

Case Officer: Linda Griffiths

Applicant: Cherwell District Council

Proposal: Change of use from agricultural (arable) to informal recreation with public access.

Ward: Fringford And Heyfords

Councillors: Cllr Ian Corkin, Cllr James Macnamara, Cllr Barry Wood

Reason for

Referral: Major development and the Council is the applicant

Expiry Date: 28 October 2019

Committee Date: 24 October 2019

EXECUTIVE SUMMARY OF PROPOSALS AND RECOMMENDATION

RECOMMENDATION: GRANT PERMISSION SUBJECT TO CONDITIONS

Proposal

The application seeks a change of use of the land from agricultural use to recreation purposes and for the creation of a community woodland. It is proposed that in the first instance, a minimum level of works will be put in place to facilitate its use for informal recreation, these being the provision of mown paths, installation of galvanised steel maintenance and mobility kissing gates, the installation of dog and litter bins and interpretation boards by the access gates. Culverts and footbridges will also be constructed over ditches to facilitate public access.

Consultations

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

- OCC Drainage

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

- OCC Highways, OCC Archaeology, OCC Rights of Way, Natural England

The following consultees are **in support** of the application:

- Councillor Corkin Local member

1 letter of support has been received.

Planning Policy and Constraints

The site is within an archaeological constraint area and the Chesterton Conservation Area lies to the west of the site. Gagle Brook runs close to the western boundary between the site and Chesterton Village. Two public rights of way cross through the site to the northern and southern parts of the site, these being footpath numbers 161/2/10 and 161/1/10. The site constraints have also identified that the site could be potentially contaminated and lies within a minor aquifer. A number of protected species may also be present within the site. The land is classified best and most versatile category 2 and 3 agricultural land.

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
- Design and impact on the character of the area
- Heritage
- Ecology
- Access
- Drainage
- Human Rights

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 is located on the south west side of Bicester between Chesterton Village and the B4030 (Vendee Drive), directly north of Bicester Park and Ride. It comprises 44 hectares of agricultural land. The site is reasonably level but falls away towards the south and south west, while rising towards the northern most part of the site. The site is generally bounded by mature deciduous hedgerow. The Kingsmere development is situated to the east of the application site on the opposite side of Vendee Drive.
- 1.2. A small area of CPRE (Campaign to Protect Rural England) managed woodland (0.7ha) is located at the north west corner of the site, and a balancing pond which has been created in respect of the SUDS drainage infrastructure for the Phase 2 development is also situated in the northern part of the site.

2. CONSTRAINTS

- 2.1. The application site is within an archaeological constraint priority area and the Chesterton Conservation Area lies immediately to the west of the site. Gagle Brook runs close to the western boundary between the site and Chesterton Village.
- 2.2. Two public rights of way cross through the site, to the north and the southern parts of the site, these being footpath numbers 161/2/10 and 161/1/10.
- 2.3. The site constraints have also identified that the site could be potentially contaminated and lies within a minor aquifer. A number of protected species may also be present within the site. The land is classified best and most versatile category 2 and 3 agricultural land.

3. DESCRIPTION OF PROPOSED DEVELOPMENT

- 3.1. The application currently seeks a change of use of the land from agricultural to recreation purposes and for the creation of a community woodland. It is proposed that as a first stage, a minimum level of works will be put in place to facilitate its use for informal recreation, these being the provision of mown paths, installation of

galvanised steel maintenance and mobility kissing gates and the installation of dog and litter bins and interpretation boards by the access gates. Culverts and footbridges will also be constructed over ditches to facilitate public access.

4. RELEVANT PLANNING HISTORY

- 4.1. The site forms part of the South West Bicester Phase 2 development which was granted outline planning permission in May 2017 (reference 13/00847/OUT). Phase 2 is a strategic allocation in the Cherwell Local Plan 2011-2031 under Policy Bicester 3 and has consent for up to 709 dwellings. The Section 106 Agreement attached to the outline consent secures the transfer of this land to the District Council on first occupation of the dwellings on Phase 2 Kingsmere for recreation purposes and the creation of a community woodland.

<u>Application Ref.</u>	<u>Proposal</u>	<u>Decision</u>
13/00847/OUT	Residential development	Approved

5. PRE-APPLICATION DISCUSSIONS

- 5.1. The following pre-application discussions have taken place with regard to this proposal:

<u>Application Ref.</u>	<u>Proposal</u>
18/00205/PREAPP	Use of land for community woodland including public access

- 5.2. Principle of the use of the site for community woodland/informal recreation purposes acceptable.

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 5th September 2019 although comments received after this date and before finalising this report have also been taken into account.

- 6.2. The comments raised in support of the proposal by a third part, with the following suggestions, are summarised as follows:

- Maximise environmental sustainability
- Re-design circular access route to reflect multiple different uses
- Separate dog-free areas
- Re-route footpath to avoid cutting through two established hedges
- Design should enable zero carbon emission maintenance
- Vehicle free access but allowing disability access
- Reduction in mown grass path to 1m
- Environmentally friendly culverts as alternative to concrete

- Wooden gates rather than galvanised steel
 - Separate recycling/waste bins
- 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. BICESTER TOWN COUNCIL: **no comments received**

- 7.3. CHESTERTON PARISH COUNCIL: **comment in summary as follows:**

- Parking is surely critical as this involves access to recreational facilities, are there no longer plans to use the park and ride parking facility?
- Recognise cannot be finalised until the full archaeological survey is completed
- Covering proforma is not suitable for this type of application so there are a number of anomalies
- Trees will help lower the water table, so help with drainage
- Siting of allotments is omitted
- No means of access from Chesterton, only Bicester

CONSULTEES

- 7.4. OCC HIGHWAYS: **no objections** but future applications that provide facilities to increase the usage of the site should consider enhancement of pedestrian access. Needs to enable safe crossing, upgrading of the public right of way surface to ensure they are useable all year round, cycle parking next to the shared path at the site entrances and provision of car parking and appropriate signage to it.
- 7.5. OCC DRAINAGE: **objection** – no drainage information is provided to enable a full technical audit of the proposal
- 7.6. OCC ARCHAEOLOGY: **No objection** - the small scale proposals covered by this application are unlikely to impact on archaeological deposits. If ground levelling or topsoil stripping is required, these are likely to have a negative impact on the surviving deposits, these however are outside the scope of the application.
- 7.7. OCC RIGHTS OF WAY: **No comments** as long as the application follows our standard criteria and the Chesterton footpath 1 and 2 are maintained on the correct legal line as shown on the definitive map and subject to the imposition of a number of conditions.

- 7.8. OCC LOCAL MEMBER: **Supportive of the application.** It will become a very useful informal green space offering a range of recreational activities and help create a green buffer for the rural community of Chesterton.
- 7.9. CDC BUILDING CONTROL: **no comments** as it is a change of use
- 7.10. CDC ARBORICULTURAL OFFICER: no comments received to date
- 7.11. CDC ECOLOGY: no comments received to date
- 7.12. CDC LANDSCAPE OFFICER: **no comments**
- 7.13. THAMES VALLEY POLICE DESIGN ADVISER: no comments received to date
- 7.14. BBOWT: no comments received to date
- 7.15. NATURAL ENGLAND: **no objection**
- 7.16. OPEN SPACES SOCIETY: no comments received to date
- 7.17. RAMBLERS ASSOCIATION: no comments received to date
- 7.18. CPRE: no comments received to date
- 7.19. KINGSMERE RESIDENTS ASSOCIATION: no comments received to date

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
- Policy Bicester 3 – South west Bicester Phase 2
- Policy Bicester 7 – Meeting the need for open space, sport and recreation
- PSD1 – Presumption in favour of sustainable development
- Policy BSC10: Open space, outdoor sport and recreation provision
- ESD1 – Mitigating and adapting to climate change
- ESD10 – Protection and enhancement of biodiversity and natural environment
- ESD13 – Local landscape protection and enhancement
- ESD17 – Green infrastructure

CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- C28 – Layout, design and external appearance of new development
- C32 – Provision of facilities for disabled people

8.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- 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”)
- Bicester Healthy New Town Programme

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
- Design and impact on the character of the area
- Heritage
- Ecology
- Access
- Drainage
- Human Rights

Principle of Development

Policy Context

- 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 purpose 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. Section 2 of the NPPF states that the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 8 notes that there are 3 overarching objectives within sustainable development – economic, social and environmental. The social and environmental objectives are particularly relevant to this application.
- 9.4. Section 8 of the NPPF concerns the planning system's role in promoting healthy and safe communities. Paragraph 91 states that planning policies and decisions should aim to achieve healthy, inclusive and safe places which promote social interaction, and enable and support healthy lifestyles, for example, through the provision of safe and accessible green infrastructure. Paragraph 92 also notes that planning policies and decisions should take into account and support the delivery of local strategies to improve health, social and cultural well-being for all sections of the community.
- 9.5. Paragraph 96 notes the importance to the health and well-being of communities of being able to have access to a network of high-quality open spaces and opportunities for physical activity.
- 9.6. Policy PSD1 of the Cherwell Local Plan 2011-2031 accords with the NPPF's requirement for 'sustainable development' stating that planning applications that accord with the policies in the statutory development plan will be approved without delay unless material considerations indicate otherwise.
- 9.7. The site forms part of the South West Bicester Phase 2 development which was granted outline planning permission in May 2017 (13/00847/OUT refers). Phase 2 is a strategic allocation in the adopted Cherwell Local Plan 2011-2031 for the erection of 709 dwellings (Policy Bicester 3 refers). The land in question is due to be transferred to the District Council through the Section 106 Agreement upon first occupation of the development for recreation purposes for use as a community woodland.
- 9.8. Policy Bicester 7 of the Cherwell Local Plan states that as part of the measures to address current and future deficiencies in open space, sport and recreation in Bicester, the Council will seek to establish a community woodland between Chesterton village and Vendee Drive.

Assessment

- 9.9. The provision of a Community Woodland as a concept was envisaged more than 10 years ago with the development of the Phase 1 South West Bicester development. A briefing paper in respect of the Community Woodland Project was produced by

Chesterton Parish Council in 2007. A survey of Chesterton village residents in 2012 indicated an overwhelming response in agreement with the provision of a Community Woodland. Following on-going dialogue between the District Council, Chesterton Parish Council and the landowners Countryside Properties (Bicester) Ltd, as part of negotiations during the consideration of Kingsmere Phase 2, Countryside agreed to transfer the land to CDC as part of the Section 106 package. A report was taken to the Council's Executive Committee in July 2014 where it was agreed that in terms of retaining this land as an undeveloped buffer between Bicester and Chesterton and securing a significant recreational asset for the District that the land should be transferred.

Conclusion

- 9.10. Central to the benefits of this proposal is that the proposal will ensure the delivery of this land at the earliest opportunity, following its transfer to the District Council, for the use by the general public for informal recreation purposes. As such the proposal therefore accords with the above mentioned development plan policies and the NPPF in seeking to deliver sustainable development and in the interests of the health and well being of the local population.

Design and impact on the character of the area

- 9.11. The application is accompanied by a layout plan. This is a high-level plan which indicates the routes of the proposed mown footpaths which will form a circular route around the site and link the two public rights of way through the site. There are a number of drainage ditches running alongside hedges and between field boundaries. Where these are crossed the ditches will be culverted and pedestrian access provided over. Small sections of existing hedgerow will also need to be removed to facilitate access through the site. This first stage of the project seeks a change of use of the land only at this time to provide informal public access. As the project develops and moves forward, where planning permission is required further planning applications will be submitted for future facilities etc that may be provided.
- 9.12. Policy ESD13 of the Cherwell Local Plan states that opportunities will be sought to secure the enhancement of the character and appearance of the landscape, particularly in urban fringe locations, through the restoration, management or enhancement of existing landscapes, features or habitats and where appropriate, the creation of new ones, including the planting of woodlands, trees and hedgerows.
- 9.13. Policy ESD17 of the Cherwell Local Plan sets out the measures through which the District's green infrastructure network will be maintained and enhanced. These include 'pursuing opportunities for joint working to maintain and improve the green infrastructure network whilst protecting sites of importance for nature conservation'.
- 9.14. Initially, the proposal will entail little alteration to the appearance of the land and will therefore have no adverse impact on the character and appearance of the open countryside and will seek to retain this green buffer between Bicester and Chesterton village. It is considered that the change of use of the land proposed accords with policies ESD13 and ESD17 of the Cherwell Local Plan and is therefore acceptable in this respect.

Heritage Impact

Legislative and policy context

- 9.15. A small part of the application site abuts the boundary of the Chesterton Conservation Area.

- 9.16. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) states that in carrying out its functions as the Local Planning Authority in respect of development in a conservation area: *special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.*
- 9.17. Conservation Areas and Listed Buildings are designated heritage assets, and Paragraph 193 of the NPPF states that: *when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.* Policy ESD15 of the CLP 2031 Part 1 echoes this guidance.
- 9.18. This application seeks a change of use of the land only for informal recreation purposes and it is considered therefore that the development will not have any adverse impact upon the setting or appearance of the Chesterton Conservation Area and is therefore acceptable in this respect.
- 9.19. The site is located in an area of known considerable archaeological interest immediately north of the scheduled Roman Town of Alchester. The Roman Road north from the town, Akeman Street, forms the southern boundary of the site. An archaeological evaluation during the A41 widening recorded a significant amount of extra mural settlement immediately south east of the proposed development area consisting of stone building foundations, roadways, pits and ditches. A cemetery was found immediately to the north of this site on the northern side of the A41, adjacent to this proposal.
- 9.20. As part of this submission, the applicants have commissioned a geophysical survey which has recorded a number of possible archaeological deposits. These appear to form a road or trackway heading towards Alchester from the north with roadside settlement along the sides of the trackway. Although these cannot be dated from geophysical survey alone, it is likely that they will be of Iron Age or Roman date.
- 9.21. Evidence of Iron Age settlement was also recorded along with archaeological features dating to the post Roman period. It is likely that archaeological deposits related to this settlement site and the associated cemetery could survive along the line of the trackway/road identified from the geophysical survey.
- 9.22. Further archaeological features related to Iron Age and Roman settlement were recorded during excavations ahead of the South West Bicester development immediately north east of this proposed development. This includes archaeological deposits along the north-eastern boundary of the site. Following the results of the geophysical survey and discussions with the County Archaeologist, the applicant is in the process of commissioning further archaeological investigations in the form of trial trenching to validate the findings from the geophysical survey. Once the results of these investigations are known, a tree planting plan will be prepared which avoids as far as possible areas of archaeological interest at the site.
- 9.23. It is accepted that the small scale and relatively non-intrusive proposals included in this change of use are unlikely to impact on the above, however if the proposals to create access for the public along paths was to require ground levelling or topsoil stripping, this could have a negative impact on these surviving deposits. It is recommended therefore that a condition to address the residual risk to archaeological deposits is included accordingly.

Ecology Impact

Legislative context

- 9.24. 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.
- 9.25. 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.
- 9.26. 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.
- 9.27. 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.
- 9.28. 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

- 9.29. 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.

- 9.30. 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.
- 9.31. 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.
- 9.32. 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.
- 9.33. 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.
- 9.34. These policies 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.
- 9.35. 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

- 9.36. 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')

9.37. The Standing Advice sets out habitats that may have the potential for protected species, and in this regard the site is close to a stream and there are a number of mature trees and hedgerows within and adjacent the site, and therefore the site has the potential to be suitable habitat for bats, breeding birds, badgers, reptiles, great crested newts, water voles and invertebrates.

9.38. 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.

9.39. 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.

9.40. Following the initial submission of the application, a Preliminary Ecological Appraisal was commissioned by the applicant. To fulfil the brief an ecological desk study and walkover survey (in accordance with Phase 1 Habitat Survey methodology) were undertaken in August 2019. The desk study exercise identified no European statutory sites within 5km of the survey area, one UK statutory site within 2km and four non-statutory sites within 1km. The ecological report identifies a number of recommendations with respect to habitat retention and protection, biodiversity and lighting. It is recommended that a condition be imposed which requires compliance with the recommendations within the report.

9.41. Officers are satisfied that in the absence of any objection from Natural England to the recommendations within the ecological report, 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.

Access

9.42. There are currently two public rights of way that cross the site. It is intended that the route of these will remain unaltered and will be actively maintained and managed as 3m wide mown paths to ensure they are more easily accessible to the public. These two public rights of way will also be connected by the creation of a circular mown path around the whole site, as indicated on the submitted layout plan. No objections have been raised by OCC's Rights of Way Officer provided the footpaths are maintained on the correct legal line shown on the definitive plan and subject to the imposition of a number of conditions below.

- 9.43. Four points of public access to the site will be created where the public rights of way meet the site boundary, the two on the north east side align with informal crossing points on Vendee Drive. In addition, the 2 existing agricultural access points at the extreme south of the site and also at the north end of the site will be used to provide maintenance access into the site.
- 9.44. In line with previous concerns expressed by OCC, there is no access proposed between the site and the adjacent Park and Ride. Should any additional access points be created and/or dedicated parking considered, it is proposed that these will be the subject of further planning applications. Whilst it is accepted that there is a risk that levels of public usage may in time justify provision of a dedicated car park, Cherwell District Council as land owner in this case has sufficient control to bring forward proposals to address this should it be required. The usage of the recreation land should therefore be carefully monitored.
- 9.45. OCC as highway authority and rights of way authority have assessed the submission. The public rights of way connect to the outskirts of Chesterton. However there are currently no footways to these access points from Chesterton. The provision of pedestrian access from Chesterton village itself would reduce the need for car parking, particularly on the southern side of the proposed site. Whilst this application only seeks a change of use of the land for informal access by the general public for recreation purposes, the intention of the applicant is to bring forward further proposals at a future date that will increase the attractiveness of the site and consequently increase usage. OCC consider that these future proposals must seek to enhance connectivity with the existing pedestrian infrastructure by providing pedestrian islands along Vendee Drive, an informal crossing along the A4095 where public footpath 161/1 meets with the carriageway which could take the form of dropped kerbs and tactile paving and footpath access to both of the access points from Chesterton village.
- 9.46. Given the proximity, it is envisaged that the recreation land is likely to be used by Kingsmere residents and that the two most used accesses will be the informal crossings over Vendee Drive. The northern Vendee Drive access point that links the footpath north of Whitelands farm is subject to being upgraded to a toucan crossing as part of the Kingsmere Phase 2 development. However, there are currently no plans to upgrade the crossing further south and pedestrians wishing to access the site will be required to find a gap across two busy lanes of traffic. In order to enhance the safety of a crossing point here it will be necessary for future access proposals to provide a pedestrian crossing facility with refuge island across Vendee Drive.
- 9.47. To encourage multimodal access that does not involve motorised travel, it is also suggested that future applications which result in increased usage of the site should also provide Sheffield cycle stands at entrance points in order to facilitate safe storage/parking of cycles for those wishing to cycle. In the first instance Sheffield stands should be provided near both of the Vendee Drive site entrances to encourage cycling over driving.
- 9.48. All of the above recommendations are noted, but are not considered necessary to secure now in order to make the proposed change of use acceptable in planning terms. Instead, they will be drawn to the applicant's attention by way of an informative on the decision notice.

Drainage

- 9.49. This application relates to a change of use only and therefore does not include drainage details. The drainage team at OCC as Lead Flood Authority have

assessed the proposal and raised an objection on the basis that no drainage information has been provided to enable a full technical audit of the proposal.

- 9.50. As stated above, this application seeks a change of use of the land only to allow access to the general public for recreation purposes, no engineering works are proposed, nor any drainage works at this time. Any drainage proposals for future uses or other works to the land will be agreed at that time. It is therefore considered that to require full drainage details at this stage would be unreasonable and is not necessary.

Human Rights and Equalities

- 9.51. 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.
- 9.52. 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

- 9.53. 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

- 9.54. 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.
- 9.55. Officers have considered that, in the event that the application is granted planning permission, there will not be any discrimination (or potential discrimination) on neighbours.

Duty under The Equalities Act 2010

- 9.56. 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.

- 9.57. 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 overall purpose of the planning system is to seek to achieve sustainable development as set out in the NPPF. The three dimensions of sustainable development must be considered in order to balance the benefits against any harm and to come to a decision about the acceptability of the scheme. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined against the provisions of the development plan unless material considerations indicate otherwise.
- 10.2. In terms of economic benefit, the proposals will generate some economic benefit during any construction works for the creation of this recreation facility.
- 10.3. In terms of social benefit, the scheme will ensure the provision of an area of land for informal recreation on the edge of Bicester for local residents. It will also support the objectives of the Bicester Healthy New Town Programme which aims to encourage physical activity and improve peoples' mental wellbeing and encouraging more time spent outdoors.
- 10.4. In terms of environmental, the scheme through proposed mitigation measures, increased tree planting etc, will ensure the protection of ecology and net biodiversity gain. The provision of such a facility on the edge of Bicester will also reduce the need for residents to travel elsewhere by car.
- 10.5. The proposed change of use will present a significant opportunity to increase both the amount and variety of greenspace within this part of the District for local residents and visitors. Although this first phase of the project focuses on the minimum works that are needed to create a safe and accessible green recreation space, it has potential over time to become a greatly valued and interesting recreational facility which will support all ages and abilities to pursue more healthy lifestyles.
- 10.6. Accordingly it is considered that the proposed change of use is in accordance with the development plan and the NPPF and should therefore be approved.

11. RECOMMENDATION

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 AS DEEMED NECESSARY)

CONDITIONS

Time Limit

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.

Compliance with Plans

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 Statement; Ecological Appraisal Report; Geophysical Survey Report; Indicative Phase 1 Site layout Plan, drawing number ES/LS/001 and red line site location plan.

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.

Temporary Obstructions

3. No materials, plant, temporary structures or excavations of any kind should be deposited/undertaken on or adjacent to the Public Right of Way that may obstruct or dissuade the public from using the public right of way whilst development takes place.

Reason – To ensure the public right of way remains available and convenient for public use, to comply with Policy ESD15, ESD17 and Bicester 3 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance in the NPPF.

Route Alterations

4. No changes to the public right of way direction, width, surface, signing or structures shall be made without prior permission approved by the Countryside Access Team at Oxfordshire County Council or necessary legal process.

Reason – To ensure the public right of way remains available and convenient for use, to comply with Policy ESD15, ESD17 and Bicester 3 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance in the NPPF.

Vehicle Access (Occupation)

5. No vehicle access (including for construction and demolition purposes) may be taken along or across a public right of way to residential or commercial sites without prior permission and appropriate safety and surfacing measures approved by the Countryside Access Team at Oxfordshire County Council. Any damage to the surface of the public right of way caused by such use will be the responsibility of the applicants, their contractors to put right/make good to a standard required by the Countryside Access Team.

Reason – To ensure the public right of way remains available and convenient for public use, to comply with Policy ESD15, ESD17 and Bicester 3 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance in the NPPF.

Gates/Right of way

6. Any gates provided shall be set back from the public right of way or shall not open outwards from the site across the public right of way.

Reason – To ensure that gates are opened or closed in the interests of public right of way user safety, to comply with Policy ESD15, ESD17 and Bicester 3 of

the Cherwell Local Plan 2011-2031 Part 1 and Government guidance in the NPPF.

Details of Gates

7. Details of the proposed new maintenance gates and pedestrian kissing gates, together with a timeframe for their provision shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of their installation. Thereafter the development shall be completed in accordance with the approved details prior to the first use of the site for recreation purposes.

Reason – In the interests of the visual amenities of the locality and to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031 and Government guidance within the National Planning Policy Framework.

Protection of Archaeology

8. There shall be no regrading of the land or removal of topsoil without the written express consent of the Local Planning Authority.

Reason – In order to protect the archaeological interests of the site in accordance with Policy ESD15 of the Cherwell Local Plan 2011-2031 and Government guidance within the National Planning Policy Framework.

Dog/litter Bins and Interpretation Boards

9. Prior to their installation, details of the dog and litter bins and interpretation boards, together with their locations shall be submitted to and agreed in writing by the Local Planning Authority. These shall be installed in accordance with the approved details prior to the site being first brought into use and retained as such thereafter.

Reason – To ensure the satisfactory appearance of the development and the proper arrangements for the disposal of litter and waste, to comply with Policy ESD15 of the Cherwell Local Plan and Government guidance within the National Planning Policy Framework.

Footbridges/Culverts

10. Prior to the site being first brought into use, full details of the proposed pedestrian bridges over the ditches 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 details.

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

Nesting Birds

11. No removal of hedgerows, trees or shrubs shall take place between 1st March and 31st 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 the site, together with details of measures to protect the nesting bird interest on the site.

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.

Carry Out in accordance with Survey

12. The development hereby approved shall be carried out in accordance with the recommendations set out in section 7 of the Preliminary Ecological appraisal report carried out by Middlemarch Environmental dated September 2019 Reference RT-MME-150493-01 submitted with this application.

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 contained within the National Planning Policy Framework.

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