

<b>Application No:</b> 09/01592/OUT	<b>Ward: Bicester South</b>	<b>Date Valid:</b> 14.12.2009
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<b>Applicant:</b>	LEDA Properties Ltd
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<b>Site Address:</b>	Land South of Talisman Road, Adjacent to London Road, Bicester
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**Proposal:** Outline: Residential Development for 140 No. dwellings with associated parking, access and public open space.

## 1. Site Description and Proposal

- 1.1 The application site comprises 3.68 ha of rough pasture land which is classified as Grade 3b agricultural land. The site lies on the south eastern side of Bicester, and is situated between the London Road and the Bicester By-Pass (A4117). The northern boundary of the site abuts the Talisman Business Centre, Pingle Brook and Langford Brook both flow through the site. There are no buildings on the site. The site is generally level with no significant landscape features. The site is bounded by hedging on three sides. There is currently a field gate into the site from the London Road, but no vehicular access.
- 1.2 The application has been submitted in outline form with all matters reserved for future consideration. The application was not accompanied by an Environmental Statement but does include a Traffic Assessment, Flood Risk Assessment, Ecological Assessment, Archaeological Desk Top Assessment and Air Quality Assessment.
- 1.3 The Planning Statement and plans accompanying the application indicate a single point of vehicular access serving the development from the London Road. The proposal seeks consent for the erection of 140 dwellings and flats, 40% of which are proposed to be affordable units with areas of open space, adjacent to the existing water courses and the centre of the site the proposed density of the development is 38 dph. There is buffer tree planting to the boundary with the elevated section of the A411 (T) Bicester By-Pass.
- 1.4 Planning History
- During 1985, 1986 and 1987, applications were submitted and considered for the development of the site for non-food retail warehousing, superstore, petrol filling station, service yards and parking. These applications were refused on highway grounds, neighbour impact and retail development which was outside the town centre. A subsequent planning inquiry dismissed the appeals on the grounds that a more appropriate site for retail use was available on the Oxford Road.
- Since these appeal proposals were considered, Bicester Village and Tesco have been developed and the A41 (T) Bicester By-Pass has been constructed, together with the development of the adjacent Bicester Fields and South East Bicester.

07/01719/OUT an outline application submitted by the current applicant for residential development was withdrawn prior to determination.

08/02361/OUT was a revised outline application following the withdrawal of the above mentioned application which sought to overcome. The issues previously raised. This application was withdrawn prior to determination.

## 2. Application Publicity

- 2.1 The application was advertised by way of site notices, a notice in the local press and neighbour notification letters. As a result of the above publicity, 6 letters of objection have been received.
- 2.2 5 letters of objection have been received from the residents of nearby properties whose concerns are as follows:-
- Site is low lying and subject to flooding, if built on it will exacerbate the flooding problems in the linear park alongside Langford Village.
  - Increase vehicular traffic along London Road creating noise, increased accidents and delays on A41 roundabout.
  - Vehicles already speed excessively along this stretch of London Road.
  - Increased pollution from additional vehicular traffic.
  - This area of greenery should be retained in the current climate of control of CO<sub>2</sub> emissions.
  - Loss of wildlife
  - Increase size of eco-town to accommodate these dwellings.
  - When property was purchased, searches did not show any development on this land.
  - Devalue property.
  - Lose the peacefulness, charm and privacy of existing property.
  - Not suitable between two busy roads.
  - Site is in flood plain and there is historical evidence of flooding on this site.
  - Increase flooding possibility of existing properties.
  - Noise from Talisman units.
- 2.3 1 letter of objection submitted on behalf of Warburtons who occupy a unit on the adjacent Talisman Road Industrial Estate states as follows:-
- Depot is used 24/7 during which there are peaks of activity for loading and unloading and therefore concern that residential properties in such close proximity will create conflict and undermine their ability to operate a business effectively.
  - The application considers noise nuisance from the London Road but does not consider Warburtons which will spoil quiet enjoyment of gardens etc.
  - Further noise assessments should be undertaken.
  - If consent is granted, appropriate conditions should be imposed to ensure that appropriate mitigation measures are employed by the development in order to protect the operations of Warburtons.
  - PPG 24 'Planning and Noise' states LPAs should fully consider whether proposals for noise-sensitive development would be incompatible with existing activities and noise sensitive development should not be permitted where high levels of noise continue through the night.

### 3. Consultations

- 3.1 Bicester Town Council objects very strongly to this application. The previous application was objected to on the grounds that the access is unacceptable and dangerous. In the Council's opinion this remains the same. Bicester Town Council would also prefer to see this site as business use.
- 3.2 Highways Agency offer no objection.
- 3.3 Thames Water advise that the existing waste water infrastructure cannot accommodate the needs of this application and therefore recommend a Grampian style condition which requires a drainage strategy to be submitted and agreed prior to commencement of development.

With regard to surface water drainage, the applicant should ensure storm flows are attenuated or regulated into the receiving public network through on or off-site storage. Approval of Thames Water will be required to discharge to a public sewer.

There are public sewers crossing the site and there should be no development within 3 metres of them.

With regard to water, the existing water supply infrastructure has insufficient capacity to meet additional demands, and a condition is therefore recommended to ensure that an impact study is carried out.

- 3.4 Environment Agency objected to the application on sequential test and flood risk grounds. The site lies within Flood Zone 3 defined by PPS 25 as having a high probability of flooding. The hydraulic modelling which has been used to redefine the flood risk is no longer considered to be the best available. PPS 25 states that more vulnerable development which includes residential should not be permitted in this zone. Refusal is therefore recommended.

Following these initial comments the applicants have carried out further modelling work using the Environment Agency's model resulting in further objections from the Environment Agency on flood risk grounds and the fact that part of the development was located in Flood Zone 3b. A revised Flood Risk Assessment now shows the application site to be raised out of the flood zone, with compensation works carried out on the land adjacent. A further application has been submitted in respect of these works and is included on this agenda (10/01316/F refers). The Environment Agency have now removed their objection, but remain concerned about the feasibility of providing SUDS Drainage within the layout as submitted. Further comments are awaited.

- 3.5 Oxfordshire County Council as Highway Authority advise that given the traffic flows along the London Road, a right hand turn would be desirable. Visibility at the access would be appropriate 4.5m x 120m although it may be beneficial to extend the speed limit beyond the site access. A crossing facility should be provided at the roundabout with the Talisman Road as this will provide access from the site to the cycle way on the eastern side of the London Road and to the primary school at Langford Village. A pedestrian and cycle link between Talisman Business Park and the western side of the railway tracks at Bicester Village will be required. This link

has been identified in the BICITLUS scheme list and is seen as essential.

The layout appears to provide large areas of parking courts and tandem parking which would be considered unacceptable. A mix of allocated and unallocated parking would provide greater efficiency. Parking areas as well as streets and footpaths should be overlooked and appropriately lit to ensure security and encourage use.

Provision must be made for waste collection with appropriate turning heads for HGV's/refuse vehicles. SUDs must be incorporated.

Off-site works will be subject of Section 106 and 278 agreements and if it is to be adopted must be constructed to Oxfordshire County Council standards and a Section 38 agreement.

The submitted Traffic Assessment provides a fair and robust assessment of the impact of the development on the local highway network. Queuing is apparent on parts of the local highway network at peak times. Whilst the proposed development would add to traffic levels, the impact of the development traffic would be insignificant when considering existing flows and fluctuations on the adjacent network. The Traffic Assessment has identified a significant number of shops, services and public transport will be available to residents. The submitted travel plan is acceptable but will require monitoring by Oxfordshire County Council.

Financial contributions to be secured by Section 106 for BICITLUS, Rail, bus service and infrastructure and Travel Plan monitoring to a total contribution of £494,206 'Index to be confirmed'.

- 3.6 Oxfordshire County Council's Archaeologist advises that they have previously had a Desk Based Assessment and an Archaeological Field Evaluation carried out on the site which highlighted the archaeological potential due to the Iron Age and Roman settlement to the south of the site. The field evaluation located two areas of archaeological significance with further evidence of Roman settlement in the form of pits, ditches and gullies. Therefore a condition is recommended in accordance with PPG 16 regarding archaeological works and finds.
- 3.7 Oxfordshire County Council's Strategic Planning response in summary advises that they have no objection in principle to the development and if the District Council is minded to permit the development, is satisfied that the release of this site ahead of the LDF would not undermine the spatial vision for the area or significantly adversely impact on the jobs/number of economically active residents imbalance and lead to increased out-commuting. A Section 106 Agreement should secure any necessary improvements to transport and non-transport infrastructure in line with South East Plan Policies CC7, CO1 and BE1.

Advise also that 2 local members objected to the proposal on the grounds that:-

- Should be retained for employment related uses and noise problems from elevated A41 make it more suitable for this. Bicester already suffers from out-commuting.
- With North-West, South-West and Gavray Drive, Bicester has in excess of a 5 year supply.

- 3.8 Oxfordshire County Council's Developer Funding seek Section 106 contributions in relation to infrastructure requirements for schools, education, youth centre provision, adult learning, library, day care for elderly, strategic waste recycling, County measures and administration fee.
- 3.9 Cherwell District Council's Section 106 contributions in relation to this development are also sought in respect of affordable housing, off-site community facilities and sports, indoor sports, public art and on-site play provision, open space, refuse and recycling bins, on-site SUDS provision and monitoring fee.
- 3.10 Natural England advice that the survey information and mitigation measures that have been proposed are acceptable and based on the information provided does not wish to object to the proposal providing suitable conditions are attached which secures the proposed mitigation as it would seem unlikely that protected species would be adversely affected by the impacts of the development. The following should be included within conditions:-
- The two trees in the Eco-Consult Ecological Assessment should be retained for bats and hedgerows retained as described in the report.
  - Any vegetation removal should occur outside the bird breeding season which is March to August inclusive.
  - Buffer zones will be retained 8 metres either side of the water courses and 5 metres either side of the hedgerows to be retained along London Road.
  - Habitat manipulation to move reptiles off the site will take place prior to commencement of works as described in Section 7.24 of the Ecological Assessment. There may also be opportunities to incorporate other biodiversity enhancements into the design such as boxes for birds/bats.
- 3.11 Cherwell District Council's Safer Communities and Community Development raises no objections to the specialist noise report accompanying the application and recommends that a condition be imposed requiring the approval of acoustic insulation to those properties falling within land classified as being within NEC B and for no development to be permitted on land falling within NEC C.
- 3.12 RPS on behalf of Thames Valley Police have requested Section 106 contributions to allow for increased Police provision in order to cater for the increased population generated by the development.
- This request has not been included within the Section 106 agreement as a full justification has not been submitted.
- 3.13 Cherwell District Council's Landscape Planning Officer expressed concern over the position of the play areas in respect of distances from the dwellings they serve, and whether they are properly overlooked. Parking provision should not encroach into these areas.
- 3.14 Cherwell District Council's Environmental Protection Officer advises that as this is a sensitive development a contaminated land assessment will be necessary and therefore recommends a condition in this respect.

- 3.15 Thames Valley Police's Crime Prevention Design Advisor is encouraged to read direct reference to designing out crime within the Design and Access Statement and the Planning Statement suggests a condition is imposed stating that all homes should achieve a minimum Part Two (physical security) in the latest guidance for 'secured by Design - New Homes'.
- 3.16 Cherwell District Council's Building Control and Engineering Services has no comments.
- 3.17 Cherwell District Council's Urban Design advises as follows:-
- A footway will need to be provided along the London Road to link the development with the Town Centre.
  - A footpath link within the site should also be provided to link with Bicester Village as far as possible.
  - Relationship between the A41 embankment and the proposed dwellings needs to be very carefully considered.
  - Status of the roads should be indicated as there appears to be no room for turning needs at the end of some roads.
  - Appears to be insufficient space for the swales to function properly as indicated.
  - Parking will need to be workable.
  - There will need to be strong frontage to London Road.
  - The Design and Access Statement lacks information in relation to the proposed design of the buildings.
- 3.18 Cherwell District Council's Environmental Protection Officer advises that the mitigation measures recommended in the Air Quality Assessment should be born in mind throughout the development. The current proposed Travel Plan and Masterplan take some of these operational measures into account and if there are any alternations to the scheme, the air quality mitigation measures should also be considered.
- 3.19 Cherwell District Council's Head of Planning and Affordable Housing advises in summary as follows:-
- Although Greenfield and likely to be considered outside the built up limits of Bicester, it is within the perimeter road system and is in close proximity to the town centre, railway and employment uses etc. Development of this land has not been considered in the past because of the potential for flooding. Careful assessment will be needed to determine the degree of harm on the countryside, landscape and natural resources and to consider this against the advantages of delivering housing, particularly the delivery of 40% affordable housing.
  - Regard must be had to housing land supply and the South East Plan.

## 4. Relevant Planning Policies

Planning Policy and Guidance is produced at National, Regional and District levels and includes Central Government Circulars, Planning Policy Guidance and Statement, the South East Plan at Regional level and Local Plan and the Local Development Framework which will eventually supersede the Local Plan at a District Level. The South East Plan and adopted Cherwell Local Plan currently form the Development Plan for the area.

South East Plan 2009 -	Policies	<p>Policy CO3 promotes Bicester as a main location for housing development.</p> <p>Policy SP3 requires development in urban areas in order to foster accessibility to employment, housing, retail and other services and to avoid unnecessary travel.</p> <p>Policy CO1 promotes Bicester as a main location for development to improve self containment and reduce out-commuting</p> <p>Policies CC1 and CC2 seek to achieve sustainable development.</p> <p>Policy NRM4 seeks SUDs to be incorporated.</p>
Adopted Cherwell Local Plan 1996	Saved Policies	<p>Adopted Cherwell Local Plan was adopted in 1996 and has a number of saved policies which are relevant and are a material consideration to the application proposal.</p> <p>Policy H1 allows for the development of sites allocated for residential purposes within the plan.</p> <p>Policy H5 seeks affordable housing provision on substantial new residential schemes where there is a need.</p> <p>Policy H18 states that there will be a presumption against residential development beyond the built up limits of settlements.</p> <p>Policy C14 seeks the retention of existing trees and hedgerows.</p> <p>Policy R12 seeks open space provision.</p> <p>Policies C28 and C30 seek to ensure that all new housing development is compatible with its locality in terms of layout and design, scale and density etc.</p>

Policy TR1 seeks suitable transport measures to serve the development.

### National Planning Policy

National Planning Policy advice is contained in Planning Policy Guidance Notes (PPG's) and Planning Policy Statements (PPS's). A number of PPG's and PPS's contain relevant advice for the consideration of this application of particular relevance are PPS1 on delivering sustainable communities, PPS3 Housing, PPS7 on development in rural areas, PPS9 on biodiversity, PPG13 on Transport, PPG16 Archaeology, PPG17 Open Space and PPS25 Development and Flood Risk.

PPS1 "Delivering Sustainable Development" sets out the Government's overall objectives for the planning system and seeks a sustainable approach to new development. It emphasises the need to provide sustainable communities with quality housing, infrastructure, amenities and community facilities to meet the needs of the people they are to serve. The PPS also recognises the importance of good design.

PPS3 "Housing" advises that Local Authorities should have regard to the following when determining applications.

- Achieving high quality housing.
- Ensuring developments achieve a good mix of housing.
- The suitability of the site for housing, including its environmental sustainability.
- Using land efficiently and effectively.
- Ensure the development is in line with housing and planning objectives.

The PPS also goes on to say:

Para 70 'Where Local Planning Authorities have an up-to-date five year supply of deliverable sites and applications come forward for sites that are allocated in the overall supply, but which are not yet in the up-to-date five year supply, Local Planning Authorities will need to consider whether granting planning permission would undermine achievement of their policy objectives'.

Para 71 'Where Local Planning Authorities cannot demonstrate an up-to-date five year supply of deliverable sites, for example where there is less than five years supply of deliverable sites, they should consider favourably planning applications for housing, having regard to the policies in this PPS'.

Para 72 'Local Planning Authorities should not refuse applications solely on the grounds of prematurity.

PPS9 'Biodiversity' sets out the Government's objectives for conserving and enhancing biological diversity in England to ensure that planning permissions not only avoid, mitigation or compensate for harm but always seek ways to enhance and restore biodiversity.

PPG13 recognises that our quality of life depends on transport and easy access to jobs, shopping, leisure facilities and services and therefore that Local Planning Authorities should 'accommodate housing principally within existing urban areas, planning for increased intensity of development for both housing and other uses at locations which are highly accessible by public transport, walking and cycling.



PPG17 'Planning for Open Space and Recreation' highlights the importance of open space, sport and recreation to the quality of people's lives and the need for accessible high quality provision.

PPS25 'Flood Risk' provides advice on assessing flood risk in connection with development and requires the provision of Flood Risk Assessments and Sequential Tests where development occurs in Flood Zone 3.

### Community Involvement

The guidance set out in PPS1 places considerable emphasis on the need to engage local communities on proposals for development in their area. Community involvement is included as one of the Governments key principles set out in paragraphs 40-44.

The inclusion of local communities in the planning process forms part of the Governments approach to delivery and growth. In this case the applicant has not carried out any public consultation on the proposal prior to its submission to the Council for determination. The consultation carried out by the Planning Department is set out above.

### Non-Statutory Cherwell Local Plan

Policy H1 sets out the housing requirements for the plan period and allows for the development of allocated sites.

Policy H2 requires completions to be monitored to ensure delivery of appropriate levels of housing.

Policy H3 seeks the efficient use of land and Policy H4 seeks the provision of a variety of housing types and Policy H7 seeks the provision of affordable housing.

Policy H19 seeks to resist new housing development beyond the existing built up limits of settlements.

Relevant Transport Policies are TR1, TR2, TR3, TR4, TR5, TR6, TR9, TR11 and TR19.

Recreation Policies R4, R8, R9, R10 and R11 seek to ensure adequate provision of open space and recreation facilities

Urban Design Policies D1, D2, D3, D4, D5 and D9 are all relevant.

## **5. Appraisal**

5.1 The main issues for consideration include, the principle of development, housing land supply, access and traffic, ecology, flood risk, archaeology, open space and recreation.

### 5.2 Principle of Development

Neither the adopted Cherwell Local Plan nor the Non-Statutory Cherwell Local Plan

contain any policies which seek to allocate the application site for development, and neither was the site subject of representations during the preparation of the Non-Statutory Cherwell Local Plan which states that proposals for residential development within the built up units of Bicester will be permitted provided they make efficient use of the land and there is no adverse impact on the residential or visual amenities of the area and on highway safety. The site in question which is located to the south of the existing Talisman Road Industrial site beyond the existing built up limits of Bicester cannot therefore be considered under that policy.

Both PPS1 and PPS3 however place considerable importance on the need to secure sustainable forms of housing development and the creation of sustainable communities, and sets out the criteria against which such proposals should be considered. Due to the position of the site relative to Bicester Town Centre and the adjacent road network it is considered that the development of the site as proposed for residential purposes would be sustainable. It is accessible by public transport and in walking distance of town centre facilities and Bicester Town Station. Furthermore as the site is bounded by the A41 (T) to the south its development would not set a precedent for further expansion of the town.

Advice contained within PPS1, PPS3 and Paras 17-19 of 'The Planning system – General Principles' states that it may be justifiable to refuse planning permission on the grounds of prematurity only where a DPD is being prepared or under review where the proposed development is so substantial, or where the cumulative effect would be so substantial, that granting planning permission could prejudice the DPD by predetermining decisions about the scale, location or phasing of new development which are being addressed in the policy of the DPD. A proposal for development which has an impact on only a small area would rarely come into this category. It is therefore considered that a proposal relating to only 140 dwellings will have any significant impact upon the allocation of sites within the LDF and cannot therefore be refused on the grounds of prematurity.

### 5.3 Housing Land Supply

Over the course of 2010 the Council has considered a number of planning applications which were submitted in the context of an under supply of deliverable housing land reported in the 2009 Annual Monitoring Report, some of which have been approved, whilst others which were refused are currently at appeal and decisions are awaited. A number of other housing developments, not specifically submitted in the context of housing land supply, but which contribute to housing delivery have also been approved.

These sites have been fed into a comprehensive review of housing land supply for the 2010 Annual Monitoring Report (AMR) which was approved by the Executive on 1 November 2010 for submission to the Secretary of State. The AMR shows that the supply of deliverable sites for the period 2010-2015 is now calculated at 5.1 years, rising to 5.9 years for the period 2011 to 2016. The calculation takes no account of two on-going appeals – 65 dwellings on land south of Milton Road, Adderbury (10/00270/OUT) and for 63 dwellings on land next to The Green, Chesterton (10/00547/OUT).

Without prejudice to the consideration of the current planning application, this proposal has been included as a deliverable site in the District's housing supply.

Although a Greenfield site, it lies within Bicester's perimeter road system, is well related to Bicester Town Centre, and is the subject of development proposals which have been the subject of extensive discussions.

It is important to note that Talisman Road is not an allocated site and that the inclusion of the site in the District's 5 year land supply does not itself carry any weight. Nevertheless if the site was ultimately shown not to be deliverable, then it would need to be removed from the District's land supply.

The applicant has continually indicated that the development of the site is both viable and deliverable. It is therefore considered that in order to ensure that this site continues to meet the Council's 5 year supply that the timescales for both the outline and the submission of reserved matters are shortened to be no more than two years in total. Furthermore, one of the Council's priorities is to address the shortfall of affordable housing within the District. This proposal seeks to provide 40% affordable housing within the development which equates to 56 units. It is therefore considered that this site is therefore not only important in seeking to provide a 5 year housing supply but also in contributing quite significantly to the affordable housing provision.

#### 5.4 Access and Public Transport Accessibility

The means of access to the proposed development will be achieved by a single vehicular access which will be created off the B4100 London Road forming a priority junction and visibility splays of 4.5m x 120m. A footway is included along the western side of the B4100 London Road from the site access to the Talisman Road roundabout. Whilst the submitted Transport Assessment does not consider a controlled pedestrian crossing at this London Road roundabout to be justified, Oxfordshire County Council consider crossing facilities to be necessary so the nearest primary school is Langford which is the other side of the London Road.

In respect of the indicative layout, the highway authority have advised that the large areas of parking courts and tandem parking provision proposed are unlikely to be acceptable, and appropriate turning heads and road layouts must be provided to ensure that HGV's and refuse vehicles can turn and negotiate the development.

Concerns regarding the tightness of the parking courts proposed and the inadequacy of the layout in terms of the provision of turning heads at the ends of roads have been raised on numerous occasions with the applicant's agent, who has declined to substantively amend the proposal on the grounds that the plan is indicative only, is in outline and they are matters which should be addressed at reserved matters stage rather than the outline.

A Traffic Assessment accompanying the application has been assessed by the Highway Authority considers that it provides a fair and robust assessment of the impact that the development would have on the local highway network. Queuing is apparent on parts of the local highway network at peak times. Whilst the proposed development would add to traffic levels, the impact of the development traffic would be insignificant when considering existing flows and fluctuations on the adjacent network. The travel plan submitted is acceptable to Oxfordshire County Council.

## 5.5 Ecology

An ecological assessment has been carried out on the site which included surveys carried out in March/April 2007 and again in September 2009 prior to submitting this application, to ascertain the presence of species such as badgers, water voles, otters, birds, reptiles, amphibians and bats.

PPS9: Biodiversity and Geological Conservation places a duty upon local planning authorities to ensure that a protected species survey be undertaken prior to determination of a planning application. The presence of a protected species is a material consideration when a planning authority is considering a development proposal. PPS9 states that “It is essential that the presence or otherwise of a protected species, and the extent to that they may be affected by the proposed development is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision”.

Paragraph 98 of Circular 06/05: Biodiversity and Geological Conservation – statutory obligations and their impact within the planning system states that, “local planning authorities should consult Natural England before granting planning permission” and paragraph 99 goes on to advise that “It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision”.

Section 40 of the natural Environment and Rural Communities Act 2006 (NERC 2006) states that “every public authority must in exercising its functions, must have regard ..... to the purpose of conserving (including restoring/enhancing) biodiversity” and; Local planning authorities must also have regard to the requirements of the EC Habitats Directive when determining a planning application where European Protected Species (EPS) are affected, as prescribed in Regulation 9(5) of Conservation Regulations 2010, which states that “a competent authority, in exercising any of their functions, must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions”.

Articles 12 and 16 of the EC Habitats Directive are aimed at the establishment and implementation of a strict protection regime for animal species listed in Annex IV(a) of the Habitats Directive within the whole territory of Member States to prohibit the deterioration or destruction of their breeding sites or resting places.

Under Regulation 41 of Conservation Regulations 2010 it is a criminal offence to damage or destroy a breeding site or resting place, but under Regulation 53 of Conservation Regulations 2010, licenses from Natural England for certain purposes can be granted to allow otherwise unlawful activities to proceed when offences are likely to be committed, but only if 3 strict legal derogation tests are met which include:

- 1) Is the development needed for public health or public safety or other imperative reasons of overriding public interest including those of a social or

economic nature (development).

- 2) Is there any satisfactory alternative?
- 3) Is there adequate mitigation being provided to maintain the favourable conservation status of the population of the species?

Therefore where planning permission is required and protected species are found to be present at the site or surrounding area, Regulation 9(5) of Conservation Regulations 2010 provides that local planning authorities must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions and also the derogation requirements (the 3 tests) might be met. Consequently a protected species survey must be undertaken and it is for the applicant to demonstrate to the local planning authority that the 3 strict derogation tests can be met prior to the determination of the application. Following the consultation with Natural England and the Council's Ecologist advice given (or using their standing advice) must therefore be duly considered and recommendations followed, prior to the determination of the application.

In respect of planning applications and the Council discharging of its legal duties, case law has shown that:

- 1) If it is clear/perhaps very likely that Natural England will not grant a licence then the Council should refuse planning permission.
- 2) If it is likely that Natural England will grant the licence then the Council may grant planning permission.
- 3) If it is unclear/uncertain whether Natural England will grant a licence then the Council must refuse planning permission (Morge has clarified Woolley).

*[R (Morge) v Hampshire County Council – June 2010 Court of Appeal case]*

*[R (Woolley) v Cheshire East Borough Council – May 2009 High Court case]*

**NB: Natural England will not consider a licence application until planning permission has been granted on a site, therefore if a criminal offence is likely to be committed; it is in the applicant's interest to deal with the 3 derogation tests at the planning application stage.**

In respect of this application, the surveys carried out have identified that the site is of local ecological value. The site is dominated by a large expanse of poor semi-improved grassland of low ecological value and the habitat with higher levels of ecological value are the hedgerow and watercourses on the edges of the site. Recorded badger activity at the site includes feeding signs, latrines, runs and tracks. The proposed retention of wildlife corridors alongside the water courses and the boundaries will allow badgers to move through the site and to use the retained areas for foraging purposes.

In terms of bats, the mature trees and hedgerows and watercourses will be retained. Small numbers of grass snake and common lizard have been recorded on the site. Eight metre buffer zones are proposed to be retained alongside water courses as well as a buffer to the hedgerow along the London Road. It is proposed

to move reptiles out of the development site prior to the commencement of works. Existing trees and hedges to the boundaries of the site will be retained and therefore the impact on bird life is not considered to be significant.

Natural England have been consulted on the proposal and consider that the survey information and mitigation measures that have been proposed are acceptable, and the development is unlikely to adversely affect any protected species.

Consequently, it is considered that art. 12(1) of the EC Habitats Directive has been duly considered in that the welfare of any protected species found to be present at the site and surrounding land will continue and be safeguarded notwithstanding the proposed development. The proposal therefore accords with PPS9 and Policy C2 (and C4 where relevant) of the adopted Cherwell Local Plan.

#### 5.6 Historic Environment and Archaeology

An archaeological evaluation of the area was carried out in April 2007. The Desk Based Assessment highlighted the archaeological potential due to Iron Age and Roman Settlement to the south of the site, and the field evaluation located two areas of archaeological significance with further evidence of Roman settlement in the form of pits, ditches and gullies. These are thought to be a further continuation of the site recorded to the south. These deposits could be damaged by the development and the weight of machines running over them.

In accordance with PPS5 the applicant would need to carry out and implement a staged programme of archaeological work if the development went ahead.

#### 5.7 Open Space and Recreation

The scale of the development proposed would require the provision of recreation and open space facilities within the site in accordance with Planning Policy and the Council's SPG on 'Recreation and Amenity Open Space Provision'. The layout as submitted seeks to provide a number of LAPs at either end of the site and one in the centre of the site and areas of informal open space around the periphery of the site, which are also to include SUDs drainage in the form of swales. Whilst there is no objection to the provision of swales within areas of open space the layout indicated is tight and care will need to be taken at reserved matters stage to ensure that the SUDs drainage can be adequately accommodated within the development.

Policy R3 of the Non-Statutory Cherwell Local Plan seeks to establish a series of open spaces linked by public footpath/ to create a circular route around the town. The site lies in a key position for achieving this aim, and if this site is to be developed it is important that the layout incorporates this within it. It is therefore considered that this should be included within the Section 106 Agreement to ensure that a route is maintained to enable links to be made outside the site in the future and that the development of this site does not prejudice its future provision.

#### 5.8 Drainage and Flooding

The site is partly located in Flood Zone 3 which is defined in PPS25 as having a high probability of flooding. The applicants have therefore had to submit a Flood Risk Assessment and Sequential Test as part of the development. PPS25 requires

that surface water should be safely contained on a development site during storm events up to and including the 1 in 100 year event with an allowance for climate change.

The applicants have proposed to overcome the Flood Risk problem on the site by raising the site out of the flood plain and compensating for the loss of flood storage downstream at Langford Park Farm. An application relating to the compensation proposal at Langford Park Farm is also for consideration on the agenda – application number 10/01316/F refers.

It is proposed to raise the site up to the height of the design flood level and to raise finished floor levels a further 300mm above the design flood level to allow for any errors in the modelling.

Whilst the Environment Agency agree that this is an acceptable technical solution, the proposed compensation proposal will involve the movement of large volumes of spoil from the site and result in considerable change to the topography of the site, and question whether the extent of the compensation works necessary are appropriate in this respect when there may be other sites capable of development which have a lower probability of flooding.

The Environment Agency have also raised concerns regarding the indicative layout submitted in that it appears tight with insufficient room for the open SUDs devices as shown, resulting in them being removed from the proposal at reserved matters stage. Open SUDs techniques are favoured over underground drainage techniques such as pipes and tanks because of their flood risk, water quality, biodiversity and amenity benefits, and suggest that if open SUDs techniques cannot fit in with the layout that it may be too dense. An 8m buffer zone is also required around the watercourses for flood risk, ecological and maintenance access reasons. These issues have been raised with the applicant's agent who considers that this is an issue to be considered at reserved matters stage and does not consider the layout to be unacceptable.

A sequential test and exceptions test has been submitted as part of the Flood Risk Assessment. It is considered that this is acceptable and the development of the site with 40% affordable housing provision is important in seeking to meet affordable housing needs within the District and meeting the 5 year housing land supply.

Further comments from the Environment Agency are awaited and will be reported at the meeting.

## 5.9 Illustrative Layout

The application seeks consent for the erection of 140 dwellings with associated parking provision, and open space. The site measures 3.68 ha in size and the development proposed equates to 38 dwellings per hectare. It is proposed that the development should front the London Road and the open space. It is proposed that the development will generally be 2 storey with elements of 3 storey on the periphery of the site.

The indicative sketches and layout are relatively high density and concern has been expressed to the applicant's agent about the ability of the site to accommodate 140

dwellings as proposed and achieve adequate parking provision, turning areas and road layout, amenity space, relationship between dwellings and open space and SUDs drainage. The agent considers that the proposal adequately demonstrates that 140 dwellings can be accommodated and that a sustainable development can be achieved.

Having given much thought to the layout, it is considered that as the application is in outline only, a refusal reason based on the overdevelopment of this site would be difficult to defend on appeal, and the application for 140 dwellings is therefore on balance considered acceptable and that an acceptable scheme could be submitted at reserved matter stage.

#### 5.10 Noise

A noise survey has been carried out and included within the application. The main sources of noise being from the elevated section of the A41 and the London Road which run alongside the eastern and western boundaries of the application site. The report finds that the majority of the site falls within Noise Exposure Category Noise Band B with only a small area adjacent to the London Road in Band C. The dwellings to the London Road frontage therefore should be set back with minimal windows in the elevation to the London Road to reduce noise. No noise issues or concerns were raised in respect of the nearby railway line.

An objection has been received on behalf of Warburtons bakery who occupy an adjacent unit in the Talisman Centre, who have concerns about the impact of their business on residents in terms of noise and disturbance, particularly in the evening and during the night. This issue has been raised previously with the Council's Environmental Health Officer who has not raised concerns. A further update will be given at the meeting.

#### 5.11 Conclusion

Having regard to the comments above it is considered that the development of the site in question for residential development is acceptable. It will provide additional affordable housing and will help to meet the Council's housing land supply targets. The development will not cause significant harm to the visual amenities of the locality and will not impact significantly upon the local infrastructure. The application is therefore recommended for approval subject to the applicants entering into a Section 106 Agreement and a number of conditions.

### **6. Recommendation**

#### **Approval subject to:**

- a) The applicants entering into a Section 106 Agreement in respect of the items listed above and the implementation and provision in perpetuity of the flood compensation scheme at Langford Park Farm.**
- b) No objections from the Environment Agency.**



<b>c) Departure procedures</b>		
<b>d) The following conditions and planning notes</b>		
<b>1.</b>	<b>SC1.0A</b>	<p>That no development shall be commenced until full details of the layout, scale, appearance, access and landscaping (hereafter referred to as reserved matters) have been submitted to and approved in writing by the Local Planning Authority.</p> <p>Reason - This permission is in outline only and is granted to comply with the provisions of Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004, and Article 4(1) of the Town and Country Planning (Development Management Procedure)(England) Order 2010.</p>
<b>2.</b>	<b>SC1.1A</b>	<p>That in the case of the reserved matters, application for approval shall be made not later than the expiration of two years beginning with the date of this permission.</p> <p>Reason - This permission is in outline only and is granted to comply with the provisions of Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004, and Article 4(1) of the Town and Country Planning (Development Management Procedure)(England) Order 2010.</p>
<b>3.</b>	<b>SC1.2A</b>	<p>That the development to which this permission relates shall be begun not later than the expiration of one years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last reserved matters to be approved.</p> <p>Reason - This permission is in outline only and is granted to comply with the provisions of Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004, and Article 4(1) of the Town and Country Planning (Development Management Procedure)(England) Order 2010.</p>
<b>4.</b>	<b>SC2.15AA</b>	<p>That no more than 140 dwellings shall be accommodated on the site.</p> <p>Reason - In order to achieve a satisfactory form of development, to ensure that the site is not overdeveloped and to comply with Policies H5 and BE1 of the South East Plan 2009 and Policies C28 and C30 of the adopted Cherwell Local Plan.</p>
<b>5.</b>	<b>SC3.0A</b>	<p>That no development shall take place until there has been submitted to and approved in writing by the Local Planning</p>

		<p><b>Authority a scheme for landscaping the site which shall include:-</b></p> <p><b>(a) details of the proposed tree and shrub planting including their species, number, sizes and positions, together with grass seeded/turfed areas,</b></p> <p><b>(b) details of the existing trees and hedgerows to be retained as well as those to be felled, including existing and proposed soil levels at the base of each tree/hedgerow and the minimum distance between the base of the tree and the nearest edge of any excavation,</b></p> <p><b>(c) details of the hard surface areas, pavements, pedestrian areas, crossing points and steps.</b></p> <p><b>Reason - In the interests of the visual amenities of the area, to ensure the creation of a pleasant environment for the development and to comply with Policy C4 of the South East Plan 2009 and Policy C28 of the adopted Cherwell Local Plan.</b></p>
6.	SC3.1A	<p><b>That all planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building(s) or on the completion of the development, whichever is the sooner; and that any trees and shrubs which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent for any variation.</b></p> <p><b>Reason - In the interests of the visual amenities of the area, to ensure the creation of a pleasant environment for the development and to comply with Policy C4 of the South East Plan 2009 and Policy C28 of the adopted Cherwell Local Plan.</b></p>
7.	SC3.4AA	<p><b>That except to allow for the means of access and vision splays the existing hedgerow/trees along all boundaries of the site shall be retained and properly maintained at a height of not less than 2 metres, and that any hedgerow/tree which may die within five years from the completion of the development shall be replaced and thereafter be properly maintained in accordance with this condition.</b></p> <p><b>Reason - In the interests of the visual amenities of the area, to provide an effective screen to the proposed development and to comply with Policy C4 of the South East Plan 2009 and Policy C28 of the adopted Cherwell Local Plan.</b></p>
8.	SC3.13A	<p><b>No tree within the site shall be cut-down, up-rooted, topped, lopped or destroyed, nor any hedge within the site cut-down or grubbed out, without the prior approval in writing of the Local Planning Authority.</b></p> <p><b>Reason - In the interests of the visual amenities of the area, to</b></p>

		provide an effective screen to the proposed development and to comply with Policy C4 of the South East Plan 2009 and Policy C28 of the adopted Cherwell Local Plan.
9.	SC4.1AA	<p>That the means of access to and from the site shall be taken only from London Road and as such shall be formed, laid out, constructed and drained and with such vision splays as shall first be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development.</p> <p>Reason - In the interests of highway safety and to comply with Government advice contained in PPG13: Transport.</p>
10.	SC4.2AA	<p>That the means of access shall not be located as shown on the application plan, but shall be located in a position, the details of which shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development.</p> <p>Reason - In the interests of highway safety and to comply with Government advice contained in PPG13: Transport.</p>
11.		<p>That prior to the commencement of any development on this site, the flood compensation measures agreed under application 10/ /F at Langford Park Farm adjacent shall be carried out, constructed, and completed in accordance with that permission and to the satisfaction of the Local Planning Authority. The compensation scheme shall thereafter be retained and maintained with this development.</p> <p>Reason - To prevent the increased risk of flooding and to improve water quality, and in order to comply with Government advice in PPS25: Development and Flood Risk and Policy NRM4 of the South East Plan 2009.</p>
12.		<p>Development shall not commence until a drainage strategy detailing any on and/or off site drainage works has been submitted to and approved in writing by the Local Planning Authority in consultation with the sewage undertaker. No discharge of foul or surface water from the site shall be accepted into the public system until the drainage works referred to in the strategy have been completed.</p> <p>Reason – The development may lead to sewage flooding; to ensure that sufficient capacity is made available to cope with the new development and in order to avoid adverse environmental impact on the community and in accordance with PPS25 and Policy NRM4 of the South East Plan 2009 and Policy ENV1 of the adopted Cherwell Local Plan.</p>
13.		<p>Development should not be commenced until Impact Studies of the existing water supply infrastructure have been submitted to and approved in writing by the Local Planning Authority (in consultation with Thames Water). The studies should determine the magnitude</p>

		<p>of any additional capacity required in the system and a suitable connection point.</p> <p>Reason – To ensure that the water supply infrastructure has sufficient capacity to cope with the/this additional demand and in accordance with PPS25 and Policy NRM4 of the South East Plan 2009 and Policy ENV1 of the adopted Cherwell Local Plan.</p>
14.		<p>No development shall commence within the application area until the applicant, or their agents or successors in title, has secured the implementation of a stages programme of archaeological investigation and mitigation in accordance with a written scheme of investigation that shall first be submitted to and approved in writing by the Local Planning Authority. 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. The work shall be carried out by a professional archaeological organisation acceptable to the Local Planning Authority.</p> <p>Reason – To ensure the appropriate measures are taken to protect and preserve archaeological remains either in situ or by record in accordance with PPS5 and Policy BE6 of the South East Plan 2009.</p>
15.	SC8.2AB	<p>All dwellings which are to be constructed/provided on land falling within Noise Exposure Category B (as defined by PPG24: Planning and Noise) shall be insulated against the source(s) of environmental noise such that noise levels do not exceed those specified in current World Health Organisation Guidance on noise levels for habitable rooms. Details of the insulation to be provided must be submitted to and approved in writing by the Local Planning Authority and installed in accordance with the approved scheme prior to the first occupation of the specified dwellings.</p> <p>Reason - To ensure the creation of a satisfactory environment free from intrusive levels of noise and to comply with advice in PPG24: Planning and Noise, Policies C30 and ENV1 of the adopted Cherwell Local Plan.</p>
16.		<p>That no dwellings nor their domestic curtilage shall be permitted or placed within any part of the site falling within NEC C.</p> <p>Reason - To ensure the creation of a satisfactory environment free from intrusive levels of noise and to comply with advice in PPG24: Planning and Noise, and Policies C30 and ENV1 of the adopted Cherwell Local Plan.</p>
17.		<p>Prior to the commencement of the development hereby permitted a phased risk assessment shall be carried out by a competent person in accordance with DEFRA and the Environment Agency's '<i>Model Procedures for the Management of Land Contamination, CLR 11</i>'. Each phase shall be submitted to and approved in writing by the Local Planning Authority;</p>

		<p>Phase 1 shall incorporate a desk study and site walk over to identify all potential contaminative uses on site, and to inform the conceptual site model. If potential contamination is identified in Phase 1 then a Phase 2 investigation shall be undertaken.</p> <p>Phase 2 shall include a comprehensive intrusive investigation in order to characterise the type, nature and extent of contamination present, the risks to receptors and to inform the remediation strategy proposals. If contamination is found by undertaking the Phase 2 investigation then Phase 3 shall be undertaken.</p> <p>Phase 3 requires that a scheme of remediation and/or monitoring to ensure the site is suitable for its proposed use to be submitted to and approved in writing by the Local Planning Authority (LPA). The remediation shall be carried out in accordance with the approved scheme and the applicant shall provide written verification to that effect.</p> <p>The development shall not be occupied until any approved remedial works have been carried out and a full validation report has been submitted to and approved in writing by the Local Planning Authority. In the event that gas protection is required, all such measures shall be implemented in full and confirmation of satisfactory installation obtained in writing from a Building Control Regulator.</p> <p>Reason – To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other off-site receptors in accordance with Policy ENV12 of the adopted Cherwell Local Plan.</p>
18.		<p>That all the existing trees and hedgerows on the site shall be retained and protected at all times during construction of development and thereafter as specified in the Eco Consult Ecological Assessment accompanying the application.</p> <p>Reason - To protect habitats of importance to nature conservation from any loss or damage in accordance with the requirements of PPS 9: Planning and Biodiversity, Policy NRM5 of the South East Plan 2009 and Policy C2 of the adopted Cherwell Local Plan.</p>
19.		<p>That there shall be no development or construction works whatsoever within the 8 metre buffer zones to be maintained either side of the water courses and 5m either side of the hedgerows to be retained along the London Road.</p> <p>Reason - To protect habitats of importance to nature conservation from any loss or damage in accordance with the requirements of</p>

		<b>PPS 9: Planning and Biodiversity, Policy NRM5 of the South East Plan 2009 and Policy C2 of the adopted Cherwell Local Plan.</b>
20.	SC9.4A	<p>The development hereby permitted shall be carried out in accordance with the recommendations set out in Habitat Mitigation Strategy to move reptiles off site will take place prior to commencement of any development as described in Section 7.24 of the Eco Consult Ecological Assessment unless otherwise agreed in writing by the Local Planning Authority.</p> <p>Reason - To protect habitats of importance to nature conservation from any loss or damage in accordance with the requirements of PPS 9: Planning and Biodiversity, Policy NRM5 of the South East Plan 2009 and Policy C2 of the adopted Cherwell Local Plan.</p>
21.		<p>That prior to the occupation of the development, a pedestrian crossing shall be provided on the London Road in a position to be agreed, and to a specification which shall be agreed in writing by the Local Planning Authority prior to the commencement of development.</p> <p>Reason - In the interests of highway safety and to comply with Government advice contained in PPG13: Transport.</p>
22.	SC9.7A	<p>The development shall proceed in accordance with the Flood Risk Assessment prepared by Millard Consulting; accompanying the application unless otherwise previously approved in writing by the Local Planning Authority.</p> <p>Reason - To protect the development and its occupants from the increased risk of flooding and in order to comply with PPS 25: Planning and Flood Risk and Policy NRM4 of the South East Plan 2009.</p>
23.	SC9.13A	<p>The development hereby permitted shall be constructed in accordance with Code for Sustainable Homes to a Code 4 level.</p> <p>Reason - To ensure energy and resource efficiency practices are incorporated into the development in accordance with Government advice contained in PPS: Planning and 'Climate Change' (Supplement to PPSI) and to comply with Policies CC2 and CC4 of the South East Plan 2009.</p>
<b><u>Planning Notes</u></b>		
1.	B	This permission shall not imply or be deemed to imply approval for the indicative sketch details shown on the plans accompanying the application.
2.	C	In the submission of reserved matter details for approval, it is

		expected that the new scheme will closely follow the indicative plans/elevations/layout accompanying this application.
3.		Thames Water have been consulted in respect of the application and a copy of their letter of reply is enclosed for your information.
4.	X1	Your attention is drawn to the need to have regard to the requirements of UK and European legislation relating to the protection of certain wild plants and animals. Approval under that legislation will be required and a licence may be necessary if protected species or habitats are affected by the development. If protected species are discovered you must be aware that to proceed with the development without seeking advice from Natural England could result in prosecution. For further information or to obtain approval contact Natural England on 0300 060 2501.

**SUMMARY OF REASONS FOR THE GRANT OF PLANNING PERMISSION AND RELEVANT DEVELOPMENT PLAN POLICIES**

The Council, as local planning authority, has determined this application in accordance with the development plan unless material considerations indicated otherwise. The development is considered to be acceptable on its planning merits as the proposal is located in a sustainable location and does not adversely affect neighbouring properties, protected species or result in increased flood risk. As such the proposal is in accordance with Policy CO1, SP3, CC1 and CC2 of the South East Plan 2009 and Policies C14, R12, C28 and C30 of the adopted Cherwell Local Plan. For the reasons given above and having regard to all other matters raised, the Council considers that the application should be approved and planning permission granted subject to appropriate conditions, as set out above.

<b>CONTACT OFFICER: Linda Griffiths</b>	<b>TELEPHONE NO: 01295 227998</b>
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