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Planning Application Reference: 19/03143/FUL

Town and Country Planning Act 1990 (as amended)

Appeal by: Avant Homes Central

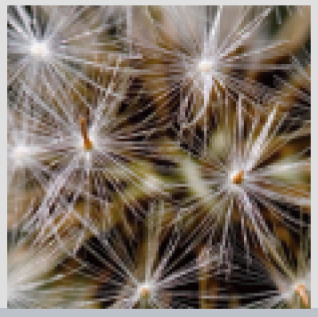
An Appeal Against the refusal of Full Planning Permission for 74 no. dwellings at land off Moorthorpe Way, Sheffield.

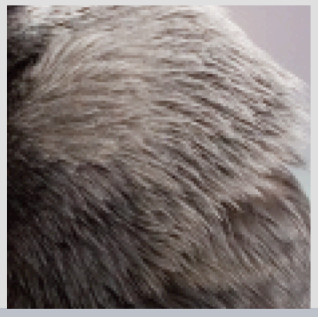
Proof of evidence on

Ecology and Nature Conservation

By

Andrew Baker BSc (Hons) FCIEEM





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1 Qualifications and Experience

1.1 I am Andrew Baker and I am Director of the ecological consultancy Baker Consultants Limited, which I established in March 2009. I hold the degree of Bachelor of Science with Honours in Botany from the University of Nottingham (1986). I have been a full member of the Chartered Institute of Ecology and Environmental Management (CIEEM) since 1994.

1.2 I have been a practising ecologist for over 30 years having worked throughout the UK for organisations such as English Nature (now Natural England), local Wildlife Trusts, National Parks, large civil engineering consultancies and private ecological firms. Much of my work involves providing expert advice to clients on Environmental Impact Assessments (EIA) and Habitat Regulations Assessments (HRA) of international sites (Special Protection Areas (SPA), Special Areas of Conservation (SAC) and Ramsar sites.

1.3 In my work in private practice clients come from the public, private and voluntary sectors. Public sector clients include English Nature (Natural England's predecessor), Department of the Environment Transport and the Regions, the Environment Agency and Local Planning Authorities.

1.4 I am actively involved in the development of the ecological profession. I have published articles on Environmental Impact Assessment and protected species legislation. I am a member of the United Kingdom Environmental Law Association (UKELA) and a former Convenor of its Nature Conservation Working Group. As Convenor of the working group I was responsible for coordinating comments on emerging wildlife legislation and policy such as Planning and Policy Statement 9. In 2003 I was a member of the Highways Agency's Translocation Steering Group, which subsequently published a best practice

guide on habitat translocation. More recently I was a member of the steering group working with the British Standard Institute and the Association of Local Government Ecologists to produce a 'Publicly Available Specification' that provides recommendations for the integration of biodiversity conservation into land use and spatial planning in the UK. In 2016 I was made a Fellow of the Chartered Institute of Ecology and Environmental Management (CIEEM) for my work on nature conservation law and my contribution to the development of the use of bioacoustics in ecological survey.

1.5 I currently stand on CIEEM's disciplinary board and I am frequently called upon to hear cases that are brought against members of the profession, often chairing the hearings.

1.6 I have considerable expertise in nature conservation law and I have published widely on the subject including (along with Brown Jacobson Solicitors) the 2nd Edition of 'A Manual of Nature Conservation Law' edited by Michael Fry. Through this involvement in Nature Conservation Working Group of the UK Environmental Law Associated (UKELA) I have been actively involved in the development of Nature Conservation Law and planning policy that affects ecological issues. I have considerable expertise of the practical application of this area of law and I teach on European and domestic nature conservation law and its associated guidance and policy. I have considerable experience of Habitats Regulations Assessment (HRA) under the Habitats Regulations (The Conservation of Habitats and Species Regulations 2010 as amended) and I have been closely involved in a number of cases, in particular cases that involve a conflict between access and recreation on the one hand and nature conservation on the other.

1.7 I am frequently called upon to give evidence to both local plan examinations and public inquiries into individual planning applications. I have also presented evidence to a Parliamentary Select Committee on the proposed ABLE UK port development on the Humber. For the past 12 months I have been giving evidence on ecology issues to the

hearing into the Development Consent Order into the realignment of Junction 10 of the M25.

1.8 In my early career I worked for Nottingham Wildlife Trust writing management plans for the Trusts urban and suburban nature reserves including woodlands, secondary grassland and railway cuttings. Many of these reserves were a key resource for the nearby residents and I am, therefore, very familiar with the challenges of managing sites which have a high visitor pressure.

1.9 In this proof of evidence also I rely on a report that has been compiled by my colleague Mark Woods who is employed by my company as Principal Ecologist. Mr Woods is our most senior botanist and is the Botanical Society of Britain and Ireland (BSBI) joint Vice County Recorder for Nottinghamshire; he is also a highly experienced ecologist and an expert in land habitat management. Mark assisted me putting together the proposed biodiversity net gain management for the land to the west of the proposed development site.

1.10 The evidence I have prepared and provided to this inquiry is true and I confirm that the opinions I express here are my true and professional judgements based on scientific evidence and my professional experience.

2 Background

2.1 Avant Homes was refused planning permission by Sheffield City Council on 5th June 2020 for the proposed residential development of land off Moorthorpe way, Owlthorpe, Sheffield, S20 6PD (Ref. 19/03143/FUL; formerly PP-08037032). The appeal is for full planning permission for erection of 74 (now 72) no. dwellings, formation of an access road, associated landscaping works, open space works and flood storage works.

2.2 The area within which the planning application is proposed is land which has been allocated in the Local Plan for housing for over 20 years. The application in question is located on "Area E" of a larger area also allocated in the Local Plan for housing. The land was previously agricultural managed as arable and pasture. Since the access road was built in around 2000 agricultural management has ceased and the land has been left unmanaged. During this time the area has become colonised by dense bramble scrub, mixed scrub, immature broadleaved trees, grassland and ruderal vegetation. Two hedgerows which once marked the western edge of Area E have been subsumed into the developing scrub and woodland habitat which has become established since agricultural management ceased. The progression of the changes in the vegetation can clearly be seen in the aerial photographs of the site since 1999 Appendix 1.

2.3 The Planning Committee Report for the application recommended granting of planning permission subject to conditions and a legal agreement. The conditions relating to ecology recommended by the planning committee are summarised as follows:

- Provision of a hedgehog highway scheme
- Provision of bird and bat boxes
- Provision of a sensitive lighting scheme for bats
- Provision of a revised Ecological Management Plan

2.4 In addition, various payments for ecological compensation and management were suggested to be in a S106 agreement.

2.5 The members of the committee, however, went against officer recommendation and refused planning permission on the following grounds which do not cite ecological reasons:

'This standalone proposal relating to the site known as "Owlthorpe site E" is prejudicial to the proper planning of the wider area, contrary to paragraph 3.2.6 of the "Housing Sites (C, D, E), Moorthorpe Way, Owlthorpe Planning and Design Brief (July 2014: Updated November 2017), which supports a comprehensive scheme for the application site together with neighbouring sites C and D. The proposal does not respond sufficiently to the area's prevailing character of abundant green infrastructure and open space, contrary to paragraphs 122 and 127 of the National Planning Policy Framework[1]. In addition the proposal fails to adequately integrate the affordable housing into the proposed layout, contrary to paragraphs 8, 122 and 123 of the National Planning Policy Framework, Core Strategy Policies CS26 and CS40 as well as policy GAH5 of the CIL and Planning Obligations Supplementary Planning Document and is not considered to be sustainable development.'

2.6 The site currently comprises a mosaic of habitats, with rank grassland, patches of dense scrub, dense bracken and broadleaved trees. The following ecological reports were submitted to inform the planning application:

- BWB. (2019). Moorthorpe Way, Sheffield – Preliminary Ecological Appraisal. March 2019.(CD2.3)
- BWB. (2019). Moorthorpe Way, Sheffield – Ecological Impact Assessment. December 2019. (CD2.5)
- BWB. (2020). Moorthorpe Way, Sheffield – Ecological Management Plan. May 2020. (CD 2.8)

Consultation Responses

2.7 Objections to the planning application have been received by a number of third parties many of which have raised concerns about the ecological impact of the proposed development. My evidence refers to the consultation responses relating to the development. These ecological objections are summarised below.

- Indirect impacts on Ochre Dike Local Wildlife Site (LWS) including reduced connectivity and increased disturbance / recreational pressures;

- Impacts on bats, birds, amphibians, reptiles, invertebrates, hedgehog, badger, deer and fox;
- Failure to enhance the natural and local environment by providing net gains for biodiversity;
- Removal of habitats including species-rich hedgerow,

Legislation and Policy Context

2.8 The key legislation, planning policy and guidance referred to in my evidence is listed as follows:

- Wildlife and Countryside Act 1981 (as amended);
- Natural Environment and Rural Communities Act 2006;
- The Conservation of Habitats and Species (amendment) (EU Exit) Regulations 2019 (as amended);
- National Planning Policy Framework (NPPF);
- ODPM Circular 06/2005. Biodiversity and Geological Conservation – Statutory Obligations and their impact within the Planning System;
- Sheffield Core Strategy (adopted March 2009), Sheffield City Council;
- Sheffield Unitary Development Plan (UDP) (adopted March 1998), and
- The Hedgerow Regulations, 1997
- Natural England's standing advice on ancient woodlands.

2.9 Through my work in nature conservation law I have been following closely the passage of the Environment Bill through the parliamentary process. The Environment Bill (although not yet law) sets out many changes to how the natural environment will be protected not least through the concept of Biodiversity Net Gain which, through the Bill is proposed to be mandated at a net gain of 10%. I am also very familiar with the DEFRA metric, now in its second iteration, which provides a mechanism for measuring biodiversity losses and gains.

3 Scope of Evidence

3.1 I have been asked by Avant Homes to provide an independent assessment of the issues that the proposed development raises, in particular to assess the evidence that has been presented on the likely ecological impacts of the housing development. I have also been asked to devise an approach as to how the proposed payment, secured under the Section 106 agreement, could be spent by Sheffield City Council (SCC) to provide biodiversity net gain.

3.2 In response to SCC and the Rule 6 party's comments and new survey information, the appellant has proposed an alternative layout to the scheme (Layout B). It is this layout that I have assessed in this proof of evidence.

3.3 I was not involved in carrying out any of the ecological surveys and my assessment has been based on a thorough review of the data that has been presented to the inquiry. In particular, I have reviewed the data presented by BWB Consulting that describes the baseline conditions and the data presented bv Wildscapes Ltd, which was submitted to the inquiry under the Rule 6 party: Owlthorpe Fields Action Group (OAG).

3.4 Drawing upon the data before the inquiry I have then considered the ecological impacts of the proposed housing development and how these impacts can be balanced through onsite and offsite mitigation/compensation measures.

3.5 My assessment will consider the points raised by consultees and objectors. My evidence will review whether the development accords with local and national policy and legislation.

3.6 I visited the site on November 25th 2020 when I was able to walk over the site and its immediate surrounds. My colleague Mark Woods visited the site on December 3rd to

assess the condition of the land to the west of Area E which informed my biodiversity draft approach to the net gain management proposals.

4 Site E Baseline Ecological Condition

Current Ecology of the site.

4.1 The planning permission has been accompanied by an Ecological Impact Assessment (EcIA) which was completed by BWB in 2019. I have reviewed this assessment and I concur with the findings of the survey and the impact assessment of the proposed development. The surveys were carried out by suitably qualified surveyors, following the appropriate guidelines and were completed at the correct time of year. I concur with the ecological assessment set out in the EcIA.

4.2 After the ecological surveys which had informed the EcIA had been completed in the spring and summer of 2019 it became clear that further areas within sites C and D would need to be included in the planning permission to provide a Local Equipped Area for Play (LEAP) and a Sustainable Urban Drainage System (SUDS) basin. A further ecological survey was, therefore, carried out of these areas. They were found to support the same mosaic of grassland, scrub and woodland habitats, which were also present in Area E and as such did not change the evaluation presented in the EcIA in terms of the impact assessment. The survey carried out by Wildscapes only surveyed the LEAP area and their results support this conclusion. Wildscapes survey did not cover the SUDS area.

4.3 In my view the level of survey effort employed by BWB was proportionate to the habitats present on the site. Surveys for protected species were carried out (bats, and badgers) along with a detailed botanical survey. In my view the level of survey

employed and the methods and survey effort allowed the ecological value of the site to be accurately categorised and a proper assessment of the ecological impacts of the proposed development. I also concur with the assessment set out in the EcIA addendum.

4.4 In summary, the site supports habitats which have colonised, over a period of c.20 years on former farmland which was previously managed as arable and pasture. As such these habitats are neither rare, nor uncommon. The botanical species which make up the grasslands do not exhibit high levels of diversity nor are there species present which are considered to be rare or otherwise remarkable; all species recorded are listed as 'Least Concern' by the International Union for Conservation of Nature (IUCN) (in Stroh, P.A., Leach, S.J. *et al*, 2014. *A Vascular Plant Red List for England*. BSBI Publications, Bristol).

4.5 Given the above it is my view that the ecological loss which the development will cause can be mitigated/compensated for, and I have a high level of confidence that the proposed mitigation will be successful.

Ecological Mitigation.

4.6 The planning application is accompanied by a suite of ecological mitigation measures. These comprise two main elements, onsite habitat creation and protection of measures, and funding for offsite biodiversity net gain (BNG).

4.7 The planning application is accompanied by an Ecological Management Plan (EMP) (CD2.8) which sets out measures to protect features such as broadleaved woodland on the boundary of the site and to create new habitats within the development areas. The EMP will be updated following the grant of permission to take into account any changes in the detail of the development and will be agreed with Sheffield City Council prior to the commencement of construction. The EMP will be secured through a condition. Is it

also proposed that the updated EMP would include the following measures.

- Protection of a hedgerow along the western boundary of site E by means of protective fencing;
- Protection of Owlthorpe LWS and Westfield Plantation LWS by means of protective fencing along the edge of the construction area;
- Habitat creation within the development site including tree and shrub planting, grassland creation, and a balancing pond;
- Dead wood habitat creation;
- Invertebrate habitat provision;
- Protection of active bird nests;
- Provision of bird boxes;
- Potential requirement for permanent reptile habitat provision including habitat design features to minimise the threat of predation by domestic cats;
- Provision of bat boxes;
- Sensitive lighting design to protect dark corridors for nocturnal fauna using retained habitat features, and
- Hedgehog habitat and connectivity features.

4.8 The ecological impacts of the proposed development will also be compensated for through a financial contribution to SCC, which will also be secured through the S106 agreement. The intention of the financial contribution is to secure 'Biodiversity Net Gain' by funding offsite habitat creation and management in the vicinity of the development. There is currently no local policy nor legal requirement to secure a defined level of BNG or to employ any metric to calculate loss/gain. However, the Environment Bill as currently drafted at the time of writing seeks to provide 10% BNG from most developments, calculated by the use of a metric tool, such as the DEFRA Metric (Beta version 2.), which is intended to allow habitat losses and gains, and changes to condition, to be quantified. The financial contribution to provide BNG has been calculated with reference to the DEFRA metric and the Impacts Assessment (CD 4.8.4) which accompanied the Environment Bill. I have explored the provision of BNG and the possible delivery mechanisms in more detail below.

4.9 Owlthorpe Site E does not support any species protected under the Conservation of

Habitats and Species (Amendment) (EU Exit) Regulations 2019 or the Wildlife and Countryside Act 1981 (as amended) which require translocation, habitat creation or other mitigation/compensation measures. The Wildscapes' surveys reported common spotted orchid (*Dactylorhiza fuchsii*) as being present on site E. This is a common and wide spread species which enjoys no specific legal protection and is classified by Plantlife as being of 'least concern'. It can be translocated if necessary using tried and tested methods.

5 Rule 6 and Third Party Representations

5.1 In the following section I will address the ecological concerns that have been raised by the Rule 6 parties and third parties. I will address the issues raised subject by subject, because many of the comments make the same, or similar claims as to the ecological effects of the proposed development. In each case I will address the issue and where necessary, demonstrate how the proposed mitigation/compensation will fully offset the loss of the impact that has been raised. As outlined above my evidence is purely concerned with matters ecological and I cannot comment on wider planning issues or the potential effects of other developments which, as some objectors have suggested, have yet to be brought forward. These questions will be addressed by other members of the applicant's team.

Impacts on Areas of Natural History Interest

5.2 The proposed development site is located to the north of an 'Area of Natural History Interest' Westfield Plantation which is protected under retained Policy G13 of the Unitary Development Plan. In addition, there are two LWS's in the locality; Ochre Dike LWS which is located to the north of the development site and, to the west Owlthorpe LWS however neither of these sites are shown on the UDP policy map and are therefore not covered by retained policy GE13. Westfield Plantation LWS is located to the south of the site and at its closest is c150m from the built environment (see Appendix 2). The closest part of the development to this LWS is the LEAP. The proposed development does not, therefore, present any risk of either direct or indirect impacts upon this LWS.

Impact on Ochre Dike and LWS and Owlthorpe LWS

5.3 Concerns have been raised in relation to possible impacts of the proposed development on Ochre Dike LWS, which is located immediately adjacent to the northern boundary of the proposed development site.

5.4 The citation for Ochre Dike seems to suggest it has been designated as a LWS primarily because of the water-course that runs through it (see citation in Appendix 2) but the citation also lists semi-natural woodland, scrub, semi-improved grassland, standing water and hedgerows.

5.5 At the time when the ecological assessment work was carried out Ochre Dike was not identified as being ancient woodland as it was not included on the Ancient Woodland Inventory (AWI). On December 14th 2020 Natural England confirmed that the woodland within the Ochre Dike LWS would be added to the AWI. Although the precisely boundary of the AW has not currently known it has been assumed that for the development a reasonable worst case is that the boundary will be to the current fence line between Ochre Dike LWS and site E.

5.6 Critically however, the applicant has put in place appropriate mitigation measures to ensure that the woodland is protected from potential damage or deterioration that could be caused by the proposed development. In accordance with Natural England's standing advice on the protection of ancient woodlands a 15m buffer has, for the most part, been put in place along the northern boundary which separates the proposed development from the ancient woodland. The efficacy of the proposed buffer is explored in further detail in the evidence of Mr Topping.

5.7 It should be noted that the eastern most section of Ochre Dike LWS (immediately to the west of the spine road in the vicinity of the proposed SUDs basin) (see plan in Appendix 2) does not support ancient woodland but rather the LWS is confined to the water course and the immediate bank which supports dense hawthorn and bramble scrub.

5.8 The potential impact pathways that could affect the Ochre Dike LWS that have been raised by third parties are, increased recreational pressure, impacts on hydrology,

predations by pets and direct damage to trees. It must be noted that the proposed buffer zone does not maintain a consistent 15m distance from the edge of the woodland throughout the entire length of the northern boundary. In some areas the buffer is narrower, but elsewhere the buffer extends to c40.5m. Overall, the area of the buffer zone exceeds the area that would be required if the buffer were at 15m throughout its length. A 15 meter buffer from the existing fence line that marks the edge of the woodland would be an area of 4259m^2. The proposed buffer for Layout B has total of 5181m^2 and therefore exceeds the overall buffer area required by the Natural England guidance by some 20%. The nature of the buffer is explained in more detail in the proof of evidence of Mr. Topping who addresses the protection of trees, especially in those parts of the buffer that are less than 15m wide.

5.9 The 15m wide buffer will ensure that any hydrological impacts are avoided. The buffer area will be planted with native tree and shrub species that will allow water to infiltrated into the soils and ensure that the hydrology of the site is not changed. In areas cellular layers will be used to protect soil structure. It should be borne in mind prior to the cessation of agriculture on the development site the fields were managed up to the edge of the woodland (see aerial photos Appendix 1) and the drainage of the area will have been modified if not by land drains then by ploughing. I am of the view, therefore, that the buffer will provide sufficient protection to the woodland to ensure that there are no significant changes to hydrology that could cause deterioration of the woodland.

5.10 With regards to recreational pressure on the Ochre Dike LWS, Owlthorpe LWS and other sites around the area it is clear from the network of desire lines that these sites are already very well used by the general public and the UDP identifies these areas as 'Open Space Area' under the Leisure and Recreation Chapter of the plan. There are numerous formal and informal paths throughout the woodlands and the grasslands to the west of

the proposed development. None of the LWS's in the area are less than 150m from existing housing in the locality and the footpaths associated with the housing are already linked formally and informally to the LWS's. While I was on site I met many people walking through Owlthorpe and Ochre Dike LWS's often accompanied by dogs. The recreational use of the LWS's is already high and the marginal increase in use arising from the scheme would not make any significant difference to the ecology of the area. Rather the funds which will be paid to SCC for biodiversity compensation offer the opportunity for improved recreational management of the open space within the LWS's that could for example, allow some areas of woodland and grassland to be fenced off to reduce public access and the potential for degradation of the habitats. The LWS's are already highly urbanized habitats with essentially open access to the general public. In my view, that is a positive feature of the woodland in the area because it allows the public to access nature close to their homes, which provides huge benefits to health and wellbeing. The proposed development offers the opportunity through the BNG payment to instigate more proactive management of access and recreation to these urban woodlands to the benefit of both local residents and the ecology of the LWS's.

5.11 It is often cited that increased housing within an area can bring increased pressure on nesting birds through predation by domestic cats. While is it indisputable that cats do predate birds, there is no scientific evidence that birds are negatively affected by domestic cat predation at the population level. This is acknowledged by the Royal Society for the Protection of Birds which states on its website (see link below) under the title of '***No scientific evidence.*** *Despite the large numbers of birds killed, there is no scientific evidence that predation by cats in gardens is having any impact on bird populations UK-wide. This may be surprising, but many millions of birds die naturally every year, mainly through starvation, disease, or other forms of predation. There is*

evidence that cats tend to take weak or sickly birds. We also know that of the millions of baby birds hatched each year, most will die before they reach breeding age. This is also quite natural, and each pair needs only to rear two young that survive to breeding age to replace themselves and maintain the population. It is likely that most of the birds killed by cats would have died anyway from other causes before the next breeding season, so cats are unlikely to have a major impact on populations. If their predation was additional to these other causes of mortality, this might have a serious impact on bird populations. Those bird species that have undergone the most serious population declines in the UK (such as skylarks, tree sparrows and corn buntings) rarely encounter cats, so cats cannot be causing their declines. Research shows that these declines are usually caused by habitat change or loss, particularly on farmland.' (https://www.rspb.org.uk/birds-and-wildlife/advice/gardening-for-wildlife/animal-deterrents/cats-and-garden-birds/are-cats-causing-bird-declines/).

5.12 The proposed project does not cause any loss of the Ochre Dike LWS woodland nor will it cause any deterioration, because the provision of the buffer along the northern boundary will protect the woodland against any hydrological impacts. Furthermore, the considerable BNG payment that has been agreed under the S106 agreement allows for management to be introduced that will improve the ecology of the Ochre Dike LWS and the woodland it supports.

5.13 Fly tipping of garden waste can also be an issue for natural spaces in urban environments. In this case the boundary buffer between Ochre Dike and the proposed development is firstly in the public realm and not located next to private gardens which would discourage fly tipping. Secondly the buffer will be planted with woodland and scrub, which will provide a physical barrier between the development and the LWS woodland.

5.14 As mentioned above Owlthorpe LWS is located immediately adjacent to the far western boundary of the proposed development site. The site supports areas of dense scrub with mature secondary woodland, hedgerows and large areas of neutral and improved grasslands. It is understood that the neutral grassland is under conservation management, however, at the time of my visit to the site I could find no evidence that the grassland was being managed.

5.15 The development does not cause any loss of habitat within the LWS. The hedgerow along the western boundary of the development site will be retained and is not affected by the proposed development. While the development would create the risk of fly tipping of garden waste in the areas where new housing abuts the LWS. However, the impacts are likely to be very localised and do not present a significant risk to the overall ecology of the Owlthorpe LWS which along this boundary comprises scrub.

5.16 The BNG funding which the development will provide offers a significant opportunity to improve the management of Owlthorpe LWS by funding management that will improve the condition and species diversity of the grassland, instigate woodland management and better control and improve recreation and access facilities along with low access areas.

Impact on nearby SSSI.

5.17 The proposed development site lays within the impact risk zones of three Sites of Special Scientific Interest Moss Valley Meadows SSSI and Moss Valley Woods SSSI. All these sites lay more than 2km from the proposed development site and are not considered to be vulnerable to any effects arising from the development. This has been confirmed by the Planning Inspectorate in its letter of 10th December 2020 when it was confirmed that the development is not considered to fall under the EIA Regulations. The

proposed development and the SSSIs are separated by urban environments and the additional housing is highly unlikely to present any additional pressure on the SSSIs.

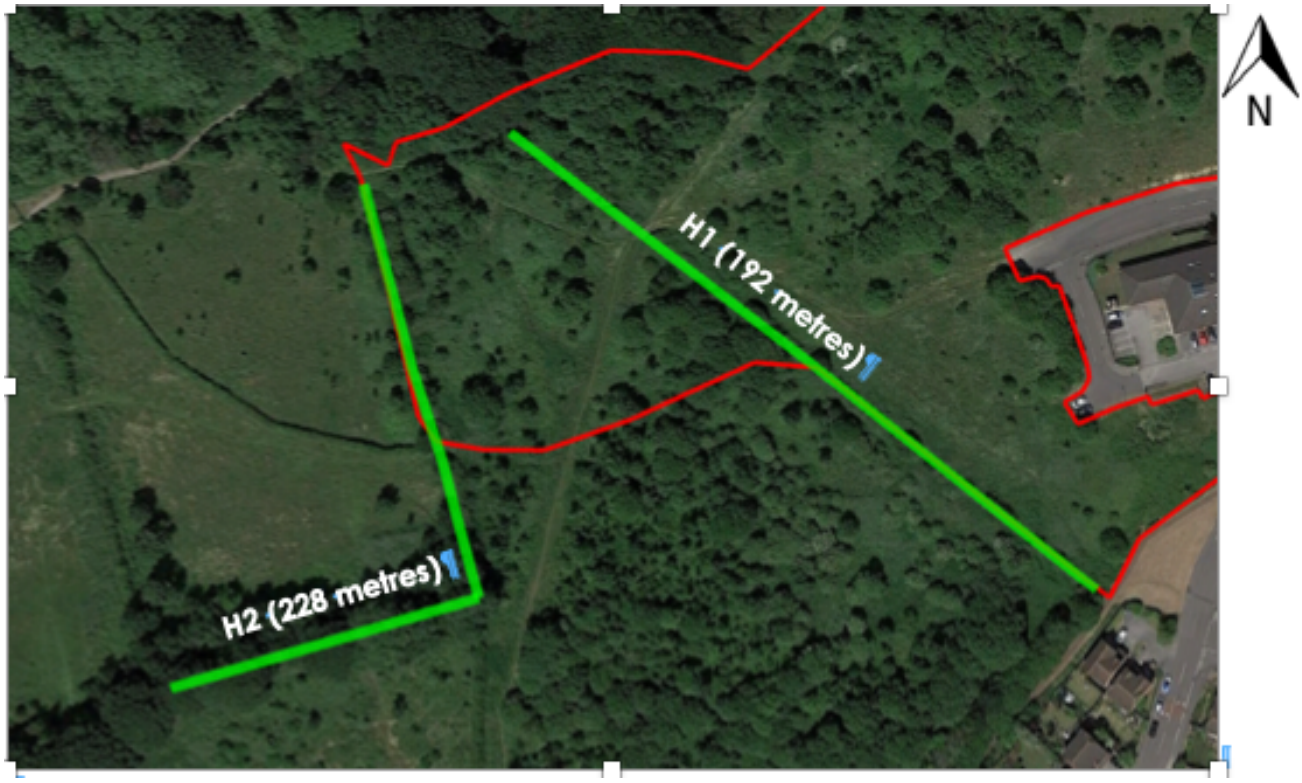
Removal of a Species-rich Hedgerow

5.18 Concerns have been raised regarding the possible removal of a species-rich hedgerow on the western boundary of the proposed development site.

5.19 There are two hedgerows at the site. Hedgerow H1 lies within the middle of the development site and hedgerow H2 is located on the site's western boundary (see Figure 1).

5.20 Neither of these hedgerows grow in, or adjacent to, any common land, protected land, or land used for agriculture, forestry or the breeding or keeping of horses, ponies or donkeys. Therefore, the Hedgerows Regulations 1997 do not apply (see Regulation 3. (1)). For the avoidance of doubt "protected land" is defined under the Regulations as '*a nature reserve in pursuance of section 21 (establishment of nature reserves by local authorities) of the National Parks and Access to the Countryside Act 1949(8)*', or site designated under Section 28 of the Wildlife and Countryside Act 1981 (as amended). The Local Wildlife Sites do not meet either of these criteria.

Figure 1. Hedgerow Locations



5.21 Hedgerows are listed as a Habitat of Principal Importance for the Conservation of Biodiversity in England under Section 41 of the Natural Environment and Rural Communities (NERC) Act (2006). Section 41 requires the Secretary of State to '*take such steps as appear to the Secretary of State to be reasonably practicable to further the conservation of the living organisms and types of habitat included in any list published under this section*'.

5.22 The development will result in the loss of hedgerow H1. Hedgerow H1 is a relatively poor-quality hedgerow that has been partly subsumed into the scrub/woodland which has developed across this part of the site. Based on aerial imagery, it also appears to have been partially grubbed out between 2010 and 2011 (Appendix 1).

5.23 In ecological terms the loss of hedgerow H1 is considered to be of significance at the Local level only (CD2.5). The loss of hedgerow H1 has been fully included in the DEFRA Metric Calculations and the loss of hedgerow H1 will be compensated by off-site habitat creation.

5.24 Hedgerow H2 is along the site's western boundary and is also now almost indistinct from the surrounding scrub/woodland which has colonised this area. Hedgerow H2 will be retained in situ. This is a changed outcome since the consideration of the application by the Council due to accurate surveys as to the location of the hedge.

5.25 During the construction phase, hedgerow H2 will be protected by Tree Protection Fencing.

5.26 After the construction phase, hedgerow H2 will be protected by means of a 1.8 meter high close board wooden fence; this will prevent degradation of hedgerow H2, e.g. by being subsumed into domestic garden boundaries and inappropriate pruning.

5.27 In order to avoid damage to hedgerow H2 during the installation of the boundary fence, the fence will be located at least 1 metre away from the nearest woody stems within the hedgerow and all post holes will be dug by hand under the supervision of a qualified arborist.

5.28 The impact of the development on hedgerows is not considered to be significant. The importance of hedgerows in terms of their ecological structure and function related primarily to their boundary function within an agricultural landscape. This landscape no longer exists. A species-rich hedgerow will provide a linear link across the landscape, with provision of nesting and feeding habitat for birds and invertebrates; a refuge for species like hedgehog, and habitat for field layer plants. In this case the linear function of the hedgerow in ecological terms is no longer valid because it is subsumed into neighbouring habitat and its ecological functions have been replaced by the woodland and scrub which now form the predominant land use to the west of the development site. The loss of hedgerow H1 cannot therefore be considered significant.

Loss of Habitats of Principle Importance.

5.29 As mention above with reference to Section 41 the NERC Act 2006 the government has published a list of habitats and species of '*principal importance for the purpose of conserving biodiversity*'. It is claimed by OAG in the Wildscapes report that some of the woodland habitat within the development site is wet woodland which is a habitat of principle importance as defined under the NERC Act 2006, however, I consider the classification of the alder stands on the Owlthorpe site as w1d (under the 'UK Habitats Classification' system) to be unreliable. While the UK Habitat Classification suggests that some of the canopy species including alder, silver birch and grey willow recorded on site are appropriate for classification as w1d it is clear that the species present are more indicative of the classification 'w1g Other woodland; broadleaved'. The habitat does not meet the definitions for w1d or for that matter w1a to w1f.

5.30 To be classified as wet woodland there would need to be indicator species present which correspond to the definition for w1d, however these are not present in Site E. Wet woodland is associated with location such as floodplain, fens, mires, bogs, stream-sides, flushes, peaty hollows, lakesides and fen marsh margins. Clearly the habitat on site E is not comparable.

5.31 The list of indicator species in the UK Habitat Classification for wet woodland appears to be derived from an earlier classification system the National Vegetation Classification Rodwell, J.S. (ed.) 1991. British Plant Communities. Volume 1. Woodlands and scrub. Cambridge University Press.) which identifies three distinct alder woodlands, 'W5', 'W6' and 'W7'.

5.32 W5 is generally a very wet, often flooded woodland dominated by 'tussocky' sedges and is essentially a woodland swamp, usually located between marsh and open water. There

is no compliance at Site E with such characteristics.

5.33 W6 can be quite variable in terms of the canopy composition and includes woodlands that are willow rather than alder dominated. However, the most distinctive characteristic is the abundance of common nettle, which is ubiquitous in W6 woodlands. Common nettle is absent or very sparse on Site E.

5.34 W7 can also be quite variable in terms of canopy but alder is a constant. The field layer in this woodland type is much richer than W6, but nettle can still be a constant. The woodland is typically associated with moist to very wet mineral soils. The field layer species with the strongest affinity are yellow pimpernel *Lysimachia nemorum*, meadowsweet *Filipendula ulmaria* and the moss *Eurynchium praelongum* (now *Kindbergia praelonga*). The field layer species recorded by Wildscapes on site E are not listed in any of the NVC wet woodland communities and whilst the NVC listings is representative rather than comprehensive it would be expected that the species present on site E, for example, glaucous sedge *Carex flacca* and compact rush *Juncus conglomeratus* would be at least mentioned in the UK Habitat Classification and one or more of the NVC listings.

5.35 Given the above, it is clear to me that the woodland recorded on site is not a priority habitat.

5.36 Four species of bird which are included on the S41 list as species of principal importance were recorded as breeding on the site dunnock *Prunella modularis*, bullfinch *Pyrrhula pyrrhula*, house sparrow *Passer domesticus* and song thrush *Turdus philomelos.* While breeding habitat for dunnock, bullfinch and song thrush will be lost to the development any impacts will be compensated by the proposed BNG management in the neighbouring land. The proposed development is likely to provide additional breeding

habitat for house sparrow and this species will benefit from the proposed provision of bird boxes within the development.

5.37 The only other Section 41 species that may be affected by the development is Hedgehog and common toad. Although these species has not been recorded on the site I consider it is a possibility that they may be present. Both these species can been protected by careful site clearance supervised by the Ecological Clerk of Works and being removed off site if they are found.

Adequacy of the Ecological Surveys

5.38 As outlined above I have reviewed the ecological surveys which accompanied the planning application and I consider them to be comprehensive and to give a thorough understanding of the ecological value of the proposed development. It should be noted that the Wildscapes surveys employed a different survey method to that used by BWB. The UK Habitats Classification use by Wildscapes is a relatively new survey methodology which is not as widely used as the Phase 1 surveys method used by BWB. The UK Habitats Classification separates the habitats of the Phase 1 survey into further sub-divisions. In my view I do not think that the two surveys show difference which would significantly affect the ecological evaluation of the site. There as no major difference between the result of the two surveys.

5.39 It has been suggested that the surveys carried out by the applicant were inadequate, because they did not include invertebrate surveys. I do not agree with this assessment. The Chartered Institute of Ecology and Environmental Management (CIEEM) of which I am a Fellow, has provided guidance on preliminary ecological appraisal of sites (*CIEEM (2017) Guidelines for Preliminary Ecological Appraisal, 2nd edition. Chartered Institute of Ecology and Environmental Management, Winchester*) (Appendix 3). It is a matter of

professional judgement as to the level of surveys that should be carried out following a preliminary ecological assessment, but the guidance seeks to give support to how those professional judgements are made. The key principle set out in the guidance is one of proportionality. At paragraph 2.12 the guidance states, '*The scope and methods used for any species surveys must be clearly reported. In most cases, species surveys undertaken at the PEA stage are characterised as preliminary risk assessments or assessments of habitat suitability for a particular species, rather than detailed field surveys.*' The need for more detailed surveys following the PEA (CD2.3) was entirely consistent with this approach where it clearly reported the value of the areas for invertebrates at pages 5, paragraphs 3.3, 3.32, 3.33, 4.3, 4.15 4.16, 5.22, 5.23 and page 20. The issue of the value of the development site for invertebrates was, therefore, thoroughly examined.

5.40 At paragraph 3.4 of the same CIEEM guidance is it stated '*It is often necessary to combine the results of desk study and field surveys and apply professional judgement and local knowledge, to make an assessment of the likelihood of a species occurring at a particular location, which will inform the need for more detailed surveys'.* This is precisely the process that was followed in compiling the PEA and assessing the potential value of the site for invertebrates and whether or not more detailed surveys were required.

5.41 At para 3.6 of the CIEEM guidance it is stated,

'*The level of detail on constraints and opportunities should be proportionate to:*

- *the predicted degree of risk to biodiversity;*
- *the nature and scale of the project; and*
- *the complexity of the ecological feature concerned.*

The level of ecological survey work undertaken to inform a planning application should be proportionate to the likely scale of impact; further ecological surveys should only be undertaken where they are necessary.'

5.42 At paragraph 3.13 the guidance states,

EcIA can be undertaken without detailed survey information for a given ecological feature, where:

1) the outcomes of the survey can be reasonably predicted, or would make no material difference to the assessment of likely significant effects; and

2) appropriate mitigation can be designed and secured on the basis of the information available.

5.43 Furthermore, the CIEEM guidance Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater, Coastal and Marine version 1.1. Chartered Institute of Ecology and Environmental Management, Winchester (2018) (Appendix 3) states with reference to the proportionality of ecological assessment at paragraph 1.9 '….*the level of detail required in an EcIA will inevitably be proportionate to the scale of the development and complexity of its potential impacts*.' It goes on to say at paragraph 1.10 '*Scoping (Chapter 2) should be proportionate to potential effects on ecological features. Professional ecologists need to use their knowledge and experience to judge the resources required to complete an adequate and effective EcIA*.'

5.44 The development site itself does not support ancient woodland or other long-established or diverse habitats that support good invertebrate populations. The loss of the rank neutral grassland and scrub which forms the majority of the habitat within the development site and the young woodland can easily be recreated elsewhere and would colonise rapidly. Given the poor quality of the habitat my professional view is that it would be disproportionate to carry out a full invertebrate survey of the development site. The Wildscape survey also supports this conclusion. The ecological surveys were carried out in accordance with CIEEM guidelines.

5.45 After the ecological surveys which had informed the EcIA had been completed in the spring and summer of 2019 it became clear that further areas within sites C and D would need to be included in the planning permission to provide a LEAP and a

Sustainable Urban Drainage System (SUDS) basin. A further ecological survey was carried out of these areas. They were found to support the same mosaic of neutral grassland, scrub and woodland habitat, which was also present in Area E (CD2.4) and as such did not change the evaluation presented in the EcIA, in terms of the impact assessment. I concur with these conclusions having viewed these areas during my site visit. While ideally these areas would have been included in the original suite of surveys I do not consider that the absence of full surveys in these areas compromises the ecological assessment that has been presented with the planning application.

5.46 It has also been suggested that the bird surveys of the site were inadequate and that more surveys should have been carried out. I do not agree with this assessment. The methods employed and the number of visits carried out are commonly used by professional ecologists. The method is based on the Common Bird Census and it is normal practice to carry out three visits across the breeding season. It has also been suggested that a nocturnal survey for barn owl should have been carried out. Again, I do not agree with this assessment. Barn owl surveys would only normally be carried out on sites where good feeding habitat is present. Barn owls prefer open grassland in which to hunt and site E is too enclosed to be favourable for this species. Furthermore, barn owl would most likely have been sighted during the bat transect surveys if they had been present and they were not.

5.47 It has also been suggested that badger surveys have not been carried out. Again, this is incorrect. The ecology survey team spent a good deal of time on site, day and night and any signs of badger would have been noted during the surveys.

Ecological Value of the Development Site

5.48 The Rule 6 party has presented its own ecological surveys (CD4.8.5 – CD4.8.14) and

claim that area E is sufficiently species rich so as to meet the criteria to be classified as a Local Wildlife Site. The assessment is, however, highly contrived as it relies on data which is historical and therefore out of date, data that has not been collected in a systematic way or was collected by unknown third parties whose botanical ability is unproven (see CD4.8.7 paras 25-30). This assessment is entirely unreliable. The correct method of evaluation would be to rely on the most recent data available and in this case that would be Wildscapes' UK Habitat Classification survey of 2020. As set out at paragraph 48 of the report neither the grassland (nor for that matter any other habitats on the site) meet the LWS criteria set out in the Wildscapes' report based on this survey alone.

5.49 The LWS assessment by the Rule 6 party has further attempted to contrive to meet the LWS criteria by considering areas C D and E together. The inclusion of additional land outside of the redline boundary Site E has not provided sufficient indicator species to meet the LWS criteria. The LWS criteria are only met for the combined areas C, D and E if one takes into account the combined historical data and data obtained from unverified sources. The fact is that areas E, C and D are not designated as a LWS in the Local Plan and nor would they meet the criteria for site selection.

5.50 The Wildscapes' report, at paragraph 28 has criticised the appellants botanical survey for not being carried out at the correct time of year. This critique is quite incorrect as a full botanical survey was completed on June 4th 2019 (CD2.5) which is entirely the correct time of year to complete such a survey.

The Need to Assess Area C and D

5.51 OAG has claimed that the ecological assessment needs to assess areas C and D along with area E. I do not agree with this analysis. The development of area E, with the exception

of the areas needed for the LEAP and the SUDs basin (which have been assessed) (see CD 2.4) does not rely on land within areas C and D. Nor does the development of area E facilitate the development of areas C or D. The proposed development of areas E is stands on its own and the ecological losses are fully mitigated. When areas C and D do come forward for development it would seem entirely reasonable to assume that any ecological impacts would be fully mitigated and the development of area E does not inhibit that mitigation. I can therefore see no reason why it would be necessary to assess the ecological impacts of across the whole of areas C, D and E. It would seem that a similar argument is relied upon by OAG as the argument that there needed to be assessment of all three sites in an EIA. That argument has been rejected by the Secretary of State and no EIA is required.

6 Biodiversity Net Gain

6.1 Currently there is no policy in the local plan to provide biodiversity net gain for any project. While the Environment Bill sets out the need for securing a 10% net gain in biodiversity for most projects, the Bill has yet to gain royal assent. There will also need to be detailed secondary legislation to implement its terms as there is a vast amount of detail needed for the concept to be implemented and workable. Once the Environment Bill comes into law then loss and gain will be calculated using a 'DEFRA Metric' which is a spreadsheet used to calculate the value of habitats based on their area, habitat type, condition, location, connectivity and complexity. Currently the DEFRA metric is in being trialed and is in its 2.0 version, it is understood that a third version of the metric will be released in January 2021. Recent appeal decisions have clarified that until such time as the Environment Bill is passed 10% gain cannot been seen as a requirement unless it is in local policy (Appeal Ref: APP/Y0435/W/20/3251121 Land at Brickhill Street, South Caldecotte, Milton Keynes MK17 9FE) (Appendix 5 CD 4.8.1.6). As indicated above there is no local policy for net gain.

6.2 While 10% BNG is not mandatory nor is there any requirement to use the DEFRA metric to calculate biodiversity net gain, nonetheless the appellant has, through the s106 agreement offered to pay £230,400 to fund offsite biodiversity improvements which will be paid to SCC in accordance with NPPF policy 175 (d) of securing measurable net gains for biodiversity. This offer has been agreed with SCC.

6.3 The habitats which will be lost on the site are predominantly habitats (rank grassland, tall ruderal, bracken, scrub and immature woodland and scattered trees) that have established naturally on former agricultural land which has been abandoned. By definition, these habitats are easily re-creatable (it has taken less than 20 years to be created). The site is neither botanically species-rich, nor does it support any protected

species. With appropriate management (essentially, minimal intervention management) the habitats that have developed could easily be re-created as part of the proposed off-site habitat creation. The hedgerow within the site is of low ecological value and such hedgerows are easy to re-create off site.

6.4 The appellant has agreed with SCC's ecologists to identify how the BNG funding will be spent in order to compensate for the loss of biodiversity on the site. Mark Woods has prepared a management brief as a starting point for discussions with the ecologists at SCC (Appendix 4). It is proposed that the net gain will be achieved by introducing conservation management to existing habitats near to the site and thereby increasing their ecological value. This has been discussed and agreed with SCC that the fund should be used to introduce management to areas of land owned by SCC to the west of the development site including land within Ochre Dike LWS and Owlthorpe LWS. Having visited the site it is apparent that there is limited conservation management currently being carried out in either LWS woodland or the neutral grassland habitats. At the time of my visit there was no evidence that basic management of the grassland such as grazing or mowing was being undertaken as there was a considerable build of thatch in the grassland and scrub is encroaching across the grassland areas. Mowing of the grassland is essential for maintaining its ecological value and mowing and removal of the arisings would increase the flora diversity of the grassland and enhance conditions for invertebrate species. Equally the woodland areas are lacking in conservation management and could be greatly improved ecologically by removal of non-native species, thinning, coppicing or control of access to specific areas. The ground layer vegetation of Ochre Dike is patchy with extensive areas of bare ground, which could be improved by selective thinning to increase light levels. The BNG funding also offers the opportunity to either create new ponds or restore an overgrown pond in the vicinity of

the site.

6.5 Any targeted management would need to be guided by an ecological management plan, based on up to date ecological surveys that are funded by the BNG payment. Furthermore, there is an opportunity for improved community involvement in management of the LWS's to enhance public access and education. Management of the LWS can also be linked to outdoor education with the local schools or well-being programs at the health centre.

6.6 The Rule 6 party has stated that the sum offered for BNG is insufficient to compensate for the loss of biodiversity at the site. This critique appears to be based on upon the work that has been carried out by Wildscapes to calculate the loss of biodiversity using the DEFRA metric 2.0.

6.7 As I have explained above the DEFRA metric is still in development. In its current form I would describe the metric as a 'blunt instrument' for measuring biodiversity gains and losses. For example, currently the most valuable habitat for creating BNG units is bramble scrub. The metric calculates that every hectare of bramble scrub equates to 10.97 biodiversity units created whereas the creation of 1ha of broadleaved woodland (all other parameter remaining equal) would generate only 2.17 units. I am sure that most ecologists would agree that the creation of broadleaved woodland is more desirable than bramble scrub, rather than bramble scrub being 5 times more valuable than woodland. Therefore, the current version of the DEFRA tool is considered to have significant shortcomings as a measure of biodiversity loss and gain.

6.8 The Environment Bill was accompanied by a detailed Impact Assessment (IA) of the economic cost of BNG and local nature recovery strategies CD4.8.4. The document estimated an indicative cost of £11,000 for a biodiversity unit. This cost was based on a

consultation exercise which informed the development of the BNG approach. Based on this figure the BNG sum offered by the appellant would fund 20.90 biodiversity units. In this case SCC has indicated that the BNG fund is to be targeted at managing land that it already owns, whereas the indicative cost calculated in the IA included the cost of purchasing land upon which the units will be cited and in practice the BNG payment is likely to fund materially more than 20.90 units and potentially, significantly more units.

6.9 Wildscapes has calculated a BNG loss of c.24.96 units which if multiplied by £11,000 cost per unit would give a BNG payment of £274,560 (it should be noted that this is a gross loss figure and does not consider any on site mitigation so the actual figure on a net basis will be a little less). The Environment Bank quote (CD 2.7) values each biodiversity unit c.£20,000 per. I do not know how this valuation was arrived at and cannot comment but the cost is evidently out of step with the government's evaluation. I can only assume that in the case the Environment Bank has significant costs which substantially increased the cost of creating the biodiversity units for the project.

6.10 It will no doubt be argued that the payment of £230,400 is therefore insufficient. I do not think this is the case for the following reasons.

6.11 Firstly, the cost of BNG land could be considerable which in this case is not required as the management is be focused on land already owned by SCC. The IA gives and average value for agricultural land in England as being £21,947 per ha based on 2017 data (CD 4.8.4 p43 para 2). While there are regional variations in land costs and local values may be lower it must be born in mind that the IA anticipated that BNG will generate a new market which will inevitably elevate the value of BNG land above the normal agricultural price. If we take the example of creating bramble scrub it would require approximately 2.5 ha of land to create c.25 units, at £21,947 per ha that would be an additional £54,868 on top of the £230,400 that is already been offered, to buy the land

needed; something that is simply not relevant in this case.

6.12 Secondly, as I have mentioned above the Defra Metric is a very blunt instrument that currently favours the creation of low value habitats simply because they are easy to create. I do not agree with this approach as it discourages the creation of much more valuable habitats such as broad-leaved woodland. What we have proposed in the BNG Management Brief is a bespoke set of measures that addressed biodiversity gain specific to the locality, as close as possible to the area of loss, in a tangible and deliverable way that is far closer to the objective of BNG than a payment with no connection to outcomes. It will bring demonstrable ecological gain to the area. The measures go far beyond the mechanistic approach of the metric to give a more effective approach that is specific to the site.

6.13 Thirdly, the Defra metric takes no account of measure such as benefits to species, managing access, signage and interpretation, wellbeing, education or community involvement. The proposed package of measures that have been agreed with SCC brings benefit in all these areas, benefits which are simply not measured by the Defra metric.

6.14 Taking into account into account these factors I am firmly of the view that the BNG fund of £230,400 spend in the way we have outlined in the BNG Management Brief will provide sufficient biodiversity gain plus 10% to offset the ecological impacts of the proposed development.

7 Impacts on Protected Species

Bats

7.1 No potential bat roost sites are present within the site and therefore there will be no impacts on bat roosts.

7.2 A suite of bat activity surveys were undertaken at the site in 2019 in accordance with current good practice guidelines (Bat Surveys for Professional Ecologists: Good Practice Guidelines (3rd edition) 2016). The survey results revealed low levels of bat activity and showed that the site does not form a key part of local bat foraging or commuting routes.

7.3 The removal of habitats used by low numbers of bats can be mitigated through the provision of additional habitats such as tree planting and grassland creation, the provision of bat boxes on new houses and a sensitive lighting strategy to minimise artificial light spill. Such measures will be agreed with SCC through the Ecological Management Plan secured by the 106 agreement.

Birds

7.4 Breeding bird surveys conducted in Spring 2019 showed the breeding bird assemblage to be of value at the local level. The bird surveys were undertaken over the course of three survey visits during optimal conditions. No rare bird species were recorded at the site. However, a number of birds recorded have suffered from population declines at the national level and are therefore listed as Species of Principal Importance for the conservation of biodiversity in England and Red and Amber birds of Conservation Concern (BoCC),

7.5 As I have mentioned above concerns have been raised regarding the number of bird species recorded during the breeding bird surveys compared to greater numbers of bird species recorded by local residents. The number of bird species observed increases with the number of surveys undertaken such that a local resident observing a site dozens of times over the course of a year or more will undoubtedly record more bird species than are observed over the course of three surveys undertaken using standard Breeding Bird Survey or Common Bird Census techniques. The additional birds observed by local

residents do not necessarily breed within the site but may be non-breeding birds occurring in the wider area and using the site occasionally or for non-breeding purposes. Furthermore, it is not known whether the local residents' observations covered a wider study area beyond the site boundaries. In summary, the breeding bird surveys undertaken at the site provide a good indication of the birds that breed at the site and additional survey effort is considered to be unlikely to significantly affect the conclusions drawn from the survey results.

7.6 Many of the bird species recorded at the site, including house sparrow (a Species of Principle Importance for the conservation of biodiversity in England and BoCC Red listed), show an active association with residential areas, where suitable breeding and foraging resources are present and therefore are likely to benefit from the new gardens and landscaping that will be associated with the development.

7.7 The removal of habitats used by birds can be mitigated through the provision of additional habitats such as woodland and grassland management and the provision of bird boxes on new houses. Such measures will be agreed with SCC through the redrafting of the Ecological Management Plan secured by the s106 agreement and through the BNG funding.

Amphibians

7.8 Great crested newts have not been recorded at the site, although common toad (a Species of Principle Importance for the conservation of biodiversity in England) could be present at the site. Common toad is common and widespread but has suffered population declines at the national level. Common toads would benefit from the creation of new ponds funded by the BNG s106 payment. During site clearance the Ecological Clerk of Works (ECoW) would ensure that any toads which are found are moved to a

safe place away from the development.

Reptiles

7.9 Detailed reptile surveys undertaken at the site in 2019 in accordance with good practice guidelines did not record any reptiles at the site and it is therefore concluded that reptiles are very unlikely to occur at the site.

Hedgehog

7.10 No evidence of hedgehog has been recorded at the site but their presence cannot be discounted given the location and habitat types. Hedgehog is listed as a Species of Principal Importance for the conservation of biodiversity in England[1] and is capable of being a material consideration in the planning process. Hedgehog is common and widespread in the UK but has suffered population declines at the national level. Hedgehogs utilise a range of habitats including scrub, bracken, grassland and gardens. The loss of such habitats at the site can be mitigated through the provision of 'hedgehog gaps' in new gardens at the site which will enable hedgehogs to access new gardens within the site and to maintain home ranges of sufficient size by effectively joining up multiple gardens and adjacent woodland and grassland habitats. Any mitigation for this species would be secured through the redrafted Ecological Management Plan secured through the s106 agreement.

Badger

7.11 No evidence of badger has been recorded at the site. Badger is common and widespread in the UK, but receives legal protection due to illegal persecution. As a standard legal compliance measure, an update checking survey will be undertaken prior to the start of

[1] Species listed on Section 41 of the Natural Environment and Rural Communities (NERC) Act 2006 as Species of Principal Importance for the conservation of biodiversity in England.

ground works to search for any newly excavated setts. Badgers are highly mobile species and may colonise a site very rapidly. Checks for badgers would be carried out immediately prior to site clearance as a precaution. This would be secured through the Ecological Management Plan that will be updated.

Deer and Fox

7.12 Neither deer nor fox are of biodiversity concern in the UK. Fox and native species of deer are common and do not receive legal protection, other than through the prohibition of certain aspects of hunting and killing.

8 Planning Policy

Local Planning Policy

8.1 Saved Policy GE11 of the Sheffield UDP (1998) states: "Nature Conservation and Development. The natural environment will be protected and enhanced. The design, siting and landscaping of development should respect and promote nature conservation and include measures to reduce any potentially harmful effects of development on natural features of value."

8.2 The proposed development complies with Policy GE11 because the design, siting and landscaping of the development protects the adjacent LWS's and includes measures to reduce any potentially harmful effects of development on natural features of value, for example, by retaining a buffer zone from Ochre Dike LWS, creating new habitats through tree planting and grassland creation, providing a surface water attenuation feature, providing bat and bird boxes and interpretation boards and fencing within the LWS.

8.3 As mentioned above the LWS's are not protected through 'saved' Policy GE13 of the Sheffield Unitary Development Plan (UDP) (1998). The only site which is protected

under this policy is Westfield Plantation ANHI. GE13GE13 states: "Areas of Natural History Interest and Local Nature Sites. Development which would damage Areas of Natural History Interest will normally not be permitted. Development affecting Local Nature Sites should, wherever possible, be sited and designed so as to protect and enhance the most important features of natural history interest. Where development would decrease the nature conservation value of an Area of Natural History or Local Nature Site, that decrease must be kept to a minimum and compensated for by creation or enhancement of wildlife habitats elsewhere within the site or local area."

8.4 The proposed development complies with Policy GE13 as no direct or indirect effects upon Westfield Plantation are anticipated. Furthermore, the BNG fund will assist SCC in introducing appropriate conservation management to the site. Ochre Dike

National Planning Policy Framework (NPPF)

8.5 The paragraph 170 of the NPPF states: "Planning policies and decisions should contribute to and enhance the natural and local environment by: a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan); b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland; c) maintaining the character of the undeveloped coast, while improving public access to it where appropriate; d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures…"

8.6 As set out above the proposed mitigation and landscaping within the site and the provision of the significant BNG payment will ensure that the policies of the NPPF will

be met. Paragraphs 175 of the NPPF is also relevant.

175 .When determining planning applications, local planning authorities should apply the following principles:

a) if significant harm to biodiversity resulting from a development cannot be avoided (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

b) development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest;

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[58] and a suitable compensation strategy exists; and

d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.

8.7 Regarding 175a based on the survey data before the inquiry I am not of the view that the loss of biodiversity associated with the development can be considered to be significant. The habitats that will be lost are not of high value, unique or difficult to replace. Species diversity is not high nor will any rare species be affects.

8.8 The proposed development will not affect any SSSIs and therefore does not conflict with paragraph 175(b).

8.9 The proposed development does not cause the loss or deterioration of any irreplaceable habitats (175 (c)). The ancient woodland of Ochre Dike LWS will not be affected by the development.

8.10 The proposed development will however result in biodiversity improvement around the site and will secure measurable net gains in biodiversity and is therefore compliant with paragraph 175 (d).

9 Conclusions

9.1 Having reviewed the ecological data present with the planning application I am of the view that the ecological surveys were comprehensive and proportionate. They have given an accurate evaluation of the ecological value of the site and are compliant with CIEEM guidance. While the LEAP area and the SUDs pond was not the subject of the full suite of surveys I am of view that this omission does not affect the evaluation of the site's ecological value.

9.2 Owlthorpe, Ochre Dike and Westfield plantation LWS's are not protected through 'saved' policy GE13 of the Sheffield UDP.

9.3 In any event, the proposed development will not directly or indirectly damage any of these LWS's. There will be a buffer zone of non-developed land between the proposed development and Ochre Dike LWS. The buffer zone will have within it Tree Protection Fencing and, for most of its length, the buffer zone will be 15m wide. In layout B the buffer is wider for much of its length than the required 15m. In my view the buffer is sufficient to protect Ochre Dike LWS and the ancient woodland.

9.4 The proposed development will not cause a significant increase in recreational pressure within the LWS's and any effect would be more than balanced by the proposed mitigation measures supported by the BNG funding.

9.5 In addition to the buffer zone between the development and Ochre Dike LWS, a sensitive lighting design will be used to protect dark corridors for nocturnal fauna using retained habitat features. This mitigation will be secured through the implementation of the Ecological Management Plan.

9.6 The appellant is offering £230,400 to fund offsite BNG which will compensate the loss of

biodiversity arising from the scheme. It has been agreed with SCC's ecologists that this will be targeted on management of the LWS's and other SCC owned land close to the development site. Based on my review of the governments IA of the Environment Bill I am convinced that the BNG fund is sufficient to balance the losses caused by the development.

9.7 The proposed development will not directly affect any protected species such as bats, badgers or reptiles. Any loss of nesting habitat will be compensated for by the biodiversity gains (plus 10%) that will be created by the BNG funding.

9.8 Taking into account the proposed mitigations/compensation the proposed development is compliant with the biodiversity policies of both the NPPF and the local plan.