

Applicant:	Network Rail		
Proposal:	Creation of two ponds, earthworks and hibernaculum, and the planting of new habitat.		
Ward:	Launton And Otmoor		
Councillors:	Cllr Tim Hallchurch Cllr Simon Holland Cllr David Hughes		
Reason for Referral:	Major Application		
Expiry Date:	21 June 2017	Committee Date:	15 June 2017
Recommendation:	Approve		

1. APPLICATION SITE AND LOCALITY

- 1.1. The application site is a triangular piece of land 2.18ha in size and is located approximately 0.3km north of Launton village which is separated from the site by the railway line. The site is currently under pasture and consists of a single field, enclosed by mature hedgerows with an existing railway line forming the southern boundary. The site is surrounded by further agricultural land. Overhead wires run across the middle of the site from north to south and a high pressure gas main runs through the south of the site. It is generally flat with no existing development or structures upon it. There is an existing ditch which runs along the eastern boundary. The site is approximately 400m south of Langford Brook, an identified main river. Cutters Brook is also located approximately 700m south east of the site which is also a main river.
- 1.2. There are no existing public rights of way across the site or adjacent to its boundary. Vehicular access to the site is gained via an existing track from Bicester Road, close to the roundabout to the south western corner of the site. The existing railway line to the southern boundary is to be upgraded as part of the East West 2 Railway scheme.

2. DESCRIPTION OF PROPOSED DEVELOPMENT

- 2.1. This application seeks consent for the creation of 2 ponds and associated earthworks including aquatic/marginal planting; the creation of 2 hibernaculum, the planting of 88m of new hedgerow, the planting of 0.02 hectares of scrub/thicket and marginal planting around the ponds. The works seek to transform an area of improved grassland into suitable habitat for notable species including great crested newts, reptiles, birds, invertebrates and bats.
- 2.2. The proposed ponds would be situated in the north eastern area of the site and would measure 290m² and 300m² respectively. The ponds will not exceed 1.5m in

depth. It is proposed to use the excavated material to create the bunds and to re-profile the land around the ponds. Marginal and aquatic planting is proposed at the pond edges.

3. RELEVANT PLANNING HISTORY

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

17/00018/SO	Screening Opinion to 17/00623/F - Creation of two ponds, earthworks and hibernaculum, and the planting of new habitat.	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. These ponds are on unproductive strata, as such there are no real groundwater concerns.

6.4. Natural England: No comments. Natural England has published standing advice which can be used to assess impact 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 wildlife. Although highlighted in the CEMP, any structural vegetation near new ponds and earthworks subject to contractor's works should be protected in accordance with BS5837:2012 Trees in relation to Design, Demolition and Construction – Recommendations. I support the development proposals, as long as Network rail adhere to a number of recommendations, including providing a management plan. The landscape layout design is acceptable.
- 6.8. BBOWT: No comments received
- 6.9. 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.
- 6.10. The EcIA is comprehensive and I can have confidence in the conclusions drawn. The application site comprises of tussocky improved grassland with localised inundation of ridge and furrow. The habitat is suitable for reptiles, however, a reptile survey has been scoped out. As the proposals would not result in any loss of existing reptile habitat, and include creation of ponds and hibernaculum, I would agree with this approach, however, suitable mitigation measures will be required during earthworks on site to safeguard reptiles, such as appropriate timing of works and ecological supervision of works. All reptiles are protected against killing and injury under Wildlife and Countryside Act 1981. A badger sett is present within 10m of the site and an updated pre-commencement survey would be required. The report details outline measures to safeguard protected species including GCN, reptiles, nesting birds, invertebrates and badgers. I would recommend that details of these are provided by condition through the submission of a Construction Environmental Management Plan (CEMP) prior to works commencing on site.
- 6.11. The proposed 30 year Ecological Management Plan is welcomed, which includes the creation of two new water bodies within the site and 88m of hedgerow planting for nesting birds and for UK BAP priority invertebrates such as black and brown hairstreak. The existing grassland will be retained and managed as existing tussocky grassland which is of value to wildlife. Details of the ongoing monitoring of the site and the reporting to the CDC ecologist and BBOWT is welcomed (section 6.1) and it is understood that Network Rail is entering into a legal management agreement to secure management of the site. I would recommend the plan is secured as part of any permission granted via a condition or Section 106 Agreement. This is to secure the long-term management of the site in line with the details submitted.
- 6.12. OCC Archaeology: No objection subject to conditions
- 6.13. OCC Transport: No objection

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 – The 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 national and local 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. The site comprises improved ridge and furrow grassland bounded by a strip of broadleaved woodland to the west along a disused track which extends north-west to join the access track. To the north is a tree line and farm ditch while to the south is a species rich hedgerow with standard trees and ditch, separating the application site from the railway line. Further ditches and strips of broadleaved woodland run adjacent to the western access track. Compensatory habitat will include two ponds to provide suitable aquatic habitat for great crested newt. Terrestrial habitats include the planting of new hedgerows, trees and scrub habitat in addition to the construction of two hibernacula which are refugia for hibernating amphibians.
- 8.8. An ecological walkover survey of the areas within and adjacent to the application site, including land up to 50m from the site boundary where access was allowed was undertaken on 7th February 2017 broadly following the Phase 1 habitat survey methodology. The walkover survey records information on the habitats within the survey area and was extended to include a search for evidence, presence, and an appraisal of the potential of each habitat to support notable and protected species as recommended by the Chartered Institute of Ecology and Environmental Management 2013.
- 8.9. 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. There are protected and notable species, these being Small Heath and Common Pipistrelle within 250m of the site.
- 8.10. 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’.
- 8.11. Policy EDS10 of the adopted Cherwell Local Plan Part 1 2011-2031 seeks to protect and enhance biodiversity and the natural environment and sets out a number of objectives to ensure that this is achieved.
- 8.12. 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’.
- 8.13. Under Regulation 41 of the Conservation Regulations 2010 it is a criminal offence to damage or destroy a breeding site or nesting 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.
- 8.14. The proposals include the transformation of an area of improved grassland to provide biodiversity enhancements to help compensate for effects of EWR2 on

biodiversity. The two new ponds will incorporate scalloped edges to increase the surface area for marginal vegetation and marginal shelves for the planting of emergent species. Due to the heavy clay nature of the soil it is not expected that the ponds will need to be lined. Once constructed and the ponds have filled with water, they will be planted up with a variety of native submerged, floating, emergent and marginal plants. The scheme will also incorporate planting of native trees, hedgerow and scrub which will include blackthorn and hybrid elm to support the black hairstreak and also the brown and white-letter hairstreak 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 0.8 area biodiversity units and 88 linear biodiversity units once all habitats have matured. This has been assessed by the Council's ecologist who is satisfied with the findings although the proposal has only resulted in a small net gain on this site.
- 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 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, including the Ecological Management Plan and Construction Environmental Management Plan (CEMP). It is agreed that the CEMP generally includes appropriate mitigation measures to safeguard protected species and habitats on site during construction, however, they should also include 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 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 at 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 the 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 and scoping of other flood risks as required, such as ground water flooding and determining whether further assessment is required.
- 8.21. The proposals will include the provision of two ponds to provide suitable aquatic habitat for great crested newts. The creation of the new terrestrial habitats include the planting of new hedgerows, trees and shrub habitat are in addition to the construction of hibernacula for hibernating reptiles. 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 site to be located entirely within Flood Zone 1 (Low probability).

The proposed development will not increase surface water runoff rates and there will be no impact or impedance to water flows or increase flood risk in the wider area. The Environment Agency has assessed the submission and has no objections to the proposal.

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 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 this proposed pond, the OCC archaeologist is satisfied that this can be dealt with by condition.

8.28. Access

8.29. The proposed development is intended to utilise an existing access off Bicester Road, approximately 55m south east of the A4421/Charbridge Lane/Bicester Road roundabout. Visibility splays at the access are considered to be sufficient with respect to the vernacular of the adjacent road network. By virtue of the proximity to the roundabout and the horizontal deflection in the carriageway, vehicle speeds are envisaged to be low.

8.30. The access gate is observed to be set back approximately 15.5m from the edge of the carriageway, a distance considered to be sufficient to accommodate a HGV whilst the gates are operated on access or egress.

8.31. The anticipated daily vehicle movements would be negligible on the highway network with a periodical officer car trip for monitoring and maintenance of the hibernaculum and ponds after construction. During the construction phase the Design and Access Statement assumes up to about 15 vehicle movements per day which is modest.

8.32. The proposed development is therefore not envisaged to have a significant detrimental impact on the safety and movement of the local highway network and is therefore in accordance with Government advice within the NPPF.

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 that 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 proposal will have no adverse impacts in respect of the natural environment, highway safety, heritage impact 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-000031 dated March 2017; Ecological Impact assessment dated March 2017; Ecological Management Plan dated March 2017; Heritage Appraisal dated March 2017; Flood Risk assessment dated March 2017 and drawing numbers: 133735-2A-EWR-OXD-XX-DR-L-010001 Rev P01.01; 010005 Rev P01.01; 010009 Rev P01.01; 010010 Rev P01.01; 010011 Rev P01.01 and 010012 Rev P01.01.

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. 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
4. 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.
5. 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.

6. 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.

7. 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.

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

8. approved details

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

9. 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.

10. 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.

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