

**Agricultural Land Approximately 1.3 KM NW Marsh
Gibbon
Bicester Road
Launton**

17/00654/F

Applicant: Network Rail

Proposal: Creation of five 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: 21 June 2017 **Committee Date:** 15 June 2017

Recommendation: Approve

1. APPLICATION SITE AND LOCALITY

- 1.1. The application site is 8.90ha in size and is located approximately 1.3km north west of Marsh Gibbon adjacent to Bicester Road close to the border between Oxfordshire and Buckinghamshire. It comprises two fields enclosed by mature hedgerows with an existing railway forming the northern boundary. Apart from the railway to the north, the site is surrounded by further agricultural land, a mixture of arable and pasture fields. A gas works is located northwest within 20m of the site boundary, Westbury Court Farm is located 200m to the east of the site.
- 1.2. There is a small drainage ditch/ordinary watercourse adjacent to the site on the eastern boundary. The ditch is a tributary to the cutters Brook, a main river, which is approximately 1km south of the site. The site has a gentle slope with the northeast parts slightly elevated above the south west boundary.
- 1.3. There are no existing Public Rights of Way through the site or adjacent to it. Existing access to the site is obtained from Bicester Road at the southern corner. The existing railway line to the northern boundary is to be upgraded as part of East West 2 Railway Scheme.

2. DESCRIPTION OF PROPOSED DEVELOPMENT

- 2.1. This application seeks consent for the creation of 5 ponds and associated earthworks in 2 groups, the creation of 4 hibernaculum, planting of 95 metres of hedgerow, planting of 0.41ha of scrub/thicket, 5.6ha of soil inversion, weeding and seeding 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 positioned within the southern corner of the site. The proposed surface area of the ponds would measure 300m², 390m² and 380m². The ponds will not exceed 1.5m in depth and the 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.

3. RELEVANT PLANNING HISTORY

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

17/00020/SO	Screening Opinion to 17/00654/F - Creation of five 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 five ponds, earthworks and hibernaculum as well as the new habitat planned. Who would be responsible for the care of this area.

STATUTORY CONSULTEES

- 6.3. Environment Agency: No comments received
- 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. 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.

6.6. BBOWT: No comments received

6.7. Ecologist: It is not possible to assess whether the proposed protected species mitigation measures are sufficient to mitigate for the impacts of 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 my 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 species through the 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.

6.8. The EclA is comprehensive and I welcome the proposals to enhance the existing arable habitat into suitable habitat for species including GCN, reptiles, birds, invertebrates (including the black hairstreak) and bats. The report identifies the presence of a metapopulation of great crested newts in the area of the site through surveys of the entire rail route and it is assumed GCN are present. GCN are known to be present in one pond on the eastern boundary of the site. However, GCN appear to have been scoped out of the ecological zone of influence. As GCN are present on site, this information doesn't appear to be right and should be clarified in the report.

6.9. General mitigation measures have been outlined in section 4.2 for works to avoid impact on protected species including GCN, reptiles and nesting birds, and to protect the existing mature trees (a number of which have roosting bat potential) and hedgerows during construction works. A condition requiring the submission of a CEMP is recommended to detail these measures.

6.10. The reference to Aylesbury Vale District Council should be amended to CDC ecologist.

6.11. The 30 year Ecological Management Plan is welcomed, which includes extensive habitat management and creation including creation of species-rich wildflower meadow grassland, 5 new waterbodies within the site and planting for BAP priority species such as black, brown and white-letter hairstreak. Are the existing ponds also to be enhanced? The existing ditch is described as very turbid and heavily shaded, can this also be enhanced. The monitoring and reporting on the management plan is welcomed but the CDC ecologist should be added to this and should be secured by condition or Section 106 Agreement.

6.12. OCC Archaeology: No objection subject to conditions

6.13. OCC Transport: No objection subject to conditions

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 the 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. Compensatory habitat will include five ponds to provide suitable aquatic habitat for great crested newt. Terrestrial habitats include the creation of wildflower meadow, hedgerows, trees and scrub habitat and the construction of four hibernacula to provide refugia for hibernating amphibians and reptiles. The application site comprises arable fields which are also surrounded by primarily arable land and boundary ditches. The immediate boundaries of the site comprise strips of broad leaved woodland to the north and east, and species poor intact hedgerow to the west. A species poor hedgerow and area of broad leaved woodland also intersect the two arable fields.
- 8.8. An ecological walkover survey of areas within and adjacent to the site, where access was allowed was undertaken on 31 January 2017 broadly following a 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 of 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 or adjacent to a statutory or non-statutory designated 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 ESD10 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, 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 primary purpose of this scheme is to provide some compensation for the significant effects of EWR2 on biodiversity. These enhancements have particular emphasis on maintaining favourable conservation status for great crested newts but also include enhancements for species such as black hairstreak, reptiles and birds such as Skylark. This will be achieved through the creation of areas of terrestrial and aquatic habitat. The five new ponds will incorporate scalloped edges in order to increase the surface area for marginal vegetation and shelves for the planting of

emergent species. Due to the heavy clay nature of the soil it is not expected that the pond 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. Another key aspect of this scheme is the creation and management of meadows comprising native species of grasses and wild flowers. The scheme design also incorporates planting of native hedgerows, trees and scrub to support the black hairstreak, brown hairstreak and white-letter butterflies.

- 8.15. Network Rail's 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 a net gain of 21.5 area biodiversity units and 95 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 also accompanied by a 30 year Ecological management Plan which sets out how the habitats will be maintained in optimal condition for the species. It will 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, but requires further detail. This can be dealt with by condition of the planning permission.
- 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. Furthermore the proposed scheme will result in significant biodiversity gain across this site. 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 may warrant further consideration, identification and scoping of other flood risks as required, such as ground water flooding and determining whether a further assessment would be necessary.
- 8.21. The proposals will include the provision of five ponds to provide suitable aquatic habitat for great crested newt. The creation of new terrestrial habitats including the creation of wildflower meadow, planting of new hedgerows, trees and scrub habitat will be in addition to the construction of four hibernacula. 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).
- 8.23. The proposed development will not increase surface water run-off rates and there will be no impact or impedance of surface water flows or increased flood risk to the wider area. The proposal is therefore considered acceptable in terms of flood risk.
- 8.24. Heritage

- 8.25. 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.
- 8.26. The site is located in an area where no formal archaeological investigation or recording has been undertaken and therefore the archaeological interest of the site is unknown. This is confirmed by a heritage assessment submitted with this application. 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.
- 8.27. 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 for their significance.
- 8.28. Due to the scale of the proposed ponds, the OCC archaeologist is satisfied that this can be dealt with by condition.
- 8.29. Access
- 8.30. The site is served by an existing access to the south from Bicester Road for which the visibility splay to the right is substandard due to the bend in the carriageway. The Design and Access Statement identifies the expected vehicle movements as modest and also proposes to locate the access gate a few metres 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, 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. During construction however, OCC as highway authority recommend that a series of warning signs are erected on the approaches to the site. The details of these should be included within a Construction traffic management Plan which will need to be agreed prior to the commencement of any development on the site.
- 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 gain within the site 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 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-010003 Rev P01.01; 010007 Rev P01.01; 010009 Rev P01.01; 010010 Rev P01.01; 010011 Rev P01.01 and 010015 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. 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.