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20th August 2020

Dear Robbie,

Land off Ashland Road, Sutton-in-Ashfield – Response relating to Outline Application V/2020/0184

We write further to the comments received from Delta Simons regarding the Ecological Appraisal (FPCR, February 2020) submitted in support of the above planning application. The following is our clarification of the main points as detailed in the report dated 10th July 2020. It should be noted the masterplan has been amended in line with the Delta-Simons comments, and as such the comments below are based on the updated masterplan for the site.

Designated Sites

It is noted that the application site falls within the outer Impact Risk Zones (IRZ) for Dovetail Wood SSSI and Teversal Pastures SSSI in which Natural England (NE) consider any discharge of water or liquid waste of more than 5 m³/day to ground (i.e. to seep away), or to surface water, such as to a beck or stream, a potential impact risk on these designated sites.

New sustainable drainage infrastructure will be incorporated as part of the development scheme and the discharge from the site will be limited to current Qbar greenfield rates as recommended by the NPPF and guidance. Currently, the discharge from the site could vary between the 1yr rate of 38.9l/s up to the 100yr flow of 120.5l/s based on greenfield runoff calculations for the site, depending on rainfall intensity, as detailed in the enclosed ICP SUDS Mean Annual Flood Assessment. The proposed 46.9l/s is based on the Qbar estimate for the site.

Although the drainage will continue to outfall to the adjacent stream, the discharge rates will not exceed 46.9l/s as the balancing facility and two ponds within Brierley Park LNR/LWS will be used to attenuate flows being passed forward, which will be reduced by approximately 65% during the 100 year storm event to provide downstream betterment and help to minimise the risk of adversely impacting upon any designated sites and wetland habitats downstream. The attenuation facility and overall SuDS with vegetated swales will filter pollutants from surface water prior to discharging to watercourses to reduce any potential impacts from road run off etc.

Overall, the hydrological regime will not be affected due to the provision of a formal surface water drainage system and SuDS feature which have been designed to ensure sufficient controls are in

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place to regulate the flows into the SSSIs and other wetland habitats of value and to ensure no adverse effects as a result of the proposed development.

ADC Officer Comment in relation to surface water contaminants

The quality of the surface water runoff will change, through a reduction in agricultural runoff and increase in drainage from roads and driveways which could, without mitigation, potentially contain contaminants from vehicles such as hydro-carbons, oil and cleaning agents and gardening pesticides and fertiliser. However, the sustainable drainage strategy will include suitable pollution control measures in line with the SuDS Manual¹ treatment train requirements to ensure that any runoff entering the adjacent ditch and stream will have been subject to an appropriate level of treatment and therefore ensuring no detrimental impact on the water quality in the catchment area.

This will include pollution controls provided through retention and bio-retention of runoff within the balancing facility. Trapped gullies and catch pits will also be provided within the piped drainage system in addition to any areas of permeable paving which may also be provided on site. The balancing facility will filter out sediment before it is discharged into the ditch at the specified greenfield rate and any pollutants will have dropped out. On this basis, it is considered that the proposed surface water management system provides an appropriate level of treatment for a development of this scale and nature and surface water quality may improve in comparison to the current agricultural surface water runoff.

Biodiversity Offsetting Assessment

Further to the request, we can confirm that we have assessed the current development proposals using the DEFRA Metric V2.0 (updated December 2019) and the Illustrative Masterplan (Pegasus drawing ref: P19-1014 007 Rev B). This assessment has been completed to determine a quantifiable assessment of the 'Biodiversity Impact Assessment' (BIA). To assist, understand and assess the proposals, the following provides a summary of the background relevant when considering the values attributed to this site from the completed BIA.

Background

We understand that the Local Plan is 'out of date' and that a new Local Plan for the District is at a very early stage of preparation, albeit the site was a proposed allocation in the now withdrawn emerging plan. Within the Ashfield Publication Local Plan² we note that there are no planning policies which require development proposals to demonstrate a 'net gain' to biodiversity. As such, we would expect ecological considerations to defer to national policy in this instance.

Paragraph 174 of the NPPF (Feb, 2019) confirms the aspiration that development ***should*** '*... identify and pursue opportunities for securing measurable net gains.*' but no levels of potential net gain are provided. Whilst this guidance does indicate securing net gain should be one of the drivers when securing the overall housing requirement, the document also requires local authorities to demonstrate at least a five-year land supply. Thus, when making planning decisions the framework should be read as a whole, but again further consideration of planning matters is provided by DLP Planning.

In terms of this application and the Local Authorities request for a 'BIA', Paragraph 175 of the NPPF is noteworthy. Here the framework provides logical principles which Authorities should apply in the decision-making process. Otherwise known as the 'mitigation hierarchy' the framework confirms:

' 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.'

These principles should be considered in the overall balance which considered the potential harm arising from proposals and the requirement of housing delivery.

¹ The SuDS Manual C753 (CIRIA, version 5 2015):

https://www.ciria.org/resources/free_publications/suds_manual_c753.aspx

² Ashfield District Council (2016) *Ashfield Publication Local Plan September 2016* [Online]. Available from:

https://democracy.ashfield-dc.gov.uk/documents/s10563/ashfield_publication_local_plan_2016.pdf [Accessed 19/08/20]

The Draft Environment Bill is not currently mandated and is unlikely to be mandated until autumn 2020 at the earliest. The Bill is likely to set a mandatory net gain requirement of around 10%. This 'net gain' requirement can be provided on site or where necessary off site. Where offsite compensation is required the Bill requires applicants to demonstrate the requirement of the mitigation hierarchy have been followed. Given this significant shift central government are likely to give Local Authorities two years in which to implement relevant policies to ensure this requirement is met either on site or where there is no alternative offsite.

Currently, the quantifiable net gain recommended at 174 of the NPPF and the 10% net gain suggest in the Draft Environment Bill is assessed using one a several standard metrics. These metrics only consider the habitats present within a site and the end values are adjusted to include risk factors and temporal multipliers. Given these factors and the fact the Local Authority have no policies for net gain (as recommended in the Draft Environment Bill) and the use of such metrics is not currently mandated locally or nationally, BIA assessments need to be considered in light of Paragraph 175 of the NPPF and the planning guidance provided in the NPPF needs to be considered as a whole.

Site Assessment

The development proposals do not result in direct effects to any statutory or non-statutory designated site for nature conservation. The dominant habitats situated across the proposed development area are arable land and poor semi-improved grassland. These habitats are common / widespread locally and therefore are of no more than local level ecological importance. No evidence of significant use by protected species was recorded. Therefore, in terms of paragraph 175 of the NPPF, loss of the site to provide the proposed 300 units would not result in significant harm to biodiversity.

Notwithstanding the housing allocation, assessment of the current 300 dwelling proposals using the DEFRA matrix confirms:

- The habitats units currently present within the site are: 23.69 biodiversity units;
- The linear habitat units currently present within the site are: 2.94 linear units.

With the implementation of the mitigation currently shown within the layout, the DEFRA metric confirms overall:

- The site and the landscape proposals would provide 11.49 biodiversity units;
- The site and the landscape proposals would provide 0.67 linear biodiversity units.

Consequently, overall and in terms of habitats only the results of the BIA have confirmed the proposals would result in a net loss of -11.10 biodiversity units and a net gain of 0.55 linear units.

Policy Assessment.

As outlined above we understand currently there are no local policies which require proposals to demonstrate a 'net gain' to biodiversity. Therefore, the only planning policy requiring the developer to demonstrate a 'net gain' to biodiversity are those within the NPPF and as the Environment Bill is not currently mandated there is no legal requirement either to demonstrate a 'net gain' or the higher bar of a 10% 'net gain'.

It is our understanding that there is a shortfall in the Local Authority housing land supply matters. Therefore, facilitating allocated development on sites which will not result in significant harm is important and this should be considered through the determination of this application.

Notwithstanding the result of the BIA assessment, the completed ecological survey work has demonstrated that the site is of low ecological importance and significant harm to biodiversity would not be expected as a result of the development. Therefore, as the site is required to meet the local housing need, if the principles of 'net gain' are applied, the mitigation hierarchy recommended at Para. 175 of the NFFP equally applies.

The following assessment follows the logical principle of the suggested hierarchy in the NPPF and demonstrate how the proposals conform with this national guidance.

To facilitate a residential development on the site to meet the housing needs and other planning requirements, the application has amended the layout to reduce the access points into Brierley

Forest Park LNR/LWS and retain the integrity of the woodland corridor. These proposals have also sought to maximise mitigation within the proposals through the creation of wildflower grassland around the balancing facility and scrub planting along the northern boundary. Therefore, in terms of policy the proposals have sought to avoid harm and provide mitigation within the scheme.

Without further reductions in housing numbers, which wouldn't assist the Local Authorities shortfall, a net gain for biodiversity cannot be delivered within the proposals. Consequently, the logical next step to accommodate the development proposals is compensation.

Given the housing requirement and the layout, the only compensation measures applicable is offsite compensation. The provision of offsite compensation for biodiversity is widely acceptable in regions where the 'net gain' requirement is embedded in policy and will be permitted once the Environment Bill is mandated.

If such measures are adopted for these proposals, it is logical that the proposals can provide a biodiversity contribution to the Local Authority through the S106 agreement and support any local ecological physical or management enhancement schemes / projects requiring funding at the current time. As the Council will be aware, there is no set monetary value for biodiversity units, thus any such proportionate contribution should be agreed between the Local Authority and the developer.

In conclusion, there is a housing need locally and development of this site would not result in significant harm to biodiversity. Although there is no local policy requirement to demonstrate net gain for biodiversity, it is understood that the Local Authority has requested a BIA assessment be undertaken to establish whether 'net gain' at the site can be achieved as part of the proposals. As detailed, even within the mitigation proposed there, net gain cannot be achieved on site and so a contribution may be necessary in this instance if the Local Authorities considers the test laid out in Rule 122 of the Community Infrastructure Regulations 2010 are met.

It is also relevant to note that additional biodiversity enhancements are proposed within the scheme, such as the provision of bat and bird boxes, which are not acknowledged within the Defra metric but which are of net biodiversity benefit for local wildlife in line with the aims of the NPPF. Although not part of the Defra metric these should be recognised for the benefits they will provide to the overall biodiversity at the site.

If a contribution is considered necessary, then the level of the contribution should be agreed between the Local Authority and the developer who has indicated a commitment to paying a proportionate and reasonable contribution for biodiversity. This commitment will ensure compliance with the requirements to biodiversity impact compensation as recommended in the NPPF and it is our view that this should be given priority weight in the overall planning balance when determining this application.

Badger

During the site survey in July 2019 an active badger sett was recorded along the southern boundary. The sett comprised five holes, the majority of which displayed signs of recent excavation with well-worn tracks leading into the surrounding vegetation, though no additional evidence such as guard hairs or latrines were recorded in association with the sett.

An updated badger survey was undertaken on 27th July 2020 where a thorough search of all areas of the site and accessible areas within 30m of the site boundary was completed. Habitats within 15m of the northern boundary included a number of features parallel to the northern boundary of the site comprising the adjacent shallow ditch, a narrow band of trees which narrowed to a hedgerow in the east of the site, a 2-3m wide pea gravel public path, then a more substantial ditch. No evidence of badgers was noted within this area.

To the north of the public path and ditch lies the Brierley Forest Park LNR/LWS which was searched up to 30m from the site boundary. Although several push-unders and mammal paths were identified no supporting evidence of badgers was recorded (caught guard hairs, setts, latrines or prints). The western and southern boundaries of the site comprised residential development which could not be accessed. Along the southern boundary adjacent to a private garden one well-worn pathway was observed however no supporting evidence of badger was found in this area and the pathway may be attributable to domestic pets. To the east of the site there was a substantial area of dense scrub between the site and the public footpath, although this area could not be fully searched no mammal trails were noted going into this area either from the site or from the public footpath.

Of the sett found in 2019 along the southern boundary, only two holes were identified at SK 47898 59455 and were considered to be formed by either fox or badger, but it could not be confirmed which at the time of the survey. Both of the holes were clearly disused with one comprising a collapsed tunnel and the other partially blocked by litter and surrounded by undisturbed vegetation.

Multiple mammal trails were recorded across the site, many of which were also used by dog walkers passing from the residential area to the south either following a path around the eastern field compartment, or crossing directly across the site to the public footpath which runs parallel to the northern site boundary.

A single recent latrine was recorded in the north of the site adjacent to the boundary hedgerow, at this point a pathway was also present, with a corresponding push-under into the LWS/LNR located on the opposite side of the footpath from this point.

The updated survey investigated this further, to determine whether the sett was an active main sett as the current layout would not provide sufficient space and connectivity to suitable foraging habitat to retain a viable main sett at this location.

The updated survey demonstrated however that the previously identified potential main sett was inactive and as such, its closure is not deemed likely to have a significant effect on the local badger clan. Furthermore, its previous use was not necessarily exclusive to use by badger. No additional active setts were identified within the site, or considered likely to be present within 30m of the development site boundary and direct evidence of badger activity was limited to a single recent latrine on the northern boundary. Based upon the findings of the survey it is considered that badgers are likely to be present within the Brierley Forest Park LNR/LWS to the north of the site and may utilise the site as a foraging resource, although the site provides a much lower quality foraging resource comparative to the adjacent LNR/LWS which is supported by the lack of foraging evidence.

Given the above and the mobile nature of badgers and sett use, a pre-commencement check of the disused mammal holes in the south of the site is therefore recommended.

Reptile and Great Crested Newts (GCN)

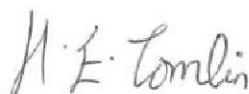
Small areas of suitable habitat are present at the peripheries of the site to support GCN and native reptile species. It is therefore recommended that works are carried out following the precautionary methods as outlined within the Ecological Appraisal Report in order to minimise the risk of harm to these species.

Following concerns about the cessation of habitat management within the site and the increasing suitability of terrestrial habitat and dispersal of reptiles and GCN, we can confirm that within the intervening period between the sale of the land and commencement of construction the site that agricultural practices will continue and the site will remain arable and cut pasture.

In the event that management could not be continued across remaining areas of the site between each phase, further habitat and protected species surveys will be carried out at the appropriate time of year to assess any risk to these species and further mitigation required.

If you require any further information, please do not hesitate to contact me at the office.

Yours sincerely



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