

Appeal Ref: APP/B1605/W/20/3261154  
Application Ref: 20/00683/OUT

Land adjacent to Oakhurst Rise, Cheltenham

## **Proof of Evidence in respect of Biodiversity**

By

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Quality Management	
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# 1 Qualifications, Background & Purpose of Evidence

## 1.1 Qualifications

1.1.1 My name is Alistair Baxter. I hold an Honours Degree and Masters of Arts in Biological Sciences from St. Catherine's College, University of Oxford. In addition, I hold a Masters of Science in Conservation from University College London, University of London and I am a full member of the professional Chartered Institute of Ecology and Environmental Management (CIEEM), a Chartered Ecologist and a Chartered Environmentalist.

1.1.2 I am a Senior Director of Aspect Ecology, a practice that provides ecological planning and design advice to the public and private sectors. I have over 20 years personal experience in carrying out Ecological Assessments relating to residential development, industrial, retail, educational, commercial, minerals, landfill and leisure schemes. I have advised on ecological matters for clients such as Crest Nicholson, Taylor Wimpey Developments, Bellway Homes, Persimmon Homes, Tesco Stores, Aldi, Big Yellow Self Storage, Extra MSA, Vopak, Wealden District Council, Surrey County Council, West Sussex County Council and the Highways Agency.

1.1.3 In particular, I am experienced in the assessment of potential effects arising from residential development on designations, including European Designations / Habitats Sites in the form of Special Protection Areas (SPAs) and Special Areas of Conservation (SACs), Sites of Special Scientific Interest (SSSIs), non-statutory designations e.g. Local Wildlife Sites (LWSs) and a wide range of Priority and non-priority habitat types e.g. grasslands, heathlands, woodlands, orchards, hedgerows and trees.

1.1.4 I regularly carry out surveys and assessments for Badgers and other protected species and I currently hold a number of licences issued by Natural England to survey or direct mitigation works in relation to protected species.

1.1.5 The evidence which I have prepared and provide in this proof of evidence is true and is given in accordance with the guidance of the professional institutions of which I am a member (CIEEM and Society for the Environment). I confirm that the opinions expressed are my true and professional opinions irrespective of by whom I am instructed.

## 1.2 Instructions and appeal proposals

1.2.1 I became involved with the appeal site when Aspect Ecology was originally instructed by William Morrison (Cheltenham) Limited in October 2018 to undertake an update ecological assessment of the site. I worked on the 2019 application (18/02171/OUT) and appeal (APP/B1605/W/19/3227293) and the 2020 application (20/00683/OUT). The current appeal proposals are for Outline permission for 43 dwellings including access, layout and scale, with all other matters reserved for future consideration.

## 1.3 Reasons for Refusal

1.3.1 The application was recommended for approval within the Planning Officer's report to Committee (CD A102) but the application was refused on the 17 September 2020 by Cheltenham Borough Council. A single reason for refusal is listed, which relates to impact on the setting of nearby listed buildings. The application was not refused on biodiversity grounds. Nonetheless, evidence on this topic is advanced by the Rule 6 party Charlton Kings Friends (CKF) who has sought to resist the grant of permission on the site throughout the consideration of the planning application by the Council.

## 1.4 Purpose of my Evidence

1.4.1 My evidence assesses the potential effects arising from the appeal proposals on the biodiversity of the appeal site. During the application process CKF took particular issue with the Local Wildlife Status of the site and Biodiversity Net Gain. I discuss these issues in detail alongside other ecological matters raised in CKF's Statement of case (CD C7) under the following headings:

- Review of the biodiversity interest of the appeal site
- Policy Framework
- Effect of the appeal proposals on the Local Wildlife Site
- Effect of the appeal proposals on Badgers
- Effect of the appeal proposals on the other ecology of the site and Application of the Mitigation Hierarchy
- Biodiversity Net Gain under the appeal proposals
- Review of Consultation Responses

1.4.2 Finally, my conclusions are drawn.

## 2 Review of the Biodiversity Interest at the Appeal Site

### 2.1 Appeal Site Description and its Ecological Characteristics

2.1.1 The appeal site is located east of Oakhurst Drive in Cheltenham, Gloucestershire (see Plan 5487/ECO1 of CD A10). The north, east and west of the appeal site are bound by residential development, whilst the southern boundary borders St Edwards Preparatory School, beyond which lies further residential development giving way to open countryside further east.

2.1.2 The appeal site itself currently comprises grassland disproportionately divided into two fields by a mature hedgerow. Hedgerows are also situated along the western boundary and sections of the northern, eastern and southern boundaries. A number of trees, including mature and veteran trees, are also present on-site.

2.1.3 Full details on the ecology of the appeal site is set out within Aspect Ecology's report entitled 'Land off Oakhurst Rise, Charlton Kings, GL52 6NR – Ecological Appraisal', dated April 2020 (ref: ECO5487 Eco Ap vf) (CD A10) which informed the application.

### 2.2 Ecology survey and assessment 2016 - 2020

2.2.1 Survey work at the appeal site has been undertaken since 2016, initially by a third-party ecological consultancy, with Aspect Ecology commissioned to advise on ecological matters since August 2018, which is when I also became personally involved. An overview of the surveys carried out is provided in Technical Briefing Note TN16 at Appendix 5487/AB1 while I set out a summary of its key findings below.

#### *Designations*

2.2.2 The site is designated as a Local Wildlife Site (LWS), having been added to the Gloucestershire Sites Register in September 2020 by the site selection committee on the basis of 'value for learning'. In this regard, the LWS citation (see Appendix 5487/AB2) sets out *"the site is exceptionally well-placed to offer educational opportunities either by its proximity to a school or other place of learning, or its easy accessibility for study of the species and habitats present without causing unacceptable damage or disturbance"*.

## *Habitats*

- 2.2.3 Plan AB01 shows the distribution of habitats within the site. The appeal site is dominated by neutral semi-improved MG1 *Arrhenatherum elatius* grassland<sup>1</sup>, which has been subject to specific botanical surveys. These have returned consistent results, namely that while a range of herbs are present that are indicators of lowland meadows, these are insufficiently scattered and infrequent in the otherwise grass dominated sward for the grassland to qualify as a Priority Habitat<sup>2</sup> (unimproved grassland) and in general the grassland is semi-improved in nature and I do not consider it to be of significantly elevated conservation interest. I provide further discussion on the quality of the grassland at section 4.3. Overall, management of the grassland throughout this period appears to have remained largely unchanged which I understand from St Edwards school comprises an annual hay cut with the cuttings left in situ to rot down, except in 2019 when the cuttings were removed, while in 2020 there was a delay to the cutting to enable study of the grassland by the appellant, County Ecologist and Gloucestershire Wildlife Trust. Previous to this time some more regular mowing of the grassland may have occurred, as set out in the 2016 Ecological Appraisal<sup>3</sup>.
- 2.2.4 Six hedgerows are present within the appeal site, although only three qualify as Priority Habitat and only one (the central hedgerow H1) qualifies as `important` under the Hedgerows Regulations 1997.

## *Fauna*

- 2.2.5 A main Badger sett (BS1) was recorded as present in the site located centrally in the north while a number of more minor setts were also recorded (BS2 – 4). Throughout this survey work the main sett remained active, whilst signs of use for the other setts was varied, as shown on Plan 5487/BS1 Rev C of the confidential annex at Appendix 5487/AB3. Regularly used paths connect the setts to the site boundaries, where “push-throughs” provide access to adjacent gardens and school grounds while dung pit

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<sup>1</sup> National Vegetation Classification categorisation. British Plant Communities Volume 3. Grasslands and Montane Communities. Rodwell. 1992. This describes the MG1 habitat as “The *Arrhenatherum* is, above all, an ungrazed grassland. It is characteristic of circumneutral soils through the British lowlands and occurs on road verges, railway embankments and churchyards and in neglected agricultural and industrial habitats such as badly managed pastures and meadows, building sites, disused quarries and rubbish dumps. (CD F15)

<sup>2</sup> UK Biodiversity Action Plan Priority Habitat Descriptions. BRIG (ed. Ant Maddock). 2008 JNCC <https://hub.jncc.gov.uk/assets/f0553254-1d47-474a-98e5-37fa163a28b5> (CD F16)

<sup>3</sup> Paragraph 3.30 of Ecological Appraisal June 2018 (CD F17).



territory markings were also recorded. This activity is shown on Plan 5487/BS1 Rev C. Feeding of the Badgers by local residents has been observed on a number of occasions.

2.2.6 Survey work has recorded a single bat roost in a veteran pedunculate Oak (Tree number 3018<sup>4</sup>), evidenced by the re-entry of a single Common Pipistrelle during a dawn survey in June 2017.

2.2.7 Survey work undertaken at the site in July – August 2019 has confirmed the presence of a low population of Slow-worm, with a peak count of a single adult Slow-worm recorded during 5 of the 7 survey visits. In addition, Grass Snake is present, although was not recorded on any survey visit, but a single adult was recorded during the set-up of the exercise.

2.2.8 Anecdotal evidence indicates common amphibians pass through the site, although there is no evidence to indicate the presence of protected amphibians such as Great Crested Newt. The hedgerows and trees at the appeal site afford good opportunities for birds with a number of red listed and Priority species recorded on and adjacent to the site.

2.2.9 Elevated opportunities for invertebrates are found within the veteran trees, which I note are retained within the layout. Other habitats within the site provide opportunities for a range of common species but otherwise the site contains no micro-habitats that would typically indicate elevated potential for invertebrates.

## 2.3 Ecology survey and assessment 2021

2.3.1 In order to provide an update to inform the inquiry, I visited the appeal site in January 2021 to carry out an update survey. The details of the findings of this work are set out in Technical Note TN17: Ecological Update Survey (see Appendix 5487/AB3). In summary this work finds that the site is largely unchanged in general. However, pertinent observations include:

- The eastern enclosure in the appeal site is now occupied by pigs which are roosting the ground such that it now comprises bare mud;

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<sup>4</sup> Aspect Ecology's Ecological Appraisal dated April 2020 (CD A10)

- Tree T3027 has developed a new hazard beam split which offers some minor potential for roosting bats;
- A number of trees have been subject to hygiene works. In particular veteran tree T3026 has had deadwood with a cavity offering habitat space removed;
- Badger sett BS1 was showing an increase in recorded active entrances compared to previous surveys (with 40+ active entrances recorded compared to 15 active entrances in April 2020). This may be due to a seasonal effect coupled with cold weather meaning Badger activity was centred on the main sett at the time of survey as opposed to being dispersed across other setts in the territory. All setts were recorded as active save for BS4. In addition, a new 2 entrance active Badger sett BS6 was recorded.

## 3 Policy Framework

### 3.1 Introduction

3.1.1 The policy framework against which the proposals will be assessed is relevant at two levels, namely the national and local levels. I discuss these below:

### 3.2 National Policy

3.2.1 National policy is set out within the National Planning Policy Framework (NPPF) 2019. Chapter 15 'Conserving and Enhancing the Natural Environment' includes policies in respect of 'Habitats and Biodiversity'.

3.2.2 Paragraph 175a sets out the key biodiversity test to be applied which is that of where 'significant harm to biodiversity' cannot be avoided, mitigated or compensated then planning permission should be refused. This sequential process is termed the 'mitigation hierarchy' and I specifically address this at section 7.

3.2.3 Paragraph 175c addresses irreplaceable habitats which include veteran trees and sets out that development resulting in the loss or deterioration of such habitats should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists. I address veteran trees at section 6.

3.2.4 In addition to avoiding significant harm to biodiversity, the NPPF at paragraph 175d encourages opportunities to be taken up to incorporate biodiversity benefits into developments especially where this can secure net gains for biodiversity. I specifically address this policy at section 8.

### 3.3 Local Policy Joint Core Strategy (Adopted December 2017)

3.3.1 The Joint Core Strategy (JCS) (CD D3), a coordinated strategic development plan between Gloucester City Council, Cheltenham Borough Council and Tewkesbury Borough Council, addresses biodiversity matters at Policy SD9:Biodiversity and Geodiversity.

3.3.2 SD9 sets out that *"The biodiversity and geological resource of the JCS area will be protected and enhanced in order to establish and reinforce ecological networks that are resilient to current and future pressures. Improved community access will be*

*encouraged so far as is compatible with the conservation of special features and interests*". SD9 goes on to describe how it achieves this aim with points of relevance to the appeal site including conserving and enhancing biodiversity on local designated sites and encouraging new developments to contribute positively to biodiversity.

3.3.3 I discuss these points are sections 4, 5 and 6.

### 3.4 **Cheltenham Plan (Adopted July 2020)**

3.4.1 The appeal site is allocated for development within the Cheltenham Local Plan (CD D4) under policy HD4. This refers to a number of 'site specific requirements' which of relevance to ecology include "Protection to key biodiversity assets and mature trees" and "Long term protection of mature trees and hedges". I discuss these points at section 6.

## 4 Effect of the appeal proposals on the Local Wildlife Site

### 4.1 Introduction

4.1.1 A hierarchy of conservation designations is available in England, with sites of international importance attracting statutory designations as Special Areas of Conservation (SACs) or Special Protection Areas (SPAs), while those sites of national importance attract statutory designations as Sites of Special Scientific Interest (SSSIs). Below this level, sites of local importance attract non-statutory designations as Local Wildlife Sites (LWS) which were formerly known as Key Wildlife Sites in Cheltenham.

4.1.2 The appeal site was designated as a LWS in September 2021 (see paragraph 2.2.2 above). The designation followed a proposal put forward by CKF to Gloucestershire Wildlife Trust who coordinate the LWS network, for the site to be considered for designation.

### 4.2 The process of designation

4.2.1 The submission of this proposal triggered the Wildlife Trust to commence a review of the site for LWS selection. The CKF proposal (see Appendix 5487/AB4) acknowledges the grassland is classified as MG1, which is a semi-improved grassland type typical of neglect or where a lack of management occurs and is normally of a low conservation interest, although some sub-communities can be more species rich.

4.2.2 To assist with the review process, I met with the Wildlife Trust and County Ecologist to carry out a site visit on 06 August 2020 and I subsequently wrote to the Wildlife Trust on 07 August 2020 to present our formal review of the site against the LWS selection criteria (see correspondence and the Technical Note TN08: Assessment of the Site Against Gloucestershire Local Wildlife Site Criteria at CD A93 & F7).

4.2.3 Following this joint site visit, the Wildlife Trust officer wrote to Cheltenham Borough Council to set out their view that the site was of borderline quality and hence would need to be *“examined by the LWS selection panel to determine whether it should be adopted as a LWS or not”* (see CD F25).

### 4.3 The Designation Proposal

- 4.3.1 The site was put forward for consideration for inclusion as an LWS by CKF on the basis of its grassland interest.
- 4.3.2 The relevant guidance material for LWS designation is contained within the Gloucestershire Key Wildlife Sites<sup>10</sup> Handbook, part 2 of which sets out the criteria for designation. In regard to grassland, the Handbook identifies at Table H5a ‘high priority grassland types’, which include national Priority habitat types (see Appendix 5487/AB5). The grassland at the site does not fall into this category i.e. it is not of a ‘high priority’.
- 4.3.3 Rather the grassland, falls to be considered as a second tier grassland at Table H5b ‘Other semi-natural grassland types’. Of these the LWS citation (see Appendix 5487/AB2) confirms that the grassland at the site is MG1 grassland.
- 4.3.4 The Handbook enables such grasslands over 0.5ha in size to also qualify for LWS designation, however in doing so it uses a simplistic and outdated method of requiring no more than the presence of a set species count (20) from the list of species at Table H5c. This approach takes no account of the frequency of these species in the sward, which is a key flaw as the criteria also provide no adjustment for area. The conservation value of a grassland is most typically derived from the frequency of the herb cover of relevant indicator species, normally determined through a standardised quadrat based survey such as a National Vegetation Classification (NVC) Survey. The criteria in the Handbook however require no application of this assessment parameter. Those grasslands with a high frequency of herb cover of indicator species, i.e. flower rich meadows, are termed ‘unimproved’ in nature and are typically of high conservation value e.g. MG5 grassland which is a Priority habitat.
- 4.3.5 The only systematic standardised botanical survey work of the grassland, is that carried out by Aspect Ecology in the form of an NVC survey (see Technical Briefing Note TN09: Results of Botanical and NVC Survey – CD F8), CKF having produced no botanical survey report at any time. Aspect Ecology’s survey was carried out by a highly qualified botanist and finds that three differing vegetation types are present, the majority of which is MG1, a ‘semi-improved’ grassland type of markedly lower

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<sup>10</sup> Key Wildlife Sites are now referred to as Local Wildlife Sites (LWS)

conservation value to say MG5. Moreover, the example of MG1 (MG1a sub-community) at the appeal site has a very low herb cover of 5 – 10%, while the average number of species per quadrat was 9, compared to the average of 12 for the described sub-community.

4.3.6 CKF has put forward that some 21 indicator species from Table H5c of the Handbook, have been recorded on the site (see 5487/AB4), however only 12 of these species were re-recorded during Aspect Ecology’s survey work in 2019 and 2020. I would highlight that this demonstrates the scarcity of these indicators in the sward with some represented by no more than a single individual plant. Accordingly, they contribute little to the overall conservation value of the grassland. This is acknowledged in Gloucestershire Wildlife Trust’s correspondence dated 07 August 2020 (see CD F25) which states:

*“MG1 can cover a wide range of grassland condition, from very high grass cover and few herbs through to much lower grass density and significant herb cover. As it stands at the moment, the proposed site is of borderline LWS quality”.*

4.3.7 Indeed, reference to Aspect Ecology’s NVC survey of the grassland records this as MG1a which is described in Natural England’s Lowland Grassland Handbook as a grassland of ‘lower botanical nature conservation value’<sup>11</sup> (see Appendix AB6).

4.3.8 I would highlight that the County Ecologist, who has visited the site alongside Gloucestershire Wildlife Trust, is also of this opinion and states in a memo to Cheltenham Borough Council dated 12/08/2020 (see CD F23) that *“The meadow is poor quality MG1 grassland (Mesotrophic Grassland Type 1 of the National Vegetation Classification) and of low conservation value”.*

4.3.9 On the basis of the above, regardless of whether the grassland may or may not technically qualify for consideration for LWS designation, my view is that it is a herb poor example of the semi-improved neutral grassland type MG1 and accordingly is of reduced conservation value.

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<sup>11</sup> Lowland Grassland Management Handbook. Natural England. 2011

## 4.4 Designation

4.4.1 The LWS site selection committee has considered the available evidence put forward and has confirmed an LWS on the basis of qualification under criteria 9c of the Handbook, namely ‘value for learning’ (see LWS citation at Appendix 5487/AB2) which states *“the site is exceptionally well-placed to offer educational opportunities either by its proximity to a school or other place of learning, or its easy accessibility for study of the species and habitats present without causing unacceptable damage or disturbance”*.

4.4.2 In terms of the botanical attributes of the grassland, the LWS site selection committee commented in email correspondence received from Gloucestershire Wildlife Trust dated 02 September 2020 (see CD F26) that:

*“The Panel also consider that the site may also pass the criteria for MG1 grassland plant species. Two sets of plant species data that were provided for the site by Aspect Ecology (applicant representative) and Bioscan (Friends of Charlton Kings representative) differ but between them provide a match for 22 species from table H5c of the LWS criteria. Under normal circumstances we would conduct our own independent survey at the correct time of year to decide whether the grassland passes the criteria based on plant species. However due to the timescale associated with the planning application this is not possible”*.

## 4.5 How will the LWS designation be maintained under the appeal proposals?

4.5.1 LWS designations attract policy protection under the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS) policy SD9. More specifically SD9(2)ii requires that *“new development both within and surrounding such sites has no unacceptable adverse impacts”* on LWS designations while SD9(5) sets out that *“development within locally-designated sites will not be permitted where it would have an adverse impact on the registered interest features or criteria for which the site was listed, and harm cannot be avoided or satisfactorily mitigated”*. I note that policy does not present a bar on development, but rather sets out a series of tests which must be met for development affecting a LWS designation to be considered acceptable. I consider how the appeal proposals fit with policy below.



4.5.2 Under the appeal proposals the eastern and southern parcels of the appeal site, of some ~1.2ha in size, will remain available for use by St Edwards School for educational purposes. This land is directly accessible from the school along the southern boundary. Accordingly, I note the criterion upon which the LWS is designated of 'value for learning' will be maintained under the appeal proposals.

4.5.3 The existing grassland area at the appeal site is ~3.38ha in size, of which a third (31% ~1.06ha) would be lost to built development under the appeal proposals, whilst a further 0.41ha (12%) will be planted to create a woodland belt. The balance of ~1.91ha (57%) of the grassland is retained and enhanced, as is 77% (~0.26ha) of hedgerow H1 and 68% (~0.1113ha) of H2, the majority of the remaining hedgerows, all veteran trees (which are heavily buffered) and the existing pond. Unavoidable losses of a very small number of non-veteran mature trees and short hedgerow sections are required to facilitate the site access and layout. To mitigate for the losses arising, the retained habitats will be substantially enhanced which will provide a net biodiversity gain (see section 6). In addition, a range of enhancements for faunal species will be brought forward while the land in the east of the appeal site will further benefit from an absence of public access. Proposed measures include:

- *Wildflower grassland*: the retained areas of grassland will be enhanced so that they develop into a species rich wildflower grassland. This would bring considerable benefits for biodiversity through a marked increase in herb cover and species richness within the sward which in turn will provide a much increased pollen and nectar resource for invertebrates, which in turn will provide enhanced resources for birds, mammals and reptiles. The principles of how the enhancement will take place are set out in the 'Framework Management Plan for Restoration of Retained Grassland and Associated Habitats' (Technical Note TN12 – see CD F11). This also accommodates the recommendation from Gloucestershire Wildlife Trust in their correspondence of 01 September 2020 (see CD F25) that Ladies Bedstraw is not widespread in the site and attempts should be made to preserve this in situ. This is addressed at paragraph 3.7 of the Framework which sets out that "*Turfs and plug plants of Ladies Bedstraw from 2 patches to the north west of the ice-house will be translocated into the area of meadow (land edged red)*". The requirement to conserve Ladies Bedstraw is secured by proposed planning condition 20

- *Existing pond*: the existing pond will be retained. If considered beneficial, this can be further restored through desilting and reprofiling;
- *New pond*: a new pond will be created, that whilst providing a balancing function, will also be designed to benefit biodiversity. The pond will cover an area of ~180m<sup>2</sup>, and have two deepened pools (each capable of achieving a water depth of 0.7m) connected by an aquatic bench to provide two constant areas of permanent water for aquatic species. The sides of the pond will have varied gradients between 1 in 3 and 1 in 10, the shallower banks providing a wider draw down zone which can support a high floristic diversity. In addition, this enhanced aquatic habitat will provide opportunities for a range of amphibian and invertebrate species, along with a foraging habitat and water supply for mammals and birds. Prior to construction of the pond and the installation of the associated adjacent deep attenuation tank (see drainage layout Plan C21505-SK02 Rev C at CD A36), the grassland turfs will be carefully stripped and stored as will the top soil, the installation works completed in the minimum time necessary, and the soil and turfs carefully reinstated as required. This approach is common practice<sup>12</sup> and will ensure that the grassland botanical interest is safeguarded;
- *Woodland belt*: the planting of an extensive native woodland belt will take place, that will be stock fenced but will remain permeable to Badgers through the incorporation of gates (see Appendix 5487/AB7). This will provide a considerable new resource for wildlife in terms of cover, foraging resources and breeding sites for birds and invertebrates. Species selected for planting will include those with overlapping flowering seasons so as to provide a long duration resource for invertebrates as well as fruit bearing species e.g. Crab Apple *Malus sylvestris* and Wild Cherry *Prunus avium* to provide a new resource for Badgers (see Appendix 5487/AB8);
- *Hedgerows*: Enhancement of existing retained hedgerows is proposed, through gapping up and supplementary planting of additional native species including fruit bearing species such as Crab Apple *Malus sylvestris*. These in

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<sup>12</sup> See case study of a grassland translocation on our website <http://www.aspect-ecology.com/february-2021-habitat-translocation-can-be-a-useful-mitigation-tool-a-case-study-of-a-successful-relocation-of-species-rich-grassland/> In this instance however, translocation is not necessary and reinstatement will occur in-situ.

turn will provide enhanced resources for foraging bats, badgers, other mammals, birds, reptiles and invertebrates as well as for nesting birds;

- *Bat boxes*: bat boxes will be installed under the appeal proposals, of a range of types, on retained trees and will provide new resources for bats which are currently relatively limited on site;
- *Bird boxes*: bird boxes will be installed under the appeal proposals, of a range of types, and will provide new opportunities for nesting birds, while the new woodland planting will also provide considerable new opportunities for birds once mature;
- *Buried log piles*: A proportion of any deadwood arising from vegetation clearance works could be retained and partially buried in areas of new planting, adjacent to the new pond or areas of wildflower grassland within the retained/proposed areas of green space. These partially buried log piles will provide shelter and hibernation opportunities for reptiles and amphibians, as well as habitat for invertebrates, including saproxylic insects which require deadwood to feed on.
- *Wood piles*: A proportion of any deadwood arising from vegetation clearance works would be retained within the site in a number of wood piles located within areas of new planting or areas of wildflower grassland in order to provide potential habitat opportunities for invertebrate species, which in turn could provide a prey source for a range of other wildlife.
- *Veteran trees*: Provision of a veteran tree management plan will serve to increase the lifespan of these important trees. Given the irreplaceable nature of these habitats (as defined at paragraph 175c of the NPPF), the benefit arising from increasing their lifespan is significant. Further details of how this will be achieved are set out in the Framework Veteran Tree Management Plan (see Proof of Evidence submission by Mr J Forbes-Laird – CD E1 and E2);
- *Conservation Management*: The habitats present would be managed to maximise their benefits for biodiversity over the long term i.e. for the life of the development, therefore exceeding the 30 year requirement under Biodiversity Net Gain (see section 8). A detailed management plan will be

drawn up post planning based on the Framework Management Plan for the site as set out in Technical Note TN12 entitled 'Framework Management Plan for Restoration of Retained Grassland and Associated Habitats' (see CD F11). Gloucestershire Wildlife Trust has confirmed the suitability of the Framework Management Plan in correspondence dated 07 September 2020 (see CD F13).

- *Secure funding*: The conservation management of the grassland will be fully funded so that the future biodiversity benefits of the proposals are assured. The revenue stream will likely be derived from annual residents' contributions to the site Management Company.

4.5.4 I note the above suite of enhancements which will benefit wildlife at the site which are summarised on Plan 5478/AB02. The effect of these enhancements is significant and I consider these will ensure harm arising to biodiversity is fully avoided while a net benefit will also arise.

4.5.5 Accordingly, I further consider, in line with JCS policy SD9(2)ii and SD9(5) that the potential harm to the LWS can be satisfactorily mitigated and the appeal proposals would have no unacceptable adverse impact on the LWS or upon the criterion for which it is listed, namely 'value for learning'.

## 4.6 Conclusion

4.6.1 I have considered the effect of the appeal proposals on the LWS designation. I note that policy protection is afforded to LWS designations, but that this does not present a bar on development, and rather it sets out a series of tests which must be met for development affecting LWS designations to be considered acceptable. Following my detailed review, following the implementation the above mitigation and ecological enhancements, I consider that potential harm arising on the LWS is fully mitigated, as required by JCS policy SD9(5), and a net benefit to biodiversity will arise under the appeal proposals. I review this latter point further at section 8 under the heading of 'Biodiversity Net Gain' while I would observe that this is a purely habitat based approach and does not account for the further benefits to faunal species that I detail above.

4.6.2 Further, I note the appeal proposals have been reviewed by the Gloucestershire Wildlife Trust who advise in correspondence dated 07 September 2020 (CD F13) that

*“Gloucestershire Wildlife Trust confirms that the prescriptions within the revised draft of the FMP [Framework Management Plan] should result in securing and enhancing the biodiversity interest of the retained areas of the Local Wildlife site”.*

4.6.3 I note that CKF is also of this opinion, as set out at paragraph 3.5 of their statement of case which states:

*“Friends accept that it could be possible to improve the biodiversity of the retained grassland...”*

4.6.4 Accordingly, I conclude that the LWS designation will be effectively maintained under the appeal proposals and that in this regard the appeal proposals are fully policy compliant.

## 4.7 Do nothing scenario

4.7.1 Should the appeal site remain undeveloped, I consider it relevant to consider a ‘do-nothing scenario’. Under such a scenario the existing position would continue where there are no restrictions on land management activities and hence future activities could lead to the removal or mis-management of veteran trees and hedgerow interests and hence a reduction in the ecological function of the site (notwithstanding the controls available under the TPO). Indeed, during my update January 2021 survey, I noted an example of exactly this type of detrimental mis-management that had occurred. I observed that veteran tree 3026 (see tree survey CD A9) had recently had unnecessary hygiene works carried out to remove deadwood components from it (as also recorded during the April 2020 survey). Veteran trees are classed as irreplaceable habitats due to their biological interests which largely arises from the deadwood supported, especially where the deadwood contains cavities which function as habitat spaces. During my 2021 update survey I observed that the deadwood removed also contained value habitat spaces, namely the most valuable components of veteran trees. At present therefore, it is clear that the current mis-management of the veteran tree resource (an irreplaceable habitat type afforded great weight under the NPPF) at the appeal site is leading to a significant reduction in its biological interest.

4.7.2 In addition, I would highlight that the current grassland management practice of an annual cut with the arisings subsequently left in situ is detrimental to the grassland, as this leads to the nutrient enrichment of the soils which serves to reduce botanical

diversity. Similarly, alternative management which may have occurred in the past of regular mowing of the sward<sup>13</sup> is also detrimental as this does not allow the flowering and seed set of the herbs present, which in time will lead to a marked reduction of the herb content of the sward. This practice is also detrimental to faunal interests, as it significantly reduces pollen and nectar sources for invertebrates and cover and foraging resources for reptiles and small mammals. The same effect would occur through over-grazing should this take place.

4.7.3 I note that the Soil Microbiology report<sup>14</sup> (CD F19) sets out that the sample soil horizons showed increased soil compaction with distance away from tree stems:

*“Generally, soil seemed compacted over the whole site and a clear increase in compaction was shown with distance from the trees. It is believed that this is due to the lack of periodic ungulate grazing on the land, and is the reason behind the absence of nematode on site”.*

4.7.4 I suggest this may have arisen as a result of the mechanical mowing of the grassland by machinery. This compaction is highly undesirable to roots of perennial grasses and trees, along with the (impoverished) below ground supporting beneficial soil biology.

4.7.5 Detrimental effects also arise where pigs are kept on the land, as their rooting behaviour turns the soil to bare mud. During my update site survey in January 2021 I noted that two pigs were being kept in the eastern enclosure on the site and they had turned the soil over fully (see Photograph 1 of Appendix 5487/AB3). If their presence is sustained in the area this will lead to the loss of grassland botanical interests.

4.7.6 I note CKF in their statement of case claim at paragraph 3.5 that the site *“has been neglected in the four years since development applications started”*. I am unaware as to whether this is the case or not, but what this illustrates is that grassland management at the site is currently uncontrolled, with management appearing inappropriate to maintain its botanical interest.

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<sup>13</sup> See paragraph 3.6 of Ecological Appraisal 2018 (CD F17) which states “[in 2016] It was evident that the grassland is not intensively managed but is subject to regular mowing” while the 2018 update survey at paragraph 3.7 states “The survey of the grassland in June 2018 as well as numerous visits over the summer of 2017 to conduct bat surveys confirmed that the grassland is not intensively managed but is subject to mowing, with the arisings left in-situ”

<sup>14</sup> Soil Consultation Report. 59 Degrees. July 2019 (CD F19)

- 4.7.7 Accordingly, I consider that the likely outcome of a do-nothing scenario at the appeal site would be a further decline in its ecological interests.
- 4.7.8 By contrast, as I discuss above, under the appeal proposals the future of the ecological interests of the retained areas of the appeal site would be secured and they would be considerably enhanced such that a net benefit to biodiversity would arise over the current day baseline.

## 5 Effect of the appeal proposals on Badgers

### 5.1 Introduction

5.1.1 Badgers can be found in a large range of habitat types<sup>15</sup>, associated with woodland and open countryside as well as towns and cities<sup>16</sup>. In this regard, I find the presence of Badgers in Cheltenham as no surprise and note they are well known in the Borough with the Cheltenham Plan (CD D4) stating at paragraph 16.8 that:

*“Green spaces are essential in providing habitats for a wide range of flora and fauna. Some green spaces, particularly the more extensive and relatively undisturbed grounds of large houses and non-residential properties, may also harbour legally protected species such as barn owls, badgers and bats....”*

### 5.2 Badger activity at the appeal site

5.2.1 An active main Badger sett is present centrally within the appeal site. Since 2016, Badger activity and the number of setts within the site has increased, potentially as a result of artificial feeding, although these do not show the same level of use as the main sett (see 2021 survey results at Plan 5487/AB3). In regard to the main sett, this was recorded in April 2020 as showing 15 active entrances, and a further 6 showing reduced signs of activity and 13 inactive entrances. In January 2021, activity at the main sett had increased such that 40+ active entrances were present, likely as a result of a seasonal effect coupled with cold weather meaning Badger activity was centred on the main sett at the time of survey as opposed to being dispersed across other setts in the territory. Accordingly, I would expect activity levels at the main sett to return to broadly those previously recorded later in the year as it is unusual for all entrances to be recorded as active. I am of the opinion that the sett is moderately large in nature but would emphasise that it is not atypical with setts of such a size regularly encountered in the landscape, with in my experience the largest of setts exceeding some 75 entrances with some comprising over 100 entrances.

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<sup>15</sup> Badger Trust: The Eurasian Badger (*Meles meles*)

<sup>16</sup> <https://www.woodlandtrust.org.uk/visiting-woods/trees-woods-and-wildlife/animals/mammals/badger/>



### 5.3 Conservation status

- 5.3.1 Badgers are documented by the Peoples Trust for Endangered Species (PTES)<sup>19</sup> to be 'common and widespread' (see Appendix 5487/AB9) with an estimated population size of 485,000<sup>20</sup> in England and Wales (see Appendix 5487/AB10) and are distributed throughout England, Wales and Scotland (except the far north) and Northern Ireland.
- 5.3.2 I would observe that their common status is such that, paragraph 175a of the NPPF which seeks avoidance, mitigation, or as a last resort compensation, should significant harm occur to biodiversity as a result of development, is not relevant in respect of Badgers (as it is not a Priority or important species in biodiversity conservation terms). Therefore, under the NPPF, avoidance of Badgers is not relevant (just as avoidance of Rabbits is not relevant), due to their common status. Regardless, in planning the appeal site, the mitigation hierarchy at NPPF175a has nonetheless been followed in regard to Badgers, as has the Natural England's standing advice on Badgers<sup>21</sup> and Natural England associated guidance note on 'Interpretation of Disturbance in relation to Badgers Occupying a Sett' (see Appendix 5487/AB11), as I set out in the following sections.

### 5.4 Legal Protection

- 5.4.1 Legislation protecting Badgers was originally drawn-up in 1973 in response to ill-treatment of this species through Badger digging with dogs: Badger baiting having been made illegal over 100-years earlier. Legislation protecting this species was consolidated in the Protection of Badgers Act 1992, providing more comprehensive protection for this species. The Act aims to protect the species from persecution, rather than being a response to an unfavourable conservation status. Indeed, licensable procedures are incorporated into the Act so as not to prevent lawful activities and to enable problems arising as a result of the presence of Badgers to be addressed. Such problems are commonly encountered and are illustrated on Natural England's Technical Information Note TIN005 'Problems with Badgers in rural areas' (see Appendix 5487/AB12). One such lawful activity in place is the licensed culling of Badgers in the UK to reduce the spread of tuberculosis in cattle. I would highlight that

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<sup>19</sup> <https://ptes.org/get-informed/facts-figures/european-badger/>

<sup>20</sup> Judge, Johanna & Wilson, Gavin & Macarthur, Roy & Mcdonald, Robbie & Delahay, Richard. (2017)

<sup>21</sup> Badgers: surveys and mitigation for development projects. Natural England and Defra. 2015  
<https://www.gov.uk/guidance/badgers-surveys-and-mitigation-for-development-projects>

should Badgers be a species of conservation concern, such culling would not be permitted. Rather their common status is such that culling has been lawfully licensed with large scale culling programmes taking place across the country to control bovine TB with a maximum of 71,789 Badgers culled in 2020<sup>22</sup>.

5.4.2 Other licences can be obtained to interfere with setts during forestry operations, drainage operations, archaeological digs, to prevent damage, and for development purposes<sup>23</sup>. It is therefore clear the intention of the legislation is to protect Badgers from unlawful acts, not to represent an impediment.

## 5.5 Appropriateness of the Mitigation

5.5.1 Best practice guidance on protected species, including Badgers, is published by Natural England in the form of standing advice (see Appendix 5487/AB11). In formulating the mitigation strategy for Badgers at the site, and in spirit of paragraph 175a of the NPPF:2019, care has been taken to follow where appropriate the principles of the standing advice with a strategy drawn up to avoid and/or mitigate harm to Badgers and to compensate for the loss of a main Badger sett. This is set out in the Confidential Badger Annex (see Appendix 5487/AB3) and contains a detailed consideration of a number of factors including:

- Potential for direct disturbance to the sett;
- Maintenance of links with other existing setts;
- Potential for loss of foraging grounds;
- Maintenance of links to off-site foraging grounds.

5.5.2 I comment on pertinent elements below:

5.5.3 **Avoidance** – Alternative schemes were considered to enable retention of the main sett BS1, but these would significantly compromise the ability of the appeal site to deliver housing in what is a national housing crisis<sup>24</sup> and as such were rejected by the developer and their architects. Other minor setts were all recorded as inactive in April 2020 save for BS5 which is adjacent to the main sett. Seasonal use of these setts was recorded in January 2021 with these recorded as active save for BS4, while a new two

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<sup>22</sup> Setting the minimum and maximum numbers in badger cull areas in 2020 Advice to Natural England. Defra. September 2020. (CD F29)

<sup>23</sup> <https://www.gov.uk/government/collections/badger-licences>

<sup>24</sup> "The housing shortage isn't a looming crisis, a distant threat that will become a problem if we fail to act. We're already living in it". Fixing our Broken Housing Market. White Paper to Government. February 2017 (CDJ24)

entrance sett, BS6, was also recorded. Minor setts BS2, BS5 and BS6 would be lost to the appeal scheme with setts BS3 and BS4 retained.

5.5.4 The implementation of standard construction safeguards (see Confidential Badger Annex at 5487/AB3) will avoid harm to Badgers during construction and can be secured by way of a planning condition requiring a Construction Environmental Management Plan.

5.5.5 **Mitigation** – The layout has been designed to ensure the appeal site remains permeable to Badgers, so that the species is able to access new areas of green open space within the appeal site, the new woodland belt, potentially gardens to new residences, and off-site foraging grounds and other existing setts. In this regard I would highlight that it is the maintenance of access to the short sward grassland areas offsite to the south which is the key ecological requirement for the species. While some foraging resource is afforded by harvesting invertebrates from long sward grassland, the Badger's preferred staple food source is that of earthworms *Lumbricus terrestris*<sup>25</sup>, which are most readily obtained from short sward grassland. The appeal proposals will not interrupt access to these offsite resources.

5.5.6 In addition, areas of green open space within the appeal site will afford enhanced foraging potential for Badgers, compensating for the overall reduction in accessible grassland within the appeal site while the landscape scheme will include fruit bearing species e.g. Crab apple, which will provide an additional seasonal foraging resource. In regard to the woodland belt, Badger gates will be incorporated within the proposed deer fencing to enable access by Badgers whilst maintaining the exclusion of deer<sup>26</sup>.

5.5.7 The retention of setts BS3 and BS4 will maintain alternative natural setts for the Badgers to utilise as recommended by Natural England's standing advice (see Appendix 5487/AB11)<sup>27</sup>. These may potentially be expanded in size by the Badger clan in due course.

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<sup>25</sup> <https://www.woodlandtrust.org.uk/blog/2016/06/what-do-badgers-eat>

<sup>26</sup> In line with the principles set out in Technical Information Note TIN026 Badger Gates in Rabbit Proof Fencing. Natural England. 2007 (see 5487/AB7)

<sup>27</sup> "If you need to exclude badgers from a sett....make sure there are alternative setts nearby that badgers can relocate to"

- 5.5.8 **Compensation** – it is not infrequent to encounter scenarios where the loss of a main Badger sett cannot be avoided. In such scenarios, it is best practice to provide mitigation by way of an artificial sett.
- 5.5.9 This is confirmed within Natural England’s current standing advice on ‘Badger: surveys and mitigation for development projects’ which advises that *‘Compensation measures can include replacing setts that will be destroyed and improving or creating new habitat’* and recommends that *‘if required, build artificial setts as early as possible and before excluding badgers from the original sett - ensure that badgers have found artificial setts before excluding them from original setts’* (see Appendix 5487/AB11).
- 5.5.10 Indeed, in my experience, artificial Badger setts are frequently used as a standard mitigation measure and readily licensed by Natural England. This is illustrated by annual training courses for professional ecologists on Badger mitigation incorporating *‘the designing and building [of] artificial badger setts’* run by the Chartered Institute of Ecology and Environmental Management (CIEEM), which *‘promotes the highest standards of practice for the benefit of nature and society’* (see Appendix 5487/AB13). Similarly, Natural England publish standard Technical Information (TIN025) in respect of using one way gates to exclude Badgers from setts under licence (see Appendix 5487/AB14).
- 5.5.11 Accordingly, I would observe that the provision of artificial setts as an effective mitigation measure has been in use for several decades and as such should there be any overriding issue with the use of artificial setts this would have been identified long ago.
- 5.5.12 The appropriateness of artificial sett provision as a mitigation measure is acknowledged by leading authors on the subject, such as described within the authoritative work ‘Badgers’ by Neal and Cheeseman 1996 who state: *“Providing they are well designed and constructed artificial setts are readily taken to by badgers”*.
- 5.5.13 The authors do continue and comment that *“if the proper guidelines are not adhered to, an expensive failure will probably result”*. As such I would emphasise the need for care and attention to be taken in respect to the siting, design and construction of the artificial sett. This detail can be secured by a reasonable planning condition, although the proposed location of the artificial main sett is considered by CKF to be in contravention of Natural England’s best practice guidance and I discuss this further in

Technical Note TN18 (see Appendix 5487/AB15) also side claims of a conflict between Badger setts and grassland management.

## 5.6 Conclusion

I have carried out a detailed review of the proposed approach to Badger mitigation alongside the strategy proposed and I find this compliant with best practice. Accordingly, there is a high chance that the strategy will be effective and that Badgers will continue to occupy the appeal site post development.

## 6 Effect of the appeal proposals on the other ecology of the site and Application of the Mitigation Hierarchy

### 6.1 Introduction

6.1.1 A range of other ecology is present on the site. I carry out a review of how this is affected by the proposals within Technical Note TN19 at Appendix 5478/AB16. I also consider how the appeal proposals fit with the ecological mitigation hierarchy at Technical Note TN20 at Appendix 5487/AB17. I summarise the findings of these reviews below.

### 6.2 Effects on habitats and fauna

#### *Veteran trees*

6.2.1 These trees are fully retained within the layout such that it is not necessary to consider the test of loss set out at NPPF paragraph 175c. In addition, the veteran trees are all extensively buffered with all built form located outside of these buffers. The size of buffering accords with the standing advice<sup>29</sup> issued by Natural England and is provided at 15 times the stem diameter of the trees and will ensure deterioration effects are avoided.

#### *Fauna*

6.2.2 The appeal site supports a very low population of reptiles (peak counts of a single Slow Worm and a single Grass Snake). These will be fully safeguarded under the proposals with plentiful reptile habitat retained under the scheme while habitat enhancements are also proposed such as wood piles for sheltering and over wintering while the new pond will benefit Grass Snake.

6.2.3 A single bat roost is present within the site located in tree 3018, occupied by a single Common Pipistrelle bat which is the most common bat species in the UK<sup>30</sup>, widely

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<sup>29</sup> Ancient woodland, ancient trees and veteran trees: protecting them from development. Natural England and Forestry Commission. 2018 <https://www.gov.uk/guidance/ancient-woodland-and-veteran-trees-protection-surveys-licences>

<sup>30</sup> Bat Conservation Trust: [https://cdn.bats.org.uk/pdf/About%20Bats/commonpipistrelle\\_11.02.13.pdf?mtime=20181101151257](https://cdn.bats.org.uk/pdf/About%20Bats/commonpipistrelle_11.02.13.pdf?mtime=20181101151257)

distributed and adaptable to different environments. The proposals maintain access to the hedgerow network around the appeal site which connects with suitable habitat in the wider local area. Sensitive lighting will safeguard the use of these habitats while new roosting opportunities will be provided in the form of bat boxes which will provide a net benefit for roosting bats.

6.2.4 A number of the birds of conservation concern have been recorded at the site, although they remain relatively common and widespread such that their presence within the site, especially in single or small numbers, is unremarkable. Some losses of parts of hedgerows will arise under the appeal proposals. However, the creation of ~0.41ha of woodland belt will exceed the area of mature hedgerow lost by a factor of three. The scheme also incorporates a range of bird boxes within a proportion of the new units to provide specific nesting opportunities for the Priority Species House Sparrow and Starling.

6.2.5 The veteran trees offer elevated invertebrate habitat potential and these are fully retained within the layout, and buried log piles and wood piles are incorporated within the scheme to provide a variety and good amount of deadwood habitat for the benefit of saproxylic (dead wood) invertebrates. No other micro-habitats that would typically indicate elevated potential for invertebrates, have been recorded at the site.

### 6.3 Application of the mitigation hierarchy

6.3.1 The mitigation hierarchy is the principle laid out at NPPF paragraph 175a, which sets out the sequential principles of avoid, mitigate and compensate. The highest level of avoidance is typically applied to 'irreplaceable' habitats such as veteran trees and in this regard I note all are retained within the scheme within substantial buffers.

6.3.2 In terms of non-statutory (local) designations, the site is designated as an LWS, however this is on the basis of its 'value for learning' rather than its ecological interest. Notwithstanding the reason for its designation, avoidance is desirable but if that is not possible, given the no more than the local status of the LWS, I consider mitigation and compensation would be appropriate as an alternative.

6.3.3 Avoidance of Priority habitats in the form of hedgerows is desirable, however given their lower status in the hierarchy of importance, where this is not possible then mitigation and compensation would also be appropriate. In this regard substantial

compensation is provided in the form of the new wooded belt and new hedgerow planting.

## 6.4 Conclusion

6.4.1 Following a review of the effects of the appeal proposals on other habitats and fauna at the site, I consider that the appeal scheme will maintain the key features such as veteran trees while following the provision of appropriate mitigation, the faunal interests within the site will be fully safeguarded and future opportunities provided so as to ensure the biodiversity interest of the appeal site is maintained. This approach is fully in line with the mitigation hierarchy such that the test of 'significant harm' at NPPF paragraph 175c is fully satisfied.



## 7 Biodiversity Net Gain under the appeal proposals

### 7.1 Introduction

7.1.1 The concept of biodiversity net gain is set out in policy. Specifically, paragraphs 170d and 174b of the NPPF encourage the delivery of net gains for biodiversity:

*“170d Planning policies and decisions should contribute to and enhance the natural and local environment by....minimising impacts on and providing net gains for biodiversity;*

*174b To protect and enhance biodiversity and geodiversity, plans should.... identify and pursue opportunities for securing measurable net gains for biodiversity”.*

7.1.2 These policies which encourage gains for biodiversity are taken further by emerging legislation.

### 7.2 Emerging legislation

7.2.1 The concepts of biodiversity mitigation and compensation are the subject of proposed legislation in the form of the draft Environment Bill<sup>44</sup> which seeks to advance the delivery of biodiversity benefits and proposes that it will become mandatory for all development sites to provide a net gain for biodiversity, with a level of a 10% net gain currently proposed.

### 7.3 Metric

7.3.1 The draft Bill sets out that in order to assess the appropriate level of compensation required, effects on Biodiversity should be assessed through the use of a new metric (termed the Defra 2.0 metric) in order to carry out a biodiversity impact assessment.

7.3.2 The metric is a spreadsheet based tool which accounts for the baseline habitats within the site and new habitats to be enhanced, restored or created. Further details are set out in its User Guide<sup>45</sup>: *“Biodiversity units are calculated using the size of a parcel of habitat and its quality. The metric uses habitat area as its core measurement, except*

<sup>44</sup> [Draft Environment Bill January 2020; updated August 2020. https://services.parliament.uk/Bills/2019-21/environment.html](https://services.parliament.uk/Bills/2019-21/environment.html)

<sup>45</sup> The Biodiversity Metric 2.0. User Guide. Natural England Joint Publication JP029. July 2019 (CD F20)

*for linear habitats where habitat length is used. To assess the quality of a habitat the metric scores habitats of different types, such as woodland or grassland, according to their relative biodiversity value. Habitats that are scarce or declining typically score highly relative to habitats that are more common and widespread. The metric also takes account of the condition of a habitat. The metric accounts for the location of the habitat relative to other similar habitats to measure its connectedness in the landscape. Being 'better' and 'more joined-up' are important facets of habitats that can contribute to halting and reversing biodiversity declines. Last, the metric also accounts for whether or not the habitat is sited in an area identified locally, typically in a relevant policy of plan, as being of significance for nature. Where new habitat is created or existing habitat is enhanced the difficulty and associated risks of doing so are taken into account by the metric. If habitat is created to compensate for losses elsewhere, then the metric also takes account of its proximity to the impact site. The metric incentivises delivery that is on or close to the impact site".*

- 7.3.3 At the 2019 appeal, CKF sought to assess the biodiversity performance of the site using the Warwickshire metric. This is a regional metric that assesses the biodiversity performance of schemes in that area using a number of basic parameters and I set out my considerable reservations around this metric at the 2019 inquiry.
- 7.3.4 The Defra 2.0 metric was not available at the time the evidence was prepared for the 2019 inquiry, but was published just before the inquiry sat and I made reference to it as a preferred tool in my oral evidence at the time.
- 7.3.5 Since then, the Defra 2.0 metric has been updated, and while it remains a beta version it is being widely referenced. The final version of the metric, to be termed Defra 3.0, is due for publication in spring 2021 but is unlikely to be available prior to the inquiry.
- 7.3.6 The Defra 2.0 metric is a much more sophisticated tool than the local Warwickshire metric and takes in a much wider range of parameters<sup>46</sup>. Accordingly, I consider it is an appropriate tool to employ to assess Biodiversity Net Gain.

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<sup>46</sup> Defra 2.0 metric includes a larger range of habitat types including green infrastructure for the urban environment; more guidance on difficulty and time to target condition for each habitat type; is prepopulated with distinctiveness, time to target condition and difficulty scores; includes new distinctiveness scores (0-8) to include very high and very low; includes new condition scores (0,1,1.5,2,2.5,3); includes two new elements 'Connectivity' and 'Strategic Significance'; includes 'accelerated succession'; includes off-site habitat options and takes account of proximity to the impact site.

## 7.4 Biodiversity impact Assessment - process

7.4.1 The metric requires a quantitative assessment of the baseline value of the habitats on the site, with the parameters of habitat type, area, distinctiveness, condition, connectivity and strategic significance accounted for.

7.4.2 This is then compared to the post development habitats that will be brought forward, including an assessment of those that are retained, enhanced or created both on and, if relevant, off site.

## 7.5 Outcome of Biodiversity Net Gain Assessment for the Planning Application

7.5.1 The proposals were assessed at the time of the 2020 application using the Defra 2.0 metric, with a conservative set of parameters utilised with the rationale applied transparently as set out in a detailed in Technical Briefing Note TN10: Biodiversity Impact Assessment Using Defra Biodiversity Metric 2.0 Calculation Tool dated 07 August 2020 (see CD F9). This reported that the application scheme achieved a 1.47% net gain in biodiversity.

7.5.2 CKF put forward its own assessment at the time of the application in correspondence dated 29 July 2020 (see CD F27) utilising the Defra 2.0 metric and reported from this that the appeal proposals would result in a 31.9% loss of biodiversity, commenting that *“by this measure the revised scheme provides no greater protection of biodiversity on the site than the previous scheme”*.

7.5.3 Aspect Ecology responded to this in correspondence dated 10 August 2020 and observed that *“this conclusion appears inherently flawed as the current planning application is for a considerably revised and reduced scheme compared to that previously considered by the Inspector at the inquiry, with commensurate increases in green space now included. Accordingly, the ecological credentials of the current application are further improved over the appeal scheme”*.

7.5.4 Aspect Ecology’s response continues *“To investigate this mis-match, Aspect Ecology has carried out our own assessment of the current proposal under the Defra 2.0 (beta) metric. In doing so we have identified that the metric put forward by CKF should be*

*updated in a number of areas to more accurately reflect the current proposals. In particular:*

*Within the baseline*

- *A more accurate measuring of site area should be utilised;*
- *The existing pond has been omitted and should be included;*
- *Scattered scrub has been coded as ‘other mixed woodland’ ‘moderate condition’ whereas this should more accurately be assigned to ‘scrub’ in ‘poor’ condition.*

*Post development*

- *It is assumed that all habitats will be lost and re-created. In fact, the grassland will be retained and enhanced;*
- *The proposed pond has been omitted and should be included;*
- *The central hedgerow (H2) is ascribed to a ‘poor’ condition, at odds to the other hedgerow (H1), which is coded as ‘good’. H2 should be coded as ‘good’ as management will be controlled by way of a conservation management plan.*

*When these adjusted parameters are inputted to the metric, a result of a biodiversity net gain (1.47%) is returned”.*

## 7.6 Update to Biodiversity Net Gain Assessment for appeal

7.6.1 As I set out at paragraph 7.5.1 above, the net gain for the application was carried out using a conservative set of parameters. In addition, I would specifically highlight that this conservative approach also omitted to utilise the additional parameter of ‘accelerated succession’, which is to be applied where one habitat is proposed to succeed to another. This parameter is relevant for woodland creation at the appeal site as this will succeed from the existing grassland habitat.

7.6.2 Accelerated Succession was omitted from the metric put forward to inform the application because at the time it was understood that this parameter would be removed from the finalised metric (Defra 3.0 which is due to be published in spring 2021).

7.6.3 Since this time, Natural England has published its response to the consultation on Biodiversity Net Gain<sup>47</sup> (see Annex TN21/1 of Technical Note TN21 at Appendix

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<sup>47</sup> The Biodiversity Metric 2.0 – Beta Test Version. Consultation Response. Natural England. August 2020

5487/AB18) which confirms that the Defra 3.0 metric will indeed omit Accelerated Succession. In particular, it states at Table 2:

*“We have taken the decision to remove Accelerated Succession from the metric. This is partly due to the feedback received but also because we have revised the Difficulty and Time to Target Condition for creation of "other" broadleaved, mixed and conifer woodland to better reflect the reality of creating these woodland types. The resulting scores are comparable with those that would have been achieved previously through using Accelerated Succession and so have made the need to use it redundant”*

7.6.4 This clarity is helpful in confirming that the Defra 3.0 metric will adjust biodiversity unit values derived for woodland creation to match those as currently derived from Defra 2.0 under the accelerated succession parameter.

7.6.5 I have therefore updated the metric calculations undertaken for the planning application to reflect this new advice and to include accelerated succession. Not to apply accelerated succession within the current DEFRA 2.0 metric would otherwise be to undervalue woodland creation within the appeal scheme. The updated metric calculations are detailed at Appendix 5487/AB18 within Technical Briefing Note TN21: Updated Biodiversity Net Gain Assessment.

7.6.6 With accelerated succession now included, a total biodiversity net gain of 12.11% is achieved.

7.6.7 In addition, outside of the constraints of the Defra metric, which only takes into account habitat losses and gains, other tangible biodiversity gains will be realised for fauna within the site, as I set out at paragraph 4.5.3 above.

## 7.7 Quantum of biodiversity net gain

7.7.1 I am aware that the forthcoming Environment Bill (expected autumn 2021) will likely introduce a statutory requirement for all development proposals to deliver a net gain for biodiversity set at a level of 10%.

7.7.2 Although, the forthcoming Environment Bill is a material consideration (and its potential to mandate that development sites deliver a 10% net gain for biodiversity), its final content is not yet available and should not be pre-judged. The relative weight to be assigned to the draft Bill has recently been considered by a Planning Inspector

for a site in Milton Keynes<sup>48</sup> (see Appendix 5487/AB19). In considering this matter the Inspector concluded:

*“42 Whilst the Environment Bill is a material consideration, it is not yet law. I attach greater weight to the adopted Plan:MK Policy NE3, which does not set out any specific level of biodiversity net gain”.*

7.7.3 Therefore, the Milton Keynes Inspector placed greater weight on local policy. In regard to the Oakhurst Rise appeal site, the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS) does not explicitly require a net gain for biodiversity to be delivered but Policy SD9(2)iii does state that the biodiversity of the JCS area will be protected and enhanced by *“Encouraging new development to contribute positively to biodiversity”*.

7.7.4 Moreover, when the Environment Bill is introduced, I understand that it is proposed that there will be a 2 year transition period when the requirement for a 10% net gain will not be mandatory.

## 7.8 Conclusion

7.8.1 Biodiversity Net Gain is encouraged by policy and is set out in the draft Environment Bill. This promotes the assessment of proposals by conducting a Biodiversity impact Assessment utilising a metric, currently available in beta testing form.

7.8.2 An assessment of the appeal proposals utilising the metric, records that the scheme will generate a 12.11% net gain for biodiversity. Therefore, the scheme is in full compliance with JCS policy SD9(2)iii which requires all developments to deliver ecological enhancements. Reference to a recent appeal decision finds that local policy should take precedence over the draft Environment Bill which in any event is likely, when introduced, to contain a two year transitional period when the delivery of a 10% net gain is not mandatory. Nonetheless, the appeal proposals deliver a net gain which exceeds requirements which are not yet even introduced and accordingly will provide a significant ecological benefit such that a very positive outcome for biodiversity will be secured under the appeal proposals.

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<sup>48</sup> Land at Brickhill Street, South Caldecotte, Milton Keynes MK17 9FE. Planning Inspectorate. Reference: APP/Y0435/W/20/3251121. 14 October 2020

## 8 Review of Consultation Responses and Committee Report

### 8.1 Introduction

8.1.1 Consultation responses have been received from a number of organisations during the application. I review these below:

### 8.2 Natural England

8.2.1 Natural England provided a consultation response dated 05 June 2020 (CD F28) confirming that they have no objection to the proposals subject to appropriate mitigation. In this regard they advise that the mitigation set out in the Council's Appropriate Assessment (CD F22) is secured, namely the provision of a Home Owner's Information Pack setting out alternative local recreation opportunities (off site). This is secured by way of a condition.

### 8.3 County Ecologist

8.3.1 The County Ecologist has provided consultation responses dated 12 August 2020, 02 September 2020 and 11 September 2020 (CD F23). These are detailed responses that consider all matters of the appeal site ecology. Following this thorough assessment, which was informed by a site visit on 06 August 2020, the County Ecologist has no objection to the proposals. In his response of 02 September 2020 he states:

*"It is my conclusion that the latest development proposal would not have a significant adverse effect upon biodiversity overall and with the proper addressing of reserved matters including a S106 agreement a biodiversity net gain would accrue".*

### 8.4 Gloucestershire Wildlife Trust

8.4.1 The Wildlife Trust has provided a consultation response dated 01 September 2020 (CD F25). The Trust has no objection to the proposals and set out that:

*"GWT's view that the mitigation and enhancements for the habitats and species recorded on site are adequate to achieve no net loss of biodiversity"*

## 8.5 Badger Trust (Gloucestershire)

8.5.1 The Badger Trust provided a response on 27 May 2020 (CD F24) and objects to the proposals on the grounds of:

*“loss of habitat generally and because it will cause material harm to badgers (Meles meles) as a protected species (Protection of Badgers Act, 1992)... We are also concerned that this application, if successful, will be part of a phased development of the whole site once the principle of development has been established. That is to say that the diminution of its ecological and amenity value will be used in future applications as an excuse to cover the whole site in housing”.*

8.5.2 I have carefully considered the use of the site by Badgers and the proposed mitigation strategy within my evidence. I find that the methods proposed accord with standard practice and would be readily licensed by Natural England under the provision of the Badgers Act 1992, which unlike conservation legislation, makes specific provision of licensing to facilitate development.

## 8.6 Charlton Kings Friends and other third parties

8.6.1 CKF and other third parties have raised a range of other ecological issues. Latterly these have centred on the value of the grassland and Biodiversity Net Gain. I fully address these matters in my evidence and demonstrate that the appeal proposals will lead to a net gain for biodiversity. The County Ecologist and Wildlife Trust are in agreement with this conclusion.

## 8.7 Planning Officer’s Report to Committee

8.7.1 The Planning Officer’s report to Committee contains a comprehensive discussion of biodiversity matters. This demonstrates that the Council has carefully considered the site ecology and has reached a well informed view on the effects of the scheme, which is that *“Officers are therefore satisfied that the proposal has an acceptable impact upon wildlife and biodiversity”.*



## 8.8 Conclusion

- 8.8.1 Following my review of the consultation responses received, I find that the County Ecologist and Wildlife Trust have no objection to the proposals, while the points raised by the Badger Trust, Charlton Kings Friends and other third parties are fully addressed in my evidence.

## 9 Summary and Conclusions

- 9.1.1 I have been instructed by William Morrison in regard to biodiversity matters in respect of application 20/00683/OUT which was refused by Cheltenham Borough Council and is the subject of this appeal. Examination of the reasons for refusal finds that none relate to ecology and therefore the Council is satisfied in respect of biodiversity matters.
- 9.1.2 However, the Rule 6 party, Charlton Kings Friends (CKF), will bring forward evidence in regard to ecology, based on the comments they raised during the application and the points set out their Statement of Case (CD C7). In particular, they raise issues in regard to the botanical quality of the grassland and its relevance to the appeal site's Local Wildlife Site Designation, Badgers and Biodiversity Net Gain.
- 9.1.3 The policy framework against which the appeal proposals should be assessed is set out in the NPPF (2019) and within the Joint Core Strategy (JCS) and Cheltenham Plan. I describe the key policy tests of relevance to the appeal proposals and later in my evidence apply these tests to the appeal scheme.
- 9.1.4 The appeal site has been subject to a range of ecological surveys carried out across a number of years, most recently in January 2021, with specific surveys undertaken for habitats, grassland flora, Badgers, bats and reptiles. The survey work has recorded that the site is dominated by semi-improved grassland with a number of hedgerows and mature trees, including veteran trees. A main Badger sett is present along with a number of more minor setts, a bat roost is present in a retained tree which was recorded to support a single Common Pipistrelle bat, while reptile surveys recorded peak counts of a single Slow Worm and a single Grass Snake.
- 9.1.5 The appeal site is subject to Local Wildlife Site (LWS) designation on the basis of its 'value for learning' due to its proximity to St Edwards School which lies adjacent to the site. CKF has advanced that the LWS should also be designated on the basis of the botanical interest of its grassland. However, the Gloucestershire Wildlife Trust, who is responsible for coordinating LWS designations, is of the view that it is of "borderline LWS quality". However, having reviewed the LWS selection criteria, I consider these outdated and flawed as they fail to adjust for area such that herb poor grasslands can qualify simply on a species count, resulting in the inclusion of grasslands of a reduced

quality. The County Ecologist is in agreement with my view and he sets out in his consultation response dated 12 August 2020 his opinion that *“The meadow is poor quality MG1 grassland (Mesotrophic Grassland Type 1 of the National Vegetation Classification) and of low conservation value”*.

9.1.6 However, an opportunity is present under the appeal proposals to restore the grassland to a herb rich sward which would significantly enhance its conservation value. A Framework Management Plan has been prepared setting out a structure as to how this will be achieved and this has been agreed with the Gloucestershire Wildlife Trust. In addition the eastern and southern parcels of the appeal site will remain available solely for use by St Edwards School which will ensure the criterion upon which the LWS is designated of ‘value for learning’ will be maintained under the appeal proposals. These measures coupled with a range of other enhancements for wildlife will ensure that the JCS policy test under SD9 that *“development within locally-designated sites will not be permitted where it would have an adverse impact on the registered interest features or criteria for which the site was listed, and harm cannot be avoided or satisfactorily mitigated”* is fully satisfied.

9.1.7 By contrast under a ‘do-nothing scenario’ it is likely that current grassland management practices on the site will continue which are detrimental to its botanical interests. Similarly, other undesirable management practices such as the detrimental management of veteran trees which is currently taking place will likely also continue. Therefore, under a do-nothing scenario the biodiversity value of the site will likely continue to decline. By contrast under the appeal proposals there is the opportunity to arrest and reverse this decline and provide a fully funded long term conservation management plan.

9.1.8 To facilitate the appeal proposals a main Badger sett on the site will need to be closed alongside a number of minor setts, while two setts will be retained. Badgers are a common mammal and their protection under the Protection of Badgers Act 1992 is on welfare grounds only. Indeed, unlike the conservation legislation, there is specific provision for the granting of licences for development under the Act. To facilitate the grant of a licence, mitigation is proposed in the form of an artificial Badger sett. The details of its design will be informed by further work and agreed with Natural England during the post planning licensing process. In addition, two natural setts will be retained, and enhanced foraging resources will be provided on site by the planting of

fruit and nut bearing species while access to offsite foraging resources, which likely currently represent their main supply of their staple of earthworms, will also be maintained.

9.1.9 Other retained habitats and fauna such as reptiles and roosting bats on the appeal site will be fully safeguarded under a Construction Environment Management Plan (CEMP).

9.1.10 I assess how the appeal proposals fit with the mitigation hierarchy under NPPF 175a and find they are wholly compatible, while paragraphs 170d and 174b of the NPPF encourage net gains for biodiversity. The forthcoming Environment Bill will also address net gains and will require the use of the Defra 2.0 metric to assess these. I have applied the Defra 2.0 metric using a conservative set of assumptions and find that a net gain for biodiversity (of 12%) is readily achieved under the appeal proposals. This exceeds even the target of 10% in the forthcoming Environment Bill which is not now expected to be in place until autumn 2021 and then will be accompanied by a two year transition period.

9.1.11 I have reviewed the consultation responses received and find that Natural England (CD F28), the County Ecologist (CD F23) and Gloucestershire Wildlife Trust (CD F25 & F26) all have no objection to the proposals, while the County Ecologist and Wildlife Trust also agree that the appeal proposals will provide a net gain for biodiversity (Natural England does not comment on net gain). The Badger Trust, CKF and other third parties maintain objections to the proposals. I have fully addressed the points they raise in my evidence and find that these are readily overcome by the application of appropriate mitigation measures. This is also the view of the Planning Officer who in their report to Committee (CD A102) advised that *“Officers are therefore satisfied that the proposal has an acceptable impact upon wildlife and biodiversity”*.

9.1.12 In conclusion, following my review, I consider that all issues raised by consultees have been addressed by the appeal proposals, while I consider the scheme highly preferable to a do-nothing scenario which otherwise would likely continue to result in the reduction in the biodiversity value of the appeal site. With the use of appropriate mitigation existing wildlife interests are safeguarded while the appeal scheme will also bring forward a net gain for biodiversity which at present is only encouraged, rather being than a requirement of policy. Indeed, the level of gain achieved at 12% exceeds

even the level of the future mandatory requirement when this is introduced. Accordingly, I consider no significant harm arises to biodiversity under the test at 175a of the NPPF which is mirrored in local policy. By contrast the scheme delivers biodiversity benefits while also ensuring that the Local Wildlife Site's interest feature of 'value for learning' is maintained, with free access to St Edwards School made available under the appeal scheme. Accordingly, I am in agreement with the Council that there is no reason for the appeal scheme to be refused on biodiversity grounds.

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