Land East of Aylestone Hill, Hereford

Proof of Evidence of
Tom Wigglesworth
BSc (Hons), MSc, MCIEEM

In respect of:
Ecological Matters

On behalf of:
Bovis Homes Ltd

Volume I:
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THE ENVIRONMENTAL DIMENSION PARTNERSHIP

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Section 1
Introduction

Qualifications and Experience

1.1 My name is Tom Wigglesworth. I am an Associate and professional ecologist at The Environmental Dimension Partnership Ltd (EDP). EDP is an independent multi-disciplinary environmental consultancy practice which specialises in the assessment of proposed land use changes.

1.2 I hold a Bachelor of Science degree in Environmental Biology from the University of Manchester and a Masters (MSc) in Conservation from University College London.

1.3 I lead EDP's 20-strong ecology team. My professional experience in ecology and nature conservation spans a period of over fourteen years. This ranges from advising land managers on habitat management for protected and/or priority species and co-ordination of national monitoring programmes, through to preparing and implementing ecological mitigation strategies for habitats and species for a range of development types.

Scope of Evidence

1.4 EDP was instructed by the appellant during 2014 to provide environmental consultancy and masterplanning services in preparation of the outline planning application for the appeal proposals. Specific ecological inputs were not provided by EDP at that stage; instead these were provided by Ecological Services. Following the refusal of the application and the appellant's decision to appeal, and more specifically following the addition of a Rule 6 party ecology case to the appeal, EDP was instructed to i) review ecological matters; and ii) prepare ecology evidence.

1.5 It is clear from the consultation correspondence and Case Officer's report to committee that the key ecological stakeholders, namely the Council's Ecologist, Natural England and the Environment Agency, did not object to the appeal proposals subject to the delivery of key mitigation measures through planning conditions. Unsurprisingly,

therefore, the Council's decision notice confirming refusal of planning permission did not specifically cite harm to ecological interests or biodiversity as a reason for refusal.

1.6 Despite it being quite apparent that all ecological matters were resolved in principle to the satisfaction of relevant professionals, the planning committee of the Council was inconsistent in its conclusions. The wording of its first reason for refusal is couched in terms of landscape sensitivity. However, the Council implies harm to biodiversity by referring to the appeal site's proximity to Lugg and Hampton Meadows Site of Special Scientific Interest (SSSI) and to the River Lugg (an SSSI and Special Area of Conservation (SAC)), which are ecological rather than landscape designations. Furthermore, within both the decision notice and the Statement of Common Ground (SoCG, CD AD 2), the Council cites Policy S7 of the UDP (CD UPD 2), and paragraphs 109 and 118 of the NPPF (which are wholly or in part ecological policies) as being contravened by the appeal proposals. Conversely, the absence of ecological impacts is included among the 'Agreed Matters' within section 6 of the same SoCG.

1.7 In addition to the inconsistent references to ecological harm made by the Council, a local residents group named 'Aylestone and Lugg Meadows Association' (ALMA), were granted Rule 6 status at the appeal, has submitted a Statement of Case (SoC, CD AD 4) in which a number of claims are made with respect to likely harm to ecological interests. These claims primarily relate to the impact of the appeal proposals on Lugg and Hampton Meadows SSSI, but also criticise the process by which ecological impacts have been assessed and mitigated more broadly.

1.8 My evidence has been prepared both to address the inconsistencies in the Council's position on ecological matters, and to the address the assertions regarding ecological impact made by ALMA, such that the inspector should be left in no doubt that there are no grounds to dismiss the appeal based on ecological matters. In order to do so, I have structured my proof evidence as follows:

- In **Section 2**, I provide an overview of the ecological baseline of the site based on a review of the work undertaken by Ecological Services, my own site visit on 28 January 2015, an update desk study in February 2015 and an initial great crested newt survey of an off-site pond in March 2015;

- In **Section 3**, I consider the potential development impacts and set out the ecology strategy for the proposed development, which has been endorsed in principal by

the Council's Ecologist and Natural England and which is capable of being secured through planning conditions in the event that the appeal is allowed;

- In **Section 4**, in light of my considerations at Sections 2 and 3 of my evidence, I demonstrate how, contrary to the Council's implied position and ALMA's direct assertions, the appeal proposals conform with the relevant adopted national and local planning policy; and

- In **Section 5**, I summarise and conclude.

1.9 The evidence that I have prepared for this appeal, as set out in my proof of evidence, together with supporting appendices, is true and has been prepared and given in accordance with the Code of Professional Conduct of the Chartered Institute of Ecology and Environmental Management (CIEEM) of which I am a full Member. I confirm that the opinions expressed in my evidence are my true and professional opinions.

Section 2

Summary of Ecological Baseline

2.1 EDP did not prepare the Ecological Assessment report for the outline planning application. However, in preparing my evidence I have reviewed the baseline ecological information collected by Ecological Services between 2010 and 2014, conducted my own site visit on 28 January 2015 and completed an updated desk study in February 2015. In doing so, I have satisfied myself that the information contained in Ecological Services' reports was accurate based on the information available at the time.

2.2 I note that in Section 2 of their SoC (CD AD 4), ALMA call into question the validity of the ecological survey(s) submitted with the application, although no details are provided on what the perceived deficiencies are. I do not share this view, nor does Herefordshire Council's Ecologist (Dr Rob Widdicombe), whose pre-application consultation response dated 23 April 2014 (see **Appendix TW1**), states: *"I read the ecological report by Ecology Services dated March 2014 and concur with all of its conclusions. The survey findings cover the fundamental character of the site and its environs and I would accept the results with regard to protected species, habitat and ecological impacts."*

2.3 ALMA also asserts that the ecological surveys were not carried out to British Standard 42020:2013. Whilst I consider that some of the presentational elements of Ecology Services' report do not strictly follow this recently published best practice guidance, which at present is neither a statutory nor planning policy requirement, this in no way renders the factual findings invalid.

2.4 Notwithstanding the validity of the ecological information submitted with the planning application, with the benefit of updated online aerial photography not available to Ecological Services at the time of their assessment, I have identified a nearby off-site pond that was not identified previously. Consequently, I have advised the appellant that detailed surveys of the pond is required to confirm the presence/absence of great crested newts. These surveys have been commenced at the instruction of the appellant, and the initial results suggest that the species is unlikely to present. However, in accordance with best practice guidelines, further surveys will be required (in the time

period between exchange of proofs and commencement of the public inquiry) to provide further confidence in this assessment.

2.5 The remainder of this section provides a summary of the ecological baseline conditions at the appeal site, based on Ecological Services' *Ecological Assessment* (March 2014, CD OPP 18) and *Update Ecological Assessment of Grassland* (June 2014, CD EI 8) submitted with the outline application, together with my own site visit, desk-top review and initial great crested newt survey.

Baseline Investigations

2.6 A range of field-based and desk-based ecological investigations were completed by Ecological Services between 2010 and 2014, namely:

- Desk study records search – June 2010;
- Extended Phase 1 survey – May and June 2010, then updated 18 September 2013;
- Day-time bat roost inspection of no. 144 Aylestone Hill – March 2014;
- Wintering bird survey of adjacent SSSI – January-March 2014;
- Badger survey (during Extended Phase 1 surveys); and
- Habitat suitability assessment for amphibians and reptiles (during Extended Phase 1 surveys).

2.7 As noted above, I have since augmented this existing baseline through a site walkover survey, an updated desk study and on-going investigations with respect to the presence of great crested newt within a recently identified off-site pond.

Findings of Baseline Investigations

Site Context

2.8 Descriptions of the appeal site and surroundings are provided in a number of core documents including the Design and Access Statement (DAS, CD OPP 10) and SoCG (CD AD 2). The key components of the appeal site from an ecological/biodiversity perspective are as follows:

- Two species-poor semi-improved grass fields managed as grazing pasture and/or for hay;
- Boundary and internal hedgerows of generally poor quality, mostly with frequent gaps and lacking any significant ground flora. Some boundaries are delineated by wire fences only;
- A small number of mature trees located along field boundaries and within fields;
- A small water course (the Rhea Lugg Brook) running along the northernmost 30m of the eastern site boundary; and
- Two buildings, namely the residential property at 144 Aylestone Hill (north west corner) and a disused poultry shed (central eastern area).

Statutory Designations

2.9 The appeal site is not designated. However, statutory designations located within the appeal site's potential zone of influence[1] are:

- River Wye SAC – the nearest sections of this SAC are the River Lugg (also an SSSI), approximately 220m east of the appeal site, and the River Wye (SSSI) approximately 1.98km south;

[1] Defined as 10km radius around the site for international sites, 5km for SSSIs and 2km for LNRs

- Lugg and Hampton Meadows SSSI – large area of floodplain grazing marsh and hay meadow approximately 18-30m from the eastern boundary of the appeal site;

- Broadlands Local Nature Reserve (LNR) – open grassland and meadows approximately 170m to the south east; and

- Tupsley Quarry LNR - scrub woodland and seasonal ponds approximately 1.2km to the south.

2.10 The location of designated sites within 500m of the appeal site is shown on **Proof Plan TW1** to my evidence.

2.11 Potential adverse impacts upon the River Wye SAC were scoped out through an informal Habitat Regulations Screening Assessment undertaken by Ecology Services (Ecology Assessment Report – Section 6, CD APP 18). These conclusions were accepted by the Council's Ecologist (consultation response 23 April 2014 – **Appendix TW1**) and Natural England Officer Hayley Fleming (consultation response 30 April 2014 – **Appendix TW2**). I, too, consider the likelihood of significant adverse effects on the SAC to be negligible in the absence of additional mitigation measures, such that no further consideration is given to this in my evidence. In addition, I do not consider the two LNRs described above to be at risk of adverse impacts owing to their spatial relationship with the appeal site, their ecological interest and their design as publically accessible open spaces.

2.12 The only statutory designation pertinent to the appeal proposals is Lugg and Hampton Meadows SSSI, by virtue of its proximity to the appeal site. With respect to the baseline position, claims are made both by the Council and ALMA regarding the value of the appeal site as a buffer/transition zone between the urban edge of Hereford (and Conservation Area) and this SSSI. This concept also draws in landscape and heritage considerations, which are beyond the scope of my evidence and are dealt with in the evidence of Mr Rosedale and Mr Crutchley respectively. From an ecological perspective, the notion of the entire appeal site forming a necessary buffer to the SSSI is highly questionable owing to its intensive agricultural use and clear separation from the meadows by the Lugg Rhea Brook. Moreover, this concept is entirely at odds with the approach taken by Natural England when it expanded the SSSI boundary from its

original 16.06 hectares (ha) (notified in 1981) to 139.62ha in 2011, but did not include the appeal site. Paragraph 6.1 of Natural England's Notification Document for Lugg and Hampton Meadows SSSI December 2011[2] (see **Appendix TW3**), clearly states:
"The boundary has been drawn to include land supporting the features of special interest and those areas required to ensure the long-term sustainability of these features."

2.13 Thus, Natural England has reviewed the SSSI boundary as recently at 2011 and has not deemed it appropriate to include the appeal site. Presumably it would have done so if it considered that the appeal site was in any way important to maintaining the integrity of the SSSI.

Non-statutory Designations

2.14 The appeal site is not designated at the local level. However, there are 22 non-statutory designations (or Local Sites) within 2km. These include 15 Sites of Importance for Nature Conservation (SINCs), four Special Wildlife Sites (SWS) and three Herefordshire Nature Trust Reserves. The designated sites within 500m of the appeal site are shown on **Proof Plan TW1**. A number of these sites overlap with the statutory designations described above and the remainder are sufficiently distant from, and/or lack any ecological connections to, the appeal site such that these are not at risk of adverse impacts as a result of the appeal proposals. It is pertinent to note that the SINC located approximately 500m west of the appeal site has been largely destroyed by a recent residential and college development (Campbell Road, off Venns Lane – see **Proof Plan TW1**). This was granted outline consent by the Council in 2006 (planning ref. DCCE2006/0099/O) despite an objection by the Council's Ecology Officer at the time.

2.15 The Local Sites that are potentially at risk of adverse impacts, in the absence of further mitigation, are Lugg Meadows SINC and Lugg Rhea Brook SINC, which are both located to the east of the appeal site. The former is located entirely within the Lugg and Hampton Meadows SSSI (and therefore does not require consideration separately), whilst the latter covers the water course running down the western edge of the SSSI

[2] Lugg and Hampton Meadows SSSI Herefordshire: Notification under section 28C of the Wildlife and Countryside Act 1981. Natural England December 2011.

together with the upstream section further north that clips the north eastern corner of the appeal site.

Habitats

2.16 Habitats within the appeal site are described in full within the two reports submitted by Ecology Services and are summarised at paragraph 2.6 above. The habitats that comprise the majority of the land area (namely species-poor grassland and ruderal vegetation) and the existing buildings are of negligible intrinsic ecological value. The hedgerows and mature trees are, relatively speaking, of greater biodiversity interest as habitats but are of no greater than local value. The short section of Lugg Rhea Brook that passes the north east corner is part of a wider SINC designation (and runs into the SSSI) and thus is considered to be of value at the County level.

Species

2.17 Based on existing information, species and species groups that I currently consider to be particularly pertinent to the appeal site are summarised within **Table 2.1**.

Table 2.1 Summary of protected species recorded/potentially within the appeal site

Species	Summary of Existing Baseline	Ecological Value
Bats	Existing buildings were found to be unsuitable and with no evidence of bat roosting. None of the trees affected by the development was suitable for bat roosting. Bats are likely to use the site for foraging and commuting purposes; however, the habitat quality is low-moderate.	Local
Birds	The site is likely to support a limited breeding and wintering bird assemblage owing to relatively limited extent and diversity of habitats available.	Local
Reptiles	Limited habitat available, although a grass snake has been recorded in the thick vegetation beside the poultry shed. As a precaution, it should be assumed that reptiles are present in the site.	Local
Badger	Desk study records of badgers nearby. No evidence recorded on site, but habitats remain suitable such that future presence cannot be ruled out.	N/A

Great Crested Newts

2.18 Based on local records received at the time and a review of the site circumstances, the presence of great crested newt was scoped out by Ecology Services in their Ecological Appraisal (CD OPP 18). ALMA take issue with this conclusion in paragraph 4.3 of its SoC (CD AD 4), which states:

"we have survey information of our own that there are Great Crested Newts in and around the area and this has not been taken into account."

2.19 I requested a copy of the survey information referred to by ALMA on 19 February 2015. However, at the time of writing no such detail has been provided.

2.20 In reviewing this matter, I obtained updated protected species records, including great crested newt, from HBRC and reviewed the site circumstances in the context of this species' habitat requirements. Investigations are continuing; at the time of writing, they are not complete owing to seasonal constraints to survey. My findings to date are summarised below.

Site Suitability

2.21 The appeal site does not contain any water bodies or semi-permanent standing water, and therefore cannot support breeding by great crested newts. The site does contain some habitats capable of supporting this species during its terrestrial phase, but only if there are breeding ponds sufficiently close by (less than 500m) that are not separated by existing dispersal barriers such as roads, development or water courses.

Local Records and Nearby Ponds

2.22 **Proof Plan TW2** illustrates the location of great crested newt records received during the 2010 (Ecology Services) and 2015 (EDP) desk studies[3]. This shows that there are three ponds/locations within 500m of the appeal site where this species has been recorded. With reference to **Proof Plan TW2**, records for Pond 1 are dated 2010 and have been added to HBRC's database since the 2010 desk study, whereas the records

[3] Note: In 2010 Ecology Services requested records within 2km, however for EDP's 2015 update a 1km radius was considered sufficient.

for Pond 2 and Pond/Location 3 are dated 2000 were received in the original data set. A brief summary of these three ponds is provided below:

- Pond 1 is approximately 450m south-south west of the appeal site, beside Hereford Hospital. It is separated from the appeal site by major dispersal barriers including Alyestone Hill Road and existing development;

- Pond 2 is approximately 420m south of the appeal site, within or near to the centre of the large complex of college and school facilities. It is also separated from the appeal site by a considerable distance and significant dispersal barriers, including the college grounds and existing residential development served off Broadlands Lane, Water Meadow Close and Walney Lane; and

- Location 3 could be related to one of three ponds at least 250m north of the appeal site, to the north east of the roundabout where Alyestone Hill Road meets the A4013. All of these ponds are separated from the appeal site by major dispersal barriers, in particular the road network.

2.23 Owing to the distances between these ponds and the appeal site, and their separation from the appeal site by physical barriers to terrestrial dispersal/mitigation by great crested newts, it is it unlikely that any newts from within these ponds would occupy the appeal site during their terrestrial phase. Having searched up to date detailed (1:1,250 scale) Ordnance Survey mapping, no other ponds have been identified that are nearer to the site than those described above.

2.24 Based on the above information alone, it would be reasonable to conclude that great crested newts do not require any further consideration with respect to the appeal proposals. However, a search of up-to-date publicly available aerial photography has revealed a pond within the rear garden of a private dwelling (98 Aylestone Hill Road) approximately 60m to the west of the appeal site's south west corner. This pond, which is illustrated on **Proof Plan TW3**, is currently the subject of a detailed survey as described below.

Detailed Survey of Nearby Pond

2.25 According to the available photographic record, this nearby pond was constructed sometime between 2001 and 2006. Owing to its recent origin and isolation from potential colonisation sources, my initial conclusions are that it is unlikely that this pond supports a population of great crested newts. Nonetheless, in order to provide greater confidence in this assessment, and at my recommendation, EDP has been commissioned by the appellant to investigate this further through detailed surveys with reference to Natural England (English Nature) guidelines.

2.26 At the time of writing, this survey work has commenced but a full survey has not yet been completed owing to the seasonal constraints to such survey work. Details of the survey work undertaken to date, and the findings thereof, are provided in **Appendix TW4** and summarised below.

- The suitability of the pond to support great crested newts has been formally assessed and found to be low. The pond is an ornamental garden pond stocked with fish. The calculated Habitat Suitability Index (HSI)[4] for the pond is 0.27, which translates as 'poor'; and

- Two overnight surveys have been undertaken, involving bottle trapping, torchlight surveys and egg searches to search for evidence of great crested newts. No evidence of the species has been recorded, although fish and other common amphibians were present.

2.27 These initial findings strongly suggest that the pond is unlikely to support great crested newts. However, two further overnight surveys within the core breeding season (i.e. between mid-April and mid-May) are required to provide sufficient confidence in this negative result. It is anticipated that these surveys will be completed and the results submitted prior to commencement of the public inquiry.

2.28 In the event that great crested newts are recorded within this pond during the additional surveys, this would not present an 'in principle' constraint to the appeal proposals. There are a range of standard mitigation techniques available to

[4] HSI: (<0.5 = poor; 0.5-0.59 = below average; 0.6-0.69 = average; 0.7-0.79 = good; >0.8 = excellent)

avoid/minimise potential harm during development and, where the risk of harm cannot be avoided entirely, there is a licensing regime enabling the derogation of the legal protection afforded to this species for consented development activities. This is discussed further under **Section 3**.

Conclusions

2.29 In conclusion to above, the appeal site itself is of generally low ecological interest. Owing to the poor quality of the habitats, the potential/actual populations of protected and/or notable species are also of low significance. However, it is recognised that there are designated sites of County, National and International importance within the appeal site's potential zone of influence, which require full consideration within the Ecological Strategy for the site (discussed in **Section 3** of my evidence).

Section 3
Ecological Strategy of the Proposals

3.1 This section of my evidence details the ecological strategy for the appeal proposals, which, in accordance with local and national planning policies, a) avoids and protects against ecological impacts; b) mitigates or compensates for ecological impacts that cannot be avoided; and c) delivers ecological gain where possible. Where relevant, I have also made reference to pre-application comments on the ecological strategy provided by the Council's Ecologist, Natural England and the Environment Agency, full copies of which are provided within Appendices to my evidence.

Pertinent Receptors and Potential Impacts

3.2 The pertinent ecological receptors (as identified in **Section 2** of my evidence), and potential development impacts requiring consideration within the ecological strategy, are summarised below.

Lugg and Hampton Meadows SSSI (also includes Lugg Meadows SINC)

3.3 Lugg and Hampton Meadows SSSI is separated from the appeal site's eastern boundary by a strip of land approximately 18-30m in width. This land is maintained as open grassland by the River Lugg Internal Drainage Board to enable periodic maintenance of the Lugg Rhea Brook, a deeply incised ditch that effectively forms the western boundary of the SSSI. This strip of land also provides an inherent buffer to the appeal site, such that no direct impacts (habitat loss/damage) would result from the proposed development. Potential impacts upon the SSSI are instead 'indirect' and can be sub-divided into a) disturbance/predation impacts and b) hydrological impacts.

Disturbance and Predation Impacts

3.4 Section 6 of the consultation comments provided by the Council's Landscape Officer (Carly Tinkler) on 18 May 2014 (CD CR 17), includes the following assertion:

"...it is possible that increased footfall in the Lugg Meadows could adversely affect these sensitive habitats, and an increase in predatory pets such as cats could also affect local wildlife."

3.5 I do not consider that these potential effects would be of sufficient magnitude as to have any discernible adverse impact upon the SSSI. My reasoning is set below.

Sensitive Habitats

3.6 The meadow habitats and plant communities within the SSSI, which are the notified interest features (see **Appendix TW3**), are maintained by active management (traditional hay cutting and grazing) and are thus are subject to an annual cycle of 'disturbance' in various forms. The SSSI is open access land with a network of public rights of way running across it, and is well-publicised locally (e.g. on the Hereford Nature Trust and Plantlife websites), and yet there is no evidence that the habitats have suffered as a result of public access. This may be in part to the naturally wet conditions within this floodplain grassland, large parts of which are flooded each winter, which impose natural restrictions on access to certain areas at certain times of year.

Increased Footfall

3.7 Based on a national average household occupancy of 2.3[5], the proposed development of up to 135 new homes would accommodate approximately 310 people. Based on the Council's population estimate for Hereford of 58,900[6], and assuming a worst case scenario where all residents the proposed development are new to Hereford (which is unlikely), this would represent an increase in the population of Hereford of up to 0.5%. A report published by the Ramblers Association in 2010[7] indicates that, although walking is the most popular form of outdoor recreation in Britain, it is still a minority of people who regularly walk for pleasure. This report states that only 22% of adults in England walk recreationally for at least 30 minutes over a four week period. Taking these factors together, it is therefore reasonable to conclude that the increase in visitor numbers within the SSSI resulting from this relatively small scale development would be insignificant.

[5] Office for National Statistics (http://www.ons.gov.uk) 2011 Census Data
[6] http://factsandfigures.herefordshire.gov.uk/subcounty.aspx
[7] *Walking facts and figures 2: Participation in walking* The Ramblers' Association 2010

Impacts on Wildlife Species

3.8 Reference is made in paragraph 5.1 of the SSSI notification document (see **Appendix TW3**) to "*small numbers of breeding curlew* "as an important feature, but one that does not meet SSSI selection criteria and is not a 'notified' feature of the SSSI designation. Curlew and other ground nesting birds within the SSSI, such as skylark, would potentially be at risk of an increase in disturbance from dog walkers. However, it would appear that parts of the SSSI are already managed to reduce this impact. According to a number of local online information sources[8], the breeding curlew are primarily located within the 'Lower' Lugg Meadows, namely the section of the SSSI south of Ledbury Road approximately 1.5km from the appeal site. Access to this area is

3.8 not permitted while the curlew are breeding between March 1 and July 31. Considering these existing access controls, together with the relatively small increase in visitors to the SSSI that would likely result from the proposals, any potential impacts would be negligible.

3.9 With regard to predation by cats, the open and often waterlogged habitats within the SSSI and, associated wildlife species, are unlikely to be particularly vulnerable to cat predation. Further, as noted within Ecology Services' Ecological Assessment (CD OPP 18), the Lugg Rhea Brook is a deeply-incised wet ditch which would also provide a barrier to cats entering the SSSI along the majority of the appeal site's eastern boundary.

3.10 A Royal Society for the Protection of Birds (RSPB) report (2007) reviewing the impacts of predation on wild birds[9] states: "*Domestic cats undoubtedly kill a large number of birds in the UK every year, although it is unclear whether this constitutes a conservation problem.*" With respect to curlew in particular, this report considers predation by native species such as foxes, hooded crows and lesser black-backed gulls (rather than cats) to be the main threat to this species. Water voles are known to be vulnerable to cat predation, however despite suitable habitat being available this species is no longer present in the River Lugg or Lugg Meadows SSSI[11]. Taking these factors into account,

[8] Sources: *www.herefordshirelife.co.uk/out-about/lugg_meadow_1_1641060* and *www.worcesternews.co.uk/leisure/walks/10621133.print/*

[9] *The Predation of Wild Birds in the UK: A review of its conservation impact and management.* RSPB Research Report no 23. RSPB, Sandy (2007)

[11] Source: River Lugg Internal Drainage Board Biodiversity Action Plan 2010

together with the relatively small increase in cat numbers that would likely result from the appeal proposals (with 19% of households on average having pet cats[12]), I conclude that there would be no significant adverse impact.

3.11 Whilst the Council's Landscape Officer has concerns regarding disturbance and predation, these are not shared by Natural England or the Council Ecologist (both of whom, it is reasonable to assume, are more qualified to comment). In respect of increased footfall within the SSSI, the Council Ecologist's consultation comments (24 June 2014 – **Appendix TW5**) include the following statement:

"No additional access is to be provided to the SSSI which is under Open Access. Although increased usage of the SSSI for walking and experiencing the natural world may occur as a result of this development, impacts upon the SSSI are not envisaged to be catastrophic. On the contrary, persuading more people to visit such sites is to be encouraged to educate and inform."

Furthermore, In respect of nesting birds within the SSSI, the Council Ecologist's consultation comments (23 April; 2014 – **Appendix TW1**) include the following statement:

"I have also discussed the potential impacts of the development upon the adjacent Lugg Meadows SSSI and nearby R. Lugg SSSI and SAC with the consultant ecologist and Natural England's Lead Advisor of the Land Use, Landscape and Licensing Team. We are of the mind that further surveys on the SSSI for impact of increased use of the area on nesting birds is unnecessary over and above a normal assessment of impact on nesting birds at the boundary."

Hydrological Impacts

3.12 Precipitation falling on the appeal site currently runs off into the Lugg Rhea Brook, which runs parallel to the eastern boundary. This section of the Lugg Rhea Brook is within the SSSI. However, water entering this ditch primarily flows around the edge of the SSSI, before eventually connecting into the River Lugg, such that direct interaction between surface water run-off from the site and the SSSI is likely to be limited. The Lugg

[12] Source: Pet Food Manufacturers Association (www.pfma.org.uk/pet-population)

Rhea is controlled by the River Lugg Internal Drainage Board (RLIDB). When considering the effects of changes to management of the Lugg Rhea on floodplain grassland (including that within the SSSI), the RLIDB's Biodiversity Action Plan (2010)[13] includes the following statements:

"Water levels in the Lugg Meadows are dependent on main river levels, not controlled by internal sluices in the watercourse system. So this limits the effects that watercourse management can have on the grasslands as a whole."

"The Board's watercourses do not flow through the grasslands but are located at the upstream end of the meadows, quickly emptying into the Lugg itself."

3.13 Despite the above, it reasonable to exercise the precautionary principle and conclude that there remains a residual risk of detriment to the SSSI as a result of alterations to either the quantity/frequency of surface water discharge, or increased sediment/-contaminants entering the water courses. This requires specific consideration within the ecology strategy and is discussed further below. It should also be noted, however, that the appeal proposals offer an opportunity for betterment with respect to water quality. As reflected in PBA's Utility Infrastructure Site Appraisal Report (CD OPP 17) submitted with the planning application, and also as noted in pre-application correspondence between Barton Willmore and Natural England (see **Appendix TW6**), septic tanks from the properties to the north of the site currently discharge into a soakaway located within the appeal site. Due to the impermeable ground conditions, the soakaway capacity is often exceeded during heavy rainfall resulting in polluted water running into the Lugg Rea. The proposed development offers the opportunity for the properties in question to be connected to a mains sewer, which would reduce or remove this existing source of pollution.

Lugg Rhea Brook SINC

3.14 Risk of adverse impacts to the Lugg Rhea Brook SINC are intrinsically linked to its position within the drainage network and relationship with both the appeal site and SSSI. Thus it is the potential hydrological impacts summarised above that require consideration within the ecological strategy.

[13] River Lugg Internal Drainage Board Biodiversity Action Plan 2010

Habitats

3.15 The locally valuable habitats on site, namely the hedgerows and mature trees, are to be largely retained. However, in the absence of mitigation, development would result in a net loss of such habitats and could result in damage to retained features.

Protected/Notable Species

3.16 In the absence of mitigation, the species/species groups identified as occurring or potentially occurring within the site (namely bats, birds, reptiles and badger) could suffer a reduction in available habitat, and in some cases be directly harmed during site clearance/construction. As set out in paragraphs 2.24-2.27 the presence of great crested newts in a nearby garden pond is currently being investigated, but the initial results suggest this species is absent. Should the additional surveys prove otherwise, then great crested newts could also be a risk of adverse impacts in the absence of appropriate mitigation measures.

Ecological Avoidance and Mitigation Strategy

3.17 The various elements of the ecological strategy for the appeal proposals are set out below, and are grouped according to four key delivery mechanisms that I consider are appropriate in this case. I also make reference to relevant existing Draft Planning Conditions, which were set out in the final section of Planning Committee Report (CD PC 1) at the recommendation of the Council's Ecologist (see **Appendix TW7**), and propose additional conditions where appropriate, which would secure the design and implementation of the require mitigation measures.

1. Inherent Design Measures

3.18 Ecological sensitivities have been considered throughout the masterplan design process and helped to achieve an ecologically sensitive layout and associated green infrastructure, which together are capable of delivering a range of benefits for biodiversity. Measures to avoid or mitigate ecological impact, which are inherent to the illustrative masterplan and associated parameter plans, include the following:

- Allocation of approximately 35% of the appeal site as open space, enabling the retention and buffering of key habitats and provision of significant new green infrastructure. This will also provide an attractive recreational resource on-site for local residents thereby reducing the potential (albeit not significant) increase in visitor pressure on Lugg and Hampton Meadows SSSI;

- Retention and buffering of the eastern and northern boundary habitats (hedgerow and Rhea Lugg Brook SINC – flowing south into the SSSI) and provision of complementary natural public open space including new wetland features/ponds as part of Sustainable Drainage System (SuDS);

- Retention of a large majority of the existing hedgerow network and mature tree stock, and provision of opportunities for new planting of trees and hedgerows in the public open space; and

- Provision of SuDS features as part of the surface water attenuation and treatment strategy to ensure that there are no changes to the quantity or quality of surface water discharging into the Lugg Rhea Brook SINC and downstream SSSI.

3.19 As noted above, the incorporation of SuDS within the appeal proposals is a key component of the ecology strategy. Contrary to the assertions made in Section 4 of ALMA's SoC (CD AD 4), there is a growing body of evidence to support the use of SuDS as an effective means of removing contaminants, maintaining greenfield run-off rates and delivering genuine biodiversity benefits. This is clear from the Environment Agency's consultation response to the planning application (07 April 2014 – see **Appendix TW8**), which included the following comments:

"The SuDS approach involves using a range of techniques including soakaways, infiltration trenches, permeable pavements, grassed swales, ponds and wetlands to reduce flood risk by attenuating the rate and quantity of surface run-off from a site. This approach can also offer other benefits in terms of promoting groundwater recharge, water quality and biodiversity benefits i.e. wider sustainability benefits."

3.20 Further evidence of the benefits of SuDS is provided within guidance published jointly by the Wildfowl & Wetlands Trust (WWT) and the RSPB [14]. Extracts from the Foreword to this document include:

"...arguments for more intelligent and sustainable land and water management should be irresistible. Sustainable Drainage Systems, known as SuDS, are widely accepted as the wise way forward. There are many excellent examples of inspirational good practice across Europe, North America and elsewhere and SuDS are now being encouraged in England and Wales through the Flood and Water Management Act 2010."

"The Wildfowl & Wetlands Trust and the Royal Society for the Protection of Birds have both been extolling the wildlife and people benefits of SuDS for some time."

3.21 The principle of SuDS as a means of mitigating potential hydrological impacts upon Lugg and Hampton Meadows SSSI was also accepted by the Council's Ecologist (25 June 2014 – see **Appendix TW6**) and Natural England (18 July 2015 – see **Appendix TW7**).

3.22 Finally, with respect to SuDS, ALMA's concerns that the proposed features will become unkempt and unattractive can and should be addressed through good quality design and establishment of a long-term management scheme (discussed further below). Page 41 of the DAS illustrates the kind of attractive features than can be created and maintained within development sites.

3.23 In order to ensure that these inherent design measures are considered and reflected in subsequent stages of the planning process, in the event that the appeal is allowed, specific measures will be detailed within mechanisms 2, 3 and 4 below.

2. Detailed Design Measures

3.24 These are measures that should be reflected within the detailed plans submitted as part of the Reserved Matters applications to build upon the principles set out at the outline stage. Measures that are capable of being delivered through detailed design include the

[14] *Sustainable drainage systems: Maximising the potential for people and wildlife. A guide for local authorities and developers.* WWT and RSPB (December 2012)

creation of new habitats of ecological value within open spaces. Proposed new habitats are as follows:

- Native species-rich hedgerow and trees (new planting and gapping up of existing);
- Species-rich meadow grassland; and
- Ponds and associated wet margins created as part of SuDS.

3.25 In the event that the appeal is allowed, species mixes and other detailed specifications for the above will be provided in the Soft Landscaping Scheme (ref. *Draft Conditions 23* and *24*) submitted for approval by the Council at the Reserved Matters stage.

3.26 In addition to the above, the detailed design would include measures to minimise light spill on to retained and new habitats of ecological value, to maintain their value for bats and other nocturnal species. Detailed specifications could be provided in the Lighting Scheme (ref. *Draft Condition 5*) submitted at the Reserved Matters stage.

3.27 Through the provisions described above, opportunities for breeding, refuge, foraging and/or dispersal will be maintained or enhanced for a range of animal species including those occurring (or potentially occurring) within the appeal site.

3. Ecological Construction Method Statement

3.28 An Ecological Construction Method Statement (ECMS) should be prepared, which sets out in detail the measures that will be implemented prior to and during construction to avoid, protect and minimise impacts on biodiversity. The preparation and implementation of the ECMS are capable of being secured through a pre-commencement condition attached to outline planning consent (*new condition recommended*). Measures to be detailed within the ECMS include the following:

- Pollution control measures (in accordance with Environment Agency guidelines) to be employed when working in or in close proximity to the Lugg Rhea Brook on the eastern boundary;

- Protection of retained and off-site habitats within 'no construction' buffer zones protected through appropriate fencing and signage;

- Restriction of construction activities to daylight hours as far as possible, with use of temporary, artificial lighting avoided during the hours between dusk and dawn to avoiding disturbing nocturnal/crepuscular species including bats;

- Briefing of site personnel by a Suitably Qualified Ecologist in relation to the potential presence of protected species and other ecological sensitivities within the site; and

- Pre-commencement surveys for badger, and sensitive timing and methods of site clearance/habitat removal with respect to nesting birds, reptiles and (in the event that the species is recorded during ongoing survey work) great crested newt.

3.29 It is anticipated that the ECMS would be drawn up in tandem with an overarching Construction Environmental Management Plan (CEMP – ref. *Draft Condition 7*). The CEMP is of particular relevance to the prevention of pollution/silt run-off and is a key mechanism proposed within Section 6 of the PBA's Flood Risk Assessment (CD OPP 16) for the appeal proposals.

4. Ecological Management Plan

3.30 The Ecological Management Plan (EMP) will set out in detail the post-development, operational, management measures that will be implemented to ensure that opportunities to maintain, enhance, restore and add to biodiversity through retained and created habitats are delivered. The EMP is capable of being secured by a pre-commencement condition (ref. *Draft Condition 26*). In the first instance, the public open space will be offered for adoption to the Council, otherwise, the appellant will create an on-site management company. The EMP is capable of being delivered by either party.

3.31 An EMP would be prepared for the appeal proposals at the detailed design stages and would include the following:

- Measures to ensure the successful establishment of new habitats of ecological value (including trees, hedgerows, grassland and wetlands), including ground preparation, planting, seeding, pruning, weeding, watering and monitoring;

- Measures to maintain the structure and function (and therefore ecological value) of these new habitats in the long-term, including timing and frequency of mowing, cutting, trimming, pruning, de-silting (ponds and ditches) and removal of arisings;

- Restoration of existing habitats, including hedgerows, to increase their botanical and structural integrity/diversity through the establishment and maintenance measures summarised above;

- Additional bat roosting habitat in the form of specially designed bricks/tiles in new buildings and durable bat boxes installed on retained mature trees; and

- Additional bird nesting habitat in the form of specially designed features on new buildings and durable bird boxes installed on retained mature trees.

3.32 As described above, the presence of great crested newt in the appeal site is unlikely, but absence requires confirmation through further survey work to be undertaken in mid-late April 2015. Should a population of this species be recorded in the nearby garden pond, and should the subsequent assessment of development impacts conclude that an offence under the legislation cannot be avoided through non-licensed avoidance measures (as part of the ECMS), then it will be necessary to obtain a European Protected Species (EPS) derogation licence for the appeal proposals prior to works commencing.

3.33 An EPS licence, if required, would effectively comprise an additional (legally binding) mechanism to secure the delivery of many of the mitigation measures described above. The appeal proposals are more than capable of mitigating potential impacts on great crested newt, and many of the inherent design measures (including new ponds and other suitable habitats) would benefit this species. Thus, the presence of great crested newt (if indeed this is confirmed) would not prevent the appeal proposals from conforming to relevant planning policy and legislation.

Summary

3.34 The appeal proposals include robust measures to avoid and protect against ecological impacts, mitigate or compensate for ecological impacts and ensure that opportunities to deliver ecological gain are realised. The required measures are capable of being secured through the application of suitably worded planning conditions attached to planning consent.

3.35 Although, inevitably, the appeal proposals will result in losses/impacts (primarily loss of existing species-poor hedgerow and loss or modification of existing species-poor grassland) these can be readily balanced by the enhancement/restoration of, and addition to, other more significant biodiversity resources.

3.36 On this basis, and as discussed further in **Section 4** of my evidence, I consider that the proposals are considered to be capable of complying fully with both national and local planning policies.

Section 4
Planning Policy Conformance

4.1 My evidence has been prepared in response to ALMA and the Council's assertions that the appeal proposals would result in harm to ecology and biodiversity, and thus be contrary to relevant planning policies contained within the NPPF and the Unitary Development Plan.

4.2 So far I have challenged these assertions as follows:

- **Section 2** summarised the generally poor biodiversity value of the appeal site whilst recognising that a nationally significant SSSI would be at risk of adverse impact in the absence of mitigation; and

- **Section 3** summarised the potential adverse impacts requiring consideration, and the proposed avoidance, mitigation and enhancement measures which, if delivered on site through attachment of planning conditions, would protect and enhance biodiversity.

4.3 In the context of the above, this section will demonstrate that the appeal proposals conform fully to national and local planning policy.

National Planning Policy Framework (NPPF)

4.4 Mr Stephenson's evidence, Section 6, explains why paragraph 14 of the NPPF is engaged in this case, such that there is a presumption in favour of sustainable development and planning permission should be granted unless the adverse impacts 'significantly and demonstrably' outweigh the benefits.

4.5 It is clear that the proposed development is sustainable in ecological terms. With reference to the NPPF Chapter 11 – 'Conserving and Enhancing the Natural Environment', the appeal proposals capable of the following:

- Minimising impacts on biodiversity and providing net gains (ref. paragraph 109);

- Promoting the preservation, restoration and re-creation of priority habitats, ecological networks and the protection and recovery of priority species populations (ref. paragraph 117);

- Avoiding adverse impacts on SSSIs or other irreplaceable habitats (ref. paragraph 118); and

- Adequately mitigating harm that cannot be avoided, and incorporating biodiversity in and around development.

4.6 In addition to the above, ecological policies in the NPPF that might indicate that development should be restricted, and the presumption in favour displaced (namely those relating to European Sites, ref. paragraph 119), do not apply in this case.

4.7 Potential adverse impacts will be avoided and mitigated to the extent that ecological enhancement (net gains) will result and this should be viewed as one of the many benefits of the scheme. Whilst it is beyond the scope of my evidence to undertake the balancing exercise of harm versus benefit for the appeal proposals as a whole, I am in no doubt that the ecological effects of the proposals contribute positively to the overall planning balance.

Existing and Emerging Local Plan Policies

Herefordshire Council Unitary Development Plan 1996-2011

4.8 Saved Policy S7 of the Unitary Development Plan (UDP, CD UDP 1) reads as follows:

"The following assets comprising the County's historic and natural heritage will be protected, restored or enhanced:

- *Areas of Outstanding Natural Beauty;*

- *Sites and features of international, national and local nature conservation interest, species of biodiversity interest and areas of geodiversity;*

- *The historic heritage including archaeology, buildings and areas of historic or architectural importance, and natural landscapes; and*

- *Landscape features that contribute positively to local distinctiveness and quality of the local environment."*

4.9 With respect to the relevant section (bullet 3) above, there is no doubt that the appeal proposals can be brought forward in a manner that protects features of national and local nature conservation interest, and that proposals offer opportunities for enhancement and restoration with respect to habitats and species of biodiversity interest.

Emerging Herefordshire Local Plan Core Strategy 2011 - 2031

4.10 As agreed within the SoCG (CD AD 2), the emerging Core Strategy Local Plan (CD CS 5) has limited material weight as it is subject to Examination. However, and with reference to the Pre-Submission Publication May 2014, relevant policies are set out below.

Policy LD2 – Biodiversity and Geodiversity

"Development proposals should conserve, restore and enhance the biodiversity and geodiversity assets of Herefordshire, incorporating the following objectives:

1. *retention and protection of sites, habitats, networks and species of European, national and local importance and those identified within biodiversity and geodiversity action plans;*

2. *restoration and enhancement of existing biodiversity and geodiversity features on site and connectivity to wider ecological networks; and*

3. *creation of new biodiversity features and wildlife habitats.*

Where appropriate the council will work with developers to agree a management strategy to ensure the protection of, and prevention of adverse impacts on, biodiversity

and geodiversity features."

Policy LD3 – Green infrastructure

"Development proposals should protect, manage and plan for the preservation of existing and delivery of new green infrastructure, and should achieve the following objectives:

1. *identification and retention of existing green infrastructure corridors and linkages; including the protection of valued landscapes, trees, hedgerows, woodlands, water courses and adjoining flood plain;*

2. *provision of on-site green infrastructure; and*

3. *integration with, and connection to, the surrounding green infrastructure network."*

4.11 The ecological strategy summarised in **Section 3** of my evidence clearly demonstrates how the appeal proposals are capable of protecting, and making a positive contribution to, local biodiversity and green infrastructure. It therefore follows that compliance with these draft policies would be achieved.

Summary

4.12 Contrary to the assertions made by ALMA and Council, it is clear that the scheme would be fully compliant with NPPF, and local plan policies S7 and LD2 and LD3 insofar as these relate to ecological matters. This can be achieved through inherent avoidance measures and on-site mitigation secured through planning conditions and, if necessary, an EPS derogation licence.

Section 5
Conclusions

5.1. In refusing planning consent the Council did not provide any specific ecological reasons for refusal. It could have done so, and presumably would have done so, if it was felt that the appeal proposals failed to meet any national and local planning policy requirements. However, ecological matters have been somewhat 'drawn into' the Council's case on the back of its landscape objections. Furthermore, the Rule 6 party ALMA has added its own ecology case to the appeal.

5.2. The baseline ecology of the appeal site, and ecological strategy for the proposals, are summarised in Sections 2 and 3 respectively. It would be apparent to anyone reviewing the proposals that the most significant ecological features will be substantially retained and enhanced and that impacts are directed towards land of very limited ecological value. Particular attention has been given to the sensitivities of Lugg and Hampton Meadows SSSI to ensure no significant adverse impacts would arise.

5.3. I have demonstrated, as far as is reasonably possible for an outline application, that impacts on biodiversity can be adequately avoided, mitigated or compensated for through on-site measures for which there are robust delivery mechanisms capable of being secured through planning conditions. This is supported by the consultation comments provided by the Council's Ecologist and Natural England, whom I consider to be the key authorities on ecological planning matters.

5.4. Following the discovery of an unmapped garden pond near the appeal site, great crested newt surveys are being undertaken in accordance with best practice guidelines and will be completed prior to commencement of the public inquiry. The initial findings suggest the species is not present. However, even if the species is present, the appeal proposals are fully capable of addressing potential development impacts.

5.5. Based on the reasoning set out in my evidence, I am in no doubt that the appeal proposals are capable of conforming fully with adopted policies of the NPPF and the current and emerging Herefordshire Local Plans. In light of the evidence I have

submitted to this appeal, as summarised above, I conclude that there are no ecological reasons why the appeal should not be allowed.

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