

Application 11/00069/F	No:	Ward:Yarnton, Gosford and Water Eaton	Date Valid: 02.02.11
Applicant:	University of Oxford		
Site Address:	Land west of Begbroke Science Park and east of Woodstock Road, Yarnton		

Proposal: Access road and all traffic movements junction, landscaping and associated works

1. Site Description and Proposal

- 1.1 This application relates to the construction of an alternative roadway between the Begbroke Business and Science Park and the A44. Located in the Oxford Green Belt and south of Begbroke village, the proposal is related to the Begbroke Science Park an academic research/business complex which is currently accessed via Sandy Lane, Yarnton. This current access is to be closed to all motor vehicles except for emergency vehicles. The site is within 2km of Rushy Meadows SSSI, in an area of Archaeological interest and has a series of public rights of way running approx 300m to the north and east. An allotment site is located immediately adjacent the A44 and the proposed new access road.
- 1.2 The access road will be 7.3m wide with a combined footway/cycleway on the northern side of the carriageway and stretches a distance of approx 580 metres, incorporating a layby on the northern side of the carriageway and a turning facility on the southern side of the carriageway. The works involve the demolition of 2 no. single storey buildings within the Science Park complex and will consist of an all movements signalised junction at the A44, just north of the allotments and a priority junction at the Science Park.
- 1.3 The junction has been designed so that vehicles can undertake all turning movements. Full crossing facilities for pedestrians and cyclists are incorporated into the design of the junction with the A44. Signalised crossings with associated dropped kerbs and tactile paving are proposed.

2. Application Publicity

- 2.1 The application was advertised by way of a site notice, press notice and neighbour notification letters. The final date for comment is 28th April 2011. 9 letters of objection have been received and 1 petition signed by 19 local residents.
- 2.2 The letters of objection raise the following issues:
 - Green Belt – should be left undeveloped to prevent urban sprawl and merging of Begbroke, Yarnton and Kidlington.
 - Increase in traffic congestion on Woodstock Road and longer tailbacks
 - Light pollution

- Hazardous to have junction near Rutten Lane roundabout
- Road is not needed because there is a dedicated minibus service to the Science Park
- Road will open up the adjacent land to further development as illustrated by the University's challenge to the development south of Oxford in the South East Plan 2009, but was rejected by the Inspector.
- Yarnton Nurseries, which includes a multitude of businesses and large numbers of traffic movement is a principle contributor to environmental pollution to residents, not the Science Park and therefore the new road is not needed.
- If the application is approved then a spur road for Yarnton Nurseries should be included.
- OCC are unwilling to provide a road crossing at Begbroke, which will increase hazard to pedestrians
- Increased road noise detracting from enjoyment of gardens
- Access to allotments restricted by a road to cross
- Loss of amenity to countryside walks – having to cross a road
- Work already commenced and the application has not yet been determined, construction vehicles almost causing an accident.
- There are wildlife issues which should be taken into account.

2.3 The petition broadly supports planning proposals that would relieve Sandy Lane of traffic but believes that Yarnton Nurseries which includes a multitude of businesses and large numbers of traffic movement is a principle contributor to environmental pollution to residents, not the Science Park and therefore the new road is not needed. But if the application is approved then a spur road for Yarnton Nurseries should be included.

2.4 Oxford Green Belt Network objects to the application on the following grounds:

- PPG2 - Policy C13 of Annex C should be taken into account. Adverse effect of the road on the Green Belt taking land out of Green Belt and longer term by inviting further forms of development
- Potential development pressure in a vulnerable Green Belt Location
- Valued open space and serves the purpose of the Green Belt.
- Questions the need for a road when the Science Park has a dedicated minibus service
- New roads encourage car use.

3. Consultations

3.1 **Begbroke Parish Council** object to the application for the following reasons:

- The proposed road is in green belt
- Apart from Science Park growth, it could lead to further development
- Outdated data supplied ie. Access Road Transport Assessment book dated January 2011, page 7, existing traffic data is based on figures in 2000 – 11 years out of date!
- Accident analysis, page 20 is based on an accident summary 1996-2001 – 10 years out of date. However, in this instance, it does show A44 /Spring Hill as having a worse safety record than A44/ Sandy Lane so why put a

pedestrian crossing near there rather than Begbroke?

- The bus timetable dates from 2001 (the above are not exclusive examples)
- Traffic analysis should be carried out to show the correct current figures and then project them to show other likely effects on the A44 such as the proposed Waste Disposal centre in Kidlington and how traffic patterns may change when travelling to Yarnton Nurseries if this road is then used for that purpose.
- Section 106 monies will be spent in Yarnton when Begbroke Science Park is in our parish. i.e. Improved Bus stop, signal controlled crossing and a possible cycle route to Kidlington
- Light pollution if lighting is eventually installed on the adopted road
- Traffic backing up along the carriageways from both directions at the junction.

3.2 **Yarnton Parish Council** raises no objection but makes the following comments:

- Design & Access Statement (3.1.6) refers to closure of existing access on a regular basis – should read permanent basis for vehicular traffic, other than emergencies.
- Key fact for the new road that Sandy Lane access be closed off (4.1.5)

3.3 **Natural England** raises no objection to the application in terms of Rushy Meadows SSSI and subject to the proposals being carried out in strict accordance with the terms of the application and accompanying plans. In respect to protected species advice from the Council's in-house Ecologist should taken into account.

3.4 **OCC - Local Highway Authority** raises no objection to the application on the basis that the proposed access road with an all movement junction with the A44 and the permanent closure of the Sandy Lane vehicle entrance will provide a benefit to the local residents as well as the Science Park. The proposed new access arrangements will be designed and constructed in accordance with Oxfordshire County Council (Local Highway Authority) specifications and provide a crossing facility which provides a benefit to local residents etc.

Subject to updated public transport and accident data being submitted it is my opinion that recommending refusal on highway safety grounds would not be appropriate or sustainable at appeal.

(Full response is combined with the assessment of Highway Impact as part of the appraisal of this application)

3.5 **OCC – Archaeology** advises that the proposed access route concerned lies within an area of some archaeological interest identified through aerial photographs and archaeological evaluation. Two or three faint ovoid enclosures, linear marks possibly part of a field system, and a small group of well-marked pits have been recorded immediately south of the proposed route (PRN 7533)(SP 4754 1336). An oval enclosure with sub-circular enclosures and a pit group have also been recorded immediately north of the route (PRN 7336)(SP 4768 1351). This second group of features are directly affected by the new road and were recorded during the evaluation. Although no dateable material was recovered these are likely to be

Bronze Age barrows which will be affected by this proposal.

We would, therefore, recommend that, should planning permission be granted, the applicant should be responsible for ensuring the implementation of an archaeological monitoring and recording action (watching brief) to be maintained during the period of construction.

3.6 **Ecology Officer** advises that the proposed works have the potential to affect protected species and habitats.

Hedgerows - small sections of hedgerow are to be removed. Whilst these are not identified as 'important' under the hedgerow regulations it is likely that they qualify as BAP habitat and therefore they should be replaced with hedgerow plants of native species where possible on site. No proposals to this effect have been provided.

Badgers - the proposed mitigation and methodology outlined in the ecological report (Sections 4.2.5-4.2.8) are appropriate and should be conditioned. The addition of a tunnel and badger fencing should be included on the road layout plans and carried out under guidance from their ecologists.

From the plans and aerial photos it appears that the 'subsidiary or main' sett identified in the badger survey is within 30m of the proposed road (although the scale may be slightly inaccurate) and therefore would be likely to be disturbed by the heavy digging works likely to be involved. If this is the case a licence and timing constraints would be required in order to avoid disturbance to badgers at sensitive times of year. The sett should be rechecked three months prior to any works commencing to determine whether it is active and therefore if further measures are required.

During any on-site construction work, open trenches should be covered at night or a means of escape provided to ensure foraging badgers do not become trapped. Access to setts must remain unobstructed at all times.

Bats - I note that further surveys are still recommended as regards bats within the two buildings to be demolished. Surveys should not usually be conditioned, however as this is stated as a precautionary measure only and the mitigation proposed in the form of the bat chamber houses is likely to more than compensate for any loss of roosting opportunities in the long-term this may be acceptable. We should be given information however as to what the plans will be if any bats are found to be using the buildings even in a limited way as outlined following these extra precautionary surveys. How would the work commence in order to avoid harm to the bats if this was the case? Will temporary bat boxes be installed? When would the bat houses be installed? Will there be timing constraints to the work? A simple method statement should be produced to outline what will occur in this instance so we can be sure a licence would be likely to be granted should bats usage come to light as a result of the precautionary emergence surveys. If it is not felt possible to produce such a precautionary statement then it may be necessary to await the

summer survey before demolition of the buildings could be permitted.

All removal of hedgerow sections/shrubs should occur outside of the bird breeding season or be checked by an ecologist before removal.

- 3.7 **Landscape Officer** advises that as part of a landscaping scheme some trees should be planted in addition to the hedge. These could either be in the hedge or in the land to the side of the drive and these should be native species. No species list provided for the hedge, but should be a mixed hedge ie 5-6 native species. Also for the hedge to be maintained in a less formal way than the close cutting regime on the hedge along the drive from Sandy Lane which looks shorn and doesn't provide a rural feel.
- 3.8 **Arboricultural Officer** advises that most of the significant trees within influencing distance of the proposal are hedgerow specimens already identified for retention within the drawings submitted. No details regarding the protection of the hedgerow or individual trees have yet been provided. These details may form a Condition to be discharged should consent be granted.

4. Relevant Planning Policies

- 4.1 South East Plan
SP1 – Sub-regions in the South East
SP5 – Green Belts
CC1 – Sustainable development
CC4 – Sustainable design and construction
CC7 – Infrastructure and implementation
RE1 – Contributing to the UK's long term competitiveness
RE3 – Employment and land provision
RE5 – Smart growth
RE6 – Competitiveness and addressing structural economic weakness
T4 – Parking
T5 – Travel Plans
NRM1 – Sustainable water resources and groundwater quality
NRM5 – Conservation and implementation of biodiversity
C4 – Landscape and countryside management
C5 – Managing the rural-urban fringe
C6 – Countryside access and rights of way management
BE5 – Village Management
BE6 – Management of the Historic Environment
CO2 – Economy
CO4 – Green Belts
- 4.2 Adopted Cherwell Local Plan
GB1 – Development in the Green Belt
EMP3 – Employment generating development – Science Parks
C1 – Nature conservation
C2 – Protected Species
C4 – Promotion of nature conservation and habitats

C7 – Landscape Conservation
C14 – Trees and landscaping
C28 – Standards of layout, design and external appearance

- 4.3 **PPS1** – Delivering Sustainable Development
PPS2 – Green Belts
PPS4 – Planning for sustainable Economic Growth
PPS5 – Planning For the Historic Environment
PPS9 – Biodiversity and Geological Conservation
PPG13 - Transport
PPS25 – Development and Flood Risk

5. Appraisal

5.1 Main Planning Considerations

The main issues to consider in the determination of this application are as follows:

- History
- Green Belt and principle of Development
- Landscape impact
- Highway Impact
- Impact on neighbouring amenities
- Ecology
- Archaeology
- Other material considerations

Each of the above points will be considered in turn.

5.2 History

01/00662/OUT – Proposed new research buildings (long term phase of site development). Approved subject to the completion of a legal agreement

01/00664/OUT – Proposed new research buildings (interim phase of site development). Approved 22.08.05

01/01872/OUT – Proposed new access road. Approved 22.08.05

08/00899/F – Widening and southern extension of access road, including public highway junctions alterations and associated works. Refused 31.10.08. Appeal dismissed.

The site is subject to considerable history, but essentially the above applications are of most relevance to this current application. The previous consent for a major expansion of the Science Park, which Members approved in 2002 was subject to the completion of a S106, which has only recently been finalised (this 01/00662/OUT is reported elsewhere on this agenda). During the consideration of the 2001 application, the applicant's had put forward their very special circumstances case, which is still considered to be relevant as part of the consideration of this current application. Their case explained the uniqueness of

the proposal and the specific need for it to be located at Yarnton, the consideration of alternative sites and also the controls to be exercised over the commercially lettable space.

- 5.3 The applicant had explained that the proposal is driven by the new area of science known as 'nanotechnology', which is the manipulation of individual atoms and molecules to manufacture machines and devices. Oxford is a world leader in this pioneering area of science. The interim phase provides for the establishment of an Institute of Nano Technology and for an innovation centre to provide accommodation for the spin-off business which will flow from the research. The long-term proposal provides for two further academic institutions dealing with related technology and provides for still further innovation space and the reprovision of the existing innovation centre. There were and still are, clear obvious academic and economic benefits from the co-location of these activities as a cluster - a form of business/research development which is being encouraged by the Government.
- 5.4 The University has been involved in a review of its estate and its capacity to accommodate the growth required and has concluded that this cannot be provided within the City. To achieve the right level of 'critical mass' a site of approximately 10 acres is required (the Begbroke site is 3.3 hectares or 8 acres). They say that within the Oxford ring road the sites tend to be smaller than 10 acres. There is strong competition for these sites from house builders and they are usually unable to compete in this sort of market. They have acquired the Radcliffe Infirmary site but this is seen as being vitally important for providing growth for those parts of the University that are particular to the collegiate nature of the University, such as arts and humanities, which have to be close to libraries and collections.
- 5.5 The applicants had volunteered to accept constraints upon the extent of the B1 innovation centre space and also to agree leasing arrangements which will support the incubation/start-up phase of business growth, with accelerated rent increased beyond an initial term, thereby encouraging growing established business to move on to appropriate commercially provided floorspace.
- 5.6 At that time Members were convinced that the very special circumstances advanced by the applicant were of sufficient weight and merit to outweigh the normal presumption against inappropriate development in the Green Belt.
- 5.7 That 2001 application was the subject of departure procedures, but was not called in. As advised in para 5.2, the application was approved subject to the completion of a Section 106 Agreement concerning access and travel plan matters. That agreement was delayed pending discussions with landowners and more latterly to agree and await the submission of this application. An interim Phase one redevelopment of the Science Park was granted permission in 2005 relating to Phase one with a cap upon vehicle movements along Sandy Lane. It is understood that the cap has been exceeded in peak hours.

- 5.8 In 2005 planning permission was also granted for the originally intended access alignment (01/01872/OUT), which is the same route currently proposed. However this was never implemented, instead an alternative route was proposed as an additional application, that improved the existing access roadway from Sandy Lane northwards into the Business and Science Park, and the use of parts of two fields to the east of Broadfield Road and south of Gravel Pits Lane respectively to form a new roadway between Sandy Lane and Woodstock Road. This application (08/00899/F) was refused on Green Belt grounds and dismissed at appeal.
- 5.9 Since the unsuccessful attempt in 2009 to provide an alternative access to the east of the village, the applicants have been in negotiation with adjacent land owners, the County Council and Cherwell District Council to provide an access on the same alignment that was approved under the 01/01872/OUT in 2005.
- 5.10 Green Belt and principle of development
- South East Plan Policy CO4 (and SP5), Adopted Local Plan Policy GB1, and Non Statutory Cherwell Local Plan Policy GB1 are relevant to this proposal. The route of the proposed access road is not identified as within the Major Developed Site area, so Non Statutory Cherwell Local Plan Policies GB5 & GB6 are not relevant.
- 5.11 The SDPHE considers that the proposal clearly represents inappropriate development in the Green Belt. There is in general a presumption against inappropriate development in Green Belts (PPG2). Such development should not be approved, except in very special circumstances. As such, the Council needs to be satisfied that very special circumstances exist. Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
- 5.12 The special circumstances put forward by the applicants are those advanced in support of the case of the interim development proposals (01/00664/OUT), the long term development proposals (01/00662/OUT), and the original road scheme (01/01872/OUT, unimplemented, now lapsed), which were all granted consent.
- 5.13 In view of the presumption against inappropriate development, weight is attached to the harm caused by the proposal to the visual amenities of the Green Belt. The landscape impact is further considered under para 5.33 below, however the SDPHE is satisfied that the visual impact of the road is acceptable and is not considered to be harmful to the purposes or objectives of the Green Belt and that there are very special circumstances for allowing the research/commercial development proposed to be served by this road.
- 5.14 Highway Impact

It is acknowledged that Begbroke and Yarnton residents and their Parish Councils

have strong objections and severe reservations about the proposal in safety and congestion terms and the need for the road. As a consequence Oxfordshire County Council (OCC), as Local Highway Authority, who are responsible for providing this Council with advice on such matters, has carefully considered its position, and the following commentary provides the full response made by OCC.

- 5.15 “The proposed new access road with an all movement junction via the A44 is a similar proposal to the one which was granted planning permission in 2005 (planning ref 01/01872/OUT), subject to the completion of a legal agreement. Within this S106 a number of covenants/triggers were imposed upon the applicant i.e. if traffic entering the Begbroke Science Park via Sandy Lane exceeded 80 vehicle movements then the requirement for the access road would be triggered. This threshold was triggered some time ago, however, it is understood that due to land constraints the access road, it could not be implemented and subsequently the planning permission expired for the access road. This land constraints matter has now been resolved so the applicant can now meet their S106 Agreement obligations.
- 5.16 Within the existing S106 Agreement one of the applicant’s obligations is to provide a controlled crossing across the A44 within the vicinity of Sandy Lane as well as improvements to the existing public transport infrastructure to the north of Sandy Lane. A deed of variation is currently been drafted to enable OCC to carry out these works instead with the appropriate costs being paid over by the applicant.
- 5.17 The location of the works have been agreed by OCC taking into the consideration the needs of the local residents and the Science Park employees i.e. crossing to go within vicinity of Gravel Pitts Lane on pedestrian desire line, public transport improvements to existing infrastructure. These proposed works will go through the standard OCC consultation period where members of the public can submit comments. At this time the deed of variation has not been signed – until completed no consultation period can start. This deed of variation is a separate issue from this current planning application. However, no new S106 Agreement is to be drawn up nor is it appropriate to ask for financial contributions from this planning application.
- 5.18 The proposed access road and new junction on the A44 will be the main access into the Science Park. The existing vehicle entrance via Sandy Lane is to be permanently closed to vehicular traffic (except for emergency vehicles). The closure of the Sandy entrance will stop the existing vehicle movements along Sandy Lane to the Science Park which in my opinion is a benefit to highway safety – this closure must be secured via planning condition. Pedestrian and cyclist access via Sandy Lane will remain.
- 5.19 New pedestrian and cycle links via the A44 along the new access road to the Science Park are to be provided. A bus stop is to be provided at the new gated entrance to the Science Park with a turning area for the buses.

- 5.20 The access road is to be constructed to OCC specifications i.e. 7.3m in width with 3m shared footway/cycleway and is to accord with SUDS. Lighting will be required on the junction of the access road and the A44 for safety reasons, but is not considered necessary along the access road towards the Science Park.
- 5.21 The proposed signalled junction on the A44 is to be constructed to accommodate all turning movements associated with the new access road as well cater for the existing traffic movements along the A44. The new junction will incorporate crossing facilities to enable local residents and employees of the Science Park to cross safely at this point. Due to the new junction the existing speed limit will be reduced to 40mph.
- 5.22 The proposed all movements junction has evolved from the previous access arrangement from a left in/left out junction to deter traffic from carrying out U-turns around the adjacent roundabouts, which is considered by the Local Highway Authority as a potential safety issue. This principle was agreed for the unsuccessful planning application 08/00899/F.
- 5.23 **Transport Assessment (TA) Summary**
- The application was submitted with a TA, the methodology of which is considered reasonable by the Local Highway Authority i.e. the base data used from the year 2000/01 for the first phase of the Science Park and the following phases which have been factored up. These figures have been checked and remain acceptable – although updated data from traffic movements associated with the Science Park would provide a more robust picture.
- 5.24 To assess the traffic impact/generation of this application the traffic data obtained from Oxfordshire County Council (2007 data) has been used and has been factored up to a base year of 2010 by using TEMPRO; this approach is deemed reasonable and is generally accepted. OCC has agreed the principle of the 50% split of traffic movements via the new junction as no other robust data is available. However, this split is expected to be monitored in the future via the Travel Plan for Science Park in terms of Travel Diary/journey surveys, which will be expected as part of an updated Travel Plan.
- 5.25 In terms of the capacity of the new junction the figures submitted have been assessed and are deemed reasonable.
- 5.26 The safety audit carried out has identified a few design issues; however the majority can be addressed. The main safety concern that has been identified is the common issue of rear shunts at queues at junctions – this is to be addressed with an increase to the right turn lane into the Science Park which is acceptable in principle. Further safety audits will be undertaken as part of the design of the works in addition to separate technical checks carried out by the Local Highway Authority if

Members are minded to approve this current application.

- 5.27 A review of the footway, cycle, public transport links and reported accident data has been undertaken. The information provided for the public transport and reported accident data is out of date and must be updated for further assessment.
- 5.28 The existing Travel Plan for the Science Park is to continue whether or not the new access road is approved. However an updated Travel Plan should be imposed upon the site via planning condition”
- 5.29 The SDPHE shares the view of the Local Highway Authority that the proposed access road with an all movement junction with the A44 and the permanent closure of the Sandy Lane vehicle entrance will provide a benefit to the local residents as well as the Science Park. The proposed new access arrangements will be designed and constructed in accordance with Oxfordshire County Council (Local Highway Authority) specifications and provide a crossing facility which provides a benefit to local residents etc.
- 5.30 Subject to updated public transport and accident data being submitted the SDPHE concurs with the Local Highway Authority that recommending refusal on highway safety grounds would not be appropriate or sustainable at appeal and consequently is acceptable on highway safety grounds and complies with PPG13: Transport and Policy T5 of the South East Plan 2009.
- 5.31 In response to the point made by the local residents in their petition, it is also acknowledged that a number of residents believe that the road is not necessary and that the main contributor to traffic along Sandy Lane is in fact Yarnton Nurseries. Whilst there is likely to be significant traffic generation by the garden centre, essentially this current application deals only with the traffic movements of Begbroke Science Park and to address the access arrangements for the expanded site. It is appreciated that there could be potential for a spur road leading into the garden centre from the north of the access road, however this matter would be subject to further consent and negotiation between the applicant, Yarnton Nurseries and the Local Highway Authority. Notwithstanding that, it is not an option for consideration as part of this current application.
- 5.32 Landscape Impact
- The Science Park site is set well back from the A44 and Sandy Lane. It is an island of development within a flat field landscape, the proposed access road cuts along a field to the north of Yarnton and west of the Science Park. The southern boundary of the access road is formed by a native hedgerow and trees, adjacent to the allotments site and Yarnton Nurseries.
- 5.33 The alignment of the road was essentially considered the best available in terms of Green Belt and landscape impact, during the consideration of the 2001 application mainly because of its proximity to the village that it would have the least harm in visual amenity terms. The SDPHE considers that with suitable landscaping neither

the road itself, nor vehicles moving along it, would be harmful to the purposes or objectives of the Green Belt or rural landscape and therefore complies with Policies C4 and C5 of the South East Plan 2009 and C7, C14 and C28 of the adopted Cherwell Local Plan.

5.34 Impact on neighbouring amenities

The proposed road will be located approx 170m and 270m from the nearest neighbours along the A44 (226 and 204 Woodstock Road respectively) and 240m from nos. 29 and 31 Sandy Lane. These properties essentially back onto the fields that will adjoin the road. Given the distances between the road and these properties, the SDPHE considers that no serious harm will be caused to these neighbours amenity in terms of noise or disturbance and subject to appropriate landscaping their visual enjoyment of the rural landscape would not be compromised. The proposal therefore complies with Policy C28 of the adopted Cherwell Local Plan.

5.35 Ecology

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.”

5.36 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 onto 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.”

5.37 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;

5.38 Local planning authorities must also have regards 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”.

- 5.39 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.
- 5.40 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?
- 5.41 Therefore where planning permission is required and protected species are likely to be 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.
- 5.42 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.

4.43 In respect to the application site, an Ecological Assessment Survey and Bat Building Survey were undertaken by Applied Ecology Ltd in November 2010 and February 2011, which found that:

- The closest body of water is approx 360m to the south surrounded by residential housing and separated from the site by minor roads and a wide buffer of arable land. There are no significant adverse impacts on Great Crested Newts predicted to occur as a result of the proposed development and no further survey work is required for this species.
- No trees attractive to bats are present at the site, but two buildings are to be demolished. No evidence to suggest that the roof void of either building was or had been in use by bats during the survey period and that a large or important bat roost is not present.

Mitigation - as a precautionary measure, simple bat roosting compensation measures could be put into place to ensure that the development would not result in any significant long term loss of bat roosting opportunities from the site. These compensation measures will be installed prior to the demolition of these two buildings and will take the form of 4 no. back to back multi-chambered nursery bat houses on legs located in plantation woodland and hedgerows that border the Science Park. In addition to these measures the two buildings will be surveyed for the presence of roosting bats during the bat active season (May-August) and a EPS licence obtained from Natural England as necessary in advance of the demolition of the buildings should bat roosting be confirmed by this additional bat survey work. The new road should also not be lit after dark or a bat friendly lighting strategy be developed.

- No badger setts were present anywhere within the land area proposed for road construction. However a small main or subsidiary sett consisting of four active well used holes and two partially-used holes, all linked by a well worn badger path was present within the hedgerow adjacent to the development and in association with an area of dumped material in the neighbouring property. The sett's tunnels were more or less aligned with the hedgerow or entered hedgerow in an easterly direction and were not located below the land area that is to be disturbed by road construction.

Mitigation – a watching brief should be maintained for the presence of newly dug badger setts within the proposed construction area including hedge to be removed. Prior to commencement of work, temporary fencing should be erected to form a boundary between the construction zone and the section of hedgerow in which the badger sett was found, providing short term protection during the construction phase. In the long term, badgers should be protected from the risk of vehicle collision by the provision of an artificial tunnel constructed from a 600mm concrete and waterproof pipe giving the animals access under the road from the sett via the most used mammal track found during the survey to the hedgerow to the north. Provision of the tunnel should be in conjunction with badger-proof fencing positioned in such a way as to prevent badgers crossing the road above ground and guiding them to the tunnel entrance.

- No bird species listed under Schedule 1 of the Wildlife and Countryside Act 1981 (as amended) were found to be present at the site. Two lengths of intact field boundary hedgerow and dense beech hedge on the west edge of the Science Park are likely to support small numbers of common hedgerow birds.

Mitigation – removal of buildings and hedges be undertaken between September and February outside the bird nesting period or after an ecologist has deemed these areas to be free of nesting birds at other times.

The Council's Ecologist has reviewed the survey and considers it is acceptable, however, suggests as a range of further precautionary measures should be undertaken to ensure that during the construction period, protected species are not adversely impacted upon.

5.44 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 of the adopted Cherwell Local Plan.

5.45 Archaeology

Oxfordshire County Council's Archaeologist has advised that the site lies within an area of some Archaeological interest identified through aerial photographs and Archaeological Evaluation undertaken by the applicant dated February 2011. As such an Archaeological monitoring and recording action (watching brief) should be maintained during the construction period. This will ensure that impact of the development on heritage asset is monitored and controlled should any important findings occur and thereby complying with PPS5: Planning for the Historic Environment.

5.46 Other material considerations

Flood Risk Assessment – As required by PPS25: Development and Flood Risk, a FRA has been undertaken for the application site and SUDS has been fully incorporated into the design for the access road in the form of swales along both sides of the road. The site is not within Flood Zones 2 or 3 and has no known history of flooding, but to ensure that runoff will not have an adversely increase risk of flooding the application has been supported by an FRA. As the site area is less than 1ha the Environment Agency offers only standing advice and given that the risk of flooding is low, the incorporation of SUDS will ensure that surface water runoff from the road will collect in the swales and consequently the development complies with the guidance contained in PPS25: Development and Flood Risk

5.47 Conclusion

The proposed assess will link the Science Park directly with the A44 and will consist an all movements signalised junction at the A44, providing an alternative access arrangement in connection with the approved expansion of the Science Park. The SDPHE is satisfied that notwithstanding the fact that the development is inappropriate development within the Oxford Green Belt, the applicant's have demonstrated a very special circumstances case, and as such the harm by reason of inappropriateness, and any other harm is clearly outweighed by other considerations. The development therefore accords with PPG2: Greenbelts and Policies CO4 and SP5 of the South East Plan 2009 and adopted Cherwell Local Plan Policy GB1.

Furthermore, the applicant has demonstrated through the submission of an Transport Assessment, Ecology Survey, Archaeological Evaluation and Flood Risk Assessment that the development will not adversely affect highway safety, protected species, heritage assets and increase risk to flooding and therefore complies with PPG13: Transport, PPS9: Biodiversity and Geological Conservation, PPS5: Planning for the Historic Environment and PPS25: Development and Flood Risk and the relevant development plan policies.

6. **Recommendation**

Approve subject to:

- (1) The expiry of the consultation period (28th April 2011) and there being no further representations that are additional material consideration not already covered as part of this report.**
- (2) The following conditions**
- (3) Referral to SoS as departure procedure**

1. 1.4A Full Permission: Duration Limit (3 years) (RC2)

2. Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the following plans:

31327/PDL/001 Rev C, 31327/LE/003 Rev A and 31327/PHL/004 Rev D

Reason - For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and to comply with PPS1: Delivering Sustainable Development.

3. The development hereby permitted shall be carried out in accordance with the recommendations set out in the Ecological Assessment Survey and Bat Building Survey of the Begbroke Science Park site by Applied Ecology dated November 2011 and February 2011 (respectively) unless otherwise agreed in writing by the Local Planning Authority. And that during the construction phase of the development best practice construction methods be applied ie. open trenches be covered at night or a means of escape be provided to ensure that foraging badgers do not become trapped and access to setts must remain unobstructed at all times

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.

4. That before any works commence on site badger proof fencing shall be erected to form a boundary between the construction zone and the section of hedgerow in which the badger sett is located and as illustrated on Figure 3 of the Ecological Assessment Survey by Applied Ecology dated November 2011.

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.

5. That prior to the demolition of the two buildings within the Science Park, a further bat survey including emergence survey, shall be undertaken during the bat active season (May-August), details of which shall be submitted to and approved in writing by the Local Planning Authority, and if any bats are found to be present, a method statement shall be provided with the bat survey details of how and when the building is to be demolished and how the bats are to be removed.

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.

6. That prior to the first use of the proposed A44 junction and access road the existing means of access onto Sandy Lane shall be permanently stopped up by the means of restatement of the highway verge, full face kerbing (footway where appropriate)

and the proposed planting, details of which shall be submitted to and approved in writing the Local Planning Authority prior to the commencement of the development and in accordance with the highway authority's specifications and shall not be used by any vehicular traffic whatsoever (except in emergencies).

Reason - In the interests of highway safety and to comply with Government advice contained in PPG13: Transport.

7. That prior to the first use of the proposed A44 junction and access road it shall be formed, laid out and to the approval of the Local Planning Authority and constructed strictly in accordance with the highway authority's specifications and that all ancillary works specified shall be undertaken.

Reason - In the interests of highway safety, to ensure a satisfactory standard of construction and layout for the development and to comply with Government advice in PPG13: Transport.

8. That prior to the first use of the access road hereby permitted an updated Travel Plan shall be submitted to and approved in writing by Local Planning Authority and implemented in accordance with the approved details.

Reason – In the interests of sustainability and to ensure a satisfactory form of development, in accordance Policy T5 of the South East Plan 2009.

9. That no connection for vehicular or pedestrian traffic shall be made from the approved road (other than for the Begbroke Science Park) for which it is designed without the prior express planning consent of the Local Planning Authority.

Reason - In the interests of highway safety, to ensure a satisfactory standard of construction and layout for the development and to comply with Government advice in PPG13: Transport and 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.

10. That no development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a scheme for landscaping the site and tree protection measures for retained trees which shall include:-

- (a) details of the proposed tree and shrub planting including their species, number, sizes and positions, together with grass seeded/turfed areas,
- (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,
- (c) a plan that shows the position, crown spread and Root Protection Area (paragraph 5.2.2 of BS5837) of every retained tree on site and on

neighbouring or nearby ground to the site in relation to the approved plans and particulars. The positions of all trees to be removed shall be indicated on this plan.

- (d) the details of each retained tree as required at paragraph 4.2.6 of BS5837 in a separate schedule.
- (e) the details and positions (shown on the plan at paragraph (c) above) of the Ground Protection Zones (section 9.3 of BS5837).
- (f) the details and positions (shown on the plan at paragraph (c) above) of the Tree Protection Barriers (section 9.2 of BS5837), identified separately where required for different phases of construction work (e.g. demolition, construction, hard landscaping). The Tree Protection Barriers must be erected prior to each construction phase commencing and remain in place, and undamaged for the duration of that phase. No works shall take place on the next phase until the Tree Protection Barriers are repositioned for that phase.

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.

11. 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.

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.

12. Prior to the commencement of the development and any archaeological investigation, a professional archaeological organisation acceptable to the Local Planning Authority shall prepare an Archaeological Written Scheme of Investigation, relating to the application site area, which shall be submitted to and approved in writing by the Local Planning Authority.

Reason - To safeguard the recording and inspection of matters of archaeological importance on the site in accordance with PPS5: Planning for the Historic Environment

13. Prior to the commencement of the development, and following the approval of the Written Scheme of Investigation referred to in condition 12, a staged programme of archaeological evaluation and mitigation shall be carried out by the commissioned

archaeological organisation in accordance with the approved Written Scheme of Investigation. The programme of archaeological evaluation and mitigation shall include all processing, research and analysis necessary to produce an accessible and useable archive and a full report for publication which shall be submitted to the Local Planning Authority as soon as practically possible following the completion of the on site investigation. Providing that the timing of the archaeological evaluation and mitigation is carried out in accordance with the wording of this condition, the submission of the full report may follow the commencement of the development on site.

Reason – To safeguard the identification, recording, analysis and archiving of heritage assets before they are lost and to advance understanding of the heritage assets in their wider context through publication and dissemination of the evidence in accordance with PPS5: Planning for the Historic Environment.

14. That notwithstanding the approved plans, no additional lighting shall be provided along the access road hereby permitted without the prior express permission of the Local Planning Authority.

Reason – To safeguard the amenities of the occupants of neighbouring properties, in the interests of the visual amenities of the area to ensure the creation of a pleasant environment and to encourage nature conservation in accordance with the requirements of PPS 9: Planning and Biodiversity and Policies BE1, NRM5 the South East Plan 2009 and Policies C2, C4, C28 and C31 of the adopted Cherwell Local Plan.

15. The development shall proceed in accordance with the Flood Risk Assessment prepared by WSP Development and Transportation dated January 2011 accompanying the application unless otherwise previously approved in writing by the Local Planning Authority.

Reason - To protect the development and its occupants from the increased risk of flooding and in order to comply with PPS25: Planning and Flood Risk and Policy NRM4 of the South East Plan 2009.

Planning Notes

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. If any vegetation or trees are to be removed, it should first be ensured that they do not contain nesting birds or roosting bats. 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 will not cause harm to purpose and objectives of the Green Belt, neighbouring or visual amenity, protected species or highway safety and will not impact on the significance of heritage assets. As such the proposal is in accordance with PPS1: Delivering Sustainable Development, PPG2: Green Belts, PPS4: Planning for sustainable Economic Growth, PPS5: Planning for the Historic Environment, PPS9: Biodiversity and Geological Conservation, PPG13: Transport and PPS25: Development and Flood Risk and Policies SP1, SP5, CC1, CC4, CC7, RE1, RE3, RE5, RE6, T4, T5, NRM1 NRM5, C4, C5, C6, BE5, BE6, CO2 and CO4 of the South East Plan and Policies GB1, EMP3, C1, C2, C4, C7, C14 and C28 of the adopted Cherwell Local Plan. For the reasons given above and having proper regard to all other matters raised the Council considered that the application should be approved and planning permission granted.

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