

**Case Officer:** Linda Griffiths

**Applicant:** Network Rail Infrastructure Ltd

**Proposal:** Use of land as a construction compound incorporating storage area, site offices and car parking

**Ward:** Launton and Otmoor

**Councillors:** Timothy Hallchurch, Simon Holland, David Hughes

**Reason for Referral:** Major development

**Expiry Date:** 23 September 2019

**Committee Date:** 19<sup>th</sup> September 2019

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## **EXECUTIVE SUMMARY OF PROPOSALS AND RECOMMENDATION**

### **RECOMMENDATION: GRANT PERMISSION SUBJECT TO CONDITIONS**

#### **Proposal**

The application seeks temporary planning permission for the creation of a construction compound that comprises a 3 storey site accommodation block, boundary fencing, gatehouse and barrier, lighting, storage area, water treatment tank, internal access roads and tree protection fencing to be used during the construction of the works to the adjacent railway line under East West Rail 2. Site access will be from Bicester Road, via the A4421. A new access will be created onto the highway and an existing farm access at this location will be formalised and retained as an emergency access point. The compound will be served from the minor arm of the new signal-controlled junction onto Bicester Road, to the southeast of the A4421/Charbridge Lane.

#### **Consultations**

The following consultees have raised **objections** to the application:

- Launton Parish Council

The following consultees have raised **no objections** to the application:

- Environment Agency, CDC Environmental Protection, CDC Landscape Officer, OCC Transport, OCC Lead Flood Authority (originally objected but this objection has since been removed).

1 letter of objection has been received.

#### **Planning Policy and Constraints**

The application site is not located within any statutory or non-statutory land designations. It is however, located within 2km of Stratton Audley SSSI. Bicester Airfield and Gavray Drive Local Wildlife Sites are within 1km of the site. The site constraints have identified a number of Protected and Notable Species are present within a 250m buffer of the site. The site lies within Flood Zone 1 but a watercourse lies approximately 80m from the north-western boundary of the site. The site is potentially contaminated.

The application has also been assessed against the relevant policies in the NPPF, the adopted Local Plan and other relevant guidance as listed in detail at Section 8 of the report.

## **Conclusion**

The key issues arising from the application details are:

- Principle of development
- Layout
- Transport impact and highway safety
- Drainage
- Archaeology
- Landscape and visual impact
- Ecology and net biodiversity gain

The report looks into the key planning issues in detail, and Officers conclude that the proposal is acceptable subject to conditions.

**Members are advised that the above is a summary of the proposals and key issues contained in the main report below which provides full details of all consultation responses, planning policies, the Officer's assessment and recommendations, and Members are advised that this summary should be read in conjunction with the detailed report.**

## **MAIN REPORT**

### **1. APPLICATION SITE AND LOCALITY**

1.1. The application site extends to 4.1ha in size and comprises agricultural land bound by hedgerow. There are three mature trees within the site and it is currently accessed from the public highway by a gated field entrance to the west of the site from Bicester Road or from the Charbridge Lane/Bicester Road roundabout. The land to the east of the site is predominantly arable and pasture land crossed by a network of hedgerows and mature scattered trees and boundary ditches. To the south of the site along Bicester Road lies the village of Launton. There are no public rights of way within the site although a public right of way passes on land to the north. The southern part of the site is bounded by the railway line.

### **2. CONSTRAINTS**

2.1. The application site is not located within any statutory or non-statutory land designations. It is however located within 2km of Stratton Audley Quarry SSSI. Bicester Airfield and Gavray Drive Local Wildlife Sites are within 1km of the site. The site constraints have identified a number of Protected and Notable Species are present within a 250m buffer of the site. The site lies within flood Zone 1 but a watercourse lies approximately 80m from the north-western boundary of the site. The site is potentially contaminated.

### **3. DESCRIPTION OF PROPOSED DEVELOPMENT**

3.1. The application seeks temporary planning permission for the creation of a construction compound that comprises a 3 storey site accommodation block provided within a modular building, boundary fencing, gatehouse and barrier, lighting, storage area, water treatment tank, internal access roads and tree protection fencing to be used during the construction of the works to the adjacent railway line under East West Rail 2. Site access will be from Bicester Road, via the A4421. A new access will be created onto the highway and an existing farm access

at this location which will be formalised and retained as an emergency access point. The compound will be served from the minor arm of a new junction onto Bicester Road, to the southeast of the A4421/Charbridge Lane.

#### **4. RELEVANT PLANNING HISTORY**

- 4.1. There is no planning history directly on this application site and relevant to the proposal. However, on the adjacent site directly to the north-west, an appeal against non-determination has been lodged in respect of an application for the erection of an electricity generator. The appeal decision is awaited (19/00163/F) refers.

#### **5. PRE-APPLICATION DISCUSSIONS**

- 5.1. No pre-application discussions have taken place with regard to this proposal.

#### **6. RESPONSE TO PUBLICITY**

- 6.1. 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 **23<sup>rd</sup> June 2019**, although comments received after this date and before finalising this report have also been taken into account.

- 6.2. The comments raised by third parties are summarised as follows:

- Great care will be required to ensure these new lights work in unison with the existing
- A growing number of vehicles are shooting the lights, this situation could be exasperated. To discourage this and maintain road safety, would be advisable to install cameras

- 6.3. The comments received can be viewed in full on the Council's website, via the online Planning Register.

#### **7. RESPONSE TO CONSULTATION**

- 7.1. 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

- 7.2. LAUNTON PARISH COUNCIL: **object** because of the access and traffic light arrangements proposed for the Bicester Road. Appears that the access is being moved much closer to the railway bridge which is already controlled by lights. Two sets of lights so close together would be unworkable, cause great disruption to village traffic and be dangerous.

- 7.3. BICESTER TOWN COUNCIL: Welcome the application

##### CONSULTEES

- 7.4. OCC HIGHWAYS: **No objection** subject to conditions. It should be noted that the signalised form of junction is not approved but the position of the junction is

acceptable – details are requested by condition. The comments can be read in full on the online Planning Register (on the Council's website) and are discussed in more detail in the appraisal below.

- 7.5. OCC DRAINAGE: Objected to the original submission – on the basis that insufficient evidence had been provided to enable a full technical review of the drainage proposals. Additional information has since been submitted and further comments have been received which confirm that **the objection has now been removed** and a condition is recommended.
- 7.6. OCC ARCHAEOLOGY: **No Objection** subject to conditions.
- 7.7. THAMES WATER: **No comment**, not clear what sqm of office space is being erected.
- 7.8. ENVIRONMENT AGENCY: **No objection**
- 7.9. ENVIRONMENTAL PROTECTION: **No comments** in respect of noise, contaminated land, air quality, odour or light.
- 7.10. NATURAL ENGLAND: **No comments**
- 7.11. ARBORICULTURAL OFFICER: **No objection**. Layout plan shows only a small group of trees removed from the site access with the remaining trees retained and protected. As the area around the retained trees is to be used as storage there should be an exclusion zone around. These trees appear worthy of a TPO. Conditions relating to exclusion zone and tree protection recommended.
- 7.12. LANDSCAPE OFFICER: **No objection**. Agrees with findings of landscape and visual impact section of planning statement. Therefore essential to retain and protect hedges at mature height and trees to ensure it is successfully mitigated.
- 7.13. BICESTER DELIVERY TEAM: **Comments** that it is not clear from the plans where the 3 storey offices will be located. Visual impact and utilitarian appearance will be contrary to Policies ESD13 and ESD15 of the Cherwell Local Plan. Considerable amount of storage, height of which is unspecified. Air pollution and dust will need to be addressed by Environmental Health. Little regard appears to have been made regarding sustainable travel to and from the site, including footpath provision and how they will connect more widely. Ecology comments important in terms of ensuring adequate mitigation. Need to ensure that the proposed development of the site or access to it does not result in an unacceptable impact on the local area and community.
- 7.14. ECOLOGY OFFICER: Comments awaited
- 7.15. BBOWT: **No comments** received

## **8. RELEVANT PLANNING POLICY AND GUIDANCE**

- 8.1. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 8.2. 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
- ESD7 – Sustainable drainage systems
- ESD8 – Water resources
- ESD10 – Protection and enhancement of biodiversity and the natural environment
- ESD13 – Local landscape protection and enhancement
- SLE4 – Improved transport and connections

#### CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- C28 – Layout, design and external appearance of new development
- TR7 – Development attracting traffic on minor roads
- TR10 – Heavy goods vehicles
- C5 – Protection of ecological value and rural character

### 8.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- National Policy Statement for National Networks (2014)
- National Infrastructure Delivery Plan (2016)
- EU Habitats Directive
- Natural Environment and Rural Communities Act 2006
- Conservation of Habitats and Species Regulations 2017
- Circular 06/2005 (Biodiversity and Geological Conservation)
- Human Rights Act 1998 (“HRA”)
- Equalities Act 2010 (“EA”)

### 8.4. Council Corporate Priorities

Cherwell District Council's Business Plan for 2019-20 sets out the Council's three strategic priorities which form our overarching business strategy. Below these are the key actions for the year 2019–20. This is a strategy which looks to the future taking into account the priorities and aspirations of the communities who live and work in the district.

The three corporate priorities are to ensure the District is “Clean, Green and Safe”, that it supports “Thriving Communities & Wellbeing”, and is a District of “Opportunity & Growth”. All three priorities are of significance to the determination of planning applications and appeals. Below these priorities, the key actions which are of most relevance to planning applications and appeals are: (1) deliver the Local Plan; (2) increase tourism and increase employment at strategic sites; (3) develop our town centres; (4) protect our built heritage; (5) protect our natural environment; (6) promote environmental sustainability; (7) promote healthy place shaping; (8) deliver the Growth Deal; (9) delivery innovative and effective housing schemes; and (10) deliver affordable housing.

The remaining key actions may also be of significance to the determination of planning applications and appeals depending on the issues raised.

The above corporate priorities are considered to be fully compliant with the policy and guidance contained within the National Planning Policy Framework and National Planning Practice Guidance.

## **9. APPRAISAL**

9.1. The key issues for consideration in this case are:

- Principle of development
- Layout
- Transport impact and highway safety
- Drainage
- Archaeology
- Landscape and visual impact
- Ecology and net biodiversity gain

### Principle of Development

- 9.2. The Development Plan for Cherwell comprises the adopted Cherwell Local Plan Part 1 2011-2031 and saved policies in the adopted Cherwell Local Plan 1996. Section 70 (2) of the Town and Country Planning Act 1990 provides that in dealing with applications for planning permission, the local planning authority shall have regard to the provisions of the development plan so far as is material to the application, and to any material considerations. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that regard is to be had to the development plan for the purposes of any determination to be made in accordance with the development plan unless material considerations indicate otherwise. This is also reflected in the National Planning Policy Framework (NPPF) at paragraph 12 which makes it clear that the starting point for decision making is the development plan.
- 9.3. On 27<sup>th</sup> July 2019 a Transport and Works Act Order (TWAO) application was made for the construction, operation and maintenance of an up-graded, and reinstated rail link between Bicester-Bletchley-Bedford and Aylesbury-Claydon junction in addition to new railway infrastructure including new overbridges, footbridges, a new station and platforms. The East-West Rail alliance proposes to set up a number of the strategic and satellite temporary construction compounds in advance of the TWAO being made which are necessary due to the tight project timetable. This is one such compound. Once construction works have been completed, the land will be reinstated and revert to its former use and condition as agricultural land.
- 9.4. The application seeks permission for the construction of a main compound off Bicester Road, north west of the village of Launton for the construction of East West Rail Phase 2. A satellite compound was granted consent earlier this year for a smaller satellite compound along Station Road just outside the village of Launton (18/02122/F) refers. This application only covers the construction of the compound and its use for preliminary activities in advance of the Transport and Works Act Order, and should the Order be granted, it will then be used to facilitate the main works. The compound will be constructed between September 2019 and December 2019 and is expected to be removed in advance of the first services on the line being introduced (currently anticipated in 2023).
- 9.5. Although EWR2 is not classified as a nationally significant infrastructure project, the nature and scale of the project is closely allied to such projects, and East West Rail will help to meet the country's needs and support the Government's ambitions in this regard. Therefore, the principle of development is acceptable in this case.

## Layout

- 9.6. The application submission indicates the erection of a three storey office and welfare station within 14 modular units, car and cycle parking provision for staff and operatives, boundary fencing measuring 2.4m in height in the form of palisade fencing to ensure the site is secure, gatehouse and access barrier, storage area, water treatment tank, wheel-wash, fuel filling station and lighting.
- 9.7. The office/welfare block will be positioned adjacent to the access road into the compound and will be screened to a degree by existing vegetation. An exclusion zone is proposed along the eastern boundary of the site to protect the existing hedgerow. Material and topsoil storage are proposed in a significant area adjacent to the existing railway track. Access to the track for construction works and vehicles will be provided at the south eastern end of the compound. A lighting condition will be necessary as no lighting details have been included. It is important that the design of the lighting together with its timing of use is such that the impact on habitats is kept to a minimum and the amenities of the locality are not compromised by unnecessary lighting during non-working hours.
- 9.8. All in all, the layout is considered logical and appropriate, and is acceptable.

## Transport Impact and Highway Safety

- 9.9. A Transport Statement has been submitted with the application. There are two types of compound proposed for the construction project; strategic and satellite. This compound (A1), is a strategic compound which will act as a base, store and site office for the advance works, including materials import and storage of topsoil and construction materials, vegetation clearance along the railway, repair work to culverts and environmental mitigation works where required.
- 9.10. The original application proposed that the compound would be accessed from the minor arm of a new signal-controlled junction onto Bicester Road to the southeast of Charbridge Lane. Temporary traffic signals and a recessed gate were proposed due to the expected volumes of traffic, to allow safe and unimpeded access and egress to and from the site. It is expected that HGVs will access the site from either A4421 Skimmingdish Lane or A4421 Charbridge Lane using Construction Access Routes. It is not proposed to provide any passing places for vehicles using Construction Access Routes.
- 9.11. The concerns of Launton Parish Council are noted. The submission has been assessed by OCC as Local Highway Authority, who initially sought clarification on a number of points, to avoid an objection. One of these points related to the assumptions that fed into a safety audit where the issue of speeds was raised. OCC needed to understand the vehicle speeds to ensure that sufficient forward visibility can be provided to the signal heads, and requested that vehicle speeds are established through a survey and forward visibility marked on a plan.
- 9.12. A meeting on site between OCC highway officers and the applicants on 24<sup>th</sup> July 2019 resulted in the following outcomes:
  - OCC officers confirmed that they were unwilling to recommend sign off of the works because of concerns about inadequate forward visibility to signal heads and the proposed mitigation of low skid surfacing not being sufficient.

- OCC officers suggested that a priority junction in the position of the current access should be investigated as an alternative which might on balance be safer than the signal option although Atkins (the agent) remain of the opinion that the signalised option would be safer.
- Atkins confirmed that the proposed access position fits better with the proposed layout of the compound – the current access point would be less suitable.
- Atkins confirmed that it was not possible to take access off the roundabout as originally proposed, or an alternative position, as prior to the Transport and Works Act Order (TWAO) coming into force, the project cannot acquire the land needed to enable this.
- Atkins confirmed that the current access position had been considered and discounted and would provide further information that led to that conclusion.
- OCC re-confirmed that speed surveys would be required and suggested that this be carried out for both the current and proposed access position. It was generally felt that speeds were below the posted limit.
- Atkins advised that they would find it difficult to procure speed surveys, so OCC agreed to look at carrying them out for a fee.
- OCC agreed that upon receipt of the above, that the information would be reviewed urgently upon receipt.

9.13. Since the application was submitted, there has been a lengthy exchange of e-mails with the applicant and following the site meeting above, speed surveys have been carried out. It was considered that the proposed signalised junction could not be accommodated safely due to inadequate forward visibility to the signal heads and OCC advised therefore that this could not be accepted. However, on the basis of speed surveys and visibility splays reported in an e-mail from the agent of 22 August 2019 it was established that a priority junction at the proposed location could be accommodated subject to the clearance of adequate visibility splays, which are shown to be within the highway boundary. A Sec 278 Agreement with OCC will be required to create the access and details of the priority junction is required by condition.

9.14. The site offers good potential for staff and operatives to travel to work sustainably, being located close to a good network of footways and cycleways, and within reasonable walking distance of bus stops. There is a footway on Bicester Road, on the opposite side from which the site is accessed. A revised plan has been provided showing an improvement to the crossing point at the roundabout splitter island, and a new section of footway on the eastern side of Bicester Road, leading into the proposed emergency access. This would provide adequate, safe pedestrian access, but the drawing will need to be updated as it includes details of the proposed traffic signals which are not acceptable as detailed above. The details will be required by condition.

9.15. The works to construct the access will require temporary traffic management and will be disruptive to the local highway network. It is recommended that any conditions that restrict working hours do not apply to the highway works, in order that they may be completed at weekends if necessary, to reduce the period of disruption.



- 9.16. During the construction of the compound, an access route will be created through the site onto the railway track, which will then provide an onward haul route to the Launton satellite compound which was granted consent in March 2018 (18/02122/F) refers. The Transport Assessment states that all loading will be from within the site only, and there appears to be a route for HGV's within the site.

#### *Traffic Impact*

- 9.17. The number of vehicles generated by the site during the compound set up and preliminary works is predicted to total 12 and 13 vehicles respectively in the am peak, and 23 and 19 respectively in the pm peak. Of these, there would be 4 HGV's in the peak hours for compound set up and 2 for preliminary works. It is assumed that the number of staff trips is low in the peaks due to the early start working hours of the site. This is not considered to have a significant detrimental impact on the operation of the local highway network. The Transport Statement submitted includes capacity modelling of the adjacent roundabout, showing it operating within capacity even with the main works traffic flows.
- 9.18. A Construction Traffic Management Plan has been submitted with the application, covering the compound set up and preliminary works phase. Although a more detailed CTMP will be prepared for the main project as required by the Transport and Works Order, this CTMP is deficient and a revised CTMP for this specific proposal will therefore be required to be submitted and agreed by condition.

#### *Conclusion*

- 9.19. Whilst the proposed access arrangements are not ideal and do present challenges, Officers are satisfied that all options have been exhausted by Network Rail and OCC as Local Highways Authority. The proposal is necessary to enable the delivery of a key infrastructure project, and it is significant that OCC Highways have confirmed no objections subject to final details of the proposed access and visibility splays. Having regard to the above comments, the temporary nature of the proposed development, and the submission of revised plans relating to the vehicular access, the proposal is considered acceptable in highway safety terms and therefore in accordance with the advice within the NPPF.

#### Drainage

- 9.20. In line with Government guidance and policy, surface water management in respect of any new development should be considered at the outset and wherever possible, runoff should be managed at source with residual flows then conveyed downstream to further storage or treatment components where required. It is therefore expected that existing drainage features on the site should be retained and they should be retained, utilised and enhanced wherever possible.
- 9.21. The site is within Flood Zone 1. A Flood Risk assessment has been submitted with the application to identify potential sources of flooding to the site. The Langford Brook flows south west of the site, approximately 85m from the northern boundary of the Compound. The FRA has been assessed by OCC as Lead Flood Authority. This submission was considered to be insufficient to provide a full technical review of the drainage proposal.
- 9.22. In response a further drainage strategy dated July 2019 has been submitted to address the concerns raised. This has now been assessed by OCC as Lead Flood Authority and found to be acceptable subject to the imposition of a number of conditions.

## Archaeology

- 9.23. The site is located in an area of archaeological interest immediately north of an area of probable Iron Age and Roman settlement identified during road construction. A ditch and posthole were recorded along with Iron Age and Roman pottery. Further Iron Age and Roman sites have been recorded in the area including a settlement site 600m to the south. Bronze Age barrows have been recorded as cropmarks on aerial photographs within the area and a number of later prehistoric enclosures have also been recorded. It is therefore possible that this development will encounter further aspects of these sites. However, the County Archaeologist has advised that this potential impact of the development can be managed by conditions.
- 9.24. Having regard to the above, planning conditions are recommended.

## Landscape and Visual Impact

- 9.25. Policy ESD13 of the adopted Cherwell Local Plan 2011-2031 relates to local landscape protection and enhancement and therefore seeks to conserve and enhance the distinctive and highly valued local character of the entire district. Policy ESD15 of the adopted Cherwell local Plan 2011-2031 states that new development proposals amongst other things should: *'contribute positively to an area's character and identity by creating or reinforcing local distinctiveness and respecting local topography and landscape features, including skylines, valley floors, significant trees, historic boundaries, landmark features or views, in particular within designated landscapes within Cherwell valley and within conservation areas and their setting; conserve, sustain and enhance designated and non-designated heritage assets (as defined by the NPPF), including buildings, features, archaeology, conservation areas and their settings, and ensure new development is sensitively designed and integrated in accordance with advice in the NPPF and NPPG'*.
- 9.26. This is a greenfield site which is agricultural in use located within open countryside, albeit the village of Launton lies nearby to the south and Bicester to the west. Whilst the site is reasonably screened by existing vegetation, the proposed development due to its nature and scale of the office block, will be visible, from both the wider countryside and Bicester Road. Due to the semi-rural nature of the site, it is accepted that there would be adverse impact on the immediate locality during construction works and the use of the compound; this however would only be for a temporary period during the construction of the EWR2 Project and therefore is not considered unacceptable.
- 9.27. An Arboricultural Impact Assessment has been submitted with the application and has been assessed by the Arboricultural Officer. It assesses the impact of the construction compound on the existing tree stock, to determine the current extent of tree removals required to facilitate its construction and operation. The tree survey includes trees both within and adjacent to the compound planning application boundary.
- 9.28. The recorded tree stock form part of the existing railway corridor vegetation and as part of linear groups of trees and shrubs growing along field boundaries. The hedgerows are primarily thorn species and have received periodic management by flailing operations, which has damaged some branches on the standard trees, but not significantly at present. The trees recorded are primarily common oak and ash. The proposed area for the compound is a broadly triangular shaped field that is

bound by vegetation on all its boundaries. Individual standard oak trees are growing within the field and on its boundaries and are of high landscape amenity value and Arboricultural significance given their relatively advanced ages. The layout of the compound has been adapted to ensure retention of these trees which have been assessed by the council's Arboricultural Officer who considers them to be worthy of a Tree Preservation Order and suggests a condition requiring a larger area than indicated around the trees to ensure they are appropriately protected. A TPO has been made in respect of the trees, but its confirmation is still awaited at the time of writing the report.

- 9.29. The creation of the proposed site access from the Bicester Road will involve the removal of a small stretch of hedgerow. Access to the railway from the compound will be via the south-west corner where a new access will be created by the removal of a stretch of scrub.
- 9.30. Whilst the development will have a significant impact on the locality, the application only seeks consent for a temporary period, which following the construction and completion of the EWR2 Project (currently anticipated for 2023) will be removed and the land re-instated. Therefore provided the existing vegetation, hedges and trees are adequately protected during the period that the compound is in use, the long-term impacts will not be unacceptable. Accordingly, it is considered that the application accords with Policies ESD13 and ESD15 of the Cherwell local Plan and Government advice within the NPPF and is therefore acceptable in this respect.

#### Ecology Impact and Net Biodiversity Gain

##### *Legislative context*

- 9.31. The Conservation of Habitats and Species Regulations 2017 consolidate the Conservation of Habitats and Species Regulations 2010 with subsequent amendments. The Regulations transpose European Council Directive 92/43/EEC, on the conservation of natural habitats and of wild fauna and flora (EC Habitats Directive), into national law. They also transpose elements of the EU Wild Birds Directive in England and Wales. The Regulations provide for the designation and protection of 'European sites', the protection of 'European protected species', and the adaptation of planning and other controls for the protection of European Sites.
- 9.32. Under the Regulations, competent authorities i.e. any Minister, government department, public body, or person holding public office, have a general duty, in the exercise of any of their functions, to have regard to the EC Habitats Directive and Wild Birds Directive.
- 9.33. The Regulations provide for the control of potentially damaging operations, whereby consent from the country agency may only be granted once it has been shown through appropriate assessment that the proposed operation will not adversely affect the integrity of the site. In instances where damage could occur, the appropriate Minister may, if necessary, make special nature conservation orders, prohibiting any person from carrying out the operation. However, an operation may proceed where it is or forms part of a plan or project with no alternative solutions, which must be carried out for reasons of overriding public interest.
- 9.34. The Regulations make it an offence (subject to exceptions) to deliberately capture, kill, disturb, or trade in the animals listed in Schedule 2, or pick, collect, cut, uproot, destroy, or trade in the plants listed in Schedule 4. However, these actions can be made lawful through the granting of licenses by the appropriate authorities by meeting the requirements of the 3 strict legal derogation tests:

- (1) Is the development needed to preserve public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment?
- (2) That there is no satisfactory alternative.
- (3) That the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.

9.35. The Regulations require competent authorities to consider or review planning permission, applied for or granted, affecting a European site, and, subject to certain exceptions, restrict or revoke permission where the integrity of the site would be adversely affected. Equivalent consideration and review provisions are made with respects to highways and roads, electricity, pipe-lines, transport and works, and environmental controls (including discharge consents under water pollution legislation).

#### *Policy Context*

9.36. Paragraph 170 of the NPPF states that Planning policies and decisions should contribute to and enhance the natural and local environment by (amongst others): a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils; and d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.

9.37. Paragraph 175 states that when determining planning applications, local planning authorities should apply the following principles: a) if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused; d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.

9.38. Paragraph 180 of the NPPF states that planning decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should (amongst others) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.

9.39. Policy ESD10 of the Cherwell Local Plan 2011-2031 lists measures to ensure the protection and enhancement of biodiversity and the natural environment, including a requirement for relevant habitat and species surveys and associated reports to accompany planning applications which may affect a site, habitat or species of known ecological value.

9.40. Policy ESD11 is concerned with Conservation Target Areas (CTAs), and requires all development proposals within or adjacent CTAs to be accompanied by a biodiversity survey and a report identifying constraints and opportunities for biodiversity enhancement.

- 9.41. These polices are both supported by national policy in the NPPF and also, under Regulation 43 of Conservation of Habitats & Species Regulations 2017, it is a criminal offence to damage or destroy a breeding site or resting place, unless a licence is in place.
- 9.42. The Planning Practice Guidance dated 2014 post dates the previous Government Circular on Biodiversity and Geological Conservation (ODPM Circular 06/2005), although this remains extant. The PPG states that Local Planning Authorities should only require ecological surveys where clearly justified, for example if there is a reasonable likelihood of a protected species being present and affected by development. Assessments should be proportionate to the nature and scale of development proposed and the likely impact on biodiversity.

#### *Assessment*

- 9.43. Natural England's Standing Advice states that an LPA only needs to ask an applicant to carry out a survey if it's likely that protected species are:

- present on or near the proposed site, such as protected bats at a proposed barn conversion affected by the development

It also states that LPA's can also ask for:

- a scoping survey to be carried out (often called an 'extended phase 1 survey'), which is useful for assessing whether a species-specific survey is needed, in cases where it's not clear which species is present, if at all
- an extra survey to be done, as a condition of the planning permission for outline plans or multi-phased developments, to make sure protected species aren't affected at each stage (this is known as a 'condition survey')

- 9.44. The Standing Advice sets out habitats that may have the potential for protected species, and in this regard the site is existing pasture land and contains no buildings or structures. Within the field and around the field boundaries are a number of scattered trees. The eastern and western boundaries of the site are species-rich hedgerows, including trees with scattered scrub bordering to the south. The northern boundary of the site is pasture field, with the site occupying only part of the field. Beyond the boundary to the west is Bicester Road and allotments; to the east agricultural fields; to the south is the OXD line with agricultural fields beyond; north is the field boundary hedgerow and associated stream with agricultural fields beyond.

- 9.45. In order for the local planning authority to discharge its legal duty under the Conservation of Habitats and Species Regulations 2017 when considering a planning application where EPS are likely or found to be present at the site or surrounding area, local planning authorities must firstly assess whether an offence under the Regulations is likely to be committed. If so, the local planning authority should then consider whether Natural England would be likely to grant a licence for the development. In so doing the authority has to consider itself whether the development meets the 3 derogation tests listed above.

- 9.46. In respect of planning applications and the Council discharging of its legal duties, case law has shown that if it is clear/ very likely that Natural England will not grant a licence then the Council should refuse planning permission; if it is likely or unclear whether Natural England will grant the licence then the Council may grant planning permission.

- 9.47. The application is supported by an Ecological Impact Assessment. The site is not located within any international or national statutory land designations although it is located within 2km of the Stratton Audley Quarries SSSI. The site also lies within 1km of Bicester Airfield and Gavray Drive Local Wildlife Sites. A desk study was undertaken in November 2017, as part of the Environmental Statement relating to the EWR2 Project works and the TWAO, and, has been used to inform this application submission. An ecological walkover survey of areas within and adjacent to the site was undertaken on 31<sup>st</sup> May 2018. The Ecological Impact assessment identifies general mitigation measures that will be put in place during the construction and operation of the compound and concludes that there is unlikely to be any significant negative impact on ecological features and habitats on the site.
- 9.48. Officers are satisfied, on the basis of the above and the absence of any objection from Natural England, and subject to conditions, that the welfare of any European Protected Species found to be present at the site and surrounding land will continue and be safeguarded notwithstanding the proposed development and that the Council's statutory obligations in relation to protected species and habitats under the Conservation of Habitats & Species Regulations 2017, have been met and discharged.

#### Human Rights and Equalities

- 9.49. The Human Rights Act 1998 ("HRA") sets out fundamental freedoms which have been laid out by the European Convention on Human Rights ("ECHR"). In making any decisions, Cherwell District Council ("the Council") should have due regard to and take into account any implications that may arise under the HRA. As a public authority, it is unlawful for the Council to act in a manner which is incompatible with the ECHR.
- 9.50. The rights under the ECHR which the Council views as being the most likely to affect planning matters are: Article 6 (the right to a fair trial); Article 8 (right to respect for private and family life); Article 14 (prohibition of discrimination); and Article 1 of the First Protocol (protection of property).

#### *Article 6*

- 9.51. Officers have considered these matters and have resolved that, whilst there are potential rights in play, these will not be affected by the application due to the application being publicised by way of neighbour letter, site notice and in the local press giving affected third parties the opportunity to comment on the application and their views taken into account when considering the application. In this case any comments/concerns raised by third parties are listed above and have been taken into account in assessing the application. In addition, third parties were invited to the public meeting of the Planning Committee and had the opportunity to speak. Furthermore should a third party be concerned about the way the application was decided they could complain to the Local Government Ombudsman or if they question the lawfulness of a decision can appeal to the Courts for Judicial Review of the application.

#### *Article 8 and Article 1 of the First Protocol*

- 9.52. Officers have considered the duties under both Article 8 and Article 1 of the First Protocol and have resolved that the application does respect the private and family life of neighbours and does not fail to protect the neighbours' property.

#### *Duty under The Equalities Act 2010*

- 9.53. S149 of the Equalities Act 2010 (“EA”) sets out what is known as the Public Sector Equality Duty (“PSED”). Under the PSED, the Council, as a public authority, must have due regard to the need to, inter alia, advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and has to foster good relations between persons who share a relevant protected characteristic and persons who so not share it. The protected characteristics to which the PSED refers are: (a) age; (b) disability; (c) gender reassignment; (d) pregnancy and maternity; (e) race; (f) religion or belief; (g) sex; (h) sexual orientation.
- 9.54. Officers have considered the application and resolved that none of the protected characteristics is affected or potentially affected by the application.

## **10. PLANNING BALANCE AND CONCLUSION**

- 10.1. The NPPF states that the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 8 requires that the three dimensions to sustainable development (economic, social and environmental) are not taken in isolation, but are sought jointly and simultaneously.
- 10.2. The proposal complies with the relevant Development Plan policies and guidance listed at section 8 of this report, and so is considered to be sustainable development. The proposed compound is necessary to enable the upgrade works to the existing railway line as part of the EWR2 Project, in the interests of providing sustainable public transport which is in the public interest. In accordance with Paragraph 11 of the NPPF, permission should therefore be granted.

## **11. RECOMMENDATION**

DELEGATE TO THE ASSISTANT DIRECTOR FOR PLANNING AND DEVELOPMENT TO **GRANT PERMISSION SUBJECT TO THE CONDITIONS SET OUT BELOW** (AND ANY AMENDMENTS TO THOSE CONDITIONS OR ADDITIONAL CONDITIONS AS DEEMED NECESSARY)

### CONDITIONS

#### **Time Limits**

1. The development hereby permitted shall be begun before the expiration of three years from 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. The development and use hereby approved shall cease and be discontinued at the expiration of 5 years from the date of this permission, or upon the completion of the works relating to this section of the EWR2 Project, whichever is the sooner, and the land restored to its former use and condition on or before that date.

Reason – In order to safeguard the character of the area in accordance with Policies ESD13 and ESD15 of the Cherwell Local Plan 2011-2031 and Government guidance within the National Planning Policy Framework.

#### **Compliance with Plans**

3. 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: Location Plan 133735-2A-EWR-OXD-XX-DR-L-019009 Rev A01; Arboricultural Impact Assessment and drawing number 133735-2A-EWR-OXD-XX-DR-L-019001 Rev A01; A1 Site Design 133735-2A-EWR-OXD-XX-DR-L-019011 Rev A01; Modular Office elevations and floor plans; Environmental Appraisal Report; Transport Statement and drawing numbers 133735-RW-EWR-XX-XX-DR-LE-010803 Rev P01, 010690 Rev P01, 010691 Rev P01, 010692 Rev P01, 010693 Rev P01, 010694 Rev P01, 010696 Rev P01, 010697 Rev P01, 010698 Rev P01, 010699 Rev P01, 010700 Rev P01 and 0107001 rev P01; Flood Risk Assessment and drawing numbers 133735-2A-EWR-OXD-XX-DR-L-019010 Rev A01 and 019011 Rev A01; Additional Drainage Strategy Information dated July 2019 and received 4 September 2019; Ecological Impact Assessment; Planning Statement; Construction Travel Plans; and drawing numbers: 133735-2A-EWR-OXD-CC-A1-DR-CH-002003 Rev B02, 002004 Rev B02; 002007 Rev B02, 002008 Rev B02, 002010 Rev B02, 012001 Rev P01 and additional visibility zone plans relating to the emergency access received 22 August 2019.

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.

#### **External Lighting Details**

4. Prior to the installation of any external lighting on the site, full details of the design, height, location, and finished appearance of the external lighting, including the timings for its use shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the lighting shall be installed and operated in accordance with the approved details.

Reason – To ensure the satisfactory appearance of the area, safeguard the area and in the interests of ecological protection and to comply with Policies ESD10, ESD13 and ESD15 of the Cherwell Local Plan 2011-2031 and Government guidance within the National Planning Policy Framework.

#### **Boundary Treatments**

5. Prior to the first use of the development hereby permitted, means of enclosure along all boundaries of the site shall be erected and maintained for the lifetime of the development in accordance with the approved plans.

Reason – To ensure the satisfactory appearance of the completed development, to protect vision splays and to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031 and Government guidance within the National Planning Policy Framework.

#### **Reinstatement Scheme**

6. Upon the cessation of the use of the compound hereby approved, all material, buildings, hardstanding, fencing or any other structures shall be removed from the site and the site re-instated in accordance with a detailed scheme which shall also include timescales for the restoration works, which shall have been previously agreed in writing by the Local Planning Authority. The re-instatement works shall be completed in accordance with the approved scheme.

Reason – In the interests of the visual amenities of the area, to ensure the site is



reinstated appropriately in accordance with Policies ESD10 and ESD15 of the Cherwell Local Plan 2011-2031 and Government guidance contained within the National Planning Policy Framework.

### **AMS Required**

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, which shall also include an exclusion zone around the existing trees within the site, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter all works shall be carried out in accordance with the approved AMS.

Reason – To ensure the continued health of retained trees/hedges and to ensure that they are not adversely affected by the construction works, in the interests of the visual amenity of the area and to comply with Policy ESD10 of the adopted Cherwell Local Plan 2011-2031 and Government guidance within the National Planning Policy Framework.

### **AMS Scheme of Supervision**

8. Prior to the commencement of the development hereby approved, full details of a scheme of supervision for the Arboricultural protection measures, to include the requirements set out in a) to e) below, and which is appropriate for the scale and duration of the development works, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the arboricultural protection measures shall be carried out in accordance with the approved details:
  - a) Written confirmation of the contact details of the project arboriculturalist employed to undertake the supervisory role of relevant Arboricultural issues
  - b) The relevant persons/contactors to be briefed by the project arboriculturalist on all on-site tree related matters
  - c) The timing and methodology of scheduled site monitoring visits to be undertaken by the project arboriculturalist
  - d) The procedures for notifying and communicating with the Local Planning Authority when dealing with unforeseen variations to the agreed tree works and Arboricultural incidents
  - e) Details of appropriate supervision for the installation of load-bearing 'structural cell' planting pits and/or associated features such as irrigation systems, root barriers and surface requirements (eg: reduced dig systems, arboresin, tree grills)

Reason – To ensure the continued health of retained trees/hedgerows and to ensure that they are not adversely affected by the construction works, in the interests of the visual amenities of the area and to comply with Policy ESD10 of the Cherwell Local Plan 2011-2031 and Government guidance within the National Planning Policy Framework.

### **Restriction of Use**

9. The site shall be used only for the purpose of a construction compound in conjunction with EWR2 and for no other purpose whatsoever.

Reason – The impact on the character and visual amenities of the area is only acceptable given the need for the development, and to comply with Policies ESD10 and ESD15 of the Cherwell Local Plan 2011-2031 and Government

guidance within the National Planning Policy Framework.

### **Protected Species Check**

10. Prior to, and within two months of the commencement of the development, the site shall be thoroughly checked by a suitably qualified ecologist to ensure that no protected species, which could be harmed by the development, have moved on to the site since the previous surveys were carried out. Should any protected species be found during this check, full details of mitigation measures to prevent their harm shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved mitigation scheme.

Reason – To ensure that the development does not cause harm to any protected species or their habitats in accordance with Policy ESD10 of the Cherwell Local Plan 2011-2031 and Government guidance within the National Planning Policy Framework.

### **Bird Nesting Season**

11. No removal of hedgerows, trees or shrubs, nor works to, or demolition of buildings or structures that may be used for breeding birds, shall take place between 1<sup>st</sup> March and 31<sup>st</sup> August inclusive, unless the Local planning Authority has confirmed in writing that such works can proceed, based on health and safety reasons in the case of a dangerous tree, or the submission of a recent survey (no older than one month) that has been undertaken by a competent ecologist to assess the nesting bird activity on site, together with details of measures to protect the nesting bird interest in the site.

Reason – To ensure the development does not cause harm to any protected species or their habitats in accordance with Policy ESD10 of the Cherwell Local Plan and Government advice within the National Planning Policy Framework.

### **Traffic and Highways**

12. Notwithstanding the submission and prior to the commencement of the development hereby approved, a revised Construction Traffic Management Plan (CTMP) shall be submitted to and approved in writing by the Local Planning Authority which shall include the following:
  - A firm commitment to always using the construction traffic routes set out in the Environmental Statement for the EWR2 Scheme;
  - Precluding any access to the site by HGV or LGV via Launton Village; and
  - A commitment to carrying out a pre-condition survey of the route and making good any damage.

Thereafter the development shall be carried out in accordance with the approved CTMP.

Reason – In the interests of highway safety and to safeguard the amenities of residents during the construction period and to comply with Policy ENV1 of the Cherwell Local Plan 1996 and Government guidance within the National Planning Policy Framework.

13. Prior to the commencement of the development hereby approved, full details of the means of access between the strategic compound and the highway, including position, layout, construction, drainage, pedestrian access, gates, signage, lighting and vision splays shall be submitted to and approved in writing by the Local Planning Authority, together with details of and a timetable for its reinstatement at the end of the East West Rail Phase 2 Project. Thereafter, the means of access shall be constructed prior to the opening of the strategic compound, retained in accordance with the approved details during the operation of the compound, and reinstated in accordance with the approved details and timetable.

Reason – In the interests of highway safety and to accord with Government guidance within the National Planning policy Framework.

14. The approved vision splays shall be kept clear of any object, structure, planting or other material of a height that would obstruct vision of any road user exiting the site.

Reason – To ensure that adequate visibility is retained in the interest of highway safety and Government guidance within the National planning Policy Framework.

### **Archaeology**

15. Prior to any demolition and 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 and to comply with Government guidance within the National Planning Policy Framework.

16. Following the approval of the Written Scheme of Investigation referred to in condition 15, and prior to any demolition on the site and the commencement of the development (other than in accordance with the Written Scheme of Investigation), a programme of archaeological 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 useable archive and a full report for publication which shall be submitted to 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 Government guidance within the National Planning Policy Framework.

### **Drainage**

17. No development shall take place until a detailed design and associated management and maintenance plan of surface water drainage for the site using sustainable drainage methods has been submitted to and approved in writing by the Local planning Authority, as per the proposed strategy; 133735-2A-EWR-OXD-CC-A1-RP-DH-000001 (ProjectWise no.) 133735-EWR-REP-EDR-000022

(eB no.) Rev B01. The approved drainage system shall be implemented in accordance with the approved detailed design prior to the use of the development commencing.

Reason – To ensure that the principles of sustainable drainage are incorporated into this proposal in accordance with Policy ESD7 of the Cherwell Local Plan 2011-2031 and Government guidance within the National Planning Policy Framework.

18. No building hereby permitted shall be occupied or the use commenced until the sustainable drainage scheme for this site has been completed in accordance with the details approved under condition 17. The sustainable drainage scheme shall be managed thereafter in accordance with the agreed management and maintenance plan.

Reason – To ensure that the principles of sustainable drainage are incorporated into this proposal and to comply with Policy ESD7 of the Cherwell Local Plan 2011-2031 and Government guidance within the National Planning Policy Framework.

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