APPLICATION No.: V/2020/0184

APPEAL REF: APP / W3005 / W / 21 / 32744818

Town and Country Planning Act 1990

Appeal by Bellway Homes Ltd.

Land off Ashland Road West, Sutton in Ashfield, Nottinghamshire.

PROOF OF EVIDENCE: ECOLOGY & NATURE CONSERVATION

Mr Kurt Goodman, BSc (Hons), MSc, MCIEEM

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DECLARATION

"The evidence which I have prepared and provide for this appeal reference W3005 / W / 21 / 3274818 is true and has been prepared and is given in accordance with guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions".

1.0 PERSONAL DETAILS

1.1 I am Mr Kurt David Goodman and this Proof of Evidence (PoE) has been prepared on behalf of the Appellant (Bellway Homes Ltd.).

1.2 I hold an Honours Degree in Environmental Biology from the University of Sunderland and an MSc in Environmental Management for Conservation and Recreation from Sheffield Hallam University. I am a Member of the Chartered Institute of Ecology and Environmental Management. I have over twenty years' experience of complex developments. I hold Natural England survey licenses for bats and great crested newts and have held these for over 20 years. I am routinely involved in site selection, constraints analysis, mitigation to minimise environmental impacts, detailed design involving habitats and protected species for complex multi-phased schemes and dealing with biodiversity net gain (BNG) for the purpose of development and the creation of biodiversity banks to supply BNG credits to developers if required. I have experience of providing evidence at planning appeals on matters relating to ecology and nature conservation including those relating to general ecological matters and those related to protected species and sites.

1.3 I am a Director of Ecology at FPCR Environment and Design Ltd, a multi-disciplinary Company of Architects, Landscape Architects, Ecologists and Arboriculturalists with over fifty years' experience of award-winning development projects.

1.4 Our environmental expertise has been utilised by numerous nationally known client bodies to facilitate development where appropriate, close to sensitive sites. FPCR is now one of the country's leading ecological consultancies acting on behalf of clients such as English Heritage and were contracted by Natural England to run the 'Bat Line Service' for the East Midland's Region from 2000 until December 2012. I was the lead consultant covering the Natural England 'Bat Line Service' for the period of our contract.

1.5 The evidence which I have prepared and provided for this appeal is true and has been prepared and is given in accordance with guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions.

2.0 BACKGROUND & APPOINTMENT

Background

2.1 FPCR were appointed by the Appellant in July 2019 to complete an ecological assessment of the application site (hereafter referred to as the 'Site'). The original submissions evaluated the potential ecological constraints of the Site and the proposals for an outline planning application for up to 300 residential dwellings with associated Green Infrastructure (GI). This assessment confirmed the ecological receptors within the Site are of limited ecological importance.

2.2 This Proof of Evidence (PoE) covers matters relating to ecology and nature conservation. It addresses the proposals submitted to Ashfield District Council (ADC) on 17 March 2020 and subsequent revisions to the Illustrative Masterplan. A comprehensive range of documentation, including various surveys has been undertaken in support of the planning application and this Appeal.

Chronology of Submissions and Responses from Statutory Consultees

2.3 The is a summary of the chronology of the ecological submissions and consultation responses. Further information relating to the planning history and timeline is provided in the Appellants Statement of Case (SoC) and planning evidence provided by Jim Lomas (DLP Planning).

2.4 The outline planning application was supported by the submission of an Ecological Appraisal (dated: 17 March 2020). This provided an assessment of the potential effects of the proposals and where necessary identified appropriate mitigation (CD.1.12)[1].

2.5 Over the determination period two additional ecological submissions were provided by the Appellant. FPCR's response dated 20 August 2020 (CD.2.6)[2] addressed queries relating to the potential effects of water quality on designated sites downstream of the Site, biodiversity net gain including an assessment of the Local Authorities (LA's) current policy position relating to biodiversity net gain and provided of the results of updated badger survey. The final ecological submission dated 06 November 2020 (CD.2.11)[3] was a voluntary submission reviewing the updated Flood Risk Assessment. This confirmed the revisions did not alter the previous assessment of potential effects to designated sites downstream of the Site.

2.6 During the determination period Natural England were consulted. The consultation response confirmed 'no comment' and referred the LA to Natural England's standing advice (CD.3.2). The Nottinghamshire Wildlife Trust (NWT) did not response to the consultation exercise.

2.7 Delta-Simons Environmental Consultants were commissioned by the LA to review and comment on the ecological submission. This assessment was provided in July 2020 (CD.3.15). No significant issues relating to the level of survey work or mitigation were raised. Some areas of clarification were sought, and these matters were addressed through FPCR submission of 20 August 2020 (CD.2.6).

2.8 Following this, apart the committee report which provided a positive assessment of the proposals in relation to ecology and nature conservation, no additional ecological comments relating to ecology and nature conservation were provided by the LA until the decision notice issued on 23 March 2021.

2.9 To assist this appeal some updated ecological survey work has been completed. At this stage it is noteworthy that the LA refused access to the waterbodies in Brierley Forest Park Local Nature Reserve (LNR) & Local Wildlife Site (LWS). The updated survey work included:

- A terrestrial survey to confirm the likely presence or absence of GCN within the site;
- Updated static and transect surveys (July 2021); and
- An updated badger survey (July 2021).

2.10 The outcome of the above surveys is consistent with those previously undertaken.

[1] Bellway Homes Ltd.. Land off Ashland Road, Sutton-in-Ashfield. Ecological Appraisal. February 2020.
[2] Land off Ashland Road, Sutton in Ashfield – Response relating to Outline Application V/2020/0184 (Letter Dated: 20 August 2020).
[3] Land off Ashland Road, Sutton in Ashfield – Response relating to Outline Application V/2020/0184 (Letter Dated: 06 November 2020).

Appointment & Structure

2.11 A single Reason for Refusal (RfR) is provided on the Decision Notice dated 23 March 2021 (CD.4.2). This RfR states:

> *"The development would result in a significant adverse impact on the character and appearance of the area and surrounding landscape, particular through the urbanising affects adjacent to Brierly Forest Park. The loss of the greenfield and associated habitats would also result in significant and irreversible harmful impacts to biodiversity. In addition, the density of the development is considered to be too high and out of keeping with the surrounding area. Accordingly, the proposals would be contrary to Policies ST1 (a, b and e), ST2 – ST4 and ENV2. These would also be conflict with Part 15 of the National Planning Policy Framework: 'Conserving and enhancing the natural environment.' It is considered that these harms would significant and demonstrably outweigh the benefits of the development."*

2.12 The ecological reason for refusal is not consistent with the independent review commissioned by the LA or the conclusions of the officer's report to committee, further details of the consultation responses are provided at Section 7 and an assessment of the RfR is provided at Section 8.

2.13 This PoE refers to the relevant baseline ecological information obtained over an extended survey period of 2019 - 2021, the potential effects of the proposals, relevant mitigation where deemed appropriate and enhancements proposed by the development.

2.14 Overall, I consider the Site and ecological receptors within the Site are of low ecological importance with a capacity for development, which would not result in more than low level harm. I conclude that there are no reasons relating to matters of ecology; biodiversity and the relevant regulatory framework, which prevent the appeal being allowed.

2.15 The PoE is presented in the following Sections:

Section 3: Legislation, Relevant Planning Policy & Guidance.

Section 4: Baseline Evidence.

Section 5: Assessment of Potential Effects & Mitigation for Habitats / Species.

Section 6: Biodiversity Net Gain.

Section 7: Consultation Responses from Statutory Consultees & Committee Report.

Section 8: Assessment of the Reason for Refusal.

Section 9: Consideration of Third-Party Submissions; and

Section 10: Summary & Conclusions.

3.0 RELEVANT LEGISLATION, PLANNING POLICY & GUIDANCE

3.1 The following section reviews planning policy, legislation, and key guidance relevant to this Appeal. Jim Lomas generally deals with planning policy, I briefly address relevant policy, legislation and key guidance at Section 10.

Legislation

The Conservation of Habitats & Species Regulation 2017 (*as amended*)

General Species Protection

3.2 Species afforded protection under the Habitat Regulations and of relevance to this PoE are bats and great crested newts (GCN). Species listed in Annex IV(a) of the Habitat Regulations, their resting places and breeding sites are also afforded full protection under both the Wildlife & Countryside Act (WCA) 1981 (*as amended*). However, when these species or the resting places or breeding sites of these species are affected by proposals or works, the legislative mechanism by which licenses are granted is the Habitat Regulations.

Protection of Resting Sites

3.3 The terrestrial habitats present within the Site do offer some limited potential to be used by GCN as resting places. Habitats in the Site do not offer suitable breeding conditions for GCN. Habitats within the Site do not offer suitable breeding site or resting places for bats. The following considered the legal protection of resting places.

3.4 Regulation 42 (Paragraph 1) of the Regulations lists actions which constitute offences. Specific actions listed as offences under this regulation and relevant to this appeal include:

3.5 A person who -

- Deliberately captures, injuries or kills any wild animals of a European protected species,
- Deliberately disturbs wild animals of any such species,
- Damages or destroys a breeding site or resting place of such an animal.

3.6 Regulation 55 (Paragraph 2) of the Conservation of Habitats & Species Regulations 2017 (*as amended)* lists seven actions for which the relevant licensing body may grant a license to provide defences against the offences lists at 42(1). The purposes for which licences can be granted are:

- Scientific or educational purposes;
- Ringing or marking, or examining any ring or mark on, wild animals;
- Conserving wild animals or wild plants or introducing them to particular areas;
- Protecting any zoological or botanical collection;

- 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;
- Preventing the spread of disease; or
- Preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber or any other form of property or to fisheries.

3.7 In order for the relevant licensing body to grant a licence under the Regulations, Paragraph 55 (9) also requires that the licensing body are also satisfied that the requirements of two further tests are also met. These are:

- That there is no satisfactory alternative; and
- That the action authorised will not be detrimental to the maintenance of the population of species concerned at a favourable conservation status in their natural range.

Protection for Foraging Areas & Commuting Routes

3.8 Foraging areas and commuting routes for bats are not afforded strict protection by the Habitat Regulations or the Wildlife & Countryside Act (WCA) 1981 (*as amended*). Commuting routes are only afforded strict protection under the Habitat Regulations when the removal of such routes could lead to the 'deterioration' of a roost site (Guidance on such protection is provided in 'Guidance document on the strict protection of animal species of Community interest under the Habitats Directive 92/43/EEC. Feb 2007').

The Wildlife & Countryside Act 1981 (WCA) (*as amended*)

3.9 Species afforded protection under this legislation and relevant to this PoE include common species of reptiles, bats, GCN and birds.

3.10 Common species of reptile, bats and GCN are afforded protection under Sections 9(1) and 9(5) of Schedule 5 of the WCA 1981 (as amended). This legislation protects these animals from:

- intentional killing and injury; and
- selling, offering for sale, possessing, or transporting for the purpose of sale or publishing.

3.11 Part 1 of this Act also provides protection for all species of wild birds during the breeding season. Under the Act all birds, their nests and eggs are protected by law and it is an offence, with certain exceptions to recklessly or intentionally:

- Kill, injure, or take any wild bird.
- Take, damage, or destroy the nest of any wild bird while in use or being built; and
- Take or destroy the egg of any wild bird.

3.12 Several species of wild birds are also listed on Schedule 1 of the Act. This provides protection for the species at all times.

Natural Environment and Rural Communities (NERC) Act 2006

3.13 Section 40 (1) of the NERC Act 2006 requires public authorities when exercising their functions to 'have regard, so far as is consistent with the proper exercise of those functions to the purpose of conserving biodiversity'. The latter is defined as including restoring or enhancing a population or habitat (Section 40 (3)).

3.14 Section 41 (S41) of the NERC Act 2006 requires the Secretary of State (SoS) to publish a list of the living organisms and types of habitats which in the Secretary of State's opinion are of principal importance for the purpose of conserving biodiversity. Before publication, the SoS must consult Natural England.

3.15 Once published and without prejudice to Section 40(1), the SoS must:

a. *Take such steps as appear to the Secretary of State to be reasonably practicable to further conservation including living organisms and habitats included in any list published under this section; or*

b. *Promote the taking by other of such steps.*

Draft Environment Bill December 2020

3.16 The Draft Environment Bill provides the legal mechanism by which the 25 Year Environment Plan can be enforced. This bill is yet to be enacted but the Queen's Speech indicated the Bill will be introduced in the upcoming parliamentary year.

3.17 Part 6 of the legislation directly relates to Nature and Biodiversity and commits to providing a 'net gain' to biodiversity as a condition of planning permission. Schedule 15(4)(3) of the draft Bill indicates the required 'net gain' for planning permission will be 10%. The content of the Bill, including the latter figure may change, as it passes through the various parliamentary stages.

3.18 Where a 'net gain' or the 10% 'net gain' as is likely to be required by the Environment Bill cannot be achieved within a site Schedule 7A. Part 1. 2 (2) confirms the required biodiversity credits can be created on a registered site or purchased from an offsite provider. Therefore, the Environment Bill fully expects developments to require an offsite unit provision to meet the net gain requirements. This is wholly consistent with the LA approach to this matter for this application.

National Policy

National Planning Policy Framework (NPPF) (July 2021)

3.19 The National Planning Policy Framework was updated in July 2021. This provides guidance for planning authorities and other decision makers on achieving sustainable development. Paragraphs 174 - 182 are relevant to biodiversity and a summary of the relevant elements is provided below.

3.20 Paragraph 174 recommends the planning system should contribute to and enhance the natural and local environment. Bullet points (a) and (d) (below) are relevant to this evidence:

- **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),**
- **minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.**

3.21 When determining planning applications Paragraph 180 recommends that local planning authorities should aim to conserve and enhance biodiversity by applying the following principles:

- **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,**
- **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,**
- **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; and**
- **development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate**
- **development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate**

3.22 Paragraph 182 states:

*'**The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects) unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site**'.*

National Planning Practice Guidance (NPPG)[4]

3.23 The section of the NPPG relating to Guidance for the Natural Environment (updated 21 July 2019) explains key issues in implementing policy to protect biodiversity, including local requirements.

3.24 Paragraph 009 confirms that when exercising their functions, public authorities have a duty to have 'regard' to the purpose of conserving biodiversity as outlined in Section 40 of the Natural Environment & Rural Communities Act 2006. The purpose of this duty is to embed consideration for biodiversity into the decision-making process with the aim of making significant contributions to achieving the government commitments in the 25-year Environment Plan.

3.25 Paragraph 013 confirms local ecological networks are important for nature conservation, making an important contribution in developing a Nature Recovery Network. The expectation of National planning policy is that local ecological networks are identified and mapped, through the plan making process and policies applied that secure protection from harm or loss and enhance them and their connection to wider ecological networks.

3.26 The presence of protected species is considered at Paragraph 16 of the guidance. This confirms planning authorities need to consider the potential impacts of development on protected and priority species, and the scope to avoid or mitigate any impacts when considering planning application. This section notes Natural England have issued standing advice on protected species, the potential need for a licence prior to the commencement of works and the development of strategic approaches to address the impact of certain protected species.

3.27 Recommendations for considering biodiversity when preparing planning applications are outlined at Paragraph 018. This confirms information on biodiversity needs to be considered when designing a development, and ecological surveys are required in advance of a planning application if the proposals could have a significant effect on biodiversity and existing information is lacking or inadequate. This guidance recommends that assessments need to be proportionate to the nature and scale of the proposals and the likely effects.

3.28 Paragraph 019 confirms the 'mitigation hierarchy' outlined at Paragraph 175 of the NPPF should be applied. Paragraph 022 encourages net gain for biodiversity. through planning polices and decisions, confirming net gain can be achieved on -site, off-site or through an combination of on-site and off-site measures. Paragraph 023 confirms biodiversity net gain can be established using of planning conditions or obligation to demonstrate measurable increase to biodiversity are provided. This paragraph also confirms the use of offsite receptor or 'habitat banks'. Paragraph 025 advocates the use of a 'biodiversity metric' to demonstrate whether a net gain to biodiversity can be achieved. In this case, net gains will be achievable on site.

[4] Biodiversity, geodiversity and ecosystems. (Source: https://www.gov.uk/guidance/natural-environment#biodiversity-geodiversity-and-ecosystems. Accessed on: 28.06.21)

Adopted Regional & Local Policy

3.29 The following section considers adopted local planning policies relevant to ecology and nature conservation. The weight which can be attributed to these policies is not considered here. These matters are assessed in the planning evidence provide by Tim Lomas.

Ashfield Local Plan Review 2002 as amendment by 'saved policies' 2007 (ALPR)

3.30 The Ashfield District Council development plan comprises 'saved' policies of the Ashfield Local Plan Review 2002. The following are the policies which are relevant to Ecology and Nature Conservation.

3.31 Policy ST1 confirms that development will be permitted where it does not conflict with other policies in the Local Plan (Part A) and would not adversely affect the environment in which it is located (Part B).

3.32 Policy EV4 states that proposals likely to effect Sites of Special Scientific Interest will be subject to special scrutiny and where such development may have as adverse effect, directly or indirectly will not be permitted unless the reasons for development clearly outweigh the nature conservation value of the site.

3.33 Policy EV6 states that development which adversely affects local nature reserves will only be permitted where provision is made within the development for protection of features of nature conservation, or the development cannot be located elsewhere.

3.34 Policy EV8 states that development which adversely affects trees worthy of retention, including woodland and individual trees, will not be permitted. Where trees are lost as a result of development, replacement or mitigating planting will be required.

Relevant Court Rulings & Guidance

R. (Morge) V Hampshire County Council [2011] UKSC2

3.35 This Supreme Court judgement provides clarity to the role of the 'competent authority' which for the planning application was the Local Planning Authority (LPA). For the purpose of this Appeal, the 'competent authority' is now the planning inspectorate, and these matters are relevant to the Inspector determining this appeal.

3.36 The court of appeal judgement preceding the supreme court judgement concluded that the role of the 'competent authority' was to consider whether on balance where European Protected species are affected by proposals consideration to the three derogation tests in the Regulations would be satisfied. The judgement concluded when considering the tests in the Regulations planning permission should only be granted in situations where it was concluded the requirements of the tests could be met. In situations where the competent authority concluded the requirements of the tests could not be met or there was doubt the judgement moved that planning permission should be refused.

3.37 The Supreme Court concluded the appeal court ruling went too far as the Directives only requires the authority to have '*regard*' to the requirements of how Habitat Directives may be affected. The judgement also goes further confirming that the competent authority should only refuse a planning permission when it is concluded that the proposals are unlikely to meet the requirements of the three derogation tests.

Cheshire East V Secretary of State for Communities & Local Government & Rowland Homes Ltd.

3.38 This judgement provides further authority relating to the evidential requirements required by a competent authority in the decision-making process to ensure their duty to have 'regard' to the Habitat Regulations is discharge.

3.39 The appeal case under review had assumed protected species were likely to be present and mitigation for the species had been provided within the development proposals. The mitigation strategy was not based on defined survey work. The Inspector determining the appeal concluded that the proposals could destroy some habitat used by protected species but there was significant potential to provide enhancements for protected species in areas of the site which remained undeveloped, and any destruction of habitat would be completed in accordance with the requirements of a Natural England license. The conclusion of the Inspector was there is no reason why appropriate conditions cannot be imposed to ensure the benefits of the scheme provided.

3.40 The court ruled this approach was sound as it gave '*regard*' to the requirements of the Regulations. In making this judgement, the court referred to the conclusion of Morge v HCC in relation to the '*regard*' that decision makers should have to the detailed requirements of the Regulations.

Natural England's Standing Advice[5]

3.41 Natural England's District Level Licensing (DLL) scheme is licensing scheme for GCN granted at a local authority level or wider scale across parts of England. Where operational DLL offers an alterative to the standard Natural England development licences. Use of DLL does not require the completion of standard survey work to support individual planning applications rather it requires a financial contribution towards the creation of strategy mitigation for population of GCN.

3.42 The DLL scheme has been issued across many local authority regions in England including the neighbouring authorities of Derbyshire and Leicestershire. Whilst this scheme has is not currently operational in Nottinghamshire, FPCR completed the necessary eDNA testing on behalf of Natural England in Derbyshire, Nottinghamshire and Leicester in 2020.

3.43 Where DLL is not being used, Natural England's standing advice confirms that surveys should be completed if:

- distribution and historical records suggest there may be GCN;
- there's a suitable water body such as a pond or ditch within 500 metres of the development, even if it only holds water for some of the year; and
- the development site includes refuges, such as log piles, rubble, grassland, scrub, woodland or hedgerows within 500 metres of suitable aquatic habitats (static or slow moving water body).

3.44 Where development trigger the need for survey work, the standing advice considers the following survey methods can be used:

- presence or absence surveys, which can use eDNA sampling;
- population size surveys of water bodies; and

[5] https://www.gov.uk/guidance/great-crested-newts-surveys-and-mitigation-for-development-projects (Accessed: 29.07.21)

- terrestrial and aquatic habitat surveys.

3.45 When assessing the potential effects of development proposals, the standing advice confirms the site importance should be considered. Factors effecting this assessment included:

- the number and size of GCN population;
- the nature of the population - for example, if the site includes a breeding area or is connected to other important populations; and
- how important the site is to the local and national GCN population, for example how near it is to a site of special scientific interest (SSSI) where GCN is a listed species

3.46 Whilst the standing advice advocates the completion of survey work, in accordance with the judgement of Cheshire East v Rowland Homes, the standing advice also confirms:

'*They should also meet industry standards, unless you have sufficient information to assess the application without this data in line with licensing policy 4. This allows for developers to propose worst-case scenario compensation in certain circumstances.*'

Natural England's Licensing Policies[6]

3.47 To provide some flexibility within the licensing system, NE developed four licensing policies. These policies were designed to reduce potential delays to development caused through the strict requirements and determination of Natural England development licenses. Licensing Policy 4 is relevant to this appeal and this policy states:

'*Policy 4 - Appropriate and relevant surveys where the impacts of development can be confidently predicted*

Natural England will be expected to ensure that licensing decisions are properly supported by survey information, taking into account industry standards and guidelines. It may, however, accept a lower than standard survey effort where: the costs or delays associated with carrying out standard survey requirements would be disproportionate to the additional certainty that it would bring; the ecological impacts of development can be predicted with sufficient certainty; and mitigation or compensation will ensure that the licensed activity does not detrimentally affect the conservation status of the local population of any EPS.'

European Protected Species: Mitigation Licensing - How to get a licence' Natural England 2013

3.48 This document provides guidance to consultants, Local Authorities, and other interested parties guidance on various element of Natural England licensing system. Of relevance to this appeal is the requirement for consultants to access ponds on third party land. This guidance is clear that:

'*Firstly, an assessment of whether a pond survey is appropriate for the scheme should be made (see guidance in new method statement template). If it is, every reasonable effort must be made to secure the landowner's permission to access the*

[6] https://www.gov.uk/government/consultations/wildlife-licensing-comment-on-new-policies-for-european-protected-species-licences (Access on: 29.07.21)

land. If access is denied, evidence to this effect must be provided (e.g. through land owner correspondence). It should then be considered whether other options will meet the data needs. These could include: historical survey data, aerial photos and terrestrial trapping. The rationale and conclusions reached must be fully explained.'

4.0 BASELINE EVIDENCE

4.1 To complement the ecological submissions produced during the determination period (CD.1.12) and to assist further in determining this appeal (by ensuring all relevant information is up to date), further ecological surveys have been completed over the relevant survey periods in 2021. The additional survey work includes:

- bat activity surveys (July 2021),
- terrestrial great crested newt survey (within 50m of Pond P2); and
- badger surveys (July / August 2021).

4.2 The results of these surveys confirm there are no significant changes to the habitats or species assemblage recorded during the original surveys completed in 2019; nor to the resultant impact of the development upon them.

Statutory Designated Sites

4.3 There are no statutory designations covering the Site.

4.4 One statutory site listed on the national site network, Birklands and Bilhaugh SAC, is situated c.14.6km northeast of the Site. This statutory designated site is not affected directly or indirectly by the proposals. Given that there are no 'likely significant effects' to conservation objectives of the designated site, no further assessment of this receptor is provided in this evidence.

4.5 The Teversal Pasture SSSI is approximately 2km northeast of the Site and the Dovedale Wood SSSI is approximately 3.5km north of the Site. The proposals will not directly or indirectly effect the conservation value of these designated sites, but the Site is situated in the 'Impact Risk Zones' of these designated sites. These designated sites are assessed as being important at a **National** level (Figure 1).

4.6 Situated on the northern boundary of the Site is the Brierly Forest Park Local Nature Reserve (LNR). Natural England's review of the designated site confirms the LNR is approximately 80.6ha in size and the LNR type is listed as urban[7]. Habitats present include species rich calcareous grassland, neutral grassland, mixed and broadleaved plantation woodlands, standing water and running water.

4.7 Resources present in the designated site include a visitor centre, car park, well-marked footpath routes and play areas. There are also established maintained links to existing residential areas surrounding the LNR (Figure 2, Plates 1 - 3). Where features of nature conservation interest are present, boundary treatments are used to reduce public access and where public access is permitted there are clearly defined paths and mown grass paths (Figure 2, Plates 4 - 6).

[7] https://designatedsites.naturalengland.org.uk/SiteLNRDetail.aspx?SiteCode=L1123159 (Accessed on: 25.07.21)

4.8 LNR are regional designations for sites providing a range of recreational use and areas of nature conservation interest. These sites are partial designated to provide considerable opportunities for introducing large numbers of people to sustainable enjoyment of the countryside. Given the designation requirements, the LNR has been assessed as being of **County** level importance.

Non-Statutory Designated Sites

4.9 There are no non-statutory designation covering the Site. In the wider environment ten Local Wildlife Sites (LWS's) are present within 1km of the Site. All of the LWS's have been assessed as **County** level importance.

4.10 Five of these LWS are present in Brierly Forest Park (LNR). These include Forest Park LNR/Country Park, Sutton-in-Ashfield District Grassland, Brierley Forest Marsh, Brierley Park Marshy Grassland, Stubbinghill Farm Meadow, and Stanton Hill Colliery Spoil. Habitats within the Site do not provide supporting habitats for these LWS (Figure 1).

4.11 The Sutton-Ashfield District Grassland, the Brierley Forest Marsh and the Brierly Park Marshy Grassland are mapped adjacent to the Site boundary. Brierly Park Marshy Grassland and the Sutton-Ashfield District Grassland are also located adjacent to existing residential development and the Brierly Forest Marsh is situated within 150m of the existing residential dwellings.

4.12 Existing features including a footpath, short mown verges and a belt of woodland separate the Site from Brierly Forest Marsh and Sutton in Ashfield District Grassland from the Site. A dense band of scrub and the mature northern boundary hedgerow are separate the main area of the Brierly Forest Marshy grassland and the Site. The existing footpaths around and through these features, and the height of the vegetation minimises the creation of additional desire lines through these habitats (Figure 2: Plates 4 & 5).

4.13 Stubbinghill Farm Meadow and Staton Hill Colliery Spoil LWS site are located in the north of LNR. Again, well managed footpaths with short mown verges run through and adjacent to these areas of ecological interest and hedgerows are present around Stubbinghill Farm Meadow.

Flora

4.14 A full assessment of the habitats is provided in the submitted Ecological Appraisal (CD1.12). The following provides an assessment of the findings and consideration of the ecological importance of the habitats. The location of the various habitats are shown on Figures 3 & 4.

4.15 Species poor semi-improved grassland is the dominant habitat present in the eastern area of the Site. This habitat is also present in the 10m field margins surrounding the is western section of the Site. The grassland is managed as a hay or silage crop and as such the sward height varies over the cropping cycle. The southern boundary of the eastern compartment is not subject to regular management, but the assemblage of the sward is broadly similar to that of the main field compartment.

4.16 The diversity of the grassland is poor and dominated by common and widespread species. Immediately adjacent to the LNR several herbaceous species recorded in the LNR were

present in low abundances. The presence of these occasional species does not increase the overall importance of the grassland. Regularly management the grassland prevents the development of a tussock structure with the grassland. Species poor semi-improved grassland is not listed as a Habitat of Principle Importance as listed in S41 of the NERC Act 2006. Given the limited species diversity and the common and widespread nature of this habitat, this grassland is assessed as being of no more than **Local** importance.

4.17 At the time of the original survey habitats in the western area of the site were dominated by intensively managed arable land. This arable land is currently an arable ley, but it is understood this will be cropped as silage. No rare or notable species were recorded associated with this arable land and this habitat is recorded as being of no more than **Site** level importance.

4.18 Tall ruderal vegetation is present on the northwestern, western and south western boundaries of the Site. This habitat type is widespread locally and the habitats are dominated by common and widespread species. The habitat type does not meet the criteria to be classified as a habitat of principle importance and as such it is of no more than **Site** level importance.

4.19 Dense mature scrub dominated common woody species is present on the southern boundary of the Site. Whilst providing some structural diversity to the Site, scrub is a common and widespread habitat locally and is not listed as a priority habitat type in S41 of the NERC Act 2006 or a local BAP habitat type. Consequently, this habitat is assessed as being of no more than **Site** level importance.

4.20 Semi-mature and mature trees are present on the boundaries of the Site and one mature ash is present in hedgerow H1. No Veteran trees have been recorded. The trees do provide some structural diversity to the Site, but in the context of the mature woodland environment present in the LNR, the semi-mature and mature trees within the Site are assessed as being of no more than **Site** level importance.

4.21 Three hedgerows have been recorded. None have been classified as 'important' in accordance with the requirements of the Hedgerow Regulations. All of the hedgerows do meet the criteria to be habitats of principle importance in S41 of the NERC Act 2006. The conservation value attributed to the hedgerows using HEGS assessment ranges from -3 to 3+ (moderate value). This is below the threshold value of -2 which is the threshold that indicates conservation significance. Given this assessment, the hedgerows have been assessed as being of no more than **Site** level importance.

4.22 Mature broadleaved plantation woodland is present immediately adjacent to the north-western boundary located within the LNR. The canopy species are typically of the planting mixes used in the restoration of colliery sites and the woodland understorey is sparse. Typical of other woodland blocks in the LNR a footpath ran through the woodland. Given the species assemblage of the plantation woodland, this habitat type has only been assessed of **Local** level importance.

4.23 Two drainage ditches are present on the Site. Both drainage ditches are unmanaged, shallow and dominated by tall ruderal vegetation. The ditches provide some diversity within the Site but neither of the drainage ditches met the criteria to be classified as priority habitats in S41 of the NERC Act 2006 and as the dominant habitat type is tall ruderal

vegetation these drainage ditches are only assessed as being of no more than **Site** level value.

4.24 Stands of Japanese knotweed have been recorded in the dense scrub on western site boundary (TN1). The stand was approximately 10m high and growing across a linear distance of approximately 6m. This is an invasive species and has not been identified as an ecologically important receptor.

Fauna

Bats: Roost Sites

4.25 Four mature trees (T1 – T4) located on the north-eastern, western, and southern boundaries of the site have been identified as providing low potential to support a bat roost. An additional group of six semi-mature sycamore situated in the dense scrub to the southwest of the Site have also been identified as providing low potential to be used as a bat roost. Given the low suitability of the trees to support a bat roost, these trees have only been assessed as being of **Local** level importance to the local bat population.

Bats: Foraging Areas

4.26 The intensively managed arable land and the species poor semi-improved grassland does not provide a significant foraging or commuting resources for the local bat population. The boundary habitats including mature hedgerows, broadleaved woodland and mature scrub do provide suitable foraging and commuting routes for the local bat population. These boundary treatments are retained in all versions of the Illustrative Masterplans.

4.27 Summer and autumn bat activity and static detector surveys have been completed over the period of July – September 2019 (Paragraphs 3.57 – 3.65, CD.1.12). To assist the Inspector, the summer activity and static detector surveys have been updated in July 2021 (Appendix 1) and the autumn surveys will be updated prior to the appeal.

Activity Surveys

4.28 Significant levels of activity have not been recorded during the activity surveys completed in 2019 or 2021. Common pipistrelle *Pipistrellus pipistrellus* was the dominant species. Other species recorded occasional included unidentified *Myotis* species and Noctule *Nyctalus noctula*. Other species occasionally recorded included individual records of soprano pipistrelle *Pipistrellus pygmaeus*, noctule and brown long eared *Plecotus autrius*.

4.29 Low levels of common pipistrelle activity was identified throughout the Site. The individual registrations of unidentified *Myotis* species were recorded on the northern, southern and western boundaries of the Site and the individual registration of Noctule was recorded on the southern boundary of the Site.

Static Detector Surveys

4.30 The summer static detector surveys in 2019 recorded 2245 registrations. Over this period common pipistrelle is the dominant species recorded with 1959 registrations. This is 87% of the total registrations. Unidentified *Myotis* species were recorded frequently over the survey with 258 registrations, which comprised 11% of the total registrations. Other species

recorded included Noctule, soprano pipistrelle, brown long eared and unidentified pipistrelle species. These species were recorded at less than 1% of the total registrations.

4.31 Over this period the distribution of common pipistrelle registrations was evenly split over the five-night recording period and the majority of the common pipistrelle registrations were recorded over the period of 20.00 – 22.00. The highest level of unidentified *Myotis* species was recorded over the period of 21.00 – 22.00 but the majority of the registrations (137 registrations) were recorded on a single evening. The timing of the registrations does not suggest the central hedgerow forms a significant commuting route rather provides a general foraging resource for the local bat population.

4.32 The results from the static detectors deployed in July 2021 confirmed common pipistrelle was the dominant species using the Site. The other species recorded were similar to those identified during the 2019 survey period. The result of these static detector confirmed that the habitats within the Site are only likely to proportion of the local bat population foraging resource.

4.33 In 2019, the autumn static detector typically recorded lower levels of activity than the summer surveys with a total of 1232 registrations. Common pipistrelle was the dominant species recorded with 1047 registrations. This comprised 85% of the total registrations and the majority these registrations (451) were recorded on a single night with similar levels of activity recorded on the other recording period. Unidentified *Myotis* species were recorded frequently recorded over the survey period with a total of 119 registrations which comprised 9.6% of the total registrations. The highest level of registrations for common pipistrelle and unidentified *Myotis* species was over the period of 20.00 – 21.00. Again, the timing of the registrations does not suggest the central hedgerow forms a significant commuting route, but it does provide a foraging resource for the local bat population.

4.34 Other species recorded over the autumn period includes unidentified pipistrelle species, noctule, brown long eared, soprano pipistrelle and unidentified *Nyctalus* species. The unidentified pipistrelle species were only comprised 2.4% of the registrations and the Noctule registration comprised 1.7% of the registrations. The registration rates of the other species were below 1%. This data indicates the Site does not provide a significant resource for these species.

Species Assemblage

4.35 Common pipistrelle and soprano pipistrelle are common and widespread species which have adapted to the urban environment. Whilst the unidentified *Myotis* species could comprise one of five species, given mosaic of woodland, open water and marshland in the LNR, it is unlikely the Site provides a significant resource for this species rather the primary habitats are situated within the LNR.

4.36 Noctule have a foraging range of up to 10km and again there preferred foraging habitats are those which are situated within the LNR. Therefore, a small percentage of Noctule registrations over the extended survey period is not unexpected or indicates the Site provides a significant for the population.

4.37 The other species were recorded at such low levels that the habitats within the Site does not provide a material resource to these species.

4.38 Given the habitat resource present in the Site and the results of the survey, the Site has not been assessed as providing a significant resource to the local population and has been assessed as being of no more than **Local** level importance to the local population.

Badger

4.39 The margins grassland field compartment and the grassland margins surrounding the arable field compartment provide suitable foraging areas for badgers. The scrub and tall ruderal vegetation provide some additional areas of cover for badgers. Over the original surveys badger prints and a latrine were recorded. A single active sett comprising five active holes was recorded in the dense scrub on the southern boundary of the site.

4.40 The status of the setts and badger activity was reassessed in July 2019 (CD.2.6). This assessment confirmed the sett was inactive, but a single latrine was identified along the lane to west of the disused sett. Animal paths were identified running across the Site but there was no conclusive evidence of badger activity.

4.41 The updated survey confirmed a single active hole on the southern boundary of the site and over a 21 day recording period an individual badger was observed occasionally using this active hole (Appendix 2).

4.42 As the sett has only been identified as an outlier sett and little evidence of use of the Site has been identified, the habitats within the Site have been assessed as no more than **Site** level importance for badger.

Breeding Birds

4.43 The management of the habitats present within the Site do not provide optimal conditions to support a significant assemblage of breeding birds. The hedgerow and scrub habitats do provide suitable nesting opportunities for a range of common and widespread breeding birds. However, such habitats are common and widespread locally, therefore the habitats within the Site are only assessed as being of **Site** level importance for breeding birds.

Great Crested Newts (GCN)

Consultation Records

4.44 No records of GCN were provided by the Nottinghamshire Biological Records Centre (NBRC) for the waterbodies within Brierly Forest Park (LNR). Within 1km of the Site, three individual records of GCN provided by member of the public in spring 2009 were supplied by the NBRC for a site located the grid reference SK 482 602 (Figure 5). This grid reference is approximately 600m north of the site.

4.45 On further review of the records, the site is described as being on ‘the Huthwaite Nature Trail near Woodhead Inn’. This site description corresponds with other records of great crested newts provided in 2009 at the grid reference SK 459 602, approximately 1.7km to the northwest of the site and 2.2km from Pond P2 within Brierly Forest Park. From review of aerial photography and ground truthing, the Site located at grid reference SK482 602 is a small area of woodland located adjacent to an industrial unit and no pond is present. Consequently, the reliability of the record is questionable.

4.46 The Brierly Forest Park Management Plan[8] has been supported by some ecological survey work but records of GCN have not been identified. Other amphibians including frog and toads are known within the LNR.

Survey Work

4.47 Three waterbodies (P1 – P3) are situated within 500m of the Site and the waterbodies are both situated on The Brierly Forest Park LNR. This site is owned and managed by Ashfield District Council (ADC). On behalf on FPCR and following Natural England guidance on accessing offsite waterbodies (see Paragraph 3.48), Bellway Homes approach the ADC requesting access to the waterbodies to complete surveys to confirm the presence or absence of GCN in 2020 and 2021 (Appendix 4).

4.48 In 2020 access was refused during the optimal survey period due to Coronavirus. In June 2020 access was granted and eDNA testing was completed in the waterbody referenced P2 (Appendix 4). In 2021 access was refused during the peak period on 16 April 2021 (Appendix 4).

4.49 P1 is a large fishing lake activity stocked with fish. The Habitat Suitability Index (HSI) assessment confirmed the status was 'poor' and given the use as a fishing pond the presence of great crested newts in this waterbody and further survey effort in this waterbody was discounted.

4.50 Pond P2 is situated approximately 20m north of the Site. The waterbody and associated marsh habitat are online of and fed by the Rooley Brook. Northeast of the P2 and the marsh the watercourse drains into a culvert which discharges into the River Meden. The initial surveys completed in 2019 confirmed the HSI for this pond was 'good'. An updated assessment in July 2021 confirms the suitably of the pond is degrading with an 'average' HSI (Appendix 3).

4.51 The eDNA could not establish the presence of GCN due to the presence of high levels of white precipitate. As this is a water quality issue, it is highly unlikely that repeating the survey would have resulted in a different outcome.

4.52 Pond P3 is located approximately 240m to the north-west of the Site situated adjacent to the Brierly Forest Park Visitors Centre (Appendix 3). This pond is a man-made circular pond heavily vegetated with reeds and immediately surrounded on all aspects by a hardstanding visitor path. The HSI assessment of the pond confirmed it has average suitability for use by GCN but the terrestrial connectivity to the Site is poor comprising woodland with limited ground flora. This pond is also over 800m from pond P2 which significant limits any dispersal between pond P2 and P3.

4.53 Given the access restrictions to ponds within the LNR, to confirm the likely presence or absence of GCN on terrestrial habitats within the Site a 20-day terrestrial survey was completed in July 2021. This was completed under the class license referenced 2015-17942-CLS-CLS (Appendix 3).

4.54 The terrestrial survey was completed outside the main breeding season when adult GCN would be using terrestrial habitats surrounding ponds and during periods when damp

[8] Brierley Forest Park Management Plan. January 2016 – December 2020. Ashfield District Council.

conditions persisted. To optimise the potential capture rates the fencing was positioned adjacent to the northern boundary hedgerow within 50m of Pond P2. Over this survey no amphibians were caught.

Terrestrial Habitat Availability

4.55 If GCN are present in Pond P2, terrestrial habitats immediately surrounding the pond comprise unmanaged wet and dry grassland comprising tussock forming species, scrub and woodland. If present these habitats provide optimal terrestrial habitats to support GCN.

4.56 Terrestrial habitats within the Site comprises species poor semi-improved grassland, managed arable land (currently arable ley), tall ruderal vegetation and hedgerows. The grassland and managed arable land only provide limited resting sites for GCN and these habitats have been classified as a suboptimal terrestrial resource for the population. This limited terrestrial resource is further restricted by the current management regime. The areas of tall ruderal vegetation and hedgerow bases do provide some areas of cover for GCN but the area of suitable habitat is limited.

4.57 Terrestrial habitats situated to the south of the Site which includes the scrub and the tall ruderal habitats do provide some further suitability to be used by GCN. These habitats are however distance from the pond and as such the potential for use by GCN is limited.

4.58 Given the limited suitability of the terrestrial habitats within the Site, and the optimal terrestrial habitats present in the LNR, if GCN are present in Pond P2 the habitats within the Site have only been assessed as being of **Site** level importance to the population.

Reptiles

4.59 The grassland and the arable habitats do not provide optimal foraging or basking habitats for common species of reptiles. Some limited suitability for reptiles is associated with the tall ruderal habitats and the hedgerows, but the extent of such habitat is very limited. Given the limited suitability of the Site, the presence of reptile is unlikely and the habitats within the **Site** are assessed as being of negligible importance to this group.

5.0 ASSESSMENT OF POTENTIAL EFFECTS AND MITIGATION FOR HABITATS / SPECIES

5.1 To assist the Inspector, the following provides a summary of the potential effects and the proposed mitigation.

Statutory & Non-Statutory Designated Sites

Dovetail Wood SSSI and Teversal Pasture SSSI

5.2 The Site is located in the outer 'Impact Risk Zones' (IRZ) of these designated sites, as defined on MAGIC[9], it is necessary to assess the potential effects of the proposals for discharges over 5m³/day.

5.3 This assessment is provided in submitted Flood Risk Assessment (FRA) (CD.1.11) and additional information submitted over the determination period (CD.2.5a-f). The FRA

[9] https://magic.defra.gov.uk/MagicMap.aspx (Access on: 29.07.21)

confirms the existing surface water runoff rate could range between 38.9l/s to 120.5l/s depending on the intensity of the rainfall. The estimated discharge rate from the balancing facility is 46.9l/s. Given the predicted runoff rates, no material effects to the designated site are expected and the potential effects of this discharge rate to ecological receptors has been assessed as **negligible**.

5.4 In terms of water quality, the existing discharge from the Site contains agricultural pollutants and is uncontrolled. Following development, these pollutants will not be discharge into the Brierly Forest Park LNR, other LWS's within the LNR or the watercourse feeding the downstream SSSI.

5.5 Without the application of appropriate control measures, uncontrolled discharge from the could result in the discharge of hydrocarbons and other pollutants into the designated sites adjacent to the Site and downstream receptors.

5.6 The drainage strategy provided in the FRA confirms surface water treatment strategy will minimise the potential for the discharge of hydrocarbons and other pollutants. This will be achieved through application of appropriate treatment trails including trapped gullies, catch pits and areas of permeable paving within the drainage system. The balancing facility will provide additional treatment through the provision of appropriate shallow wetland areas in the pond, a wet channel linking the two wetland and filtration in the basin to increase settlement and filtering of pollutants. The application of these standard methods is likely to improve the water quality of any discharge into the adjacent watercourse and the potential effect arising from reduced water quality have been assessed as **negligible**.

Brierly Forest Park LNR / LWS

5.7 Given the proximity of the Site to the Brierley Forest Park LNR / LWS, the following considers the potential effects of the proposals on these statutory and non-statutory.

5.8 Development of the Site does not require any physically land take within the designated site and short-term effects during the construction period can be avoided through the implementation of appropriate control measure detailed in a Construction and Environmental Management Plan. Consequently, over the construction period the potential effect to these sites is assessed as **negligible**.

5.9 Given this assessment, any potential effects to the Brierly Forest Park LNR are likely to be indirect effects during the operational period of the development. The following considers these potential effects in further detail.

Recreational Pressure

5.10 In keeping with other existing residential areas surrounding Brierly Forest Park LNR, the proposals have included two access points directly into the LNR. The location and design of these accesses will be subject to detailed design, but in keeping with existing residential developments to minimise potential access by vehicles appropriate restrictions to the access will be used (Figure 2, Plates 1 – 3). At the detailed design stage, the location of the access points will also be positioned to minimise loss of plantation woodland within the LNR and provide direct links to the main network of footpaths.

5.11 The Brierly Forest Park LNR is designed to provide areas for nature conservation and recreation. These are the primary functions of an LNR. The recreational facilities provided and advertised ADC include over two miles of footpath, cycling routes, horse riding networks, play areas, car parking, dog bins, a visitor centre and café[10]. This site is managed by ADC in accordance with the requirements of the Brierly Forest Park Management Plan[11] which identifies ecological sensitive areas and provides appropriate management regimes for the features of ecological interest and other recreational assets within the designated site.

5.12 The site has been awarded a Green Flag award. This award recognises and rewards well managed parks and green spaces. Given the resources situated across the site, the designated site is considered to be a well-established recreational resource designed to provide areas for nature conservation, areas for recreation and areas allow public access to areas of nature conservation.

5.13 Under the current management regime, well maintained paths with mown verges are situated adjacent to and through the LWS's situated in the LNR and throughout the LNR (Figure 2: Plates 4 – 9). Recreational assess to other ecological sensitive areas is managed by hedgerows and fencing. Where access is encouraged through ecological sensitive areas as with the LWS, mown grass tracks or formal footpaths have been provided. The existing footpaths and tracks do reduce the creation of desire lines through such areas and minimise trampling and / or disturbance of the habitats.

5.14 Development at the Site will inevitably increase the number of people using Brierly Forest Park LNR as a recreational resource. Given the current infrastructure, management and the type of habitats present in the LNR, any increase of recreational use across the 80.6ha site is unlikely to result in any additional material effects to the conservation status site. Should additional resources be required, Brierly Forest Park LNR is identified as one of the sites which would benefit from open space maintenance funding from the S106 payment and as such these monies could be used to improve management within the LNR, if required, and minimising any potential effect.

5.15 Additional mitigation which can be provided by the development would include the provision of homeowner information leaflets advising on sensitive area of the LNR and appropriate use of the LNR to minimise the effects of increased recreational pressure. With the application of such additional measure the potential effects of increased recreation and trampling are likely to be **Negligible**.

Disturbance

5.16 To minimise disturbance and anti-social behaviour, the Illustrative Masterplan has been designed to front onto the northern boundary of the site adjacent to the LNR. This Illustrative Masterplan also shows shared private drives will be provided along the northern elevation of the site and at the detail design stage a 10m buffer retained in the public realm can be provided between the private drive and the boundary to the LNR. This buffer strip can be planted with appropriate native species.

[10] https://www.ashfield.gov.uk/community-leisure/parks-green-spaces-visitor-centres/brierley-forest-park-visitor-centre/ (Access on 29.07.21)

[11] Brierly Forest Park Management Plan. January 2016 – December 2020. Ashfield District Council.

5.17 These measures provide a sufficient buffer between the built environment and the LNR and a form of natural surveillance which will reduce the potential for anti-social behaviour in the LNR. Following the implementation of such measures it is not envisaged that the proposals will result in a significant increase in anti-social behaviour or disturbance in the LNR.

5.18 Fronting the proposed housing onto the boundary of the LNR and the provision of buffer planting along the edge of the scheme are standard design features used to minimise light spill onto sensitive receptors and create dark corridors.

5.19 To further avoid effects of light spill, all new dwellings along the northern elevation of the Site would be fitted with low level external lighting at the ground floor and any lighting provided along the private drive would be low-level bollard lighting. Given the distance of the housing from the northern boundary and the additional features proposed any residual effects from light spill would be **Negligible.**

5.20 No evidence of significant fly tipping within the LNR or adjacent to the existing residential areas has been observed during our site visits. The buffer provided between the Site and the LNR and fronting the residential housing are standard measures which are implemented to reduce the potential for fly tipping in the LNR. The Brierly Forest Park Management Plan, ADC have asset management policy for controlling litter, vandalism and maintenance in the 'Management Plan Overview and Supporting Information'. The policies in this document are clearly effective in reducing the impact from any potential increases in fly tipping or antisocial behaviour. If the council considered it necessary, the LNR is one of several sites identified for receipt of S106 monies for open space management and additional funds could be diverted to LNR to manage such events.

5.21 In addition to the design and potential additional funding, interpretation boards can be position at the indicative accesses to the LNR and homeowner leaflets can be provided to new residents. These additional educational resources will provide further information of the sensitivities of the designated site and appropriate code of conduct that should be followed whilst using the resource.

5.22 Through the provision of the design, existing control measure and the provision of additional information to new residents the potential effects from increase disturbance and antisocial behaviour are assessed as **negligible**.

Flora

5.23 Habitats within the Site have been assessed as being of no more than local to site level importance. The development has been designed to retain the boundary features and the majority of the central hedgerow and area of dense scrub on the southern boundary of the Site are also retained.

5.24 The species poor semi-improved grassland situated to the east of the Site and surrounding the arable land will be lost. The grassland has been identified as Local level importance but given the extensive areas of species rich grassland present locally, without the implementation of mitigation the loss of the grassland is only likely to result in minor negative effects to biodiversity locally, but appropriate mitigation and offsite compensation can be provided to ensure no net loss to biodiversity from the development.

5.25 The arable land (or arable ley) does not provide a significant ecological resource and the loss of this habitat without the implementation of mitigation is also only likely to result in minor negative effect to biodiversity locally. Again, mitigation and / or offsite compensation using the S106 BNG contribution can easily be provided for the loss of such a common and widespread habitat type.

5.26 The proposals will employ measures to control and eradicate the Japanese knotweed on the western boundary of the Site will be implemented if planning persimmon is granted. These measures will be detailed in a Construction and Environment Management Plan and the methods will be provided by appropriately qualified contractor. Following the implementation of such measures it is anticipated that the further development of the stand will be avoided.

5.27 The Illustrative Masterplan confirms that some limited mitigation will be provided within the proposals. This mitigation will include the creation of wetland features in the balancing facility, the creation of area of species rich grassland in areas of open space within the site and the provision of native species planting along the northern boundary of the Site. Whilst the submitted Biodiversity Impact Assessment (BIA) confirms the development without offsite contribution will result in a net loss to biodiversity, a contribution to provide offsite enhancements to biodiversity has been agreed with ADC and appropriate mechanisms for this contribution are provided in the S106 agreement. The contribution has been calculated to achieve a 10% net gain to biodiversity and as such residual effects from the loss of habitats of low ecological importance are not expected. Further details of this assessment are provided in Section 6.

Fauna

Bats

Roost Sites

5.28 The mature trees identified with low bat roost potential are retained. All of these trees are situated in dense vegetation which outside the curtilage of residential properties and as potential effects to these receptors have been assessed as **negligible**.

5.29 In accordance with best practise at the detail design stage a range of integrated bat boxes with be installed on the new residential dwellings. These features will increase the number of roost sites locally and is likely to result in **minor positive** affects to the local population.

Foraging / Commuting Areas

5.30 The species assemblage using the Site is dominated by common and widespread species. The main foraging areas and commuting routes recorded over the survey are the habitat present on the Site's northern, western and southwestern boundaries. These are retained in the Appeal proposals and as such the potential effects to use have been assessed as **negligible**.

5.31 Through the implementation of the Site's infrastructure there will be some partial loss of the central hedgerow. Whilst this hedgerow does provide a foraging and commuting resource for the local population, prior to the implementation of mitigation these losses are only likely to be **minor negative** effects to the population, but these effects are unlikely to undermine the favourable conservation status of the species locally.

5.32 The foraging or commuting activity identified across the Site is dominated by common pipistrelle. This species is common and widespread in an urban setting. Along with soprano pipistrelle, these species have adapted to use of the urban environment and as such the implementation of residential housing with gardens and street lighting is unlikely to result in adverse effects to the species or the conservation status of the species.

5.33 Unidentified *Myotis* species were frequently recorded. Whilst recorded using habitats within the Site, the arable (arable ley) and species poor semi-improved grassland do not provide optimal habitats for either of these species which favour wetland, woodland and aquatic environments such as those present in the LNR. Consequently, habitats within the Site are unlikely to provide a significant resource for the unidentified *Myotis* species and without mitigation the habitats lost to the development proposals are unlikely to materially affect the local populations of these species.

5.34 Noctule were only recorded occasionally using the Site. This species has a foraging range of up to 10km and the mosaic of habitats within Brierly Forest LNR do provide an optimal foraging recourse for this species. Considering the habitat requirements and range of this species without the implementation of strict mitigation the potential effects of the proposals to this species would be **negligible**.

5.35 The registration rates of species were extremely low demonstrating the habitats within the Site do not provide a significant resource for any the other species recorded.

5.36 Given the suboptimal nature of the habitats within the Site for bats, the retention and buffering of boundary habitats avoids significant affects to the local bat population. Loss of the habitats within the Site are unlikely to result in significant affects to the local population, however proportionate mitigation for the proposals will be provided through:

- the implementation of wetland in the balancing facility;
- the creation of species rich grassland in open area of the public open space;
- the implementation of a 10m wide area buffer planting adjacent to the northern boundary of the Site; and
- the implementation of a sensitive lighting scheme designed in accordance with current BCT specifications throughout the Site.

5.37 Following the implementation of these features the potential effects of the proposals to the local bat population are assessed as **negligible**.

5.38 In additional to the mitigation outlined above, which is integral to the scheme, the creation of garden habitats will also provide suitable foraging areas for common pipistrelle which was the dominant species over the survey period.

5.39 Habitats within the Brierly Forest Park LNR will be of value to the local bat population. The proposals will not directly affect the quality or overall habitat availability with the LNR but through the provision of habitat enhancements within the LNR funded through the BNG contribution there is the potential that the proposals could enhanced the foraging resource within the LNR. Such measures are not however considered necessary to mitigate the potential effects of these proposals.

5.40 Uncontrolled there is the potential for some limited disturbance from light spill from the proposals. Without the implementation of the additional mitigation outlined at Paragraph 5.36, the mature plantation and vegetation along the northern boundary of the Site will effectively prevent light spill into the LNR. Toward the east of the site, where the height and the thickness of the boundary vegetation is reduced, the development is isolated from the LNR by the balancing facility which in terms of distance will avoid significant light spill into the LNR.

5.41 With the application of the buffer with planting adjacent to the northern boundary, the offset between the residential housing and the northern boundary receptor is likely to be between 17 – 20m. At this distance light spill onto the northern boundary is unlikely to result in material effects but with the provision of low-level external lighting on the ground floor of the dwellings and the use of low level bollard lighting the potential that light spill would affect bats within the LNR are minimised and the potential effects of such effects to bats using the LNR are assessed as **negligible**.

Badger

5.42 An active badger sett is present in the scrub to the southeast of the Site. The level of badger activity associated with this sett has varied over the survey period and the recent survey completed in July – August 2021 only confirmed occasional use and the sett has only been recorded as an occasional use outlier sett.

5.43 Development of the site is likely to require closure of the sett. This closure will be completed over the appropriate licensing period of July – November (inclusive). Following closure, loss of this sett is not expected to result in a significant effect to the local population and the potential effects have been assessed as **negligible**.

5.44 The habitats within the Site provide a limited proportion of the overall foraging resource for the local badger population in comparison to the optimal habitats present in the LNR. Over the survey period, only limited evidence of foraging activity has been recorded within the Site and as such unmitigated the potential effects of habitat loss to the population have only been assessed as **minor negative** effects.

5.45 The implementation of the proposed enhancements north of the Site will provided enhanced foraging opportunities for badgers adjacent to the LNR. Following establishment of these habitats and given the limited evidence of activity within the Site, the potential effects to the local badger population are assessed as **negligible**.

Birds

5.46 Habitats within the Site have not been assessed as providing a significant resource to the local breeding bird population. Ground nesting species have not been recorded using the Site, but the boundary hedgerows and scrub habitats will provide suitable nesting opportunities for birds associated with woodland edge and farmland habitats which is consistent with the assemblage associated with the LNR.

5.47 The proposals have retained the majority of the hedgerow and scrub habitats and additional areas of native scrub planting is proposed on the northern boundary of the Site. In addition, a range of bird boxes will be provided on the new residential dwellings. Through retention of existing habitats and the creation of new habitats within the Site, **minor positive** effects to the local breeding bird population are expected.

Great crested newts

5.48 As outlined at Paragraphs 4.44 – 4.45, the consultation exercise did not identify the presence of GCN within 1km of the Site.

5.49 The eDNA survey of Pond P2 was inconclusive but the suitability of pond P2 is degrading, and no great crested newts or other amphibian were recorded during the 20-day terrestrial survey completed within the Site. Although guidance provided in the 'Great Crested Newt Mitigation Guidelines, English Nature 2001' suggests the results of terrestrial surveys should be viewed with caution, research completed by English Nature (now Natural England) in 2004 (English Nature Research Report Number 576) provides further assessment regarding terrestrial trapping efficiencies which is relevant to the methods used at this site.

5.50 With regard to mitigation and the effects of habitat on GCN commuting distances the research report states:

> "The most comprehensive mitigation, in relation to avoiding disturbance, killing or injury is appropriate within 50m of a breeding pond. It will also almost always be necessary to actively capture newts 50-100m away. However, at distances greater than 100m, there should be careful consideration as to whether attempts to capture

> newts are necessary or the most effective option to avoid incidental mortality. At distances greater than 200-250m, capture operations will hardly ever be appropriate".

5.51 This report also confirms:

> "These recommendations are also broadly consistent with findings in the literature, since although a maximum routine migratory range has been estimated as approximately 250m from a breeding pond (Franklin, 1993 ; Oldham and Nicholson, 1986 ; Jehle (2000)), Jehle (2000) determined a terrestrial zone of 63m, within which 95% of summer refuges were located. In addition, following the breeding season, (Jehle and Arntzen, 2000) recorded 64% of newts within 20m of the pond edge."

5.52 The terrestrial trapping equipment used during the survey was approximately 25-30m from Pond P2 and the exercise was completed during optimal damp nocturnal conditions. Therefore, if GCN were present in Pond P2, given NE research it is likely that the exercise would have confirmed the presence of GCN.

5.53 As ADC refused access to complete full aquatic surveys in 2020 and 2021, the appellant has adopted the precautionary principle for this appeal and despite the evidence has assumed GCN are present in pond P2. Given the degrading and isolated nature of pond P2, if GCN are present the population is likely to be declining and any population is considered to be no more than a small population.

5.54 The proposals do not affect any breeding ponds, therefore new breeding habitats are not required within the overall mitigation package.

5.55 If GCN are present in P2 terrestrial habitats within following impact zones with be affected 25-50m and 50-250m but given the nature of the existing habitats in the 250 – 250m zone it is unlikely that development in this distant impact zone would affect GCNs. Whilst the following provides an assessment of the potential effects in the various impact zones, the terrestrial habitats present in the Site are largely sub-optimal for GCN due to the structure of the grassland and ongoing management. Optimal terrestrial habitats for GCN are present immediately surrounding pond P2 in the LNR. Furthermore, the terrestrial habitats do not provide connectivity to other breeding sites located to the south of the Site. Therefore, the habitats effected by the proposals will not provide a significant part of a GCN populations terrestrial habitat requirement and any loss in unlikely to affect the favourable conservation status of a population if present.

5.56 Habitats within 50m of the pond are affected by temporary loss during the construction of the balancing facility and the creation of the habitats associated with the balancing facility. In an absence of mitigation, but given the nature of the habitats, the scale of impact for temporary loss over the construction period will be medium.

5.57 The species poor semi-improved grassland is the dominant habitat type affect in the 50-250m impact zone. The majority of this habitat will be lost to the development and the impacts arising from such loss are likely to be medium. Over 250m from pond P2, arable land (arable ley) is the dominant habitat affected by development of the Site. The potential impacts from loss of this habitat at this distance are low.

5.58 Given the local distribution of ponds to the north of the Site and the optimal habitats all associated with the LNR, isolation and habitat fragmentation are factors that are unlikely to affect a population, if present.

5.59 If GCN are present the Site would be subject to a standard clearance exercise completed in accordance with a Natural England development license or DLL, if available. The trapping period for this site is likely to be 30 days depending on the agreement with Natural England licensing department. This exercise would be undertaken prior to commencement of the development during the appropriate trapping period.

5.60 Considering the terrestrial habitats within the Site are sub-optimal for GCN and the management of these habitats does not allow the development of optimal habitats, the proposed mitigation and long-term management of the habitats would provide significant enhancements for the population if present. This mitigation provided over 1ha of the site adjacent to the northern boundary would include:

- the implementation of native species scrub planting along the southern boundary of the Site, the implementation of ten hibernacula and ten log piles within the scrub planting. These habitats would significant increase potential resting place, hibernation sites and foraging areas adjacent to the LNR;
- the creation of wetland features and species rich grassland associated balancing facility. The creation of these habitats will again increase the overall foraging resource and potential resting sites for great crested newts in the core and immediate habitat zones.

5.61 Following the implementation of the measures outlined above and detailed at Appendix 3, the potential affects to GCN if presence have been assessed as **negligible – minor positive**.

5.62 In additional to the measures outlined above, the LNR is identified as one of the sites where BNG payments collected through the S106 agreement could be used for habitats creation. Through the provision of appropriate habitats in the LNR, these additional enhancements would further benefit GCN, if present in the LNR.

Reptiles

5.63 Habitats within the Site do not provide optimal habitats to support a population of common species of reptiles. Whilst some limited areas of suitable habitats are present with areas around the Site, the application of appropriate pre-commencement works will avoid harm to individual animals which maybe present within the Site. Following the application of such methods, the potential effects to reptiles have been assessed as **negligible**.

6.0 BIODIVERSITY NET GAIN (BNG)

6.1 There are no current local plan policies requiring development proposals to demonstrate a net gain to biodiversity. However, Paragraph 180 of the NPPF recommends that development should aim to provide measurable net gain to biodiversity in and around development. It does not suggest a level of net gain that developments should provide.

6.2 Once the Environment Bill gains royal assent, there is likely to be a legal requirement for most development projects to provide a minimum level of net gain for biodiversity (currently proposed as 10%) measured using the DEFRA metric. The level of net gain is yet to be confirmed.

6.3 Whilst the provision of biodiversity net gain within development sites is preferable to offsite provisions, the Environment Bill does recognise that securing a 10% net gain on all development sites will not be possible and provides a mechanism by which any shortfall can be provided offsite. Such offsite provisions can either be secured on land owned and managed by the Local Authority or alternative at the reserved matters stages a developer can proposed an offsite scheme which provide the credits necessary to secure the measurable net gain.

6.4 The DEFRA metric is a spreadsheet which calculates the baseline value of habitats within sites, the effects of development proposals without mitigation and finally the overall effects of proposals following the implementation of mitigation. The final effects of proposals are calculated on habitat types lost and provided, connectivity, area location and complexity.

6.5 Version 3 of the DEFRA metric was released on 07 July 2021. The guidance notes associated with this release confirmed that submitted assessment using Version 2 of the metric should continue to use Version 2, but all new applications should use Version 3[12]. The BIA assessment of this Site was completed using Version 2 of the metric and as such there is no requirement to update the submission.

6.6 Assessment using the DEFRA Metric (Version 2) confirms the scheme proposals will result in a net loss to biodiversity of 11.10 habitat units (a net loss of 46.87%) and a net gain of 0.55 hedgerow units (a net gain of 18.69%).

6.7 The habitats effected by the proposals comprise species poor semi-improved grassland and arable land (arable ley). Neither of these habitats are of significant ecological importance and these habitats can easily be recreated offsite. Consequently, prior to refusal of the application, the appellant and the LA agreed a payment of £134,300.00 would be paid to provide enhancements schemes at a range of local site including Brierly Park, Sutton Lawn, Healdswood Rec, Stoneyford Rec, Quarrydale Rec and tree planting in Sutton Town Centre[13]. Whilst there is no local policy basis for this payment, this payment is in accordance with the requirement of Para. 180 of the NPPF and the expected 10% net gain requirements of the Environment Bill.

7.0 CONSULTATION RESPONSES FROM STATUORY ECOLOGICAL CONSULTEES & COMMITTEE REPORT

Consultation Responses

7.1 This section provides a summary of the consultation responses from statutory consultees relating to matters of Ecology & Nature Conservation, received during determination of the planning application.

[12] http://nepubprod.appspot.com/publication/6049804846366720 (Accessed on: 25.07.21)
[13] Committee Report. App Ref. V/2020/0184. Page 33.

Natural England (NE)

7.2 During the determination period NE provided a single consultation response (CD.3.2). NE did not object to the planning application and refer the LA to NE standing advice to protected species and designated site.

Independent Ecological Review (Delta-Simons Environmental Consultants, July 2020)

7.3 Delta-Simon provided a thorough assessment of the ecological submission to the LA (CD.3.15). The following provides a summary of the substantive matters raised.

Statutory Designated Sites

7.4 This response confirmed the assessment of the potential effects to the designated site was appropriate, but the following comments were provided.

7.5 The response highlight that the site was located in the 'Impact Risk Zones' of Dovetail Wood SSSI and Teversal Pasture SSSI and the requirement to consider in development with discharges over 5m³/day. As outline at Paragraph 5.3 above, the flood risk assessment did consider the overall discharge rates and concluded that following development of the site the discharge rate is likely to be similar to existing situation. Further clarification was provided to the LA and no further queries have been raised relating to this matter.

7.6 Given the sensitivity of Brierly Forest Park LNR / LWS, the consultation response provided a detailed analysis of the potential effects of the proposals. The independent assessment concluded that increased visitor pressure could result in significant effects to the conservation status of the designated site. To avoid and minimise potential effects the response recommended the number of accesses into the LNR were reduced from 4 to 2, buffer planting should be provided between the development and the LNR.

7.7 Following this independent advice and as outlined at Paragraphs 5.3 – 5.6, the updated Illustrative Masterplan has reduced the number of accesses into the LNR, and a buffer strip which is at least 10m can be provided between the development and the northern boundary. In addition, the proposals include the provision of interpretation boards at the accesses to the LNR and the provision of information leaflet to new residents.

Habitats

7.8 The assessment confirmed the habitats effected by the proposals were of low ecological value and the majority of the habitats of high value had been retained. This follows the results of the submitted assessment and the analysis of ecological importance provided at Paragraphs 4.15 – 4.23 above. The assessment did recommend a BIA was completed to ensure the requirement of net gain within the NPPF could be demonstrated.

7.9 This net gain assessment has been submitted to the LA and the result of the assessment are outline at Section 6 above and a position has been agreed between the appellant and the LA.

Bats

7.10 The presence of the low roost potential trees is acceptable and retention and proposed mitigation is found to be acceptable.

7.11 Whilst the assessment confirms that seasonal surveys have not been undertaken, it is accepted that the main foraging area and commuting route were present on the boundaries of the Site and for the most part retained. Based on the completed survey and the mitigation proposed the level of completed survey work was considered to be acceptable and adverse effects of the proposals could be avoided. This response does apply the standard guidance provided by the Bat Conservation Trust, that the level of survey work should be proportionate to the potential effect of the proposals.

Badger

7.12 Additional information was requested regarding the status of the badger sett recorded to the south of the Site. Additional information confirming the sett was inactive was provided on 20 August 2019 (CD.2.6).

7.13 Further survey work completed to assist this appeal has confirmed the sett is currently used as an occasionally used outlier sett. Paragraphs 5.42 – 5.45 confirm the proposals are unlikely to result in significant effects to the local population and measures to avoid harm to badger are also provided.

Reptiles

7.14 The assessment confirms that the current land use does not provide suitable habitats for common species of reptiles recorded locally and the application of the method statement was appropriate. The assessment did highlight concerns relating to land use change and the potential for suitable habitat to be created. This concern only highlights a potential risk which is associated with any development site and there will be ongoing monitoring of habitats prior to the commencement of development.

Great Crested Newts

7.15 Given the record of GCN 600m to the north of the Site, the assessment considers that GCN are likely to be presence within the LNR. Further analysis of the record for this appeal has confirmed that the grid reference supplied with the records does not match the description of the site, but it does match other records provided by the NBRC. Additional ground truthing has not recorded a pond at this location. Consequently, the validity of the record is questionable.

7.16 Irrespective of the validity of the record, the response does not disagree that the habitats within the Site are sub-optimal, and the application of a method statement could be achievable, it only raises the point about habitat change and the need to monitor the situation prior to commencement of development and a planning condition to achieve this was recommended in the Committee Report.

Committee Report

7.17 The officer's recommendation to the planning committee concluded that subject to the application of appropriate conditions development of the site was acceptable.

7.18 Ecology and nature conversation is considered at Pages 30 – 33 of the report. This provides a summary of the ecological assessment provided by Delta-Simons. The report details that the application of a planning condition for the submission of an Ecological Management Strategy which includes a requirement for additional survey work, if necessary, can be applied.

7.19 The committee report also confirms the calculation for the offsite net gain payment and the sites which will be subject to enhancement. Further details of the matters are provided at Section 6.

8.0 ASSESSMENT OF THE REASON FOR REFUSAL

8.1 Despite the positive assessment of the ecological submissions by the independent review instructed by the LA and the positive recommendation for approval in the committee report the planning application was refused. No specific details for the basis of the ecological RfR are provided in the decision notice. In terms of ecology and nature conservation the single putative RfR states: '….*The loss of the greenfield and associated habitats would also result in significant and irreversible harmful impacts to biodiversity….'.*

8.2 Further detail regarding the ecological elements of this RfR is provided in the LAs Statement of Case (SoC) (CD.6.8). Paragraph 7.12 confirms there are three main elements of the ecological RfR, these are:

1 – insufficient mitigation to avoid trampling and fly tipping the Brierly Forest Local Nature Reserve (LNR/LWS);

2 – the effect of lighting on the woodland within the LNR particularly where it adjoins the fishing lake; and

3 – the presence or absence of GCN has not been determined.

8.3 The following provides an assessment of these ecological elements of the LAs case at this Appeal.

1- Insufficient mitigation to avoid trampling and fly tipping the Brierly Forest Local Nature Reserve (LNR/LWS).

8.4 During the determination period the ecological submission were subject to an independent review (CD.3.15), a summary is provided at Section 7 of this evidence.

8.5 This independent review considers the assessment of the potential effects of the proposals on statutory and non-statutory designated site was appropriate. The recommended reduction in access points to the LNR was incorporated in the design through revisions to the Illustrative Masterplan (refer to Illustrative Masterplan. P19-1014 07 Rev E, submitted in January 2021). Further details of the proposed buffer strip adjacent to the LNR are provided in this evidence at Paragraph 5.16. These details follow the recommendations of the independent review and outline measures which would be provided to discharge Condition 3 as drafted in the Committee Report.

8.6 Brierly Forest Park LNR / LWS was restored over the period of 1992 – 2000 on the former Sutton Colliery. The LNR has been designed to provide areas of for nature conservation and recreation and the significant recreational resources are outlined at Paragraph 4.7. From review of the resources within the LNR there is no significant evidence that trampling of vegetation, or the creation of desire lines is a significant issue, and it is our professional opinion that this is related to the infrastructure and interpretation provided through the LNR.

8.7 An assessment of the potential effects of increase recreational pressure is provided at Paragraphs 5.10 – 5.22. In summary, this assessment concludes:

a) The existing infrastructure recreational resource including footpath are well managed and areas of ecological interest are separated from public use by hedgerows and fences. Where footpaths are present through where footpaths are situated through area of ecological interest the mown grass paths are used and there is little evidence of trampling outside the mown footpath.

b) The provision of buffer which is at least 10m wide comprising native species planting will minimise the creation of desire lines into the LNR and would direct access through the formal access points provided into the LNR.

c) The housing has been designed to front onto the LNR. This is a standard design feature that provides natural surveillance and will minimise any potential effects of antisocial behaviour with the LNR.

d) The implementation of interpretation boards at the access to the and information leaflets to the new residents will provide further guidance to new residents on appropriate uses of the LNR, highlighting the sensitive area of the LNR and appropriate use of the LNR to minimise the potential effects of ecologically sensitive areas.

e) Brierly Forest Park is identified as one of the potential area where public open space payments can be used for the maintenance of existing resources.

8.8 In terms of fly tipping, no material evidence of fly tipping has been observed adjacent to the existing residential areas and the implementation of items (b) and (c) above provides inherent design features to minimise the potential effects of fly tipping. In addition, the Brierly Forest Park Management plan confirms there is a policy for dealing with such antisocial behaviour and if additional funding is specifically required to deal with such matters the wording of the S106 agreement allow such monies to be provided through the maintenance of public open space.

2 - The effect of lighting on the woodland within the LNR particularly where it adjoins the fishing lake

8.9 The potential effects of increased lighting are considered in respect of bats at Paragraphs 5.36 – 5.41. This assessment concluded that the main foraging / commuting routes within the Site are the boundary habitats which are retained and buffer from the proposals. Given the retention of these habitats the level of the completed survey work is proportionate to the potential affects of the proposals and therefore the level of completed survey work is in accordance too the requirement of the BCT survey guidelines. The independent review agreed this position (CD.3.15).

8.10 In terms of species use common pipistrelle is the dominant species recorded using the Site. This species is common and widespread in urban situations and has habituated to using the habitat provided in such areas. In 2019 the unidentified *Myotis* species were frequently recorded using the Site, but the level of use was significant reduced in July 2021. Habitats within the LNR provide optimal foraging for unidentified *Myotis* species and loss of the habitats within the site would not result in material effects to the species. Only low levels of activity from other species were recorded and the habitats present in the Site have not been assessed as providing a material resource for these species.

8.11 Plantation woodland is present on the northern boundary of the Site. Without additional measures this mature plantation will provide screen which will effectively prevent light spill into the LNR and the area around the fishing lake. Consequently, it can only be concluded that the potential effects of lighting relate to the southern elevation of the plantation woodland.

8.12 In this respect, the proposals can include a buffer which is at least 10m wide and the housing will offset from the boundary by approximately 17-20m. The provision of the buffer planting and the offset of the housing from the northern boundary will provide a dark corridor of movement adjacent to the northern boundary. Hence it is unlikely that the proposals will result in unacceptable light spill onto the plantation that would affect the current level of use by light sensitive species.

8.13 In addition, to the measures outlined above the mitigation proposals also include the use of low-level bollard lighting along the private drives to the north of the site and the implementation of an external light on the ground floor of the new residential houses. Again, the implementation of these features will minimise any light spill onto the plantation woodland and the potential effects of lighting on this receptor will be **negligible**.

8.14 The lighting strategy and any necessary mitigation, such as those measures outlined above can be effectively controlled by draft Condition 3, as suggested in the committee report.

3 - The presence or absence of GCN has not been determined.

8.15 Where ponds are situated on third party land Natural England's advice is the applicant or the applicant's ecologist should request assess to the ponds. The owner of these ponds is ADC and during the appropriate survey periods in 2020 and 2021 Bellway Homes requested access to the ponds (Appendix 4). On both occasions ADC refused access to the ponds. This should therefore be the end of this matter and draft Condition 9 as detailed in the committee report should be accepted.

8.16 To assist the Inspector determining this appeal FPCR have completed further assessment work, this is presented at Paragraphs 4.44 – 4.58 and 5.48 – 5.62 above. This additional work includes the completion of a 20-day terrestrial survey were GCN were not found. For the benefit of the Inspector a draft mitigation strategy for GCN has also been prepared (Appendix 3). This mitigation strategy assumes the GCN are present in Pond P2, thus taking a similar approach to that agreed in Rowland Homes v Cheshire East.

8.17 The assessment work concludes that any population of GCN potential present in the LNR is an isolated population and as the suitability of the pond is declining any population

present in the pond is likely to be small. The habitats affected by the proposals are sub-optimal and if GCN were present the habitats in the LNR provide the optimal terrestrial habitat. Therefore, loss of the habitats within the Site are unlikely to significant effect the population and a full assessment of these matters is presented at Paragraphs 5.48 – 5.62 of this evidence.

8.18 The proposals will provide over 1ha of optimal habitat for GCN along the northern boundary of the Site. Habitats provided in these areas will include species rich grassland, native species scrub planting, hibernacula and long piles and wetland features. All of these features will provide significant enhancements to terrestrial habitats for GCN if present in the offsite ponds and the extent of these proposals follow the requirement of Natural England Licensing Policy 4 as outlined at Paragraph 3.48. In addition to these measures, the creation of appropriate habitats within LNR with BNG S106 monies would also increase the suitability of local habitats for GCN if present in the LNR.

8.19 In terms of the legal duty on the Inspector, the court rulings of Morge v HCC and Rowland Homes v Cheshire East, confirm the planning permission should only be refused if it is determined that requirement of the test in the Habitat Regulations cannot be satisfied. Rowland Homes went further concluding that providing the Inspector considered that adequate mitigation the decision maker would discharge their duty under the Regulations.

8.20 For the purpose of this appeal, the appellant has been refused access to the offsite ponds but a through assessment of the potential effects to GCN is provided and a detailed mitigation strategy that over mitigates for any potential has been presented to the appeal. Consequently, given the submitted assessment there is no logical reason preventing the Inspector from determining the appeal positively.

9.0 THIRD-PARTY SUBMISSIONS

9.1 Over the determination period and since lodging the appeal, additional third-party comments relating to ecology and nature conservation have been received. These are summarised in the Council's Committee Report (p24). The main matters summarised in the committee report and in the consultation responses raised by interested parties are:

1 – The proposals will affect the ability of the LNR to sustain wildlife;

2 – Affects to bats, deer, tawny owl, barn owl, foxes, newts and grass snake from loss of the habitats in the application site.

3 – The site provides an essential green corridor adjacent to the LNR and there is inadequate buffering between the LNR and the development proposals;

4- Financial contribution for improvement to Brierly Park, Riley Recreational Ground and Huthwaite Welfare Park will not make up for the loss of green belt land;

5 – The destruction wildflower meadows;

6 – Increased recreational pressure in the LNR;

7 - The presence of Japanese Knotweed is a significant constraint to development.

1 - The proposals will affect the ability of the LNR to sustain wildlife.

9.2 Habitats present in the appeal site are not representative of the mosaic of species rich habitats present in the LNR. From an ecological perspective, habitats in the appeal site provide some limited habitats which could be used in a limited way by a number of the species using the LNR but given the habitat management the Site is unlikely to provide a significant resource which is required by species using the LNR. This is confirmed by the completed survey work.

9.3 The existing boundary habitats are likely to be the primary features used by a number of the bird and bat species recorded in the LNR. The proposals have retained these features and measures to avoid and minimise the potential effects of the proposals are outlined in Section 5 of this evidence. Following the implementation of these measures it is our professional opinion that the potential effect of the proposals can be avoided.

2 - Affects to bat, deer, tawny owl, barn owl, foxes, newts and grass snake from loss of the habitats in the application site.

9.4 The intensive management of the Site reduces the potential importance of the Site for these species. The main foraging areas and resting sites for these species will be the mosaic of habitats provided in the 78.8ha LNR. These habitats are not affected by the proposals.

9.5 This evidence outlines mitigation strategies for bats and GCN (Section 5: Paragraphs 5.36 – 5.41 and 5.48 – 5.62) and following the implementation of the mitigation proposed, the proposals will not affect the favourable conservation status of either of these species.

9.6 Relatively homogenous habitats are present across the Site. These conditions do not provide the significant areas of the various microclimates and basking opportunities a population of grass snake would require. The habitats within the LNR provide optimal habitats for grass snake and given the location of these habitat adjacent to the Site, it is likely that occasion grass snake may commute through the Site. Such occasional by grass snake, a species which has a habitat range of several kilometres, does not indicate the habitats provide a significant resource for the population or that the loss of the habitats would affect the species at a population level. The proposals provide proportionate mitigation for the loss of sub-optimal habitats within the Site on land within and surrounding the balancing facility and the application of direction strimming would ensure compliance to the requirements of the Wildlife & Country Act 1981 (*as amended*).

9.7 In terms of tawny owl, barn owl and foxes habitats within the Site will only provide a minor proportion of the overall habitat requirement for these species. The main habitats for of these species will be within the LNR and loss of the Site is unlikely to affect the conservation status of any of these species.

3 - The site provides an essential green corridor adjacent to the LNR and there is inadequate buffering between the LNR and the development proposals.

9.8 Habitats within the Site do not provide a material resource which is required to ensure the LNR functions at a favourable conservation status. None of the habitats present in the LNR are present in the appeal Site and the species-specific survey work has not confirmed material use of the Site.

9.9 The proposals include a buffer adjacent to the boundary of the LNR. This buffer will be a minimum of 10m wide and in some areas along the southern boundary the buffer will be wider. Given the width of the buffer this will act as a linear commuting route outside the boundary of the LNR on completion of the development.

9.10 The independent review confirmed the implementation of measures outline at Paragraphs 5.10 – 5.22 would serve to minimise any potential effects and through the implementation of such measures it is unlikely that the proposals will affect the conservation status of the LNR.

4 - Financial contribution for improvement to Brierly Park, Riley Recreational Ground and Huthwaite Welfare Park will not make up for the loss of green belt land.

9.11 As discussed in Section 6, the principle of biodiversity net gain relies not only on the principle of habitat provision within development sites but on land surrounding development sites. The principle of offsite provision is to provide larger areas of higher quality habitats in the wider environment. These larger areas will be of greater benefit to habitats and species and are intended to increase habitat connectivity through the county rather than the piecemeal provision of smaller areas of mitigation on individual development sites. These requirements follow the principles of the Lawton Review (Lawton *et al* 2010).

5 - The destruction wildflower meadows.

9.12 The consultation exercise reported areas of species rich meadows within the LNR and in LWS adjacent to the Site. This consultation exercise did not confirm the presence of wildflower meadows within the Site and the presence of priority habitat within the Site is not shown on MAGIC.

9.13 The results of the surveys did not identify wildflower meadows within the Site only species poor semi-improved grassland. The independent review of the assessment did not disagree with the findings or the value which was attributed to the grassland. Whilst the eastern area of the site maybe cut for hay or silage on an annual basis, the species present do not represent those found in wildflower meadows.

6 - Increased recreational pressure in the LNR.

9.14 The LNR provides a well-established recreational resource which is designed and managed for the purpose of nature conservation and recreation. The proposals do provide a range of measures which will serve to minimise and avoid the effects of increased recreational pressure as outlined at Paragraphs 5.10 - 5.22. These measures include the recommendations arising in the independent review. Following the implementation of such measures significant negative effects arising from increased recreational pressure are not expected.

7 - The presence of Japanese Knotweed is a significant constraint to development.

9.15 A single stand of Japanese Knotweed is known on the western boundary of the Site. This location of this stand does not represent a material constraint to development of the Site but prior to commencing works that are likely to result in movement or spreading the stand appropriate treatment will be applied. The details of the treatment will be provided by a

specialist contractor and could involve spraying or direct removal depending on the contractor preferred methods.

10.0 EXECUTIVE SUMMARY & CONCLUSIONS

10.1 The Site has been the subject of detailed ecological survey work over an extended survey period. Detailed ecological assessments have been submitted to and reviewed by ADC over the determination period. The completed ecological surveys have identified no significant ecological constraints to the proposed development and the independent review of the ecological submission concluded the proposals will not result in significant harm to ecological or nature conservation.

10.2 The proposals will not directly affect the conservation value of a SSSI. Consequently, the proposals are in accordance with the requirements of Policy EV4.

10.3 Whilst the proposals are likely to increase the level of use in Brierly Forest Park LNR, the LNR is designed to provide a resource for recreation and nature conservation with the intension of making nature conservation assessable to all. The current measures implemented across the LNR are effective in reducing potential effects to areas of nature conservation interest and there is little evidence of trampling outside the footpaths and mown grass verges edging footpaths. Given that this resource is advertised and encourages use the proposals are unlikely to materially effects the resources present across the 80ha LNR.

10.4 To minimise potential adverse effects the proposals have reduce the number of access point into the LNR to two, following guidance provided in the independent review. Appropriate control measures can be applied at the accesses which will minimise the potential for undesired vehicle access to the LNR. The Site has been designed to front onto the LNR and a 10m buffer has been provided between the proposed housing and the LNR. Further interpretation boards will be provided at the access to the LNR and all new residents will be provided with information leaflets confirming the sensitive nature of area of the LNR and appropriate use. If required, the S106 open space provision allow for additional funds to be provided to the LNR to manage increased recreational pressure. Following the implementation of these measures and considering the significant infrastructure within the LNR, the proposals have provided all relevant and necessary protective features to minimise potential effects to the conservation value of the LNR. Therefore, the proposals are in accordance with the requirements of Paragraph 174 of the NPPF and Policy ENV 6

10.5 Habitats within the Site are predominately of low ecological value which are common and widespread in the local environment. Furthermore, none of the habitats present in the LNR are present within the Site. Given the nature of the habitats present, loss of the habitats within the Site are unlikely to result material effects to biodiversity locally or adversely affect the local environment. Mitigation for loss of habitats within the Site has been provided and situated adjacent to the LNR. The provision of mitigation adjacent to the LNR is logical as it increases connectivity along the boundary of the LNR.

10.6 Whilst the mitigation within the Site does not provide a ‘quantifiable net gain to biodiversity’, the habitat effected by the proposals are of low ecological importance. Consequently, when this loss is considered in the overall planning balance as outlined by Mr Lomas, the offsite

compensation comprising a financial contribution as agreed by the Appellant and ADC is acceptable. Given such measures are expected in the forthcoming Environment Bill the proposals in in accordance with the requirements of Paragraphs 174 and 180 of the NPPF and policy ST1 (Part B).

10.7 The proposals do not require removal of any significant trees and as such the proposals also accord with the requirements of Policy EV8.

10.8 No statutory ecological constraints to the development have been identified from the presence of a bat roost. The completed survey work did identify bats using the Site for the purpose of foraging and commuting but the assemblage was dominated by common and widespread species which are unlikely to be affected by the proposals. The GI retained the primary foraging and commuting habitats and provide further buffer planting adjacent to the LNR and the creation of wetland features in the balancing facility. These measures provide proportionate mitigation for the habitat which are lost to development of the Site. In addition to the implementation of a low-level lighting scheme will ensure a foraging resource is retained within the Site. From this it has been concluded that the proposed would comply with the requirements of the Habitat Regulations and negligible effects to the local bat population are expected.

10.9 Habitats within the Site are unlikely to provide a significant resource for the local bird population. The proposals have sought to maximise retention of the main breeding bird habitats which include the hedgerows and scrub. The mitigation proposed including the new native species planting, grassland and wetland in the balancing facility provides proportionate mitigation for the habitats that are loss to the development. Following the implementation of these habitats no material effects to the local breeding bird population are expected.

10.10 Development of the Site will require the closure of an occasional use outlier badger sett. Loss of this sett will not result in material effects to the local badger population and given the extensive areas optimal foraging land adjacent to the Site, the development will not materially affect the availability of badger foraging habitats.

10.11 As access to ponds in the LNR was refused by ADC, a terrestrial survey was completed within the Site and as such the Appellant has followed the requirements of NE standing advice and other guidance.

10.12 Given the circumstances, the Appellant has adopted the precautionary principle and based on current evidence has assume a small declining population of GCN could be present in pond P2. The completed assessment concludes on the basis that significant areas of terrestrial habitat are present in the LNR and the limited suitability of habitats within the Site, in an absence of mitigation the proposals are unlikely to affect the favourable conservation status of the population.

10.13 The Site can delivery over 1ha of optimal terrestrial habitats which will be managed to increase potential resting sites and foraging areas of GCN and it is accepted that a NE license would be obtained, if required. The provision of the proposed mitigation will provide material enhancements to the local population, if present, and therefore the proposals follow the requirements of NE's licensing Policy 4. Given the proposed mitigation the inspector can determine this appeal positively as the proposals follow the requirement of

Morge v HCC ad Cheshire East v Rowland Homes and following the implementation of mitigation the requirements of the Habitat Regulations will be satisfied.

10.14 In additional to the suitable habitat that can be created within the Site, the BNG S106 monies provide an opportunity to provide further offsite enhancements for GCN in the LNR. Whilst, the proposals are not reliant on such additional enhancements, the creation of such habitats would provide additional betterment for GCN if present.

10.15 The habitats present across the Site do not provide optimal habitat for common species of reptiles. The proposals do provide enhancement for reptiles in the wetland of the balancing facility and areas of species rich grassland and through the application of directional strimming intentional killing of reptiles will be avoided. Through the application of these measures the proposals comply with the requirements of the Wildlife & Countryside Act 1981 (*as amended*).

10.16 In summary, the appeal proposals will not result in the loss or deterioration of irreplaceable habitats as defined in the NPPF, the proposals have provided protection for the LNR and the presence of protected species has been appropriate addressed by the proposals. Net gains to biodiversity would be delivered by the development. Therefore, from the submitted information and the evidence presented here, I conclude that the development proposals are in accordance with National and Local planning policies, and I respectfully request that this appeal is allowed.

FIGURES

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Key

- Site Boundary
- 2km Buffer
- 1km Buffer
- Country Park
- Local Nature Reserve (LNR)
- Local Wildlife Site (LWS)
- Site of Special Scientific Interest (SSSI)

LOCAL WILDLIFE SITES KEY:

1. Brierly Forest Marsh

2. Brierly Park Marshy Grassland (a.k.a Huthwaite Park Marshy Grassland

3. Sutton-in-Ashfield District Grassland (a.k.a Grassland, Sutton-in-Ashfield)

4. Stubbinghill Farm Meadow

5. Stanton Hill Colliery Dismantled Railway Line

6. Spring Wood, Stanton Hill

7. Stanton Hill Colliery Spoil

8. Stanton Hill Relect Grassland

9. Herod's Hill Grassland

10. Crossley Avenue Grassland

client
Bellway Homes (East Midlands) Ltd.

project
Land off Ashland Road, Sutton-in-Ashfield, Nottinghamshire

drawing title
CONSULTATION PLAN - DESIGNATED SITES

scale 1:15000 | drawn BRJ / WVR | issue 2/3/2020

drawing / figure number **Figure 1** | rev **7919-E-RevA**

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Figure 2: Typical View of Existing Use and Features of Brierly Forest Part LNR

Plate 1 – View of controlled assess into the LNR

Plate 2 – View of controlled assess into the LNR

Plate 3 – View of controlled assess into the LNR

Plate 4 – View of maintained path through Sutton-in-Ashfield Grassland LWS

Plate 5 – View of Brierly Park Marshy Grassland LWS showing no disturbance

Plate 6 – View of establish mown grassland path through the wildflower meadows

Plate 7 -Typical well-maintained footpath with mown verges

Plate 8 -Typical well-maintained footpath with mown verges

Plate 9 -Typical well-maintained footpath with mown verges in an area of nature conservation

Key

- Site Boundary
- Scrub - scattered
- Target note
- coniferous trees
- Broadleaved tree
- Standing water
- Running water
- Intact hedge - species-poor
- Fence
- A — Cultivated/disturbed land - arable
- Other tall herb and fern - ruderal
- Poor semi-improved grassland
- Scrub - dense/continuous

TARGET NOTES

TN1 - Clump of Japanese knotweed within vegetation on western site boundary.

TN2 - Localised additional herbaceous species present more typical of wetter grassland, likely in association with wet ditches and surroudnign damp patches.

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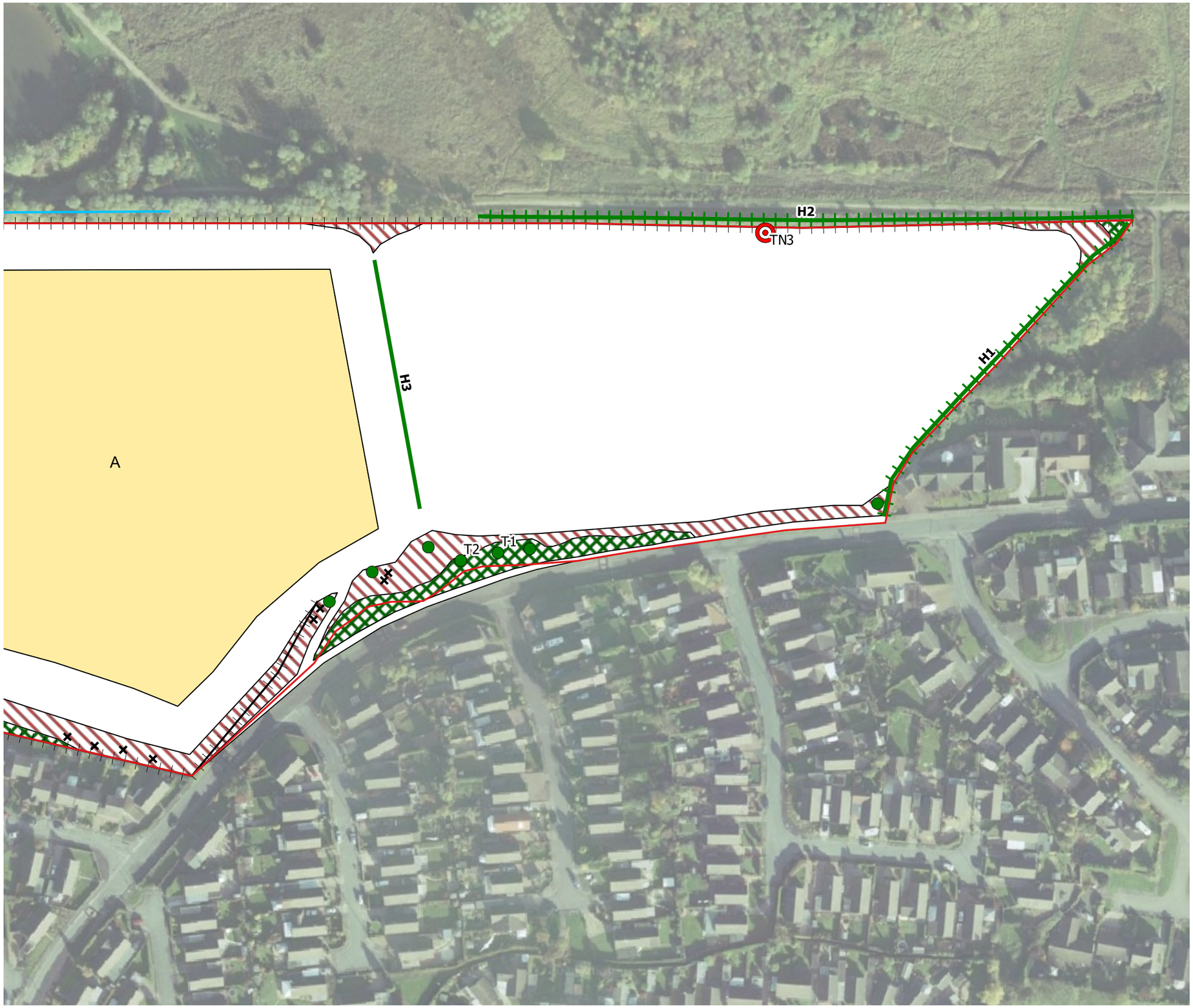
client
Bellway Homes (East Midlands) Ltd

project
Land off Asland Road,
Sutton-in-Ashfield, Nottinghamshire

drawing title
PHASE 1 HABITAT PLAN -
WESTERN HALF OF SITE

scale 1:1500 | drawn WVR / RG | issue 2/3/2020

drawing / figure number **Figure 3** | rev **7919-E-RevA**



Key

- Site Boundary
- Scrub - scattered
- Target note
- Broadleaved tree
- Standing water
- Intact hedge - species-poor
- Hedge with trees - species-poor
- Fence
- A — Cultivated/disturbed land - arable
- Other tall herb and fern - ruderal
- Poor semi-improved grassland
- Scrub - dense/continuous

TARGET NOTES

TN3 - Localised additional herbaceous species present likely due to natural dispersal via connectivity between this area and the grassland to the north which is managed for species richness.

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client
Bellway Homes (East Midlands) Ltd

project
Land off Asland Road,
Sutton-in-Ashfield, Nottinghamshire

drawing title
PHASE 1 HABITAT PLAN -
EASTERN HALF OF SITE

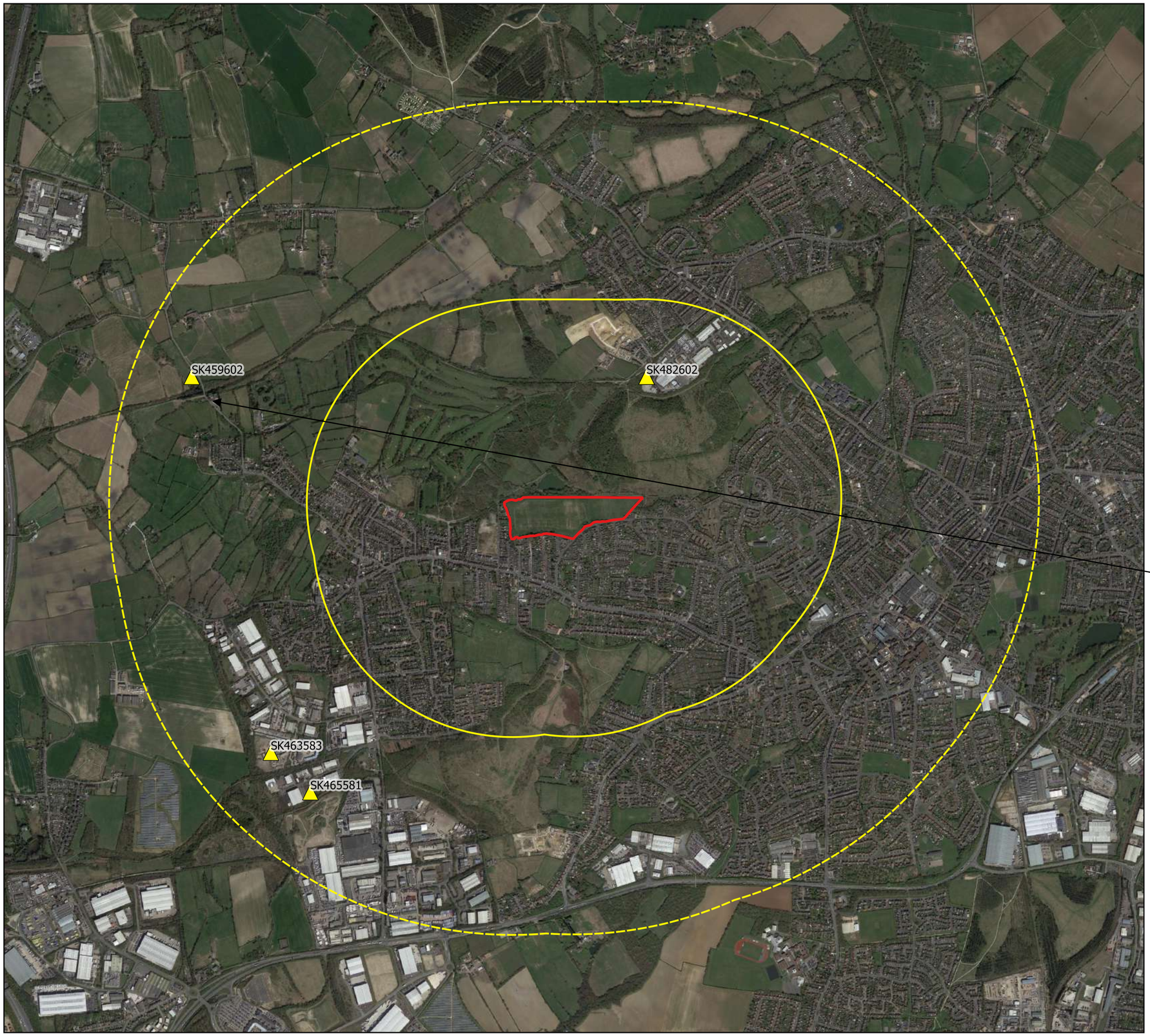
scale 1:1500 | drawn WVR / RG | issue 2/3/2020

drawing / figure number **Figure 4** | rev **7919-E-RevA**

Key:

- Site Boundary
- 1km buffer
- 2km buffer
- Location of GCN Records (Grid Reference)

Provided Grid Reference	Date of Record	Provided Site Description
SK459602	03/07/2009	Huthwaite
SK459602	03/07/2009	Huthwaite
SK459602	03/07/2009	three ponds by five pits trail, Woodend
SK463583	05/07/2001	Huthwaite
SK463583	05/07/2001	Huthwaite
SK463583	05/07/2001	County Estate Huthwaite
SK465581	14 and 15/06/2012	Huthwaite
SK465581	14 and 15/06/2012	Huthwaite
SK482602	Spring 2009	Huthwaite Nature Trail near Woodend Inn
SK482602	Spring 2009	Huthwaite Nature Trail near Woodend Inn
SK482602	Spring 2009	Huthwaite Nature Trail near Woodend Inn
SK482602	Spring 2009	Huthwaite Nature Trail near Woodend Inn



Location of the Woodend Inn

0 500 1000 m

client
Bellway Homes

project
Ashland Road,
Sutton-in-Ashfield

drawing title
SITE LOCATION & GCN CONSULTATON RESULTS PLAN

scale @ A3
1:20000

drawn
MPG/KDG

issue
23/8/2021

drawing / figure number
Figure 5

rev
-

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