

**Case Officer:** Linda Griffiths

**Applicant:** Network Rail Infrastructure Ltd

**Proposal:** Phase 2 of the Blackthorn & Piddington rail embankment stabilisation scheme (installation of sheet piles to provide stabilisation to the railway embankments)

**Ward:** Launton and Otmoor

**Councillors:** Cllr Hallchurch MBE, Cllr Holland & Cllr Hughes

**Reason for Referral:** Major development

**Expiry Date:** 25 February 2021

**Committee Date:** 11 March 2021

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

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

#### **Proposal**

This application seeks consent for re-stabilisation works to a section of the railway embankment that runs between Blackthorn and Piddington. The embankment in question has a history of instability problems, which have resulted in emergency repairs, speed restrictions and repeated maintenance problems over recent years. The embankment to which this scheme relates is approximately 2km in length and consists of sheet piling. This application relates to Phase 2 of the stabilisation works. Phase 1 works, which were granted consent in 2019, are already well underway.

#### **Consultations**

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

- OCC Drainage and the Environment Agency objected to the original submission on grounds of insufficient detail with respect to drainage impacts, but those objections were removed following the submission of additional information and clarification from the applicant.

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

- Blackthorn Parish Council; CDC Ecology; OCC Countryside Access Officer; OCC Highways; CDC Environmental Health; and Natural England.

2 other letters of objection have also been received.

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

The railway embankment is within 20m of a main river (the River Ray) and located within Flood Zones 2 and 3. The site is also close to Meadow Farm, Blackthorn, a Local Wildlife Site and there are several known Protected and Notable Species within a 250m buffer of the site. The site is also within 2km of Arncott Bridge Meadows, Rushbeds Wood and Railway Cutting and Long Herdon Meadow SSSI's. Blackthorn Public Footpath 1 (131/1) passes under the railway embankment where the proposed work will be taking place.

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

## **Conclusion**

The key issues arising from the application are:

- Environmental Statement
- Planning and the Need for the Development
- Noise and Vibration
- Flooding and Drainage
- Ecology and Net Biodiversity Gain
- Transport and Highway Safety
- Archaeology
- Landscape and Visual Impact
- Human Rights and Equalities

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

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

## **MAIN REPORT**

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

- 1.1. The application site referenced as Blackthorn embankment is located approximately 3 miles south east of Bicester. The northern extent of the site is located where the A41 crosses under the railway, while the southern extent is where Piddington Road crosses over the railway. The embankment was constructed in 1909, as part of the Great Western Railway. The railway is not electrified in this location and comprises two tracks on the embankment. The embankment was necessary to cross an area of low lying agricultural land in the flood plain of the River Ray. It now carries the Chiltern Line between Birmingham and London Marylebone. This is a modern, two-track high speed (100mph) passenger railway, which forms a commuter and intercity link through Oxfordshire.
- 1.2. The Earthworks Regrading Scheme and Sheet Pile installations are required along various sections of the embankment along a 3.7km length between Blackthorn and Piddington. This section of embankment is within open countryside, although there are a number of agricultural holdings and residential properties within close proximity of the embankment and the proposed works.
- 1.3. The villages of Blackthorn and Piddington are located to the west of the railway line, and a small number (11) of farms and residential dwellings are situated within 300m of the site – namely: Blackstone Farm, Lower Cowleys Farm, Nos.1 and 2 Cowleys Cottages, Piddington Cowleys Farm, Middle Cowleys, Ashville, Treadwells Barn, Weir Farm, Weir Farm Cottages and The Homestead to the southwest.

## **2. CONSTRAINTS**

- 2.1. The railway embankment lies within 20m of the River Ray (a main river) and runs through an area designated as Flood Zones 2 and 3. The embankment is also close to Meadow Farm, Blackthorn a Local Wildlife Site and there are a significant number of Protected and Notable Species within 250m. The embankment is also within 2km of several Sites of Special Scientific Interest (SSSI), these being Arccott Bridge Meadows, Rushbeds Wood and Railway Cutting, and Long Herdon Meadow. Blackthorn Public Footpath 1 (131/1) passes under the railway embankment where the proposed works will be taking place.
- 2.2. The embankments are vegetated with rough grassland, blackthorn scrub and scattered trees, including oak, hawthorn, blackthorn, sycamore and ash. The River Ray and one of its tributaries, Piddington Brook, cross beneath the railway in the northern half of the site. There are a number of flood alleviation 'through pipes' that pass through the railway embankment within the flood plain area. A minor road linking the A41 to Piddington and three farm track roads cross over the railway. There are numerous drainage ditches throughout the surrounding farmland and several ponds close to the embankment.

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

- 3.1. The application seeks consent for the installation of sheet piles in conjunction with the previously approved stabilisation works to this section of the railway embankment that runs between Blackthorn and Piddington. The embankment in question has a history of instability problems, which have necessitated emergency repairs, speed restrictions and maintenance problems over recent years. Network Rail are seeking a long-term solution to these problems and in doing so improve the safety and reliability of the train services using the line, which provide an important link between London and the Midlands.
- 3.2. The Scheme for which the application is made involves work on various segments of the same section of route under Phase 1, using earthworks to re-grade the embankment on parts of the line totalling 3.7km in length. This proposal constitutes Phase 2, which comprises the installation of a 1,640m length of sheet pile retaining wall and re-grading to the rear with engineered fill to provide stabilisation to the railway embankments. It will affect approximately 2km of earthworks and sheet pile installation in total. The sheet piles will be approximately 6m long with a rear graded slope angle of 15 to 20 degrees. Each pile will extend no higher than 1m above ground level.

## **4. RELEVANT PLANNING HISTORY**

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

13/01805/F – permission subject to conditions granted for stabilisation works to the Blackthorn/Piddington railway embankment;

18/00211/F – resubmission of 13/01805/F, conditional consent granted in July 2019;

20/01046/SCOP – scoping opinion given for ES submission.

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

- 5.1. No pre-application discussions have taken place about this phase 2 works proposal.

## **6. RESPONSE TO PUBLICITY**

6.1. The application was publicised by way of site notices displayed near the site, by advertisement in the local newspaper, and by letters sent to all properties immediately adjoining the application site that the Council was able to identify from its records. The final date for comments was **30 November 2020**, although comments received after this date and before finalising this report have also been taken into account.

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

- Why was this application not applied for at the outset of the project?
- Hope this potentially very loud and intrusive construction does not take place at night, as already subjected to some night time working at the weekend without any mitigation or compensation.
- The very noisy sheet piling works to the embankment will perpetuate and escalate the disruption for another year unless the Council is able to intervene and provide some mitigation.
- To date there has been no approach from the applicant to discuss the nature or timing of these works and how they might seek to reduce disruption – are they not required to demonstrate that they have engaged with those affected by the works?
- Looking at the ES, the affected properties have not been identified as a ‘Sensitive Receptor’, so their conclusion that the works would have no impact on anybody in the locality ignores the plight of those living right in the centre.
- Only 50m away from the main compound where construction vehicles enter and exit frequently from along the haul road and railway. The noise and light disturbance is especially intrusive.
- The compound was originally much smaller and now contains a two-storey high complex of portacabins used as offices, canteen and welfare facilities.
- Appreciate these works are necessary but request a visit from environmental health to assess the impact this project has as the impacts do not match the negligible effect that Goodhead Acoustics predicted at the outset.

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

6.4. Following the submission of an addendum relating to noise impact on Nos.1 and 2 Cowleys Cottages, a further objection was received on behalf of No.1 Cowleys Cottages which can be viewed on the website.

## **7. RESPONSE TO CONSULTATION**

7.1. Below is a summary of the consultation responses received at the time of writing this report. Responses are available to view in full on the Council’s website, via the online Planning Register.

## PARISH/TOWN COUNCIL AND NEIGHBOURHOOD FORUMS

- 7.2. BLACKTHORN PARISH COUNCIL: Following concerns that the original agreement; assurances from Network Rail, and approval from the County Engineer, to divert the pumps towards the River Ray, as recommended by Blackthorn Parish Council, as part of a planning application had not been complied with; the PC has enlisted the support of District Cllr D. Hughes and County Cllr I. Corkin to ensure the recommendations are met before approving a further application and furthermore that the Traffic Management Plan previously approved should also be abided by and that both be made a condition of approval of the application.

### CONSULTEES

- 7.3. OCC HIGHWAYS: **No objections** subject to a standard detailed condition in respect of a construction traffic management plan
- 7.4. OCC LOCAL LEAD FLOOD AUTHORITY: **Objection.** Further details are required on how the existing water courses will be protected during construction, the site is located in flood zones 2 and 3 and no detailed FRA or Surface Water Management Strategy has been provided.

**Update 30<sup>th</sup> November 2020** following correspondence with the applicant. This is a high level water resources section of an EIA. This is not a detailed FRA and does not include an appropriate Surface Water Management Strategy.

**Update 2<sup>nd</sup> December 2020 – Objection as above**

**Update 19<sup>th</sup> January 2021 – No objection** subject to a condition relating to the management of water quality

- 7.5. OCC COUNTRYSIDE ACCESS OFFICER: **Comments.** Blackthorn footpath 1 runs through this site and is affected by this application. The footpath is currently closed via a TTRO but this temporary order expired on 4<sup>th</sup> December 2020 and needs to be renewed to ensure the footpath remains legally closed. The new plans show that the footpath is to be enclosed with fencing. At least 3m of width **MUST** be provided between the fences for the footpath to ensure the width of the footpath is not encroached. As part of the work, the stile should be replaced, and undergrowth cleared prior to re-opening the footpath.
- 7.6. LANDSCAPE OFFICER: **No comments** in respect of landscape/visual impacts
- 7.7. ECOLOGY OFFICER: **Comments** that the Ecological Management Plan is in the Appendices, but no Biodiversity Impact Metric has been included

**Update 12<sup>th</sup> February 2021 – Comments** that the ecological information submitted is fine and the recommendations within can be conditioned. The monitoring and management scheme also raises no issues and the Biodiversity Impact Assessment is accurate. Net gain for biodiversity is achievable and is to be gained through off-site enhancement works on part of the BBOWT reserve. If BBOWT are in agreement with the form of these measures, then this needs to be secured via condition or legal agreement if required as part of any permission. Beyond this I have no concerns although note the need raised by the Bucks Ecologist for the hydrological conditions previously agreed for Phase 1 to be applied here also.

7.8. ENVIRONMENTAL PROTECTION OFFICER: **Comments.** I have reviewed the ES submitted by JOMAS Engineering Environmental and I am happy with their assessment of the potential impacts on both noise and air quality. Providing the applicant commits to following best practicable methods outlined in the EIA, I have no further comments or observations to add.

7.9. ENVIRONMENT AGENCY: **Object** in the absence of an acceptable FRA

**Update 26<sup>th</sup> January 2021: No objection** subject to the imposition of a condition to ensure the development is carried out in accordance with the FRA.

7.10. BBOWT: **Comments** that they are happy with the off-site biodiversity compensation scheme on their land but raise concerns about the hydrological impact of the works on our nature reserve and suggest the condition from Phase 1 be re-imposed on this application in respect of monitoring hydrological changes.

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

8.1. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

8.2. The Cherwell Local Plan 2011-2031 - Part 1 was formally adopted by Cherwell District Council on 20th July 2015 and provides the strategic planning policy framework for the District to 2031. The Local Plan 2011-2031 – Part 1 replaced a number of the ‘saved’ policies of the adopted Cherwell Local Plan 1996 though many of its policies are retained and remain part of the development plan. The relevant planning policies of Cherwell District’s statutory Development Plan are set out below:

### CHERWELL LOCAL PLAN 2011 - 2031 PART 1 (CLP 2031 Part 1)

- ESD15 - The Character of the Built and Historic Environment
- ESD7 – Sustainable Drainage Systems
- ESD8 – Water Resource
- ESD10 – Protection and Enhancement of Biodiversity and the Natural Environment
- ESD13 – Local Landscape Protection and Enhancement
- SL4 – Improved Transport Connections

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

- C28 – Layout, design and external appearance of new development
- TR7 – development attracting traffic on minor roads
- TR10 – Heavy Goods Vehicles
- C5 – Protection of Ecological Value and Rural Character

8.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- The Planning (Listed Buildings and Conservation Areas) Act 1990
- EU Habitats Directive
- Natural Environment and Rural Communities Act 2006
- Conservation of Habitats and Species Regulations 2017
- Circular 06/2005 (Biodiversity and Geological Conservation)

- Human Rights Act 1998 (“HRA”)
- Equalities Act 2010 (“EA”)

#### 8.4. Council Corporate Priorities

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

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

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

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

### 9. APPRAISAL

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

- Environmental Statement
- Planning and the Need for the Development
- Noise and Vibration
- Flooding and Drainage
- Ecology and Net Biodiversity Gain
- Transport and Highway Safety
- Archaeology
- Landscape and Visual Impact
- Human Rights and Equalities

#### Environmental Statement

9.2. The application is supported by an Environmental Statement (ES). The impacts of the proposed scheme during demolition, construction and operational phases are identified so as to determine the likely significant environmental effects both on its own and in combination with other committed developments. The proposed scheme is considered to fall within Category 2 (10) (d) *Infrastructure Projects* of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017.

9.3. The scope of the ES considers in detail the following topics: Ecology and Biodiversity, Traffic and Transport, Air Quality, Noise and Vibration and Water Resources and Cumulative Effects. An ES was submitted with the application because of the likely significant effects on the environment as a result of the nature

of the proposal and the length of track involved. Having regard to the nature of the proposal and that this follows a previous consent for embankment stabilisation works and the site constraints, Officers are satisfied with the scope of the submitted ES. On this basis it is considered that sufficient information is before the Local Planning Authority in order to consider the environmental effects of the development and any mitigation required to make the development acceptable. The submitted ES can be viewed with the application documents via the Council's website.

- 9.4. Regulation 26 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 requires that Local Authorities must examine the environmental information, reach a reasoned conclusion on the significant effects of the proposed development on the environment and integrate that conclusion into the decision as to whether to grant planning permission.
- 9.5. The PPG advises 'The Local Planning Authority should take into account the information in the Environmental Statement, the responses to consultation and any other relevant information when determining a planning application.' Proper consideration of these matters is integrated into the assessment of the application under the relevant sections below.

#### Planning Policy and the Need for the development

##### *Legislative and policy context*

- 9.6. The Development Plan for Cherwell comprises the adopted Cherwell Local Plan Part 1 2011-2031 and saved policies in the adopted Cherwell Local Plan 1996. Section 70 (2) of the Town and Country Planning Act 1990 provides that in dealing with applications for planning permission, the Local Planning Authority shall have regard to the provisions of the development plan in so far as is material to the application, and any material considerations. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that regard is to be had to the development plan for the purpose of any determination to be made in accordance with the development plan unless material considerations indicate otherwise. This is also reflected in the National Planning Policy Framework (NPPF) at paragraph 12 which makes it clear that the starting point for decision making is the development plan.
- 9.7. Policy PSD1 of the adopted Cherwell Local Plan 2011-2031 advises that the Council will take a proactive approach to reflect the presumption in favour of sustainable development and Policy SLE4 seeks to ensure improved Transport and Connections.
- 9.8. The embankment between Piddington and Blackthorn has a history of landslip movements due to its age and the original construction methods. As recently as 2007 these have led to the need for stringent speed restrictions and emergency repair work in order to manage the risk to railway safety. These proposals are part of the planned programme of works to provide cost-effective safe and reliable railway infrastructure.
- 9.9. The section of embankment at Blackthorn has been monitored since 2003 on both sides using devices to detect movement in the soil and ground water levels. Movements in clay embankments of this kind develop slowly and gradual 'creep' movements are precursors to sudden landslips which can occur without warning, usually over the winter months when the ground is wet and water levels in the ground are high. The movements identified suggest that the works to stabilise the slopes are urgently required. The initial stabilisation works granted under a previous consent (18/00211/F) which are identified as Phase 1 are underway. This application relates to Phase 2, which involves the insertion of sheet piles.



- 9.10. The Piddington section of the embankment is thought to be made up of re-worked Oxford Clay and ash shoulders and also has a longstanding history of instability, which has led to the need for speed restrictions and increased maintenance. The insertion of sheet piles is also proposed along this stretch.
- 9.11. Central to the benefits of the proposal is that the scheme will safeguard the operation of the line and the reduced occurrence of temporary speed restrictions which in turn should make the railway a more attractive transportation option thereby encouraging the use of the railway. As such therefore, the proposal accords with the NPPF in seeking to ensure sufficient provision of transport infrastructure in achieving sustainable development. Policy SLE4 'Improved Transport Connections' seeks to promote a modal shift away from an over reliance on the car to more sustainable forms of transport.
- 9.12. Construction is expected to commence in 2021 and it is anticipated that it will take approximately 4 months to complete.

#### Noise and Vibration

- 9.13. It is anticipated that construction work will take 4 months to complete, with working hours expected 08:00-17:00 Monday to Friday with provision for up to 10 shifts from 23:00-06:00 on Saturdays, if work needs to be undertaken while no trains are running on the line. The submission advises that should night-time working be required, activities will not take place on consecutive nights and advance notice would be given to local residents.
- 9.14. The ES has assessed the potential noise and vibration levels during construction of the piling and re-grading works together with noise levels from increased traffic during construction. Noise from any operational phase has been scoped out of the assessment as confirmed by the Local Planning Authority as the proposed works, once completed, will have no impact on the number of trains or road traffic.
- 9.15. Objections have been received by and on behalf of the occupiers of Nos.1 and 2 Cowleys Cottages, a pair of semis which sit adjacent to the railway line at the point where the road passes over the railway line, who are concerned about the impact of the construction upon their residential amenities in terms of noise and vibration and that the assessment in the ES has not considered their properties. The applicant was requested to look into the matter accordingly, and consequently, an addendum was received which considers the noise impact on Cowleys Cottage. This has been forwarded to the agent on behalf of the occupants of the Cottages. However, their objection currently still stands, advising that whilst each section is assessed in isolation, at no point does it recognise that at the Cottages, all of the nuisances, that is noise and vibration from the works together with traffic accessing the site, will be combined together at the same time.
- 9.16. In response to the above objection, the applicants have commented as follows:

*'Please note that whilst Phase 1 of the works were concentrated in one area near the main compound, which was relatively close to the properties, Phase 2 is split into a number of worksites along the line. This is why receptors further away from the main compound are now equally affected, and why you would expect the overall noise impact to be reduced with work spread out along the railway line instead of in one place. The predictions set out in the Jomas Noise Impact Assessment Addendum reflect this. We believe that main compound is only used for Phase 2 of the works in order to access the line so there should be fewer movements in that area than during Phase 1. The road traffic movements to the east are not counted as part of the construction noise as they are on a public highway. These are very different assessment*

*methods and it would produce a false picture to combine them. It is also noted that whilst a minor increase in road traffic noise levels has been predicted during this phase, the absolute noise level is relatively low and not at a level likely to cause adverse impacts when assessed against other typical road traffic noise criteria.'*

- 9.17. The above comments have been forwarded to the Environmental Health Officer for further comment and advice. Members will be updated at the meeting.
- 9.18. The noise and vibration chapter in the ES has been assessed by Environmental Health who raise no objections to the development in principle subject to the impact on No.1 Cowleys Cottage having been adequately assessed. Having regard to the above, it is considered that the proposal is acceptable in this respect, subject to the imposition of a condition requiring mitigation measures to be agreed in respect of the impact on Nos.1 and 2 Cowleys Cottages.

#### Flooding and Drainage

- 9.19. The scheme could affect the local water environment, including ground water and surface water courses. The proposed works will result in changes to local water features which include the diversion of a watercourse that crosses under the railway track, and the reduction of floodplain volume between the most northerly extent of the embankment stabilisation scheme and Upper Cowleys Farm.
- 9.20. Policies ESD6 and ESD7 of the adopted Cherwell Local Plan relate to Sustainable Flood Risk Management and Sustainable Drainage Systems. Policy ESD7 requires that all development will be required to use SuDS for the management of surface water run-off. The policy also requires ground water quality to be protected, flood risk to be reduced where possible, reduce pollution and provide landscape and wildlife benefits. Section 14 of the NPPF – Meeting the challenge of climate change, flooding and coastal change echoes the above-mentioned policies and is also relevant to the consideration of this application.
- 9.21. The site lies within the River Ray floodplain and also crosses the Piddington Brook. A Flood Risk Assessment was required as part of the submission to ensure that the proposed scheme would not adversely affect the existing floodplain and flood conveyance routes. The Blackthorn section of the line is predominantly within the floodplain associated with the River Ray, which flows south-west through the northern part of the site and passes beneath the railway. It is classified as a main river and is managed by the Environment Agency. The Piddington Brook flows northwards from Piddington and crosses beneath the railway line at Piddington Cow Leys before its confluence with the River Ray. The surrounding landscape is predominantly agricultural land, divided into fields that are drained by a network of drainage ditches that flow towards the River Ray. There are also numerous ponds, particularly within the Blackthorn section. The Piddington section of the embankment works lies within Flood Zone 1, but the Blackthorn embankment works are entirely within Flood Zones 2 and 3.
- 9.22. The application is accompanied by a Flood Risk Assessment and an explanation of the assessment carried out by the Phase 1 development proposals. These were submitted following initial objections from OCC and the Environment Agency. These have subsequently been assessed by the Environment Agency and OCC as Lead Flood Authority who are now content with the submission, which makes it clear that the scope of works to be completed as part of the Phase 2 works were all included in the modelling and FRA completed as part of Phase 1. The submission is therefore recommended for approval in this respect and the proposals are considered acceptable in terms of flood risk and drainage and therefore in accordance with the

development plan and NPPF Government guidance, subject to a condition that the works are carried out in accordance with the FRA and mitigation measures therein.

### Ecology Impact

#### *Legislative context*

- 9.23. The Conservation of Habitats and Species Regulations 2017 consolidate the Conservation of Habitats and Species Regulations 2010 with subsequent amendments. The Regulations transpose European Council Directive 92/43/EEC, on the conservation of natural habitats and of wild fauna and flora (EC Habitats Directive), into national law. They also transpose elements of the EU Wild Birds Directive in England and Wales. The Regulations provide for the designation and protection of 'European sites', the protection of 'European protected species', and the adaptation of planning and other controls for the protection of European Sites.
- 9.24. Under the Regulations, competent authorities i.e. any Minister, government department, public body, or person holding public office, have a general duty, in the exercise of any of their functions, to have regard to the EC Habitats Directive and Wild Birds Directive.
- 9.25. The Regulations provide for the control of potentially damaging operations, whereby consent from the country agency may only be granted once it has been shown through appropriate assessment that the proposed operation will not adversely affect the integrity of the site. In instances where damage could occur, the appropriate Minister may, if necessary, make special nature conservation orders, prohibiting any person from carrying out the operation. However, an operation may proceed where it is or forms part of a plan or project with no alternative solutions, which must be carried out for reasons of overriding public interest.
- 9.26. The Regulations make it an offence (subject to exceptions) to deliberately capture, kill, disturb, or trade in the animals listed in Schedule 2, or pick, collect, cut, uproot, destroy, or trade in the plants listed in Schedule 4. However, these actions can be made lawful through the granting of licenses by the appropriate authorities by meeting the requirements of the 3 strict legal derogation tests:
- (1) Is the development needed to preserve public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment?
  - (2) That there is no satisfactory alternative.
  - (3) That the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.
- 9.27. The Regulations require competent authorities to consider or review planning permission, applied for or granted, affecting a European site, and, subject to certain exceptions, restrict or revoke permission where the integrity of the site would be adversely affected. Equivalent consideration and review provisions are made with respects to highways and roads, electricity, pipe-lines, transport and works, and environmental controls (including discharge consents under water pollution legislation).

#### *Policy Context*

- 9.28. Paragraph 170 of the NPPF states that Planning policies and decisions should contribute to and enhance the natural and local environment by (amongst others): a)

protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils; and d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.

- 9.29. Paragraph 175 states that when determining planning applications, local planning authorities should apply the following principles: a) if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused; d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.
- 9.30. Paragraph 180 of the NPPF states that planning decisions should also ensure that new development is appropriate for its location considering the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should (amongst others) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.
- 9.31. Policy ESD10 of the Cherwell Local Plan 2011-2031 lists measures to ensure the protection and enhancement of biodiversity and the natural environment, including a requirement for relevant habitat and species surveys and associated reports to accompany planning applications which may affect a site, habitat or species of known ecological value.
- 9.32. Policy ESD11 is concerned with Conservation Target Areas (CTAs), and requires all development proposals within or adjacent CTAs to be accompanied by a biodiversity survey and a report identifying constraints and opportunities for biodiversity enhancement.
- 9.33. These two policies are both supported by national policy in the NPPF and also, under Regulation 43 of Conservation of Habitats & Species Regulations 2017. It is a criminal offence to damage or destroy a breeding site or resting place, unless a licence is in place.
- 9.34. The Planning Practice Guidance dated 2014 post-dates the previous Government Circular on Biodiversity and Geological Conservation (ODPM Circular 06/2005), although this remains extant. The PPG states that Local Planning Authorities should only require ecological surveys where clearly justified, for example if there is a reasonable likelihood of a protected species being present and affected by development. Assessments should be proportionate to the nature and scale of development proposed and the likely impact on biodiversity.

#### *Assessment*

- 9.35. Natural England's Standing Advice states that an LPA only needs to ask an applicant to carry out a survey if it's likely that protected species are:
- present on or near the proposed site, such as protected bats at a proposed barn conversion affected by the development

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

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

9.36. The Standing Advice sets out habitats that may have the potential for protected species, and in this regard the site consists of scrub, a mix of species rich and species poor semi-improved grassland and agricultural land which has been subject to some improvement. A number of ponds and drainage ditches are also present within and adjacent to the site. The overall scheme also crosses three watercourses: the River Ray, Piddington Brook and an un-named drainage ditch. There are no buildings to be removed or altered due to the proposed development. There are several mature trees and hedgerows within and adjacent the site, and therefore has the potential to be suitable habitat for bats, breeding birds, badgers, reptiles, great crested newts, water voles and invertebrates.

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

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

9.39. The application is supported by a chapter in the Environmental Statement which focuses on the ecology of the site and the surrounding area based upon desk study data, consultations and field surveys undertaken between 2009 and 2020. In particular, it considers the potential key impacts of this phase of the scheme on habitats and protected and notable species, paying most attention to the results of the most recent suite of ecological surveys.

9.40. The schemes ecological mitigation is largely tied into Phase 1 of the works. This includes replacement planting, which will take place on the railway embankment, consisting predominantly of native species including blackthorn, hazel, holly, oak, rowan, honeysuckle and dog rose. Blackthorn is a key location for a number of notable butterfly species, historically recorded within 500m of the site so its inclusion within the planting mix will provide long-term habitat for those species. There will also be a wildflower planting mix sown along the scheme, to include a high percentage of those species recorded as being present in the site during the walkover surveys. It is likely however that some off-site habitat compensation is likely due to the constraints of the site.

9.41. The submission has been assessed by the Ecologist who raised no objections but wished to see the Biodiversity Impact Metric that had not been included in the original submission. The biodiversity calculator was duly submitted, and the

application proposal is now considered acceptable in this respect subject to the imposition of a condition to ensure that development is completed in accordance with these documents and a condition relating to the hydrological impacts upon the adjacent nature reserve as per Phase 1.

- 9.42. Officers are satisfied, on the basis of the advice from the Council's Ecologist and the absence of any objection from Natural England, and subject to conditions, that the welfare of any European Protected Species found to be present at the site and surrounding land will continue and be safeguarded notwithstanding the proposed development and that the Council's statutory obligations in relation to protected species and habitats under the Conservation of Habitats & Species Regulations 2017, have been met and discharged.

#### Transport and Highway Safety

- 9.43. Saved Policies TR7 and TR10 of the adopted Cherwell Local Plan 1996 consider traffic generated by a proposed development and its impact on the local highway infrastructure. Whilst consideration of these policies is relevant to the Scheme, the traffic generated by the proposal in terms of construction traffic is only short term and once the embankment stabilisation scheme has been completed, except for infrequent inspections and future maintenance, this traffic will cease.
- 9.44. Section 9 of the NPPF 'Promoting Sustainable Transport' advises at paragraph 109 that *'development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe'*.
- 9.45. The ES transport chapter has been prepared to consider the likely environmental effects associated with the construction traffic generated with this phase. The works duration is anticipated to be four months, commencing this year. The overall works area extends from the A41 in the northwest to the location where Piddington Road crosses the railway line in the southeast.
- 9.46. Access to the site will be via a number of points for construction vehicles. There is no public access to the site. The temporary access points for vehicular access and construction compound which were approved as part of the Phase 1 works will also be utilised for this development.
- 9.47. Access Point 1 is adjacent to A41 at the most northerly point of the site but will not be used by construction vehicles as part of these Phase 2 works. Access Point 2 has two accesses which are located off Lower End close to Upper Cowleys Farm, approximately 1.2km to the south of A41. Access Point 2a provides access to the north-west of the railway overbridge, with Access Point 2b located on the south eastern side of the railway overbridge. Access Point 3 also has two access points located off Lower End. Access Point 4 from Ludgershall Road will only be used by light vehicles serving the site.
- 9.48. The Transport submission within the ES has been assessed by OCC as highway authority who raise no objection to the development but recommend the imposition of a condition requiring the submission of a Construction Traffic Management Plan for approval.
- 9.49. Having regard to the above, it is considered that the proposed development accords with the policies within the development plan and Government advice within the NPPF and is therefore acceptable in this respect.

### Air Quality

- 9.50. The National Planning Policy Framework sets out the Government's planning policies and how they are to be applied. Specific reference to air quality is provided within Section 15 at paragraphs 103 and 181.
- 9.51. In this regard the ES has focussed on the potential effects of dust and traffic emissions associated with the construction phase of the development, the operational phase has been scoped out as the proposal will not result in any increase in the number of train services provided nor future maintenance requirements. The ES has therefore looked at the construction phase only and the effects on air quality in that respect. The ES concludes that any impacts will not be significant. The document has been assessed by the Environmental Health Officer who has not raised any objections to this assessment and the conclusion reached.

### Landscape and Visual Impact

- 9.52. The main impacts of the proposed scheme will result from the construction phase, including the removal of vegetation such as hedgerows, trees and scrub and construction of the works along sections of the embankment relating to the proposed piling. It should be noted however, that much of the existing vegetation has already been removed to facilitate the Phase 1 stabilisation works. Visual and landscape impact has not been included in the ES but the application is accompanied by a separate visual impact assessment.
- 9.53. The landscape immediately around the railway is flat, becoming gently undulating towards the south leading to the prominent Muswell Hill and Arncott Hills. It is primarily of a rural character with smaller scale developments such as Blackthorn, Piddington, Brill and Ludgershall within. The existing railway line also forms a strong element within the landscape as it runs on an embankment for the majority of its length through the application site.
- 9.54. Policy ESD10 of the adopted Cherwell Local Plan 2011-2031 refers to the protection and enhancement of ecology and the natural environment and requires amongst others, the protection of trees. Policy ESD13 also encourages the protection of trees and landscape features. The impact of the stabilisation works and removal of trees, hedgerows and scrub were all considered as part of the Phase 1 proposals. The additional impacts for consideration here in the main are the construction of sheet piles along sections of the embankment. These, however, will only project 1 metre above ground level and will therefore have minimal landscape impact.
- 9.55. The imposition of landscape conditions will ensure that appropriate replacement planting occurs and within a reasonable timescale. Accordingly, it is considered that the stabilisation works proposed accord with Policy ESD13 of the adopted Cherwell Local Plan and will not cause demonstrable harm to the landscape.

### Human Rights and Equalities

- 9.56. The Human Rights Act 1998 ("HRA") sets out fundamental freedoms which have been laid out by the European Convention on Human Rights ("ECHR"). In making any decisions, Cherwell District Council ("the Council") should have due regard to and take into account any implications that may arise under the HRA. As a public authority, it is unlawful for the Council to act in a manner which is incompatible with the ECHR.

9.57. The rights under the ECHR, which the Council views as being the most likely to affect planning matters are: Article 6 (the right to a fair trial); Article 8 (right to respect for private and family life); Article 14 (prohibition of discrimination); and Article 1 of the First Protocol (protection of property).

#### *Article 6*

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

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

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

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

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

9.61. S149 of the Equalities Act 2010 ("EA") sets out what is known as the Public Sector Equality Duty ("PSED"). Under the PSED, the Council, as a public authority, must have due regard to the need to, inter alia, advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and has to foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The protected characteristics to which the PSED refers are: (a) age; (b) disability; (c) gender reassignment; (d) pregnancy and maternity; (e) race; (f) religion or belief; (g) sex; (h) sexual orientation.

9.62. Officers have considered the application and resolved that none of the protected characteristics is affected or potentially affected by the application.

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

10.1. The overall purpose of the planning system is to seek to achieve sustainable development as set out in the NPPF. The three dimensions of sustainable development must be considered in order to balance the benefits against harm and come to a decision about the acceptability of the scheme. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined against the provisions of the development plan unless material considerations indicate otherwise.



- 10.2. In terms of economic benefit, the proposals will generate some economic benefit during the construction works by providing construction employment and in the long term benefit the economy through the increased use of public transport.
- 10.3. In terms of social benefit, the scheme will ensure the long-term future of the railway network, increased use of public transport to the benefit of the local population, and also afford health and safety benefit through stabilisation of the embankments and removal of the risk of collapse.
- 10.4. In terms of environmental impact, the scheme through proposed mitigation measures will seek to ensure the protection of ecology and net biodiversity gain through replacement planting and the implementation of a construction Environmental Management Plan together with a Biodiversity Monitoring and Maintenance Schedule. The improvement to the public transport system will also help to reduce the reliance on the use of private vehicles.
- 10.5. The proposed embankment stabilisation scheme is necessary to ensure that the existing embankment does not collapse, in the interests of passenger safety and the provision of sustainable public transport. Therefore, provided acceptable mitigation measures are agreed in terms of ecology, flood risk and landscaping, it is considered that the proposed embankment stabilisation works are in accordance with the development plan and the NPPF and therefore should be approved.

## 11. RECOMMENDATION

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

### CONDITIONS

#### **Time Limit**

1. The development to which this permission relates shall be begun not later than the expiration of three years beginning with the date of this permission.

Reason - To comply with the provisions of Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

#### **Compliance with Plans**

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

Reason – For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and comply with Government guidance contained within the National Planning Policy Framework.

#### **Public Right of Way**

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

Reason: To ensure the public right of way remains available and convenient for use.

#### **Public Right of Way**

4. The development should be designed and implemented to fit with the existing public rights of way network. No changes to the public rights of way's legally recorded direction or width must be made without first securing appropriate temporary or permanent diversion through separate legal process. Alterations to surface, signing or structures shall not be made without prior written permission by Oxfordshire County Council. Note that there are legal mechanisms to change PRow when it is essential to enable a development to take place.

Reason: To ensure the legal public right of way remains available and convenient for public use.

#### **Public Right of Way**

5. Any gates provided in association with the development shall be set back from the public right of way or shall not open outwards from the site across the public right of way.

Reason: To ensure the public right of way remains available and convenient for use.

#### **Drainage**

6. Drainage – Wording awaited from OCC

#### **Noise and Vibration**

7. Prior to the commencement of the development hereby approved, a full assessment of the impact of noise and vibration resulting from the development on 1 and 2 Cowleys Cottages shall be carried out and the report submitted to the Local Planning Authority for approval in writing. The development shall thereafter be carried out in accordance with any mitigation measures identified within the report.

Reason: In the interests of the residential amenities of 1 and 2 Cowleys Cottages and to comply with Government guidance within the National Planning Policy Framework.

#### **CTMP**

8. CTMP – This has been submitted but wording will be required to ensure compliance

#### **Ecology**

9. The development shall be implemented in accordance with the Ecological Management Plan and the on and off-site ecological mitigation measures set out in the Environmental Statement.

Reason: In the interests of protecting wildlife and supporting habitat and creating ecological enhancements in accordance with Policy ESD10 of the adopted Cherwell Local Plan 2011-2031 and Government guidance within the NPPF.

#### **Hydrological Impact**

10. Prior to the commencement of the development hereby approved, a report on the hydrological impact of the drainage works on Meadow Farm Local Wildlife Site shall be submitted to and approved in writing by the Local Planning Authority. The report is to details appropriate mitigation measures should they be considered necessary, including any amendments to the approved scheme. Thereafter the development shall be carried out in accordance with the approved details.

Reason: In the interests of protecting wildlife and supporting habitat and creating ecological enhancements in accordance with policy ESD10 of the adopted Cherwell Local Plan 2011-2031 and Government guidance within the NPPF.

**FRA**

11. The development shall be carried out in accordance with the submitted Flood Risk Assessment (ref P2451J1890 Version 3.0 dated 10/12/2020) and the following mitigation measures it details:
- Compensatory storage and flood risk mitigation should be provided in accordance with Section 7
  - These mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the schemes timing/phasing arrangements. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

Reason: To prevent flooding elsewhere by ensuring that compensatory storage of flood water is provided, in accordance with Policy ESD6 of the adopted Cherwell Local Plan 2011-2031 and Government guidance within the National Planning Policy Framework.

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