

Project: Orchard Farm, Defford Road, Pershore

Planning Ref: W/23/02112/OUT

Date: 21 August 2024

Topic Specific SoCG: Biodiversity

Between:

For the Appellant

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For Wychavon District Council

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1 Introduction

1.1.1 This Statement of Common Ground (SoCG) relates to matters of ecology and biodiversity in connection with planning application W/23/02112/OUT, now appealed (ref: APP/H1840/W/24/3347643) on the grounds of non-determination by Wychavon District Council.

1.1.2 The application and appeal is accompanied by ecological information to inform its consideration. This includes:

- Ecological Assessment (September 2023);
 - Tiddesley Wood (North Eastern Compartments) - Framework Woodland Management Plan. October 2023;
 - Biodiversity Net Gain Assessment (September 2023);
 - Bat Addendum Report 1 (Aspect Ecology, December 2023);
 - Bat Addendum Report 2 (Hibernation Survey Results) (Aspect Ecology, March 2024);
 - Technical Note TN04 'Grassland Botanical Survey' (Aspect Ecology, April 2024);
 - Biodiversity Net Gain Assessment (Updated) (Aspect Ecology, April 2024);
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- Shadow Habitats Regulations Assessment (Aspect Ecology, April 2024);
- Ecological Assessment Addendum (May 2024);

1.1.3 Additional material has also been submitted directly to Natural England, to address their comments, as follows:

- Technical Briefing Note: Woodland Serviceability Assessment (Sylvan, February 2024);
- Correspondence to Natural England dated 01 May 2024, setting out the proposed approach to mitigation to potential effects on Tiddesley Wood SSSI, accompanied by
 - Portfolio of Case Studies (May 2024)
 - Plans 6596/REC1 and 6596/REC2 showing Alternative Green Space Provision and Links to off-site Public Rights of Way (PROWs), and a list of options for further mitigation measures (April 2024)
 - Technical Note 07 'Summary of Visitor Access management Options' (01 May 2024)

2 Consultation responses from Wychavon Natural Heritage Officer

2.1.1 Following the submission of the application two consultation responses have been received from the Wychavon Natural Heritage Officer. The latest consultation response is dated 25 June 2024. This comments on three matters:

- In regard to Tiddesley Wood SSSI the Officer comments that “I remain concerned about potential adverse impacts on Tiddesley Wood at this stage. I will however need to look into them [the Case Study Portfolio May 2024] in more detail”;
- In regard to other on site ecology, the Officer comments that “I have also reviewed the various additional information submitted in May. This now looks to address the comments made regarding onsite habitats. I would just like to check some issues in relation to the revised BNG assessment and calculations”;
- In respect of European Designations, the Officer comments that “In terms of the Shadow Habitats Regulations Assessment I agree with the commentary and conclusions reached in relation to Dixton Wood SAC, Bredon Hill SAC and Lyppard Grange Ponds SAC and that the effects on functionally linked bird habitat can be screened out for the Severn Estuary SAC/SPA/Ramsar site. This leaves the need to carry out an Appropriate Assessment with respect to potential water quality effects on fish species using functionally linked habitats to address any potential likely significant effects which could arise in the absence of mitigation”.
- Following feedback from the Council’s Drainage Engineer, the Natural Heritage Officer comments on 5 July 2024 that “we can reasonably assume that the Appropriate Assessment for functionally linked habitats, such as the River Avon, is acceptable and so is the conclusion that the proposed development would have no effect on the integrity of the Severn Estuary SAC/SPA/Ramsar Site, subject to mitigation measures of course.”

3 Consultation responses from Natural England

- 3.1.1 Correspondence dated from Natural England dated 30 November 2023 raised concerns in respect of Tiddesley Wood SSSI. Since this time additional material has also been submitted directly to Natural England, to address their comments (see paragraph 1.1.3 above).
- 3.1.2 The mitigation measures put forward include those embedded within the scheme, such as buffer zones, public open space serving to absorb potential recreational pressure, a circular walk within the POS, creation of semi-natural habitats complementing the woodland, and measures to divert public pressure away from the woods.
- 3.1.3 Further offsite mitigation measures are set out which could be delivered within Tiddesley Wood including path management; path upgrades potentially including boardwalks; improved signage, waymarking and interpretation; dog waste bins; improved wardening and surveillance; funding for management activities; and the provision of a home-owner pack explaining the sensitivities of the woodland.
- 3.1.4 These measures have been discussed at meetings with Natural England dated 22 March 2024 and 19 April 2024, the second of which WWT were also in attendance. Following these meetings Natural England has confirmed, through further correspondence dated 04 June 2024, that that these types of effects are ‘mitigable’, and that the list of additional mitigation measures which has been provided is comprehensive, and could form the basis of a more detailed package of funded SSSI mitigation measures. It is also agreed that a good quantity of Green Infrastructure has been provided as part of the application.
- 3.1.5 The latest response provided by Natural England (dated 28 June 2024) to the planning application sets out the following remaining points:
- a) That following engagement with the appellant and WWT, Natural England considers that “the offer of onsite green infrastructure is of good quantity” and “the list of additional SSSI measures seems comprehensive”, whilst also noting that “While the case studies [May 2024] are useful in demonstrating what has been done elsewhere, mitigation needs to be tailored to the local situation.” Further information now sought on the detail of the mitigation.
 - b) In regard to Malvern Hills SSSI, Natural England advises the “authority to liaise with the South Worcestershire Council's Policy Team and the Applicant to understand on how the mitigation requirements should be met”;
 - c) In regard to European designations, Natural England comment that “The application site is hydrologically linked to the Severn Estuary SAC which is a Habitats Site, by watercourses on the development site which flow into the River Avon. We have advised that Habitat Regulations Assessment should be undertaken”.
- 3.1.6 Since the appeal start letter dated 18th July 2024, a further response is provided by Natural England sets out the following points:
- a) Natural England notes that the Habitats Regulations Assessment (HRA) has been produced by the applicant. The appropriate assessment concludes that WDC is able to ascertain that the proposal will not result in adverse effects on the integrity of any of the sites in question, i.e., the Severn Estuary Special Area of Conservation/Ramsar site.

4 Natural England concurs with the assessment conclusions, providing that all mitigation measures are appropriately secured in any planning permission given. Consultation responses from WWT

4.1.1 The latest consultation response provided by WWT is dated 28 June 2024 and can be summarised as follows:

- a) Concern is maintained over potential adverse effects arising on Tiddesley Wood Site of Special Scientific Interest (SSSI), primarily relating to increased recreational disturbance. WWT comment that the Case Studies (May 2024) presented by the applicant do not “respond adequately to our concerns over incombination effects of harm over the long term, or the likely effectiveness of mitigation”;
- b) WWT draw attention to the “mitigation hierarchy, which sets out that avoidance of harm should be the first step in decision-making, before consideration of mitigation”;
- c) In terms of biodiversity net gain, WWT observe that “we do believe that net gain above the statutory threshold will be achievable. As such we do not wish to comment further on this aspect of the application at this stage”;
- d) WWT assert that the required cut and fill land forming approach will lead to additional loss of habitat, including trees, and recommend that the council take expert advice on these issues.
- e) In regard to bats, WWT comment that “should you be minded to grant permission it will be necessary to append conditions covering bespoke bat mitigation and site-wide lighting controls so as to safeguard commuting and foraging routes as well as the proposed bat house”.

5 Purpose of the Statement of Common Ground

5.1.1 This SoCG is a jointly agreed statement that identifies where there is agreement between the appellants and Wychavon District Council in relation to ecology and biodiversity following submission of the additional information outlined above.

6 Matters Agreed

6.1 Ecological Designations

6.1.1 The Site itself is free from any formal ecological designations. The nearest statutory designation is Tiddesley Wood SSSI, which is located immediately adjacent to the western red line boundary of the site, but is 100m away from the nearest built development, being separated by a proposed area of greenspace. The woodland is also classified as semi-natural ancient (ASNW) and replanted (PAWS) ancient woodland.

6.1.2 Other non-statutory designations exist in the local vicinity, with the nearest non-statutory designation being Tiddesley Woods Local Wildlife Site (LWS), forming a southern extension to the SSSI, being located immediately adjacent to the south-west boundary of the Site.

- 6.1.3 There are three European designations within 25km of the Site: Bredon Hills Special Area of Conservation (SAC) is located 4.4km to the south-east; Lyppard Grange Ponds SAC is located 11.3km to the north-west; and Dixton Wood SAC is located 14.1km to the south-east.
- 6.1.4 Although the Severn Estuary SAC is considerably more than 25km from the application site, the River Avon is located 150m to the south of the site, which is considered to be functionally linked to the Severn Estuary Special Area of Conservation (SAC) with respect to species of fish.
- 6.1.5 Natural England has however confirmed in its consultation response that it agrees with conclusions of the Shadow HRA, in which the potential effects relating to European sites, including the Severn Estuary SAC have been ruled out from being likely significant effects. Whilst the LPA (as competent authority), has yet to produce a formal HRA, it is understood that they will not contest Natural England's view, and that effects on European sites are not a matter of dispute.
- 6.1.6 As such, it is agreed that the only ecological designation which has the potential to be significantly adversely affected by the proposed development is Tiddesley Woods SSSI, and that this is the primary area of dispute between the various parties.
- 6.1.7 The site is located within the Zone of Influence for recreational impacts on the Malvern Hills SSSI, and although there is no current policy requirement to new developments to provide mitigation, Natural England highlight in their consultation response that the SWDPR Regulation 19 consultation has been informed by reports, including a mitigation strategy report. This may result in new local policy requiring developer contributions in relation to recreational pressure.
- 6.1.8 Should this be the case, it is understood that these effects can be mitigated through an appropriate contribution, if applicable, to be agreed through consultation with the Local Authority, and are not considered to be a matter in dispute.

6.2 Effects on Tiddesley Woods SSSI

- 6.2.1 It is agreed that the residential development proposals will not result in any direct 'loss' of irreplaceable habitat (Ancient Woodland or Veteran Trees as per NPPF paragraph 186c), although it is flagged by the Council that some of the works included within the proposed package of visitor management mitigation measures (such as path improvements) could constitute loss if not carried out sensitively. The main area of dispute however involves the potential 'deterioration' and any other adverse indirect effects on the SSSI and of Ancient Woodland within Tiddesley Wood.
- 6.2.2 Results of woodland botanical surveys of Tiddesley Wood SSSI are presented within the Ecological Appraisal (Aspect Ecology, September 2023), which have been carried out with the permission of WWT, including those describing the botanical composition and woodland condition. The contents of this assessment is not disputed by consultees, and no further information relating to the baseline ecology of the woodland has been requested. As such, the woodland baseline which is described is a matter of common ground.
- 6.2.3 An assessment of the types of potential impact is presented in the Ecological Appraisal (Aspect Ecology, September 2023).
- 6.2.4 Certain types of potential effects and impact pathways of concern have been identified by the consultees, being focussed on those relating to indirect recreational disturbance and urbanisation effects during the operational phase of the proposed development.

6.2.5 It can be agreed that other types of potential effects are not likely to result from the development. Hydrological impacts are not likely to arise from the proposals due to the topography of the site, whilst construction phase effects (such as noise and vibration effects, and those arising from dust pollution) are matters which have been raised by consultees but are matters that can be mitigated by condition and/or a legal agreement

6.2.6 It is agreed that there will be no loss or deterioration to Veteran trees resulting from the proposals, based on the Arboricultural material and woodland surveys that have been submitted.

6.3 Flora and Habitats

6.3.1 The baseline habitat conditions at the appeal site are described in the Ecological Appraisal (Aspect Ecology, September 2023), and BNG Assessment (updated in April 2024) – see above.

6.3.2 These documents set out the results of both desktop and field survey work in terms of irreplaceable habitats, Priority habitats and other habitats. The botanical surveys (see BNG Assessment 2024) have provided a greater degree of resolution over the grassland type and condition, which has informed the revised BNG Assessment. Further details have been provided regarding the approach to grassland creation and enhancement, and how areas of proposed cut and fill have been taken into account.

6.3.3 The site is recorded to support a number of Priority habitats including a remnant of traditional orchard (at the centre of the site), lowland mixed deciduous woodland (within the blue line land) and hedgerows. Other habitats considered to be of ecological importance are limited to mature trees.

6.3.4 It is agreed that the baseline conditions in terms of flora and habitats are accurately described in the above documents and that the survey work undertaken is up to date.

6.3.5 It is agreed that the proposed development would not result in any loss of irreplaceable habitats on the development site, and that minor losses of Priority and other important habitat types can be addressed through an appropriate mitigation and compensation strategy, with further details to be secured at the detailed planning stage, or by planning condition / or a legal agreement.

6.4 Fauna

6.4.1 As detailed in the Ecological Appraisal, a general faunal assessment and specific Phase 2 faunal surveys have been undertaken to provide an assessment of Priority and protected species at the site. Further information relating to bats has been provided in the form of Bat Addendum Report 1 (Aspect Ecology, December 2023) and Bat Addendum Report 2 (Hibernation Survey Results) (Aspect Ecology, March 2024).

6.4.2 It is agreed that survey work in relation to Badger, Dormouse, Water Vole and Otter, amphibians reptiles and birds has been appropriately conducted using industry standard methods and is sufficiently up to date to inform a planning decision. The issue of effects of cats on species in Tiddesley Wood remains in query.

6.4.3 In respect of bats, additional survey data is presented in Bat Addendum Reports 1 and 2, which includes further data from bat activity surveys (walked transects and static detector surveys) carried out during the latter part of the 2023 survey season as well as hibernation surveys. It is

agreed that survey work in relation to bats has been appropriately conducted using industry standard methods and is sufficiently up to date to inform a planning decision.

- 6.4.4 The surveys identify that Barbastelle and Lesser Horseshoe bats were recorded during the activity surveys, whilst it has been established that there is a Lesser Horseshoe bat roost within one of the buildings in the site. These are light sensitive species and accordingly it is essential that dark corridors are maintained across the site to ensure the site remains permeable for them.

6.5 Biodiversity Net Gain

- 6.5.1 A BNG Assessment has been submitted to inform the planning application (originally produced in September 2023, and updated in April 2024 to address consultation comments). This provides an assessment of the level of biodiversity net gain that could be achieved under the scheme, based on the Biodiversity Metric 4.0 tool, and includes an assessment of habitats, hedgerows and watercourses.
- 6.5.2 The BNG Assessment includes an area of woodland within Tiddesley Wood under the control of the applicant, and which it is proposed to bring in favourable conservation management.
- 6.5.3 It is agreed that the updated BNG Assessment provides an accurate assessment of the pre-development biodiversity value of the site.
- 6.5.4 It is noted that the application was submitted prior to the requirement for a mandatory net gain of 10%, which is required by the Environment Act 2021 and Biodiversity Gain Regulations the latter of which came into force on 12 February 2024. As such, it is agreed that there is no requirement to achieve a 10% biodiversity gain, although it is recognised that the metric provides a way of quantifying the net gain provided by the scheme which can be used to demonstrate compliance with 'no net loss' under NPPF para 186d and Policy SWDPR 27 (securing a measurable net gain), and to inform consideration of the positive contribution of biodiversity to the planning balance.
- 6.5.5 It is noted that the biodiversity metric calculations are based on an outline scheme, such that details of landscaping and habitat creation and management would need to be provided at the detailed stage. It is nonetheless agreed that, on the basis of the submitted BNG Assessment, that a gain of >10% in habitats, hedgerows and watercourses is achievable under the proposals.
- 6.5.6 The BNG Assessment takes account of the Cut and Fill proposals as confirmed at paragraph 4.1.3 of the BNG Assessment (April 2024). The development of the Cut and Fill scheme has been, where possible, guided by the existing grassland conservation interest as discussed at paragraphs 4.4.6 – 4.1.6 of the Grassland Botanical Survey report (April 2024) at Appendix 6596/4 of the BNG Assessment report. Where grassland is of higher botanical interest e.g. other neutral grassland, the Cut and Fill scheme seeks to avoid these areas so that they can be retained and enhanced. Rather, the Cut and Fill scheme has been developed so it centres on grassland of lower conservation interest e.g. modified grassland, and the BNG Assessment accordingly codes such grassland as lost to the scheme and then re-created. This is also the case for any short lengths of hedgerow lost to the Cut and Fill scheme which are also coded into the Metric as lost and then re-planted (not retained).

7 Matters not Agreed

- 7.1.1 Matters in dispute relate to recreational and urbanisation effects in relation to Tiddesley Woods SSSI, particularly those resulting from increased visitor pressure and potential incursions by domestic pets, notably cats. Further, that the proposed open space buffer will not be effective in mitigating impacts of the proposed development.
- 7.1.2 A lack of consideration of the role of the Orchard Farm site as habitat functionally linked to the SSSI (citing breeding birds as an example).
- 7.1.3 The Portfolio of Case Studies (May 2024) provided has not responded adequately to the concerns over in-combination effects of harm over the long term, or the likely effectiveness of mitigation measures.
- 7.1.4 Whether there is sufficient information to demonstrate effective dark corridors for light averse bat species can be delivered as part of the development.

8 Summary

- 8.1.1 The SoCG sets out those matters which are agreed and those which are disputed, between the appellant and Wychavon Council.

Signed:

Name:

Date:

For and on behalf of the appellant
(Formula Land Ltd)

Signed:

Name:

Date:

For and on behalf of Wychavon District Council

Signed:

Name:

Date:

For and on behalf of Wychavon District Council