

Application 12/00302/CDC	No:	Ward: Banbury Grimsbury and Castle	Date Valid: 07/03/12
Applicant:	Cherwell District Council		
Site Address:	Land adjacent the M40 and Oxford Canal, North of Wildmere Industrial Estate, Banbury, Oxfordshire		

Proposal: Change of use from agricultural land to country park and creation of car park

Date site visited: 27 January 2012

1. Site Description and Proposal

- 1.1 The site is situated to the north of Banbury and is formed of two sites to the east and west of the M40 motorway, with access through to each other. The site to the east of the M40 would take access from the A361 and the site then follows the edge of the motorway north west before following the line of the railway line in a northerly direction. To the south of the motorway, the site forms an area of land to the north of the Wildmere Industrial Estate and which contains Wildmere Wood. The total area of land covered is 26.86ha. The land is currently open agricultural land; however it has recently been the subject of the Banbury Flood Alleviation Scheme (FAS) and so contains the embankments and control structures associated within this. Part of the land that extends in a northern direction from the motorway and adjacent to the railway was excavated in order to build the earth embankments that form part of the FAS, but the land has been re-graded to acceptable gradients so that it is more appropriate for public access.
- 1.2 The site is within an area of High Landscape Value, public rights of way run through the site, the site has ecological interest, has archaeological interest, is potentially contaminated and is within a flood plain and within 20m of a Main River and therefore there are several site constraints that need to be taken into consideration.
- 1.3 The application seeks full planning permission for the change of use from agricultural land to a Country Park and the creation of a car park. The plans show a number of engineering works, including seasonal ponds, pedestrian access points and paths, wildlife observation areas and seating and a bridge. The proposal also involves woodland planting and habitat creation such as wetland scrapes, grassland and meadows. The car park would be accessed from the A361 and access would then lead into the Country Park utilising the Flood Alleviation Scheme Embankment permissive footpath. Cherwell District Council and the Environment Agency are working in partnership to design and implement the Country Park for the benefit of present and future generations of people who live, work and visit Banbury.
- 1.4 The Country Park will be made up of a number of character areas, namely around the existing FAS embankment, Wildmere Wood (with an access provided into this area), a Woodland extension, Roman Meadow and The Dell and Arboretum Field.
- 1.5 The design and access statement suggests that much of the Country Park will be new woodland and it has been an aspiration for the Council to establish new community woodland in Banbury and its urban fringe. In order to increase biodiversity, improve public health and well being and mitigate climate change, it is

important to plant more community woodland throughout the District. This application provides a way to achieve this aim on land recently acquired by the Council.

- 1.6 The planning history relates only to the flood alleviation works that were permitted under both applications 04/00923/F and 09/00570/F.
- 1.7 A small part of the site falls within South Northamptonshire District Council area and so a planning application has been made for the change of use of the land that falls within that District.

2. Application Publicity

- 2.1 The application has been advertised by way of three site notices placed at the entrance to Grimsbury Reservoir, at the north of the Prodrive site close to a pedestrian route and on the A361. A press notice was also published on 22 March 2012. The final date for comment on this application was, therefore, 12 April 2012.
- 2.2 2 letters of representation from the RSPB and Banbury Ornithological Society have been received, which support the proposal; however raise comments in relation to the detail of the scheme. Full details are available electronically via the Council's website.

The comments raised in terms of the detail of the scheme include:

Banbury Ornithological Society

- Believe there is great scope to improve the delivery of wildlife habitat and the creation of better opportunities for local people to enjoy this natural area
- BOS have sought to engage constructively with the Environment Agency and CDC during the development of the restoration scheme for the flood alleviation area and have written to the EA with firm proposals for part of the area labelled Roman Meadow on the Preliminary Masterplan. Proposed this area could be established as a wildlife refuge for wetland birds with viewpoints enabling people to watch birds without disturbing them
- Disappointed to see from Masterplan that the Roman Meadow Area is proposed for a meadow restoration with trails through the whole field with further trails and an arboretum proposed for the thin strip of land to the north. If it is feasible to create a wetland area here, it is proposed that an alternative scheme is developed for this area with involvement of expertise from BOS, RSPB and BBOWT to create a nature reserve section of the Country Park. BOS would be pleased to commit time and some resource to help plan this restoration and potentially help to manage this area
- Access is along the canal towpath beyond Grimsbury Reservoir. Would seem to make sense to focus co-ordinated effort to improve access from the Reservoir area and the Country park extension. BOS would be happy to work with parties to develop the existing access route through the woodland to ensure people are encouraged to continue through the woodland and up the canal tow path to the extension area.
- Support the establishment of new woodlands in the Banbury area, but care should be taken in planning the additional woodland. From a visitor point of view, people are wary of entering woodland areas on their own unless it is clear plenty of people are around. From an ecological point of view, creating wetland areas with scattered scrub and trees might well be a better option.

Consideration should be given to the ecological implications of any planting.

- Believe this initiative offers a great opportunity to harness local knowledge and expertise to create a valuable area for people and wildlife.

RSPB

- Understand detail of the scheme is still to be finalised however raise a few points regarding the current design. Would be interested to support CDC through advice on design to maximise the biodiversity gains which can be achieved. Records of birds in the area and CDC should benefit these and other species.
- The RSPB support the proposals of the BOS and agree there is potential for creating a wetland which would enhance the area for wildlife.
- Scrapes proposed within the current design are suitable to help benefit breeding waders. RSPB happy to advise on the design of these to ensure they benefit wading birds and would recommend some further wet areas and islands in addition to those already proposed. Creation of wet grassland would contribute to the Oxfordshire Biodiversity Action Plan (BAP) targets for this habitat.
- Currently the benefit of the scrapes is negated by other features of the design. Access to the whole site will limit the success of the area for biodiversity. RSPB recommend that the amount of access is limited in certain areas of the site, particularly the area north of the motorway and that facilities such as viewing platforms and information boards are used.
- The proposed Country Park is far enough from Banbury to allow a limitation on disturbance levels but near enough to offer the opportunity for the local community to experience wildlife. The experiences gained by individuals would make this area an asset to the local community.
- RSPB recommend the woodland structure is diversified by including some areas of scrub which will benefit nesting birds
- Tree planting in wetland areas should be considered carefully to ensure they are complementary.
- RSPB question the intention to plant non native trees in the Arboretum Field. Suggest this area could be turned into a wetland area.
- NPPF identifies that the planning system should work to enhance biodiversity, providing net gains where possible.

3. Consultations

- 3.1 **Banbury Town Council:** No Objections, a welcome facility for residents and visitors
- 3.2 **Wardington Parish Council:** No Objections
- 3.3 **Bourton Parish Council:** No comments received
- 3.4 **Chacombe Parish Council:** No comments received
- 3.5 **South Northamptonshire District Council:** No comments received to date
- 3.6 **Environment Agency:** The Flood Risk Assessment sets out good principles to ensure that the proposed development does not increase flood risk and therefore no objections are raised. The proposed development will only meet the requirements of the NPPF if measures detailed in the FRA are implemented and secured by way of a condition on any permission. A condition is also recommended to agree the detailed design of the drainage system.

- 3.7 **Highways Agency:** No Objections
- 3.8 **BBOWT:** No comments received.
- 3.9 **OCC Highways:** No objection. Access will be taken via the existing maintenance access off the A361. Such an arrangement has been agreed in principle with Local Highway Officers due to the expected low vehicle movements associated with a country park in this location. The maintenance vehicle access will need to be upgraded/ improved to meet the Local Highway Authority Construction standards, which will require a S278 agreement. The detail of the required access works are shown in indicative form and the setback distance of the timber gate as shown on the submitted drawing is acceptable. Proposed visitor car park will provide 28 parking spaces, which appears to be reasonable for a country park in this location.
- 3.10 **OCC Rights of way comments:** This proposal will increase access into the Countryside. The proposal utilises the existing public right of way and the permissive route along the flood alleviation embankment as well as providing further access opportunities within the site. People will be able to gain access into the park from a number of directions along public rights of way and the routes will be accessible for disabled people and disabled parking spaces will be provided. If this goes ahead, the country park will be an asset and therefore no further comments or suggestions where public rights of way are concerned. Conditions are recommended.
- 3.11 **OCC Archaeology:** No comments received.
- 3.12 **Head of Safer Communities, Urban & Rural Services (Arboricultural):** No Objections on Arboricultural grounds.
- 3.13 **Head of Safer Communities, Urban & Rural Services (Ecology):** No objection, if properly planned and implemented the proposal has the potential to greatly enhance biodiversity within the site. There are no ecologically valuable habitats that would be lost. A condition should be attached to any permission requiring that details pertaining to the planting scheme and layout are approved before any works start on site.
- 3.14 **Head of Safer Communities, Urban & Rural Services (Rights of Way):** No comments received.
- 3.15 **Head of Public Protection and Development Management (Environmental Protection Officer):** No comments received.

4. Policy Considerations

National Planning Policy Framework (NPPF)

Core planning principles and the delivery of sustainable development with particular regard to the following sections:

- 3: Supporting a prosperous rural economy
- 4: Promoting sustainable transport
- 8: Promoting healthy communities
- 10: Meeting the challenge of climate change, flooding and coastal change

11: Conserving and enhancing the natural environment

**South East Plan
2009**

Cross Cutting – Policies

CC1: Sustainable Development
CC6: Sustainable Communities & Character of the Environment
CC7: Infrastructure and Implementation
CC8: Green Infrastructure

Transport – Policies

T4: Parking

Natural Resource Management – Policies

NRM4: Sustainable Flood Risk Management
NRM5: Conservation and Improvement of Biodiversity
NRM7: Woodlands

Countryside and Landscape Management – Policies

C4: Landscape and Countryside Management
C5: Managing the Rural-Urban Fringe
C6: Countryside access and rights of way management

Management of the Built Environment – Policies

BE1: Management for an Urban Renaissance
BE4: The Role of Small Rural Towns

Tourism and Related Sports Recreation – Policies

TSR2: Rural Tourism
TSR4: Tourism attractions

Social and Community Infrastructure – Policy

S1: Supporting Healthy Communities
S5: Cultural and sporting activity

Central Oxfordshire – Policies

CO1: Core Strategy

**Adopted Cherwell
Local Plan 1996
Saved Policies**

R7: Oxford Canal and River Cherwell
C2: Protected Species
C4: Promotion of new habitats
C7: Landscape conservation
C13: Areas of High Landscape Value
C14: Trees and Landscaping
C17: Enhancement of the urban fringe
C28: Design, layout etc standards
C30: Design control
C32: Disabled access

**Non-Statutory
Cherwell Local Plan
2011**

Transport & Development policies TR1, TR5 and TR11

Recreation and Community Facilities policies R4, R6, R14

Tourism policy T1

Conserving & Enhancing the Environment policies EN1, EN13, EN14, EN22, EN23, EN24, EN25, EN27, EN28, EN34, EN35, EN36, EN37

Urban Design & The Built Environment policy D6

**Cherwell Local
Development
Framework (LDF)
Draft Core Strategy
2010**

The draft document went through the first round of public consultation in the Spring of 2010. The second draft is due out for public consultation. The current plan indicates the strategy that the Council is putting forward and contains a series of key objectives and a number of policies highlighting a focus of growth in and around Bicester with limited growth in the rural areas towards larger and more sustainable villages thereby protecting open countryside areas. Policies seek to mitigate and adapt to climate change and ensure sustainable construction methods including SuDs.

SD1: Mitigating and Adapting to Climate Change

SD8: Protection and Enhancement of Biodiversity & the Natural Environment

SD11: Local Landscape Protection & Enhancement

I3: Open Space, Sport and Recreation Provision

NOTE

THIS DOCUMENT MAY BE REPLACED WITH CHERWELL LOCAL PLAN 2012 FROM END OF MAY, BUT FOR PURPOSES OF MAY COMMITTEE THIS IS STILL RELEVANT

**Other relevant
documentation**

Cherwell Biodiversity Action Plan: 2005-2010

Corporate Biodiversity Action Plan 2011-2012

Natural Environment and Rural Communities (NERC) Act 2006

Cherwell District Council Countryside Design Summary

Supplementary Planning Guidance

Oxfordshire Wildlife and Landscape Study (OWLS)

Article 10 of the Habitats Directive

5. Appraisal

5.1 The key issues for consideration in this application are:

- Principle of the development
- Visual impact
- Access and highway safety
- Ecology
- Flooding

5.2 **Principle of the development**

The purpose of the planning system is to contribute to the achievement of sustainable development and the NPPF defines this as having 3 dimensions: economic, social and environmental. Also at the heart of the NPPF is a presumption in favour of sustainable development. Relevant to this case, the NPPF seeks to promote sustainable transport, supporting a prosperous rural economy, promoting healthy communities, meeting the challenge of climate change and flooding and conserving and enhancing the natural environment.

- 5.3 The land the subject of this application forms part of the land that has currently been subject to the construction of a flood alleviation scheme, land adjacent to the flood alleviation scheme works and some existing unused pasture. The creation of a country park involves a change of use of the land and therefore the principle of this change of use must be considered.
- 5.4 The NPPF suggests that planning should support economic growth in rural areas and states that support should be given to sustainable rural tourism and leisure developments that benefit businesses in rural areas, communities and visitors and which respect the character of the countryside. The NPPF also reinforces the need to promote healthy communities and that there should be the delivery of social, recreational and cultural facilities and services the community needs. Paragraphs 73 and 74 of the NPPF are particularly relevant and which state that access to high quality open spaces and opportunities for sport and recreation can make a positive contribution to the health and well being of communities.
- 5.5 The South East Plan also is clear that the rural urban fringe must be managed under policy C5. This policy includes detail within the supporting literature that research has found that the urban rural fringe serves an important role both functionally and structurally in the South East and that this area provides 10 key functions which include being a bridge to the country, a gateway to the town, a 'health centre', a 'classroom' and a nature reserve amongst others.
- 5.6 In the View of your officers, the principle of the creation of a Country Park will accord with the general thrust of the above planning policies to provide a new recreational facility for Banbury and its residents, visitors and those who work in the town. It is considered that the Park would be an asset to the town and would form a new and unique facility within the Cherwell District. The provision of the Park will help to make a positive contribution to the health and well being of communities and will help to promote the rural edge of the town. The proposal will also ensure the management of the rural fringe around Banbury and will ensure that the function of this area is enhanced.
- 5.7 The application provides some details of engineering operations and supporting work that are proposed. Officers are aware that it is likely that some of these proposals may change as the scheme development unfolds, and so a condition is recommended to ensure that details are submitted of the final scheme and approved prior to the commencement of the development. These works involve the provision of scrapes and seasonal ponds, pedestrian access points, wildlife observation and seating areas, bridges and boardwalks within woodland areas. The proposals also involve woodland planting and other landscaping. The physical extent of the works are fairly minimal and are generally natural in character, which will not detract from the rural nature of the area and your officer's are satisfied that this assessment is likely to still apply, should the details of the scheme subsequently change from those shown on the submitted plans. The proposals will increase biodiversity of this area, which will increase the experience for visitors to the Country Park and will also contribute to improving the health and well being of communities. The proposal also assists in protecting and enhancing the diversity and local distinctiveness of the region's landscape.
- 5.8 The car park is proposed to be to the east of the M40 and the Country Park and is to be accessed by car via the A361. The car park is proposed on the site of the

contractor's base for the FAS works and will be a hard surfaced, laid out car park forming space for 28 vehicles. The principle of a car park is considered to be acceptable as it will increase accessibility for the Country Park. The visual impact of this feature will be considered below.

- 5.9 The siting of the Country Park is considered to be acceptable in that it is located on the edge of Banbury and will be an accessible facility for the town including visitors and residents. From a site visit carried out by officers, it was apparent that with the prevailing wind the eastern side of the motorway does suffer from noise pollution from this major road, which is considered to be a disadvantage to the position of the Country Park, however the land on the western side of the motorway is noticeably quieter and more tranquil and it is considered that the overall benefits of the scheme and its contribution that it will make to the town overall mean that the proposal is acceptable. There are other examples of recreational features close to major roads, for example Avon Dassett Hills, which are well used and which do not suffer by their position close to the motorway.
- 5.10 In terms of pedestrian access within the site, footpaths are provided throughout the park and linkages are provided through underneath the motorway to gain access to each side of the Country Park. Bridges are also used to allow access over waterways, again, allowing full accessibility through the site and around the Country Park. It is envisaged that the Country Park will link up with existing Green Infrastructure, which includes Grimsbury Reservoir, Grimsbury Nature Reserve and Spiceball Park improving the rural urban fringe. Wildmere Wood is currently inaccessible to pedestrians; however a bridge is to be provided to access this woodland. The most southern link underneath the motorway exists currently providing pedestrian access and is along the route of the old A361. The bridge under the motorway is currently relatively oppressive, being unlit and having an unwelcoming atmosphere. It must also be noted that the recently considered retail park on the Prodrive site, (which has a resolution to grant planning permission) will involve a large retail building being built in fairly close proximity to this walkway, which may increase the oppressiveness of this approach and so it is recommended that details of any lighting and measures to increase the security of these areas are submitted. Comments are awaited from the Thames Valley Police Architectural Liaison Officer who may offer advice in terms of this matter as well as to any potential security issues for the car park given its relatively isolated position.
- 5.11 Pedestrian safety features are also proposed, to ensure that the permissive pathways are safe and that people cannot fall into areas near for example the two control features for the FAS. Gates and other security features will be used to block pedestrian access to certain areas and the Environment Agency will be able to access these for maintenance purposes only.
- 5.12 **Visual impact**
The land is within an area defined as the Northamptonshire Uplands in the Oxfordshire Wildlife and Landscape Study (OWLS). As has been described, the physical works that are shown on the currently submitted plans are relatively minor works, that are usual countryside features and which will not detract from the rural character of the area. The works will increase and support the biodiversity of the area and will create a pleasant environment for visitors to the Country Park. Other than the creation of the minimal engineering works and minor features for visitors (e.g. benches, board walks etc) the land will otherwise remain open with landscaping and tree and woodland planting and which will have a very limited

impact upon the visual amenity of the area or the existing identified landscape character of the area. The proposal will therefore provide an attractive gateway to the town and improve connectivity between the town and the Countryside.

- 5.13 The land is within an area designated as an area of high landscape value and given the proposed work and the assessment above, your officers do not consider that the proposal will cause harm to the character or visual appearance of the area of high landscape value.
- 5.14 The car park will form a new physical feature in the countryside, which will to some degree detract from the open rural character of the area. However, a car park is required to provide access for car users to the Country Park and it is officer's view that the best location for this has been chosen, being tucked into the edge of the site, against an existing hedgerow and that the car park is a reasonable size not being overly large. The impact of the car park can also be mitigated by some degree by the introduction of additional landscaping in this area to help to screen the car park and it is therefore considered that the proposed car park will not cause serious harm to the visual amenity of the area.
- 5.15 **Landscaping**
Woodland planting is proposed throughout the Country Park as well as other landscaping and this is supported given the rural location of the site. Native planting is generally proposed, however the applicant has stated that with climatic change, plant species should also be planted that can cope with higher temperatures and drought. Full details of landscaping and planting schemes can be requested via condition. Wet woodland/ river corridor planting is proposed in the Woodland Extension to again contribute to the landscaping of the site. The new planting will support existing sites at for example Wildmere Wood and Grimsbury Nature Reserve. The planting of woodland will also help to achieve the aims of the Corporate Biodiversity Action Plan 2011-2012. No tree planting will be carried out on the embankment to ensure that the flood worthiness is not compromised by tree roots. Landscape maintenance will be ongoing once any landscaping is planted.
- 5.16 **Access and Highway Safety**
The Highway Authority has raised no objections to the proposal. They consider that the level of car parking provided is acceptable (28 spaces) and that the proposed access has been agreed in principle due to an expected low level of vehicle movements. The Highway Authority have advised that a new S278 Agreement may be required or at the very least an amendment to the existing S278 Agreement to allow the highway works and a planning note has been recommended in relation to this matter. The Highway Authority has recommended conditions to ensure that the access and vision splays are provided and retained and to request details of the specification for the hard surfacing for the car park.
- 5.17 Public rights of way run through the site, and will not be affected in terms of their useability. The Highway Authority have raised no objection in relation to the public rights of way and note that the proposal will increase access into the countryside while utilising the existing public rights of way and the permissive route along the flood alleviation embankment.
- 5.18 In terms of pedestrian access to the site from the town itself, the linkages are relatively difficult, given that the access points are from within the Wildmere Industrial Estate, from a number of positions along the canal towpath, but which are

a fair distance from the town and Grimsbury Reservoir and from the proposed new car park. As such, it is recommended that details of any signage that will be installed to direct people to the Country Park is submitted and approved. This will help to ensure that the Country Park is as accessible as possible to visitors.

- 5.19 The NPPF requires sustainable transport to be promoted and in this case, the site will be accessible for pedestrians as well as for road users. The NPPF also requires a safe and suitable access to the site for all people to be achieved and the Highway Authority response is considered to demonstrate that this will be the case. The proposal is therefore considered to be acceptable.
- 5.20 The Country Park will be built to Disabled Access requirements for pedestrians including the use of ramps and rest platforms. Pavements will be constructed from a black macadam surface and DDA compliant galvanised steel handrails will be installed along the edge of the path. The safety features, as described above, will meet best practice for warning people with visual impairments through the use of contrasting colours on fencing, bollards and tactile paving.
- 5.21 **Ecology**
NPPF – Conserving and enhancing the natural environment requires that “the planning system should contribute to and enhance the natural and local environment by minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government’s commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures” (para 109)
- 5.22 Paragraphs 192 and 193 further add that “The right information is crucial to good decision-taking, particularly where formal assessments are required (such as Habitats Regulations Assessment) and that Local Planning Authorities should publish a list of their information requirements for applications, which should be proportionate to the nature and scale of development proposals. Local planning authorities should only request supporting information that is relevant, necessary and material to the application in question”. One of these requirements is the submission of appropriate protected species surveys which shall be undertaken prior to determination of a planning application. The presence of a protected species is a material consideration when a planning authority is considering a development proposal. It is essential that the presence or otherwise of a protected species, and the extent to that they may be affected by the proposed development is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. This is a requirement under Policy EN23 of the Non-Statutory Cherwell Local Plan 2011.
- 5.23 Paragraph 18 states that “When determining planning applications, local planning authorities should aim to conserve and enhance biodiversity by applying the following principles:
- if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused”
- 5.24 Paragraph. 98 of Circular 06/05: Biodiversity and Geological Conservation – statutory obligations and their impact within the planning system states that, “local

planning authorities should consult Natural England before granting planning permission” and paragraph 99 goes on to advise that “it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.”

- 5.25 Section 40 of the Natural Environment and Rural Communities Act 2006 (NERC 2006) states that “every public authority must in exercising its functions, must have regard ... to the purpose of conserving (including restoring / enhancing) biodiversity” and;
- 5.26 Local planning authorities must also have regards to the requirements of the EC Habitats Directive when determining a planning application where European Protected Species (EPS) are affected, as prescribed in Regulation 9(5) of Conservation Regulations 2010, which states that “a competent authority, in exercising any of their functions, must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions”.
- 5.27 Articles 12 and 16 of the EC Habitats Directive are aimed at the establishment and implementation of a strict protection regime for animal species listed in Annex IV(a) of the Habitats Directive within the whole territory of Member States to prohibit the deterioration or destruction of their breeding sites or resting places.
- 5.28 Under Regulation 41 of Conservation Regulations 2010 it is a criminal offence to damage or destroy a breeding site or resting place, but under Regulation 53 of Conservation Regulations 2010, licenses from Natural England for certain purposes can be granted to allow otherwise unlawful activities to proceed when offences are likely to be committed, but only if 3 strict legal derogation tests are met which include:
- 1) is the development needed for **public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature** (development).
 - 2) Is there any **satisfactory alternative**?
 - 3) Is there **adequate mitigation** being provided to maintain the favourable conservation status of the population of the species?
- 5.29 Therefore where planning permission is required and protected species are likely to be found to be present at the site or surrounding area, Regulation 53 of the Conservation of Habitats and Species Regulations 2010 provides that local planning authorities must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions and also the derogation requirements (the 3 tests) might be met. Consequently a protected species survey must be undertaken and it is for the applicant to demonstrate to the Local planning authority that the 3 strict derogation tests can be met prior to the determination of the application. Following the consultation with Natural England and the Council’s Ecologist advice given (or using their standing advice) must therefore be duly considered and recommendations followed, prior to the determination of the application.
- 5.30 In respect of planning applications and the Council discharging of its legal duties, case law has shown that:

- 1) if it is clear/perhaps very likely that **Natural England will not grant a licence** then the Council should refuse planning permission
- 2) if it is likely that **Natural England will grant the licence** then the Council may grant planning permission
- 3) if it is **unclear/uncertain** whether Natural England will grant a licence then the Council must refuse planning permission (Morge has clarified Woolley)

[R (Morge) v Hampshire County Council – June 2010 Court of Appeal case]
[R (Woolley) v Cheshire East Borough Council – May 2009 High Court case]

NB: Natural England will not consider a licence application until planning permission has been granted on a site, therefore if a criminal offence is likely to be committed; it is in the applicant's interest to deal with the 3 derogation tests at the planning application stage.

- 5.31 In this case, a phase 1 habitat survey was carried out in October 2011, which identified three UK Biodiversity Action Plan (BAP) Priority Habitats (hedgerow, river and reedbed), other habitats and animal species with some evidence of badger activity, potential for bat roosts, a number of bird species and barn owls, otters and potential reptile and amphibian habitat. The habitat is also favourable for water vole. The woodland extension will improve the wildlife potential of Grimsbury Nature Reserve and given the level of woodland planting and the introduction of wetland scrapes, grassland, meadows and ponds, there is an aim to achieve a net gain in biodiversity. The Council's Ecologist has commented that she raises no ecological concerns regarding the conversion of this land into a Country Park and that if properly planned and implemented it has the potential to greatly enhance biodiversity within the site. There are no ecologically valuable habitats that would be lost as a result of this proposal. Her suggested condition has been recommended.
- 5.32 Consequently it is considered that art.12(1) of the EC Habitats Directive has been duly considered in that the welfare of any protected species found to be present at the site and surrounding land will continue, be safeguarded and may be enhanced notwithstanding the proposed development. The proposal therefore accords with the National Planning Policy Framework – Conserving and enhancing the natural environment and Policy C2 and C4 of the adopted Cherwell Local Plan.
- 5.33 The comments of the Banbury Ornithological Society and the RSPB are noted and it is understood that work is intending to be continued in relation to the detail of the Country Park, taking into account the views of these parties to come up with a scheme that will benefit and enhance biodiversity whilst still representing an accessible community facility. It is officer's view however that although the enhancement of biodiversity and the natural environment is an important factor to be considered for this proposal, it must be borne in mind that the proposal is for a Country Park and not a nature reserve and so the level of exclusion of the public from certain areas will need to be carefully considered.

5.34 **Flooding**

The site is within proximity to the Oxford Canal and the River Cherwell and therefore there is a risk of flooding in this area and a Flood Risk Assessment has been submitted to support the application. This FRA demonstrates that part of the site lies within Flood Zone 3 and has a high probability of flooding. Other parts of the site are within Flood Zone 2 and will be defended from flooding by the Flood Alleviation embankment. There will be no raising of land levels within this area and the FRA also details that there will be no significant increase in run off. The Environment Agency has raised no objection to the scheme subject to the imposition of conditions, which have been recommended. On completion of the scheme, there will be a joint flood risk monitoring responsibility between Cherwell District Council and the Environment Agency.

5.35 **Other matters**

It is considered that the proposal is unlikely to have an impact upon archaeology or the fact that the land may be potentially contaminated given the extent of the works. Should any consultation responses be received in relation to these matters, then an update will be given at committee.

5.36 **Conclusion**

Given the above assessment, the proposal is considered to be acceptable in principle, is unlikely to have any serious impact to the character of the countryside in this area or on the constraints that the site has. The proposal is also likely to result in a net gain for Biodiversity and will help to achieve the aims of the Council's Biodiversity Action Plan. The proposed Country Park will form a new recreational facility for the benefit of Banbury and the wider District and will be an asset to the area. The consultation responses demonstrate the support for the scheme and it is therefore recommended that the proposal be approved subject to the imposition of conditions as set out below.

6. Recommendation

Approval, subject to:

1. That the development to which this permission relates shall be begun not later than the expiration of three years beginning with the date of this permission.

Reason - To comply with the provisions of Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the following plans and documents: application forms, design and access statement, flood risk assessment, Banbury Flood Alleviation Scheme File Note: Phase 1 Habitat Survey carried out by Black and Veatch dated 25/10/2011, Landscape specification for implementation and maintenance document, drawing number 11-091 CP-Masterplan 1 Rev C with red line amended to reflect the County boundary, Phase 1 Habitat Survey plan for Proposed Country Park, Habitat Creation Zones – proposed flood storage reservoir maintenance and management plan – rev A dated May 2011, 07012-FSR-SK001 Rev A, 07012-FSR-SK002 Rev C, 07012-FSR-SK005 Rev A, 07_012_507 Rev P00, 07012-CS-530 Rev B

Reason: For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and to comply with The National Planning Policy Framework.

3. Notwithstanding the approved plans, any changes to any of the physical development or engineering operations, shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development. The development shall be carried out in accordance with the approved details.

Reason: For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and to comply with The National Planning Policy Framework.

4. That no development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a scheme for landscaping the site which shall include:-

(a) details of the proposed tree and shrub planting including their species, number, sizes and positions, together with grass seeded/turfed areas,

(b) details of the existing trees and hedgerows to be retained as well as those to be felled, including existing and proposed soil levels at the base of each tree/hedgerow and the minimum distance between the base of the tree and the nearest edge of any excavation,

(c) details of the hard surface areas, pavements, pedestrian areas, crossing points and steps.

Reason - In the interests of the visual amenities of the area, to ensure the creation of a pleasant environment for the development and to comply with Policy C4 of the South East Plan 2009 and Policy C28 of the adopted Cherwell Local Plan.

5. That all planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building(s) or on the completion of the development, whichever is the sooner; and that any trees and shrubs which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent for any variation.

Reason - In the interests of the visual amenities of the area, to ensure the creation of a pleasant environment for the development and to comply with Policy C4 of the South East Plan 2009 and Policy C28 of the adopted Cherwell Local Plan.

6. That the existing hedgerow to the east of the proposed car park shall be reinforced by additional planting in accordance with a detailed scheme to be first submitted to and approved in writing by the Local Planning Authority and carried out within the first available planting season following the occupation of the building or on the completion of the development whichever is the sooner. Any plant/tree within the hedgerow which may die within five years from completion of the development shall

be replaced and thereafter by properly maintained in accordance with this condition.

Reason - In the interests of the visual amenities of the area, to provide an effective screen to the proposed development and to comply with Policy C4 of the South East Plan 2009 and Policy C28 of the adopted Cherwell Local Plan.

7. That full design details of any signage that will be installed to guide individuals to the Country Park shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The development shall be carried out in accordance with the approved details.

Reason: To ensure the satisfactory appearance of the completed development and to ensure that future users of the Country Park are guided to the Park, in order to comply with Policy C28 of the adopted Cherwell Local Plan.

8. That full design details of any lighting that may be required on the site including for bridges and underpasses for example shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The development shall be carried out in accordance with the approved details.

Reason - In order to safeguard the amenities of the area and to comply with Policy C4 of the South East Plan 2009 and Policy ENV1 of the adopted Cherwell Local Plan.

9. That prior to the opening of the visitor car park the existing means of access between the land and the highway (A361) shall be improved, laid out and constructed strictly in accordance with the specification of the means of access attached hereto, and that all ancillary works therein specified shall be undertaken in accordance with the said specification.

Reason - In the interests of highway safety and to comply with Government advice contained in The National Planning Policy Framework.

10. That the proposed vision splays shall be formed, laid out and constructed in accordance with drawing 07012-FSR-Sk002-C prior to the opening of the visitor car park and shall not be obstructed by any object, structure, planting or other material.

Reason - In the interests of highway safety and to comply with Government advice contained in The National Planning Policy Framework.

11. That prior to the opening of the visitor car park the parking and manoeuvring areas shall be provided in accordance with the plan hereby approved (07012-FSR-SK005-A) and shall be constructed, laid out, surfaced, drained and completed in accordance with specification details to be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development, and shall be retained unobstructed except for the parking and manoeuvring of vehicles at all times thereafter.

Reason - In the interests of highway safety and to comply with Government advice contained in The National Planning Policy Framework.

12. The development permitted by this planning permission shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) and the following

mitigation measures detailed within the FRA:

1. There shall be no raising of ground levels in Flood Zones 2 or 3, as set out in Sections 1b and 7a of the FRA.
2. Rates and volumes of surface water discharge shall not be increased during storm events up to and including the 1 in 100 year storm event with an allowance for climate change (the design storm event), as set out in Section 3d of the FRA.
3. The drainage system shall be designed to not flood during storm events including the design storm event or any surface water flooding beyond the 1 in 30 year storm event, up to and including the design storm event shall be safely contained on site, as set out in Section 3d of the FRA.

Reason – To prevent flooding elsewhere by ensuring there is no loss of flood storage, to prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site and to prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site in accordance with the National Planning Policy Framework.

13. No development shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The drainage strategy should demonstrate the surface water run-off generated up to and including the 1 in 100 years plus climate change critical storm will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.

Reason – To prevent the increased risk of flooding, to improve and protect water quality, improve habitat and amenity, and ensure future maintenance of the scheme in accordance with the National Planning Policy Framework.

14. No development shall take place until a landscape management plan, including long- term design objectives, management responsibilities and maintenance schedules for all landscaped areas (except privately owned domestic gardens), shall be submitted to and approved in writing by the local planning authority. The landscape management plan shall be carried out as approved and any subsequent variations shall be agreed in writing by the local planning authority.

The scheme shall include the following elements:

- detail extent and type of new planting (NB planting to be of native species) (List of species required)
- details of maintenance regimes
- details of any new habitat created on site
- details of treatment of site boundaries and/or buffers around water bodies

Reason – To ensure that the natural and local environment is conserved and enhanced and to minimise impact on biodiversity whilst achieving a net gain in biodiversity where possible in accordance with the National Planning Policy Framework.

Any additional conditions required by consultee responses received by committee.

Planning notes

1. All works will be carried out via an Agreement with Oxfordshire County Council under Section 278 of the Highways Act 1980. No works should be carried out until the

- applicant has submitted a detailed design of the scheme and the scheme approved in writing by the Highway Authority.
2. Under the terms of the Water Resources Act 1991, and the Land Drainage Byelaws 1981, the prior written consent of the Environment Agency is required for any proposed works or structures, in, under, over or within 8 metres of the top of the bank of any main river.
 3. The applicant is advised that all works to which this permission relates must be carried out strictly in accordance with the plans, drawings and other relevant supporting material submitted as part of this application and hereby approved. The Planning Department must be immediately advised of any proposed variation from the approved documents and the prior approval of this Council obtained before any works are carried out on the site. This may required the submission of a further application. Failure to comply with this advice may render those responsible liable to enforcement proceedings which may involve alterations and/or demolition of any unauthorised building or structures and may also subsequently lead to prosecution.
 4. Planning permission only means that in planning terms a proposal is acceptable to the Local Planning Authority. Just because you have obtained planning permission, this does not mean you always have the right to carry out the development. Planning permission gives no additional rights to carry out the work, where that work is on someone else's land, or the work will affect someone else's rights in respect of the land. For example there may be a leaseholder or tenant, or someone who has a right of way over the land, or another owner. Their rights are still valid and you are therefore advised that you should seek legal advice before carrying out the planning permission where any other person's rights are involved.

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

The Council, as local planning authority, has determined this application in accordance with the development plan unless material considerations indicated otherwise. The development is considered to be acceptable on its planning merits as the proposal constitutes an acceptable form of development in the Countryside, which will not harm the rural character of the area or the wider landscape. The proposal for a Country Park will provide a new recreational facility for Banbury and the wider Cherwell District, which will be an asset to the town and which will enhance the rural urban fringe of Banbury. The proposal will result in a net gain in Biodiversity and will not cause harm to any existing protected species or habitats and will not compromise the Banbury Flood Alleviation Scheme in any way. The proposal also raises no highway safety implications. As such the proposal is in accordance with The National Planning Policy Framework – March 2012, Policies CC1, CC6, CC7, CC8, T4, NRM4, NRM5, NRM7, C4, C5, C6, BE1, BE4, TSR2, TSR4, S1, S5 and CO1 of The South East Plan and Policies R7, C2, C4, C7, C13, C14, C17, C28, C30 and C32 of the adopted Cherwell Local Plan. For the reasons given above and having proper regard to all other matters raised the Council considered that the application should be approved and planning permission granted subject to appropriate conditions as set out above.

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