

Planning Inspectorate Ref: APP/B1605/W/20/3261154  
Application Ref: 20/00683/OUT

Land adjacent to Oakhurst Rise, Cheltenham

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

By

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February 2021

Quality Management	
<b>Client:</b>	William Morrison (Cheltenham) Ltd
<b>Project:</b>	Land adjacent to Oakhurst Rise, Cheltenham
<b>Report Title:</b>	Summary Proof of Evidence in respect of Biodiversity
<b>Project Number:</b>	1005487
<b>File Reference:</b>	5487 Oakhurst rise Ecology Proof Summary vf
<b>Date:</b>	23/02/2021

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## 1 Qualifications

- 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, and a Senior Director of Aspect Ecology, a practice that provides ecological planning and design advice to the public and private sectors.

## 2 Planning Background

- 2.1 Outline planning application (ref: 20/00683/OUT) for 43 dwellings including access, layout and scale, with all other matters reserved for future consideration was recommended for approval within the Planning Officer’s report to Committee 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.
- 2.1.1 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.

## 3 Policy

- 3.1 National policy set out in the NPPF requires that developments avoid, mitigate or compensate where significant harm to biodiversity would occur, while net gains in biodiversity are also encouraged. Policy SD9 of the adopted Joint Core Strategy (JCS) 2017 requires development proposals to include measures to ‘protect and enhance’ biodiversity including designations such as local wildlife sites, while it also encourages new development to contribute positively to biodiversity. Policy HD4 of the Cheltenham Local Plan 2020 contains a series 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”.

## 4 Ecology surveys and findings

4.1.1 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.

## 5 Local Wildlife Site

5.1.1 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 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".

5.1.2 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 part 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.*

- 5.1.3 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.

## 6 Badgers

- 6.1.1 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.

## 7 Other habitats

- 7.1.1 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).

## 8 Mitigation Hierarchy & Biodiversity Net Gain

8.1.1 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 Consultation Responses

9.1.1 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”*.

## 10 Conclusion

10.1.1 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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