

Applicant: Network Rail

Proposal: Creation of six ponds, earthworks and hibernaculum, along with the planting of new habitat and soil inversion.

Ward: Launton And Otmoor

Councillors: Cllr Tim Hallchurch
Cllr Simon Holland
Cllr David Hughes

Reason for Referral: Major Application

Expiry Date: 16 June 2017 **Committee Date:** 15 June 2017

Recommendation: Approve

1. APPLICATION SITE AND LOCALITY

- 1.1. The application site is 8.33ha in size and is located approximately 250m north east of Launton adjacent to Station Road and approximately 50m south west of the Station Road crossing. The site is currently in agricultural use and is generally flat with no existing development or structures upon it. It consists of three fields, enclosed by mature hedgerows, an existing railway line forming the northern boundary and Station Road the southern boundary. Cutters Brook runs from the north to the south across the centre of the site. There is also a small tributary of the brook running along the north eastern boundary, the two converge at Station Road where the watercourse is culverted and the brook flows south. The site is surrounded by further agricultural land, a mixture of arable and pasture fields, along with farm buildings and isolated properties.
- 1.2. The site is situated adjacent to the railway line to the north, which travels alongside the northern boundary of the site. It is the intention that the railway line will be upgraded as part of the East West Rail scheme.
- 1.3. An existing Public Right of Way travels through the centre of the site from Station Road up to and over the railway line. The proposed development would not require the extinguishment or permanent diversion of the Public Right of Way, but it would be necessary to temporarily close it during the proposed construction. The site benefits from existing access points from Station Road at the north eastern corner along the centre of the south eastern boundary.

2. DESCRIPTION OF PROPOSED DEVELOPMENT

- 2.1. This application seeks consent for the creation of 6 ponds and associated earthworks, creation of 2 hibernaculum, planting of 293 metres of hedgerow, planting of 0.5 hectares of scrub/thicket, 5.4 hectares of soil inversion, weeding and seeding and 0.03 hectares of marginal planting around ponds. The works seek to

transform an area of arable habitat (improved grassland) into suitable habitat for notable species including Great crested Newts, reptiles, birds, invertebrates and bats.

- 2.2. The proposed ponds will be located in the centre and south western area of the site. Excavated material would be used to create bunds and re-profile the land around the two ponds. Marginal and aquatic planting would be provided at the pond edges.
- 2.3. This is the first of three applications which follow on the agenda for similar proposals all relating to ecological improvements in connection with EWR2.

3. RELEVANT PLANNING HISTORY

- 3.1. The following planning history is considered relevant to the current proposal:

17/00017/SO	Screening Opinion to 17/00622/F - Creation of six ponds, earthworks and hibernaculum, along with the planting of new habitat and soil inversion.	Screening Opinion not requesting EIA
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4. PRE-APPLICATION DISCUSSIONS

- 4.1. Informal verbal pre-application discussions have taken place with regard to this proposal. The submission is in line with the advice given.

5. RESPONSE TO PUBLICITY

- 5.1. This application has been publicised by way of a site notice displayed near the site, by advertisement in the local newspaper, and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records. The final date for comments was 07.05.2017, although comments received after this date and before finalising this report have also been taken into account.
- 5.2. No comments have been raised by third parties

6. RESPONSE TO CONSULTATION

- 6.1. Below is a summary of the consultation responses received at the time of writing this report. Responses are available to view in full on the Council's website, via the online Planning Register.

PARISH/TOWN COUNCIL AND NEIGHBOURHOOD FORUMS

- 6.2. Launton Parish Council: have no objections but are dismayed at the lack of long term provisions for the maintenance of the two ponds. Earthworks and hibernaculum. Who would be responsible for the care of this area.

STATUTORY CONSULTEES

- 6.3. Environment Agency: No objections. Although a small part of the site is within Flood Zone 2 and 3, the described works are deemed to have no impact on flood risk at

the site or in surrounding areas as they are all taking place in the surrounding land within Flood Zone 1.

- 6.4. Natural England: No comments. Natural England has published standing advice which can be used to assess impacts on protected species.

NON-STATUTORY CONSULTEES

- 6.5. Environmental Protection Manager: There are no objections to this application in respect of noise, contaminated land, air quality, odour and light.
- 6.6. Arboricultural Officer: No adverse comments
- 6.7. Landscape Architect: It is important to retain the hedgerows and trees for the benefit of the landscape structure and character, and of course for wildlife. Any structural vegetation (Trees and Hedgerows) near ponds or contractor's plant should be protected in accordance with BS5738:2012 Trees in Relation to Construction. I support the development proposals as long as Network Rail adhere to a number of recommendations, including providing a management plan. The landscape drawing is acceptable.
- 6.8. Ecologist: It is not possible to assess whether the proposed protected species mitigation are sufficient to mitigate for the forthcoming proposed EWR2 at this stage as this assessment has not come forward, and this will be assessed as part of the Environmental Impact Assessment when this is submitted. As such, any comments just relate to the current application as it stands. As part of the requirements of the great Crested Newt mitigation licence, and depending on the impact of the proposals on other protected and notable species through EWR2 proposal, it is possible that further areas of habitat creation or amendments to the design of the habitat creation on site may be required.
- 6.9. The EclA has been undertaken in line with appropriate methodology and I agree in general with the conclusions. The application site comprises of improved grassland and is generally of low ecological value, however, features of higher ecological value on site are present including broad-leaved semi-natural woodland, mature hedgerows and a number of mature trees. I would recommend that appropriate methods to safeguard protected species and existing hedgerows and trees on the site are provided within a CEMP and secured by condition.
- 6.10. The 30 year Ecological Management Plan is welcomed which includes biodiversity enhancements of the site and for the creation of a wildflower grassland with 6 new water bodies and 88m of hedgerow planting for nesting birds and for BAP priority invertebrate species such as black and brown hairstreak. Details of on-going monitoring of the site and reporting is welcomed (section 6.1), however there appears to be a mistake as reference to Aylesbury Vale Ecologist rather than CDC. It is understood that Network Rail are entering into a legal management agreement with the landowner to secure management of the site. I would recommend the plan is secured as part of any permission via condition or Section 106 Agreement. This is to secure the long-term management of the site in line with the details submitted.
- 6.11. BBOWT: No comments received
- 6.12. OCC Archaeology: No objection subject to conditions
- 6.13. OCC Transport: No objection subject to conditions, although concerns were initially raised in respect of the access points and the numbers of HGV's that might be

accessing the site. Following the receipt of additional information on behalf of the applicant, OCC further advise that the concerns raised are fully addressed.

7. RELEVANT PLANNING POLICY AND GUIDANCE

- 7.1. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 7.2. The Cherwell Local Plan 2011-2031 - Part 1 was formally adopted by Cherwell District Council on 20th July 2015 and provides the strategic planning policy framework for the District to 2031. The Local Plan 2011-2031 – Part 1 replaced a number of the ‘saved’ policies of the adopted Cherwell Local Plan 1996 though many of its policies are retained and remain part of the development plan. The relevant planning policies of Cherwell District’s statutory Development Plan are set out below:

CHERWELL LOCAL PLAN 2011 - 2031 PART 1 (CLP 2031 Part 1)

- ESD15 - The Character of the Built and Historic Environment
- ESD10 - Protection and Enhancement of Biodiversity and the Natural Environment

CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- C28 – Layout, design and external appearance of new development

- 7.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)

8. APPRAISAL

- 8.1. The key issues for consideration in this case are:

- Principle of development
- Ecology
- Flood Risk
- Heritage
- Access

- 8.2. Principle of Development

- 8.3. The applicant has been commissioned by Network Rail to deliver EWR2, from design to operation. This phase of the EWR scheme aims to upgrade train services between Bicester Town and Bedford as well as Milton Keynes to Aylesbury and Princes Risborough.

- 8.4. The applicant is in the process of producing a Transport and Works Act Order for EWR2 which includes an Environmental Impact Assessment to assess the likely environmental impacts and effects of EWR2. Assessments undertaken to support the Environmental statement have highlighted that EWR2 is likely to result in significant effects on local biodiversity which need to be avoided, mitigated or compensated in accordance with local and national planning policy.

8.5. The proposed development is required to provide established compensatory habitat for notable species, including great crested newts and reptiles, prior to construction works commencing on Phase 2 of the East West Rail Western Section. A key objective of the East West Rail Alliance is to achieve a Net Positive biodiversity target for the wider scheme. The proposed works at the application site would make a valuable contribution towards achieving this target.

8.6. Ecology

8.7. The application is accompanied by an Ecological Impact Assessment to determine the potential impacts of the proposed development on any ecological features within the site. An ecological walkover survey of areas within and adjacent to the application site, including land up to 50m from the site boundary where access was permitted, was undertaken on 16th February 2017 broadly following the Phase 1 habitat survey methodology. The Phase 1 habitat survey included a Preliminary Roost Assessment of trees (where access was allowed) within the survey area. No Phase 2 surveys were completed.

8.8. The site is not within a statutory or non-statutory designated site, although there is a Site of Special Scientific Interest (SSSI) located within 2 kilometres, this being Stratton Audley Quarries. NERC Act S41 Habitats are present to the north on the opposite side of the railway line and to the south on the opposite side of Station Road.

8.9. The NPPF – Conserving and Enhancing the Natural Environment, requires at paragraph 109, 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 overall decline in biodiversity, including establishing coherent ecological works that are more resilient to current and future pressures’.

8.10. Policy ESD10 of the adopted Cherwell Local Plan Part 1 seeks to protect and enhance biodiversity and the natural environment and sets out a number of objectives to ensure that this is achieved.

8.11. Section 40 of the Natural Environment and Communities Act 2006 (NERC 2006) states that ‘every public authority must in exercising its functions, have regard to the purpose of conserving (including restoring/enhancing) biodiversity and ‘local planning authorities must also have regard to the requirements of the EC Habitats Directive when determining an application where European Protected Species are affected, as prescribed in Regulation 9(5) of the Conservation Regulations 2010, which states that a ‘competent authority’ in exercising their functions, must have regard to the requirement of the Habitats Directive within the whole territory of the Member States to prohibit the deterioration or destruction of their breeding sites or resting places’.

8.12. Under Regulation 41 of the Conservation Regulations 2010 it is a criminal offence to damage or destroy a breeding site or resting place, but under Regulation 53 of the conservation Regulations 2010, licences from Natural England for certain purposes can be granted to allow otherwise unlawful activities to proceed when offences are likely to be committed.

8.13. The proposals include the transformation of an area of improved grassland into suitable habitat for notable species including great crested newts, reptiles, birds, invertebrates and bats. The proposals will include the provision of six ponds to provide suitable aquatic habitat for great crested newts. The creation of new terrestrial habitats include the creation of wildflower meadow, planting of new

hedgerows, trees and scrub habitat will be in addition to the construction of four hibernacula (refugia for hibernating amphibians). The new ponds will incorporate scalloped edges in order to increase the surface area for marginal planting with marginal shelves for planting of emergent species. Due to the heavy clay content of the soil it is unlikely that the ponds will need to be lined.

- 8.14. Another key aspect of the scheme is the creation and management of meadows comprising native species of grasses and wildflowers. The proposed wildflower meadow habitat creation will be of value to ground-nesting birds such as Skylark which are present within the locality. The hedgerow planting will support blackstreak butterfly and the incorporation of hybrid elm will support brown and white-letter streak butterflies.
- 8.15. Network Rails Biodiversity Impact Assessment Metric was used to calculate the biodiversity value of the site before and after the proposed development. This indicates that the proposed development would result in the gain of 18.2 area biodiversity units and 210 linear biodiversity units once all the habitats have matured. This has been assessed by the Council's Ecologist who is satisfied with the findings.
- 8.16. The application is accompanied by a 30 year Ecological Management Plan which sets out how the habitats will be maintained in optimal condition for the species. It would be periodically reviewed to ensure that the conservation status of the species, found within the site are maintained in a favourable condition.
- 8.17. The Council's Ecologist has assessed the submission, which also includes an Ecological Management Plan and Construction Environmental Management Plan (CEMP). It is agreed that CEMP generally includes appropriate mitigation measures to safeguard protected species and habitats on site during construction, however, they should also include the identification and protection of biodiversity protection zones in line with British Standards for Biodiversity 42020:2013. It is further advised that the CEMP should also be updated to include the details of the Precautionary Method of Working to avoid impacts on great crested newts, to be informed by the surveys which are ongoing this year. The applicant is aware of these requirements and a revised CEMP is awaited. A number of conditions are recommended and are included at the end of the report.
- 8.18. Consequently, having regard to the above, it is considered that Article 12(1) of the EC Habitats Directive has been duly considered in that the welfare of any protected species found to be present on the site will continue, and will be safeguarded. The proposal therefore accords with the NPPF and Policy ESD10 of the adopted Cherwell Local Plan Part 1 2011-2031.
- 8.19. Flood Risk
- 8.20. The application is accompanied by a Flood Risk Assessment (FRA). The FRA report includes a review of site information and the likely extent of any flood risk at the site; identification of whether there are any flooding or surface water management issues related to the development that might warrant further consideration; identification of scoping or other flood risks as required, such as groundwater flooding and determining whether further assessment is required.
- 8.21. The proposals will include the provisions of six ponds to provide suitable aquatic habitat for great crested newt. The ponds will all be below ground level with no positive outfall provided.

8.22. The NPPF sets out the Government's national policies in relation to flood risk. The Planning Practice Guidance also advises on flood risk. The Environment Agency mapping shows the majority of the site to be located within fluvial Flood Zone 1 (Low probability). A small section of the south eastern boundary of the site is identified as being located in Flood Zone 3 (high probability) and Flood Zone 2 (medium probability). The Environment Agency has assessed the submission and has no objections to the proposal. Although a small part of the site is within Flood Zone 2 and 3, the described works are deemed to have no impact on flood risk at the site or in the surrounding areas as they are all occurring within Flood Zone 1.

8.23. Heritage

8.24. A Heritage Appraisal has been undertaken to support the submission which establishes the nature, extent and significance of the historic environment resource within the site and its environs as well as identifying any potential impacts from the proposed development.

8.25. The site is located in an area where no formal archaeological investigation or recording has been undertaken and therefore the archaeological interest of the proposed site is unknown. This is confirmed by the submitted heritage assessment. The general area of the proposed works is located in an area of archaeological interest however, as identified by the submitted heritage assessment. The proposed site therefore has the potential to encounter previously unidentified archaeological deposits and a programme of archaeological investigation will need to be undertaken ahead of the construction of these ponds.

8.26. Section 12 of the NPPF sets out the planning guidance concerning archaeological remains and the historic environment. Paragraph 126 emphasises the need for local planning authorities to set out a clear strategy for the conservation and enjoyment of the historic environment, where heritage assets are recognised as an irreplaceable resource which should be preserved in a manner appropriate to their significance.

8.27. Due to the scale of the proposed pond, the OCC archaeologist is satisfied that this can be dealt with by a condition.

8.28. Access

8.29. Station Road is a rural connector road linking Launton Village to Twyford Village via Poundon. It is mostly narrow and winding in nature. The application submission indicates that the site shall be accessed by three existing access points, two of which are adjacent to each other and the third access located about 240m further north along Station Road.

8.30. The application has been assessed by OCC as highway authority who advises that it is not clear whether the two adjacent accesses shall be upgraded into a single access and in the interests of highway safety recommends that they are formed into a single improved access. It is further advised however that the required visibility splays to the left are unachievable due to the bend in the vicinity of the access. DMRB guidance shows that carriageway speeds of 60mph would require in excess of 200m. It is anticipated that the northern access which is marked for use by a mobile welfare unit shall not be utilised on completion of the proposed works. Similarly, OCC would require the access gates to be set back at least 15m from the carriageway edge to ensure sufficient room for the accommodation of a large size vehicle on access or exit.

8.31. In traffic generation terms, OCC consider the proposed development would have a negligible impact on traffic flow and congestion on the surrounding highway network

with a periodical officer car trip for monitoring and maintenance of the hibernaculum and ponds. However, they consider that during construction/development of the site, there would be a considerable generation of HGV movements involved in earthworks movement. The submitted planning design and access statement advises that the excavated material from creating the ponds would be used to create bunds and to re-profile the land around the ponds. It is unlikely therefore that there would be significant HGV movement to and from the site.

- 8.32. To counter the substandard visibility splays at the access during construction, temporary mitigations such as 'slow down – heavy vehicles turning ahead' signs on the approach to the site should be considered and should form part of the Construction Traffic Management Plan.
- 8.33. Having regard to the concerns raised by OCC, the applicant has responded with a note which sets out how the proposed mitigation works will be undertaken. This confirms that access to the site will be via the existing farmers field accesses and will not require the creation of new access points and that the numbers of vehicles accessing the site has been minimised with a cut/fill balance maintained to ensure that no bulk material is required to be transported to and from the site. The access to the site will also be controlled and advance warning signs erected. OCC have since confirmed that these comments successfully address the points raised.

9. PLANNING BALANCE AND CONCLUSION

- 9.1. Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004 require planning applications to be determined against the provisions of the development plan unless material considerations indicate otherwise. The NPPF supports the plan-led system and advises that planning applications which accord with an up-to-date development plan should be approved without delay.
- 9.2. The application proposes development that is considered to be in accordance with the development plan and the NPPF. The application proposal will have no adverse impacts in respect of the natural environment, highway safety, heritage and flood risk and will help to deliver biodiversity enhancement as required by local plan policies and Government advice within the NPPF. The proposal is therefore considered acceptable.

10. RECOMMENDATION

That permission is granted, subject to the following conditions

1. 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: Planning, Design and Access Statement dated March 2017; Construction Environmental management Plan – Advanced Environmental Mitigation Site, document number 133735-EWR-REP-EEN-000032 dated March 2017; Ecological Impact Assessment dated March 2017; Heritage Appraisal dated March 2017; Ecological Management Plan dated March 2017; Flood Risk Assessment dated March 2017 and drawing numbers: 133735-2A-EWR-OXD-

XX-DR-L-010002 Rev P01.01; 010006 Rev P01.01; 010009 Rev P01.01; 0100010 Rev P01.01; 0100011 Rev P01.01 and 010014 RevP01.01 and e-mail from James Oliver dated 4th May 2017.

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

3. Prior to commencement of the development hereby approved, a Construction Traffic Management Plan (CTMP) shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the approved construction Traffic management Plan shall be implemented and operated in accordance with the approved details

Reason: In the interests of highway safety and to comply with Government guidance within the National Planning Policy Framework.

4. Prior to the commencement of the development a professional archaeological organisation acceptable to the Local Planning Authority shall prepare an Archaeological Written Scheme of Investigation, relating to the application site area, which shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To safeguard the recording of archaeological matters within the site in accordance with the NPPF.

5. Following the approval of the Written Scheme of Investigation referred to in condition 4, and prior to the commencement of any development (other than in accordance with the written scheme of investigation), a staged programme of archaeological evaluation and mitigation shall be carried out by the commissioned archaeological organisation in accordance with the approved Written Scheme of Investigation. The programme of work shall include all processing, research and analysis necessary to produce an accessible and usable archive and a full report for publication which shall be submitted by the Local Planning authority.

Reason: To safeguard the identification, recording, analysis and archiving of heritage assets before they are lost and to advance understanding of the heritage assets in their wider context through publication and dissemination of the evidence in accordance with the NPPF.

6. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in accordance with BS4428:1989 Code of Practice for general landscape operations (excluding hard surfaces), or the most up to date and current British Standard, in the first planting seasons following the construction of the ponds. Any trees, planting or hedgerow 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 current/next planting season with others of similar size and species.

Reason: In the interests of the visual amenities of the area and to comply with Policy ESD13 of the adopted Cherwell Local Plan 2011-2031 and Government guidance within the national Planning Policy Framework.

7. Prior to the construction of the pond hereby approved, a landscape management plan, to include the timing of the implementation of the plan, establishment of the planting, management responsibilities, maintenance schedules and procedures for failed planting shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the landscape management plan shall be carried out in accordance with the approved details.

Reason: In the interests of the visual amenities of the area and to comply with Policy ESD13 of the adopted Cherwell Local Plan 2011-2031 and Government guidance within the National Planning Policy Framework.

8. Prior to the commencement of the development hereby approved, an Arboricultural Method Statement (AMS), undertaken in accordance with BS 5837:2012 and all subsequent amendments and revisions shall be submitted to and approved in writing by the Local Planning authority. Thereafter all works on site shall be carried out in accordance with the approved AMS.

Reason: To ensure the continued health of retained trees and hedgerows and to ensure that they are not adversely affected by the development and to comply with policy ESD13 of the adopted Cherwell Local Plan and Government guidance within the National Planning Policy Framework.

9. K19 Landscape and Ecological Management Plan

Reason: To protect habitats of importance to biodiversity conservation from any loss or damage in accordance with Policy ESD10 of the adopted Cherwell Local Plan 2011-2031 and Government guidance within the National Planning policy Framework

10. K21 Construction Environmental Management Plan

Reason: To protect habitats of importance to biodiversity conservation from any loss or damage in accordance with Policy ESD10 of the adopted Cherwell local plan 2011-2031 and Government guidance within the National Planning Policy Framework.

Planning Notes

PN6: Public Footpaths

PN22: Construction Sites

PN26: Nesting birds

Environment Agency Consultation Letter

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