PLANNING INSPECTORATE REFERENCE: APP/E2205/W/21/3284479

ASHFORD BOROUGH COUNCIL REFERENCE: 21/00790/AS

LOCATION: LAND BTW WOODCHURCH ROAD ETC, TENTERDEN

PROOF OF EVIDENCE OF HELEN JEAN FORSTER BSc (Hons) MCIEEM

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Introduction

1. I hold a Bachelor of Science degree (Honours) in Countryside and Environment Management awarded by the University of Aberdeen in 2001. I am a Full Member of the Chartered Institute of Ecology and Environmental Management.
2. I have over 14 years of experience as Local Authority ecologist. Since August 2007 I have been employed as a Biodiversity Officer with Kent County Council's Ecological Advice Service (EAS). Within this role I provide impartial ecological advice to Kent County Council Planning Officers to ensure compliance with biodiversity and protected species legislation, policy and best practice. Under Service Level Agreements, this ecological advice service is also provided to Ashford Borough Council (since 2015) and 11 other local planning authorities.

Relevant Background

Application Process

3. I have been consulted on this site for previous application 19/01788 and the current application 21/00790.

4. As part of application 19/01788 eight consultation responses were proved between February 2020 and August 2020 and a number of discussions were had with the applicant's ecologist (CD3.10). Additional information was provided by the applicant, however it was not demonstrated by the submitted information that the proposed mitigation and enhancement measures were implementable.

5. As part of the current application two consultation responses were provided in June and August 2021 (CD4.4 and CD4.4a), in addition to a meeting and a site visit with the applicant. Similar to the advice provided for the previous application it was not demonstrated that the intended habitat enhancement, required as part of the mitigation requirements, could be implemented.

6. The relevant Reasons for refusal are as follows:

   - 4b "The proposals in their current form would have a detrimental impact on the following important trees within the site:-
     T381 Ancient Field Maple. A new football pitch is proposed within its offset Buffer Zone and an incursion within its Root Protection area. The Root Protection Area and buffer zone plotting of the tree described in the application is not accepted. The associated works required for the football pitch would result in a deterioration and possible loss of this ancient tree."

   - 5. The proposals would not preserve or enhance biodiversity as it is considered the proposed ecological mitigation measures would be unlikely to

be able to be successfully implemented alongside the scale of development for which permission is sought. The application is likely to result in loss and harm to biodiversity interests on the site contrary to policies HOU5 (e) and (f) (vi) and ENV1 of the adopted Ashford Local Plan 2030.

Legislation

Conservation of Habitats and Species Regulations 2018

7. When considering the impact on European Protected Species the Conservation of Habitats and Species Regulations 2018 require the determining authority (the competent authority) to have regard to the requirements of the Habitats Directive in the exercise of its functions. As such, the determining authority must consider whether it is likely that an EPSM Licence from Natural England will be granted, and in so doing must address the three tests when deciding whether to grant planning permission for the proposed development. The three tests are that:

   - Regulation 55(2)(e) states: a licence can be granted for the purposes of *"preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment".*
   - Regulation 55(9)(a) states: the appropriate authority shall not grant a licence unless they are satisfied *"that there is no satisfactory alternative".*
   - Regulation 55(9)(b) states: the appropriate authority shall not grant a licence unless they are satisfied *"that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range."*

Environment Act 2021

8. The Environment Act includes a legal target to halt wildlife decline by 2030 (section 1.3 of the Environment Act). Following the implementation of secondary legislation, the Environment Act will include the requirement of Biodiversity Net Gain, Local Nature Recovery Strategy, a strengthened Biodiversity Duty, detail a step change on how nature recovery should be approach, and provide delivery tools and mechanisms. Current time scales indicate that these requirements will be implemented within the next two years.

<u>Policy and Guidance</u>

National Planning Policy Framework 2021

9. Paragraph 180(a) of the National Planning Policy Framework 2021 states:

- a. "*if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused"*
- *c. development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists;*

Ashford Borough Council Local Plan 2030

10. Policy HOU5 states; -
    - "*Residential Windfall Development in the Countryside - Proposals for residential development adjoining or close to the existing built up confines of the following settlements will be acceptable: Ashford, Aldington, Appledore, Bethersden, Biddenden, Brabourne Lees/Smeeth, Challock, Charing, Chilham, Egerton, Great Chart, Hamstreet, High Halden, Hothfield, Kingsnorth*, Mersham, Pluckley, Rolvenden, Shadoxhurst, Smarden, Tenterden (including St Michaels), Wittersham, Woodchurch and Wye.*
      **Existing Kingsnorth village*

      Providing that each of the following criteria is met:

      e) The development must conserve and enhance the natural environment and preserve or enhance any heritage assets in the locality; and,

      f) The development (and any associated infrastructure) is of a high quality design and meets the following requirements:-

      vi) it would conserve biodiversity interests on the site and / or adjoining area and not adversely affect the integrity of international and national protected sites in line with Policy ENV1."

11. Policy ENV1 states:
    - *Biodiversity "Proposals that conserve or enhance biodiversity will be supported. Proposals for new development should identify and seek opportunities to incorporate and enhance biodiversity. In particular, development should take opportunities to help connect and improve the wider ecological networks.*

      Proposals should safeguard features of nature conservation interest and should include measures to retain, conserve and enhance habitats, including BAP (Priority) habitats, and networks of ecological interest, including ancient woodland, water features, ditches, dykes and hedgerows, as corridors and stepping stones for wildlife.

Development that will have an adverse effect on the integrity of European protected Sites, including the Wye and Crundale Special Area of Conservation and the Dungeness, Romney Marsh and Rye Bay Ramsar and SPA sites, alone or in combination with other plans or projects, will not be permitted. Any proposal capable of affecting designated interest features of European sites should be subject to Habitats Regulations Assessment screening.

Development that will have an adverse effect on nationally designated sites, including the borough's Sites of Special Scientific Interest and National Nature Reserves, will not be permitted unless the benefits, in terms of other objectives including overriding public interest, clearly outweigh the impacts on the special features of the site and broader nature conservation interests and there is no alternative acceptable solution.

Development should avoid significant harm to locally identified biodiversity assets, including Local Wildlife Sites, Local Nature Reserves and the Ashford Green Corridor as well as priority and locally important habitats and protected species. The protection and enhancement of the Ashford Green Corridor is one of the key objectives of the Plan and therefore all proposals coming forward within or adjoining the Ashford Green Corridor should comply with Policy ENV2 in the first instance.

Where harm to biodiversity assets cannot be avoided, appropriate mitigation will be required in line with a timetable to be agreed with the Local Authority. Normally any mitigation measures will be required to be delivered on-site, unless special circumstances dictate that an off-site model is more appropriate. A financial contribution - in lieu of on-site mitigation - will only be considered in very exceptional circumstances and where it is demonstrated that the proposed mitigation is deliverable and effective.

Opportunities for the management, restoration and creation of habitats in line with the opportunities identified for the Biodiversity Opportunity Areas (BOAs) and targets set out in the Kent Biodiversity Strategy will be supported."

The Proposal

12. The proposal is a hybrid planning application for up to 145 dwellings, sports pitches, country park and associated landscaping. The Ecological Assessment (Ecology Solutions) (CD 1.15) submitted as part of the current application and the ecological information submitted as part of the previous application detailed the following:

13. The site is at least 9 fields which are divided up by hedgerows. The ecological surveys (to date) have recorded the following habitats within the site.

- Neutral and Acid Grassland (11 species indicating unimproved grassland were recorded).
- Area of rush pasture (previously assessed as a pond)
- Ponds and ditches throughout the site (5 of the 7 ponds on site retained significant amount of water during the updated survey).
- Hedgerows recording Ancient woodland Indicator species
- At least 59 trees with potential to be used by roosting bats
- At least 9 species of foraging/commuting bats within the site
- At least 38 species of birds of which at least 22 species were considered to be breeding within the site – including birds of conservation concern and species of principle importance.
- Breeding population of GCN
- Smooth Newt, Palmate Newt and Common Frog.
- 3 species of reptiles
- At least 366 species of invertebrates (including species of principle importance)
- Badger sett in the NE of the site.

14. Details of the ecological surveys can be found within the Ecological Assessment (CD 1.15) and the habitat plan can be found at (PLAN ECO2: C1-15).

15. The ecological assessment submitted with the application provides a good understanding of the ecological interest within the site. An overview of the mitigation was provided within the ecological assessment and the intention of the proposed development is to mitigate the impact on the habitats and species recorded within the site through the enhancement of the habitats proposed to be retained. - These habitats are located within the proposed country park (full planning permission) and the landscape buffers and green links (reserved matters application).

Impacts

Overview

16. The proposed development would result in the direct loss of neutral grassland, trees and rush pasture (Ecological Assessment PLAN ECO2: C1-15) due to the construction of the proposed dwellings. This area exhibits signs that it has not been subject to regular disturbance, such as ploughing, due to the presence of ant hills which form over time. In addition, there would be further impacts to habitats and features retained on site - including from recreational pressure on neutral and acid grassland, hedgerows and scrub. The impacts from the proposal could be further amplified if inappropriate or insufficient management is carried out within the site.

17. All the species groups listed within paragraph 13 were recorded within the development site and as such species mitigation has been proposed – in the

event the proposed management is not implemented as intended the species interest of the site may not be maintained.

Reason for Refusal 4a

18. This is concerned with the deterioration of the irreplaceable habitat of T381 Field Maple which is within the area of a football pitch, the morphing of the Buffer Zone and incursion within the RPA.

19. Having seen Phillip Cook's (ABC Tree Officer) evidence – as an ecologist I support his evidence having regard to the significance of the deterioration of possible loss.

Reason for Refusal 5

<u>Biodiversity Net Gain</u>

20. To support the application the results of a biodiversity net gain (BNG) assessment has been submitted by the applicant (Ecological Assessment appendix 4 CD1.15) - the BNG metric is a habitat based approach used to assess an areas value to wildlife. The results of the BNG assessment must not be considered using the percentage value alone but also taking into account the information used to reach those conclusions (survey information /proposed landscaping plans) in order to understand the results fully.

21. The submitted BNG metric concluded that the anticipated net gain is 15.8% for habitats and 23.3% for hedgerows.

Habitats

22. The BNG metric (appendix 4 CD1.15) details that 20ha of neutral grassland is currently within the site and as a result of the proposed development 6.71ha of neutral grassland would be lost, 0.44ha created and the remaining area of neutral grassland enhanced. However, no plan was submitted with the application demonstrating the areas of neutral grassland within the site to be lost, retained, enhanced and created as part of the proposed development.

23. Some of this information can be assumed by comparing the ecological features plan (Ecological Appraisal, PLAN ECO2: C1-15) and illustrative master plan (LEMP T-4, CD1-14), but this does not provide a clear picture. The illustrative masterplan does not demonstrate all the areas to be impacted by the proposed construction, such as the areas to be impacted by the installation of utilities, construction footprint (typically larger than the development footprint) and land levelling requirements. Therefore, it is my view that a larger area of neutral

grassland would be lost by the development than is assessed within the BNG metric.

24. Therefore it is my view that the area of grassland within the site to be enhanced is lower than anticipated within the BNG metric. My view is the anticipated BNG value will be lower than that proposed by the applicant therefore the ecological interest of the proposed developed site would be lower than anticipated within the ecological appraisal (CP 1-15).

Landscape and Ecological Management Plan (CP1-14)

25. A Landscape and Ecological Management Plan (LEMP) was submitted as part of the planning application and it provides an understanding of what management is proposed to be carried out within the site. Due to the total area combined of the country park and the landscape buffers and green links theoretically appropriate species mitigation and habitat enhancement could be achieved but I have serious concerns about the ability to manage the improvement so that the claimed BNG can be achieved.

26. The appellant's BNG assessment concludes the net gain of 15% (habitats) on the basis that the condition of the current habitats has been assessed as poor or fairly poor and then concludes that due to the proposed management the conditions of the habitats of note post development would be enhanced to fairly good to good condition (within the BNG metric the condition of the habitat is determined by the surveyor and can range from poor to good).

27. The appellant's BNG metric has detailed that the condition of the majority of the retained neutral grassland within the site would be enhanced. However, in the east of the site Scrub and Grassland Mosaic is proposed to be created and the proposal would result in an increase in scrub within an area which is currently neutral grassland. While the intention is to manage the grassland within that area to increase the floristic diversity, my view is that the total area of grassland within that area would be reduced due to the scrub planting and in some areas the grassland quality would not increase as areas (particularly immediately around the scrub) would not be managed as intended as a grassland meadow. Therefore, it is likely that, due to the creation of the scrub and grassland mosaic, the proposed management of the area of grassland enhancement, claimed within the applicant's BNG metric, would not be implemented as intended; the anticipated BNG would be lower than currently predicted by the appellant.

28. The appellant's LEMP and the BNG metric do not appear to have fully taken in to account the habitat requirements for the protected species found within the site. For example, tussocky grassland is typically established within receptor sites to provide suitable habitat for reptile populations. This habitat is created by cutting

sections of the grassland within the receptor site on a 2-3 year rotation. Paragraph 4.2.2 of the LEMP details that the reptiles would be translocated to dedicated receptor sites but it is not clear where those areas are located or if they would be managed appropriately to retain the population. Point 5 in the *Existing Grassland* section of paragraph 8.1.2 of the LEMP details that the majority of the grasslands would be managed as wildflower meadow with some pockets of grassland cut every 2-3 years within the areas adjacent to hedgerows. From the ecological appraisal and the LEMP it is not clear if the reptile receptor sites are to be located. If the proposal is to provide the receptor sites along the hedgerows the documentation received does not demonstrate whether there is sufficient space to support the reptile population that would ned to be relocated. In my view a larger area of grassland managed with rotational cutting would be required.

29. Should a larger area be required to accommodate the reptile populations the cutting regime would need to be less frequent (i.e., every 2/3 years, as opposed to every year) this would reduce botanical species diversity due to the lack of frequent cutting required to support botanical diversity. As detailed in point 3 of *Existing Grassland* section in section 8.1.2 (LEMP CP-14) the management of majority of the grassland is to be managed as wildflower meadow to aid the ongoing reduction of nutrients in the soil. The aim of this management is to help improve the botanical diversity. The inability to cut the grassland regularly due to the reptile management requirements would impact on the conclusions of BNG metric, which has not taken this into account when assessing grassland condition. It is therefore my opinion that the development would not achieve the proposed habitat enhancement to mitigate the loss of grassland habitat and therefore will not achieve the anticipated net gain.

30. If the proposed management is not carried out as intended the intended habitat enhancement and creation would not be implemented as proposed resulting in a decline and ultimately harm to the ecological interest of the site.

Recreational pressure

31. The proposed development is for up to 145 dwellings and as such the proposal would result in an increase in recreational usage this is acknowledged in paragraph 4.5.1 of the Ecological Appraisal (CP-1- 15) which states "There is potential for negative effects from recreational usage of grassland fields within the east of the Site due to their proximity to the land proposed for residential dwellings". Currently the site is used for recreation via the existing and proposed PROW, however the proposed development would result in a significant increase in the number of people using the site – through future residents and residents within the surrounding area who currently may not use the site.

32. The forest research paper Recreational Use Of Forests And Disturbance Of Wildlife (2012) has considered the impact on vegetation from recreation and it has detailed: *Recent studies have confirmed earlier findings (e.g. Bayfield, 1971, 1973) that trail characteristics can have a substantial effect on disturbance, for example trail 'roughness can cause hikers to widen trails by seeking out smoother trailside hiking surfaces' (Wimpey and Marion, 2010, p.2035).*

33. Paths size can increase more than anticipated at the design of a proposal, which would further result in a loss of habitat. The impact of increasing widths of footpath through use has been apparent during the current covid pandemic as a result of increased users of footpaths/open spaces, and social distancing has meant that footpaths in some areas has significantly increased.

34. In addition to damage to proposed footpaths, desire lines can be created within residential areas and country parks, and it is possible that within the country park, landscape buffers and green links unofficial footpaths would be created – it is possible that these areas would become unvegetated over time. The creation of unofficial paths would mean that the proposed management detailed within the LEMP would not be fully implemented.

35. Table 5-7 of the LEMP has detailed that as part of the proposal *Footpaths Annual wear and tear inspection* would be carried out. It is assumed that as part of any inspection restoration works would be carried out to any damaged caused to habitats due to recreation. However, depending on the extent of the damage to the habitats within the desire lines or habitats adjacent to existing footpaths, it might not be possible to restore the grassland to the - fairly good - condition intended within the BNG metric.

36. Therefore while management has been proposed for the site it is possible that the management measures may not be implemented so the habitats would not be maintained as intended; and the anticipated BNG could not be achieved.

Hedgerows

37. Paragraph 5.2.97. of the ecology assessment states that the proposal would result in the inclusion of new areas of high quality hedgerows and increase connectivity across the site which would be of particular benefit to a range of faunal species; it states the following about the management: *"Once established, new areas of species rich hedgerow planting should be cut no more than once annually, and on a rotational basis where possible to enhance structure and value to faunal species."* However table.5-7 within the LEMP details that "*once established the hedgerows would be cut in height and the sides cut back for a tidy appearance*". It is my understanding that the anticipated BNG is based on the detail within the ecology report rather than the information within the LEMP. Therefore the anticipated condition of existing and proposed hedgerows - to good - would be unlikely to be possible due to the proposed management detailed

within the LEMP; the anticipated net gain of 23% therefore might not be achieved.

Species mitigation

38. The proposed development has been designed to create the country park and the landscape buffers and green links through the site which in theory would enable connectivity through the site for species within the site and surrounding area. However, as explained above the concern is that if the management is not implemented as intended or the recreational use within these areas is higher than intended the habitat within these green links would not reach the intended quality and might not provide the habitat and connectivity required to maintain the interest for protected/notable species. Thus resulting in harm to the species currently present within the development site.

Summary and Conclusions

39. It is my view that insufficient information has been provided to demonstrate that the proposed high quality habitat enhancement and habitat creation is achievable within the proposed development site.

40. As set out above, this is due to the uncertainty of the proposed habitat enhancement and creation, the implementation of the management and the impacts associated with the recreational pressure resulting from the proposed development and associated country park.

41. The proposed development is likely to result in a decline or loss of the quality of the habitats on site which may consequently result in likely harm the species present

42. In this way, the proposal conflicts with paragraph 180 of the NPPF, and policy HO5(e,f-vi) and ENV1 of the Ashford Local Plan.

Appendix

1. The forest research paper Recreational Use Of Forests And Disturbance Of Wildlife (2012)