expansion of the Bicester Village retail complex) [39] To my mind, such provision would more than adequately meet the town's contribution to the objective in the CDC's Draft Economic Development Strategy of 6,000 new jobs across the district as a whole by 2011 [37] It would also be consistent, in my judgement, with policy E3 of the OSP, which seeks an "appropriate" and not an exact balance between the numbers of economically active persons and jobs in Bicester To the extent that there is any conflict between this strategic aim and the contents of the NSCLP, it is clear that the adopted and more recent OSP must take priority [27]
- 91 The absence of an up to date comprehensive assessment of employment land provision and requirements in the district is unhelpful in assessing the potential of the town for economic growth However, the information that is available strongly supports the view that there is a readily available supply of a variety of size and type of sites and premises, including those suitable for re-development, to more than meet current market demand and reasonable future requirements [45] The fact that CDC has not carried out any analysis of other opportunities closer to the town centre than this site and their responses to a recent proposal on land allocated for employment development in the CLP at Skimmingdish Lane, as well

as the potential re-development of the Bessemer Road site, do not demonstrate a serious concern over the lack of land or buildings for employment uses in and around the town [41]

- 92 Nor is there any evidence of a current interest in the site for mainly B1 use, either from potential occupiers or prospective developers [40] Moreover, CDC appears to have given no consideration to matters such as infrastructure costs or rental values and therefore the likely economic viability of new employment development here [41] In such circumstances, I do not attribute the lack of interest simply to the absence of marketing after 1999 This is particularly so as the site has now remained undeveloped for approaching 20 years, since it was first identified as suitable for employment development, during which time it was actively marketed and only the Unipart scheme has come forward to the planning application stage
- 93 The very low level of activity in office lettings (of over 5,000 sq ft) and for new B1 development in Bicester in recent years serves only to strengthen the conclusion that the site is not likely to be developed in the near future should it remain allocated for employment development [43] It is clearly not attractive to the market at present and there is no suggestion of public investment or compulsory purchase to alter this situation Nor, in my opinion, is this likely to alter significantly in the short term given the availability of other sites and premises in the town and the development costs in relation to the returns expected, as well as the less favoured location on the eastern side of town compared to SWB [44]
- 94 I conclude that there is a more than adequate supply of land and premises available in Bicester to meet current needs, an example being the more centrally located Station Approach area, where new B1 offices would be consistent with PPS 6 Also, it seems to me that the presently anticipated future employment requirements of the town, in accordance with the OSP, would be more readily met at SWB in a more commercially attractive and equally sustainable location, with good links to Oxford and the M40 motorway This should mean that the major new employment site in Bicester is better suited to meet any needs arising from knowledge and science based firms from the Oxford area, in accordance with para 6 17 of the OSP Additionally, much of the traffic generated would not have to pass around part of the town's by pass system, as would be the case with Gavray Drive
- 95 In the absence of a full review of provision, it has not been demonstrated that there is a realistic prospect of the site being utilised for new employment provision in the foreseeable future Even if the likelihood of new employment development taking place on the site in the near future was less clear cut, I consider that the urgent need for new housing provision described above should take priority under current circumstances and in accordance with PPG 3 para 42 (a) With reference to the tests therein, I conclude that this site no longer needs to be retained as an allocation for employment use and that the proposal meets the criteria in para 31 for the reasons set out elsewhere in this report It would be consistent with the strategy of the OSP and would not lead to an over provision of housing
- 96 In my judgement, the local strategy for economic development would not be undermined by the early use of this site to help provide the houses needed in the town to meet the requirements of the OSP I therefore conclude on the first main issue that the site should be used now for new housing, to help meet strategic requirements and local needs, including for affordable housing, rather than being retained for possible future employment development, particularly when that seems unlikely to occur under current circumstances

Sustainability

- 97 Neither the CDC nor any other party disputes that the site is in a relatively sustainable location, with reasonably good links to the town centre and other facilities, such as the town's railway stations, by means other than the private car [46 & 63] Whilst a few are marginally beyond the 2km walking distance favoured in PPG 13 as most likely to replace short car trips, the majority of local services can be accessed more easily, by walking (or cycling) along fairly flat and direct routes, including to the south in Langford Village. Although some involve the pedestrian level crossing of the very lightly utilised Oxford – Bicester rail line, as I saw on my visits, the route is well used by the public.
- 98 The site is also well placed for access to the town's cycle network. In particular, Gavray Drive forms part of the Sustrans National Cycle Network, providing a convenient route between the town centre to the west and east towards Launton. In addition, Chiltern Rail runs a taxibus service to and from Bicester North station, which currently passes close to the site and is readily capable of diversion to serve it (Baker paras 3.22 – 3.26). Taking into account the financial contributions to be made via the legal agreement (Doc 5), to help improve public transport services in the locality, I am satisfied that this scheme would constitute a sustainable form of development in accord with national guidance, regional strategy and strategic/local planning policies, notably G1 of the OSP 2016, in terms of location and accessibility.
- 99 There are no outstanding highway infrastructure or capacity objections and it is also agreed that, if the site were developed for mostly B1 employment as currently envisaged by CDC, the total vehicle mileage generated would be significantly greater than for residential (and associated) use [46 & 63]. Both Councils also accept that more extensive and costly off site highway improvements would be required for employment use, rather than housing [47]. In relation to out commuting, the 2001 Census data appears to confirm that, whilst a relatively high proportion of Bicester's working adults leave the town itself for jobs, a significant percentage do so to travel to Oxford, rather than any further afield [63]. This pattern of movement, providing vital support to the economy of the city, is not inconsistent with the overall county strategy and is to be reinforced by further investment in improving public transport links under the OSP and Local Transport Plan, following the Bicester Integrated Transport Study [48].
- 100 Building a new multi-modal transport interchange on the north western part of the site would clearly enhance its credentials as a sustainable location for new offices and other forms of employment development. However, now that only the rail chord linking the two lines is likely to be progressed, that major potential advantage no longer weighs in favour of B1 employment use, compared to residential [46]. In my opinion, even though the link should lead to an improvement in rail services for the town as a whole, it would not directly improve the accessibility of the site itself such that major generators of travel demand should be located there. Accordingly, the CDC's reliance on this site to achieve an exact balance between jobs and working population in Bicester, implicit if not explicit in the NSCLP, now seems to be flawed in principle and over optimistic in practice. This is particularly so given the town's strategic relationship with the city of Oxford, which is essentially endorsed by the OSP strategy.
- 101 Whilst creating a closer balance between the numbers of jobs available locally and the economically active residents in Bicester is a generally desirable aim, it has to be tinged with reality. For example, it is common ground that simply putting new employment alongside existing housing does not necessarily lead to lower levels of car usage or out

commuting [48] In this instance, the available evidence suggests that, for the former at least, the opposite will be the case, in comparison to residential development. This is partly due to the overall size and relatively peripheral location of the site. However, it is also a factor of the proposed emphasis on B1 office development, which is a major generator of travel demand and ought ideally to be sited in or on the edge of town centres in accord with national guidance such as PPS 1, PPS 6 and PPG 13 [59]. I conclude on the second issue that residential development on this site would not give rise to an unacceptable increase in the need to travel, including by private car, particularly when compared to the alternative of mainly B1 employment use.

Ecology

- 102 Both District and County Councils, English Nature and Butterfly Conservation are all now satisfied with the ecological baseline information, evaluation and assessment in the ES (CD 28) and ES Additional Information – Ecology (CD 34). In addition, the ECMS (Doc 28) and MFS (CD 35) are also deemed by those organisations to be appropriate mechanisms for implementing the ecological strategy via planning conditions and the legal agreement respectively (SCG para 10.2). Nor does anyone object to development west of the Langford Brook for ecological reasons [81].
- 103 However, BBOWT and Mr Woodfield make detailed criticisms and raise numerous concerns regarding both the EIA process and specific aspects of the proposals, including that there would be significant harm to the rare lowland meadow habitat east of the Langford Brook. This is one of the habitats of principal importance for biodiversity under Section 74 of the CROW Act 2000 and Annex C of Circular 06/2005 [66]. However, only about 3 ha of a total CWS of around 16.5 ha (roughly 19%), which is not subject to any statutory designations, would be lost to development, leaving approximately 6.5 ha west of the by-pass and just over 6 ha to the east [75].
- 104 Inevitably, the fragmentation of the CWS already created by the road would increase to a degree and this would have an effect on the remaining habitats currently present on the site [68]. Nevertheless, two extensive and similarly sized areas would remain and be positively managed for nature conservation purposes, with the western area at least in public ownership, unlike at present. Moreover, a significantly larger area would be retained under this proposal to the west of the road and east of the Langford Brook than under any of the alternative allocations for employment (or housing) use in the CLP and the various drafts of the NSCLP. The alternative scenario of no development would mean the likely continued degradation of most, if not all, of the ecological interest of the site in the absence of positive management of the grasslands. As I saw on my visit, this is already evident in certain respects, including overgrowth and scrub encroachment, arising from the lack of agricultural activity such as cutting and grazing [50].
- 105 The suggestion that employment development would have less impact than housing on the environmental value of the eastern part of the site is unsupported by evidence, other than the potential effect of access by new residents over the retained CWS. Provided that this is limited as proposed, I see no real difference arising given that a central area would remain undeveloped, but presumably without the agreed funding for future management under the employment option. Taking into account the needs of modern business operations, including for parking, delivery and circulation space, as well as the practicalities of building sizes and dispositions relative to one another, I do not agree that a mainly B1 use layout would, in fact, be more flexible and better able to retain existing site features, such as trees, hedges and ponds, or the linkages and corridors between them, than new housing.

- 106 Turning to the EIA process itself, the inquiry evidence confirms that the initial scoping was undertaken in consultation with the relevant bodies and organisations, including EN and the CE [51]. Appropriately qualified and experienced people, with the advantages of earlier studies of the site and local knowledge, were involved [51]. Consequently, I am satisfied that no significant environmental effect was omitted from the process. The chance discovery of a single adult female MFB (*Eurodryas aurinia* - a protected species) on the site by Mr Woodfield in May 2005 could not reasonably have been anticipated by previous surveyors/researchers, given the absence of sightings of the species in the county over recent years [52]. This "omission" has now been rectified through the ES Additional Information and MFS, including special measures relating to Field 7, where a single MFB larval web has been observed, in the legal agreement. In my judgement, the less than optimal timing of some of this work does not undermine the basis of the strategy that has now emerged and agreed with BC and others to address this matter.
- 107 The fact that, ideally, other strategies might be preferable from the narrow perspective of the establishment of a sustainable breeding colony of this species on this site does not alter my conclusion, which has to be based on wider considerations. This is particularly so when the allocation of the site for development in an adopted local plan preceded its identification as a CWS, the MFB was previously thought to be extinct in the county and the unknown provenance of the single specimen observed in May 2005. Notwithstanding the presence of the plant with which it is most closely associated (devil's-bit scabious), as all the experts at the inquiry agreed, the extensive history of previous attempts at re-introduction at various locations and the distance of the site from the nearest known surviving colonies, as no other MFB has been noted within 15km of the site in the last 10 years and no other suitable habitat known or identified within a 4km radius, suggests that a "rare colonisation event" is unlikely to have occurred.
- 108 The ES also confirms that the bat and reptile surveys were properly carried out, having first been scoped, and competent professional expertise and judgement applied to the results, according to their ecological significance [52]. Similarly, based on the originally agreed scoping, sufficient attention was given to potential impacts on invertebrate colonies on the site [53]. This did not identify or justify the need for any more detailed survey work, given that the likely effects could be reasonably assessed on the information collected and had already been taken into account in the proposed design/layout of the scheme. Whilst more detail could have been provided in some instances, the test is whether further work was needed to assess the likely significant effects, as it is not necessary to consider every possible limited or very detailed effect that would not have an influence on the form or content of the proposal. As para 98 of Circular 06/2005 confirms, there is no requirement to carry out additional surveys to satisfy professional curiosity.
- 109 Similarly, the omission of a few plant species present on the site from a list which did not purport to be comprehensive does not invalidate the conclusions arising. The fact that the ES effectively reached much the same conclusions as the BBOWT in relation to the nature and value of the lowland meadow grassland habitat on the site reinforces this conclusion, in my view [54]. Accordingly, I am satisfied that the baseline data provided has been adequate to assess the likely significant environmental effects, following suitable initial scoping. Therefore, I consider that this case is clearly distinguishable from "*R v Cornwall County Council ex parte Jill Hardy - 2000*", referred to on page 49 of "*Planning for Biodiversity and Geological Conservation - A Guide to Good Practice*" - ODPM et al - March 2006.

- 110 With regard to mitigation, local experience suggests that it may well take many years to extend and fully recreate the lowland meadow type grassland habitat, so as to meet the Section 74 definition, within the retained part of the CWS [67]. Notwithstanding, the advantages of an agreed management strategy with appropriate funding and public ownership of the land should ensure that the overall ecological value of this area is maintained and materially enhanced over time. Together with the ECMS to apply during the construction period, this should help to retain biodiversity in accord with the second key principle of PPS 9 and paras 84/85 of Circular 06/2005, on a site of local importance and in relation to protected species. The retention of existing features such as trees, hedges and ponds and the creation of new ones, together with links between them, as indicated on the illustrative development framework plan (plan D), would also be of relevance in this respect, not least with regard to invertebrates, consistent with the fourth and fifth key principles of PPS 9.
- 111 I recognise the concerns expressed regarding the possible detrimental environmental impact on the retained CWS area of unlimited public access for recreational purposes [75]. However, only limited access over a small number of defined routes is envisaged through the area, which will be under public ownership by the District Council and with funding for active management by an appropriate body. In such circumstances, it is reasonable to assume that these potentially conflicting interests can be satisfactorily and sustainably managed over time to ensure that ecological interests are not materially prejudiced. Examples of the successful management for nature conservation of grassland areas adjacent to new housing are described in the recent Good Practice Guide referred to above.
- 112 The MFS will not lead directly to the acquisition of additional land in compensation for the loss of about 3 ha of the present CWS [70]. It should, however, provide the opportunity to establish a sustainable meta-population of the butterfly in the locality, if at all possible, thereby restoring an element of biodiversity which had, apparently, been lost, in accord with PPS 9 and para 85 of Circular 06/2005. To my mind, such an outcome would be a clear net benefit of the proposals, particularly when compared to the alternatives, as the present situation on the site is not expected to continue for long without positive action.
- 113 In conclusion, at the regional and strategic levels, policies E2 of RPG 9 and EN2 of the OSP confirm that biodiversity should be maintained and enhanced through planning decisions and damaging development prevented on sites supporting specially protected species. By reference to the relevant legislation, policy C2 of the CLP also opposes development that would adversely affect protected species, whilst C1 seeks to promote the general interests of nature conservation. I agree with the CDC, EN, BC and the CE that, taken as a whole, the scheme does not conflict with these policies. In the NSCLP, policy EN22 says that features of nature conservation value should be retained and enhanced, wherever possible, such as through the use of conditions and obligations and the provision of compensatory measures where appropriate, as proposed in this case.
- 114 Regarding ecological surveys, policy EN23 requires their submission in connection with schemes affecting sites of nature conservation value, with the supporting text adding that they should be carried out by reputable consultants, using recognised methods appropriate to the task. In terms of protecting sites and species, policy EN24 states that the reasons for the development must clearly outweigh the ecological value if a proposal resulting in the loss of or damage to such sites is to be permitted and any damage kept to a minimum. Policy EN25 says that development adversely affecting protected species will not be permitted, whilst EN27 aims to secure new habitats in connection with development, particularly for priority species. Again, in common with the CDC and other relevant

bodies, I conclude that, overall, the requirements of these policies would be met and that damage to the ecological resource would be kept to a minimum. Moreover, I also consider that the survey work and mitigation/compensation measures now agreed as part of the proposals are consistent with the guidance in para 99 of Circular 06/2005.

- 115 Taken together, both the ES and the subsequent additional information have identified the likely significant environmental effects of the proposed development, in accordance with Schedule 4, Para 4 of the Regulations. For the reasons explained above I do not accept the view that there was any material failure to apply appropriate professional standards in the implementation of the EIA process and related studies. The significant package of protection/compensation measures would make a contribution to the unimproved grassland resource in the county, consistent with the relevant national, regional and local BAPs for the habitat types and protected species on the site. Accordingly, I conclude that neither the scale nor the extent of the development proposed need result in the destruction or significant harm to the ecological value or wider nature conservation interest of the CWS as it currently exists and as it would be if no further action is taken.
- 116 Therefore, I conclude on the third main issue that, overall, and taking into account all the planning conditions and provisions of the Section 106 legal agreement, including those that would apply in respect of mitigation for the loss of part of the CWS and the enhancement of the remainder, the scheme would not result in significant harm to the ecological interest of the site. Such harm that would arise as a result of the reduction in size of the CWS and the limited increase in fragmentation of the habitats present is clearly outweighed by the need for new housing to meet the requirements of the OSP for the town and district in this sustainable location, on a site which has been allocated for development for many years but is no longer needed for employment use.

Other matters

- 117 Regarding the other "further information" sought in relation to the original ES, additional archaeological work has been undertaken. A report of June 2005 by Cotswold Archaeology confirms that the area of the site to the north west of the Langford Brook has no significant features and low archaeological potential. Taken together with the earlier investigation of the south eastern part of the site by Oxford Archaeology in 1997, this confirms that, subject to a condition requiring a staged programme of investigation, there is no archaeological objection in principle to the development of the site.
- 118 On flood risk, it has now been confirmed that the existing surface water balancing ponds to the south of Gavray Drive were constructed with capacity to serve development on the land to the north of the road. Given that residential development is likely to have a lower impermeable area than commercial, thereby reducing anticipated flows, it is now common ground that the surface water drainage proposals for the site are suitable and acceptable.
- 119 I have also borne in mind the unusually strong level of public support for new housing on the site, albeit as an alternative to employment use, as reflected in letters to the Council and the results of the two extensive consultation exercises undertaken by the Appellants [49]. I conclude that the appeal should be allowed and outline planning permission granted subject to conditions and the provisions of the Section 106 legal agreement.

Conditions and Obligations

- 120 A list of suggested conditions (Doc 4) was fully discussed and agreed during the inquiry. In addition to the standard time limits for outline applications (applicable at the time of

submission) (nos 1-3), I accept the consensus view of the parties that, taking into account the nature and scale of the scheme subject to EIA, any permission should be limited to no more than 500 dwellings (no 6) and that no building should exceed three storeys in height (no 4). Similarly, in order to make the best use of land and achieve consistency with both PPG 3 and policy H3 of the OSP, an average density of not less than 35 dwellings per hectare, with not less than 30 dph in any phase, should be required across the site (no 5).

121 Discussions between the appellants and the District Council prior to the inquiry led to agreement that a Master Plan should be prepared and approved, before any reserved matters are submitted (no 7) and that the scheme should also be subject to Design Codes for the various phases (no 8). Having received an assurance from the Appellants that the 12 month time limit was considered adequate due to the amount of work completed to date, I endorse this approach to achieving a high quality design and layout as both appropriate and reasonable in the circumstances.

122 Although an unusually full and detailed level of public consultation has already been carried out by the Appellants in connection with this application (and a duplicate one), it was common ground that the local community should continue to be closely involved in decisions on the details of the scheme. This would include in relation to the Master Plan, Design Codes and Ecological Construction Method Statement, in addition to reserved matters applications. The proposed condition (no 10) would ensure that a public consultation strategy is prepared and followed, consistent with the advice in PPS 1 and the Council's Statement of Community Involvement.

123 All parties are also agreed that, given the sensitivity of that part of the site to the east of the Langford Brook in nature conservation terms, an ECMS (no 11) is essential if it is to be built on and I agree. In the light of all of the above, I further agree on the necessity of an implementation plan (no 12), to co-ordinate the timing of the various elements of additional preparatory work and the construction of the development itself, including in relation to any distinct phases or sub-phases, in compliance with policies G3 and H3 of the OSP.

124 Regarding archaeology (no 13), surface water drainage (no 14), flood storage works (no 15) and foul drainage (no 16), previous objections in principle to the scheme have been withdrawn by the relevant bodies and organisations [24 & 25] on the strict understanding that appropriately worded conditions are imposed, to ensure that their detailed concerns over implementation are properly addressed. All the currently available evidence, including from the Council [56 & 57], points to these matters being readily capable of resolution at reasonable cost and within a relatively short timescale. Consequently, I consider it essential that such conditions are imposed to safeguard the interests identified and ensure that adequate infrastructure is provided alongside the new housing and associated facilities.

125 Again, there is no dispute that appropriate and suitably located play areas need to be provided on the site (no 17), nor that noise assessments (no 18) should be undertaken before any new dwellings are occupied. I too am satisfied that such conditions meet the necessary tests in this instance. Although the exact details were debated at the inquiry, a consensus also emerged regarding the best methods for the proper protection of retained trees and hedges during the construction period and I am content that this would be achieved by the proposed condition's wording (no 19). Whilst I questioned the strict necessity for a condition requiring provision of fire hydrants in each phase to be the subject of an agreed scheme, the Appellants said that this would not be onerous and the District and County Councils pointed to the costs and difficulties of "retro-fitting", once the scheme had

been designed, let alone implemented, even in part. On balance, therefore, I take the view that this condition would not be unreasonable in the circumstances.


126 Finally, bearing in mind the relative proximity of existing housing to the south of Gavray Drive, a requirement to provide details of temporary site compounds and construction site parking seems sensible in order to minimise any impacts on the residential amenities of adjoining occupiers, in accord with the ES.

127 The signed legal agreement provides for a number of significant financial contributions to be made towards local services and facilities, each of which has been individually negotiated with the organisations concerned. In particular, contributions would be made towards education facilities, to enable the building of a new primary school, as well as the provision of public open space, play areas, landscaping and the CWS on the site, and indoor/outdoor sports pitches/centres and improvements to the Langford Village Hall off site, including their transfer into public ownership and for future maintenance. Local bus service and highway improvements, including at the Neunkirchen/Seelscheid Way, London Road and A41 junction, as well as other increased service provisions for the area, would also be funded. In addition, the legal agreement confirms the detailed arrangements for 30% of the new dwellings to be affordable housing, of which 88% would be in the social rented sector, including the transfer of land to a Registered Social Landlord at no cost.

128 Based on the advice in Circular 05/2005, I consider that all the matters addressed in the agreement are relevant to planning and directly related to the development proposed by virtue of the impacts otherwise imposed on services and facilities in Langford Village and Bicester. Moreover, in my opinion, the contributions agreed with the relevant authorities are related in scale and kind to the scheme in both physical and practical terms and reasonable in other respects, as well as necessary if the application is to be permitted.

Recommendation

129 I recommend that the appeal be allowed and outline planning permission granted subject to the conditions set out in Annex A, (the wording of which have been slightly modified from the agreed list (Doc 4) in the interests of clarity and brevity).



Inspector