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Proof of Evidence

LAND ON THE NORTHWEST SIDE OF MAYS LANE, ARKLEY, BARNET, EN5 2AH.

December 2024

Project: LAND ON THE NORTHWEST SIDE OF MAYS LANE, ARKLEY, BARNET, EN5 2AH.

Date: 24/12/24

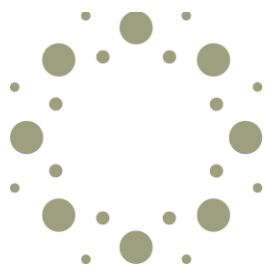
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Version: Final

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1.0 Executive summary

1.1 Natural England has not designated the site as a habitat because of its importance in national, regional, or county conservation. The application site includes a horse paddock, scrub and hedges. No protected species were recorded on-site. However, seven ponds are situated outside the red line. eDNA results from two ponds were positive. The landowner was denied access to two of the seven ponds by the consultants undertaking a DNA sample.

1.2 The application was refused as it has not been demonstrated that the proposed development would mitigate against the disturbance of great crested newts. A concern raised by the county ecologist is that the proposed development will sever a commuting route for great crested newts. The habitat cited is rough grassland. However, the habitat is a modified grassland grazed by horses, a sub-optimal habitat for great crested newts. In addition, the permeability and connectivity across this habitat type is poor. Therefore, migration routes to other ponds would follow suitable habitats like hedges.

1.3 The other concerns raised could be addressed with a sensitive lighting strategy. Contaminating the adjacent pond can be minimised by retaining a buffer around the hedge and enhancing the hedge to prevent domestic pets from disturbing any potential newts.

1.4 Another concern was the lack of adequate survey data and the fact that both ponds may support breeding adult great crested newts. Firstly, no ponds are lost as part of the proposal and these ponds are outside the proposed development site. In the worst-case scenario, the developer can apply for a mitigation licence from Natural England. Natural England has introduced four policies ecologists can use for European Protected Species. Natural England states they are most likely useful for great crested newt and bat mitigation licencing. This includes Policy 4: Alternative sources of evidence to reduce standard survey requirements. The proposal shows that it benefits the local EPS population. This can be done by increasing the distribution of suitable habitats, improving the quality of occupied habitats, improving connectivity between habitats and enhancing the long-term maintenance and security of the habitat to improve future populations.

1.5 A Precautionary Method of Working (Ecology) is proposed to address the local authority's concerns. This Precautionary Method of Working (Ecology) document outlines the precautionary working practices for protected species on sites with a low risk of the species being present on site and when the local planning authority (LPA) considers the preventive measures applicable.¹

1.6 Should any protected species be discovered during construction or other works on site which will likely be affected by the development, works will cease immediately. The owner/site manager will then seek the advice of a suitably qualified and experienced ecologist, and outcomes will only proceed following their advice.

1.7 The proposal would not be detrimental to maintaining the species concerned in favourable conservation status in their natural range.

2.0 Introduction

Purpose of the report

2.1 This Precautionary Method of Working (Ecology) sets out a practical working strategy to be implemented during the pre-construction and construction phases of the development. It ensures that features of ecological interest, including notable habitats and protected/notable species, are not compromised within the working area or the influencing distance of the working site.

2.2 The "working area" is defined as 'any area where there will be a requirement for temporary or permanent works to facilitate the construction of the development.' This includes areas required for access, temporary construction, temporary storage areas and site facilities.

2.3 The Precautionary Method of Working does not include any landscape design, management or biodiversity enhancement measures.

2.4 The Precautionary Method of Working (Ecology) should be included as ecological input to inform the Contractors' Environmental Management Plan (CEMP) and ensure the following recommendations are implemented.

¹ This is not a legal document and does not include information on wildlife protection and legislation.

Baseline Site Location and General Description

2.5 The site is LAND ON THE NORTHWEST SIDE OF MAYS LANE, ARKLEY, BARNET, EN5 2AH.

Development Proposal

2.6 The proposal is to develop a caravan site with hardstanding and ancillary dayrooms to the northwest of Mays Lane, Arkley, Barnet.

Ecological constraints

2.7 The previous reports suggested that Natural England has not designated the site as a habitat because of its importance in national, regional, or county conservation.

2.8 RSK Biocensus great crested newt eDNA report found the presence of eDNA in two ponds. An eDNA survey of two ponds was not provided. However, these ponds and habitats are not within the boundary of the proposal.

2.9 The Natural England risk calculator indicates an amber risk is likely. Therefore, a precautionary approach is for the following:

- Great crested newts.

Purpose and Objective

2.10 This Precautionary Method of Working (Ecology) considers the scope and localised nature of the proposed works. It assesses how those works could affect protected species within the works' Ecological Zone of Influence (EZOI). Reasonable and practical measures are provided that are proportionate to the scale of the development and the potential with which protected species are likely to be present.

2.11 The Precautionary Method of Working (Ecology) sets out the relevant advice to ensure that appropriate and reasonable efforts are made to avoid harm to wildlife and prevent breaches in legislation protecting wildlife species.

2.12 This document and its implementation will inform the local authority when considering the planning application.



3.0 Precautionary Method of Working (Ecology)

3.1 Great crested newts are European Protected Species subject to the Conservation of Habitats and Species Regulations 2010 (as amended). Natural England's view is that *"If the consultant ecologist, based on survey information and specialist knowledge of the species concerned, considers that on balance the proposed activity is reasonably unlikely to result in an offence under Regulation 41 or 45, then no licence is required"* (Natural England, 2013).

3.2 A range of factors are considered when assessing whether works can proceed without a licence, including the nature of the proposals, the suitability of habitats within the site to support protected species, evidence of such species, and proximity of existing known populations. In cases where a licence is not required, Natural England (Natural England, 2013) urges reasonable precautions to avoid affecting European Protected Species during work and that an audit trail on the decision-making process.

3.3 Following Natural England's advice, this Precautionary Method of Working (Ecology) sets out reasonable precautions. It reduces the risk of causing offences to these species under the Wildlife and Countryside Act 1981 (as amended). The Precautionary Method of Working (Ecology) provides an audit trail to justify why an offence is considered reasonably unlikely.

Great Crested Newts

3.4 Suitable terrestrial habitat for great crested newts has structure and includes meadows, rough grassland with a tall sward height, scrub and woodland.² The area for the proposal includes a short modified grassland that is horse-grazed, a sub-optimal habitat for GCN. RSK Biocensus report states the hedgerows and scrub habitats at the grassland edges are likely used for foraging and sheltering by GCN. Any GCN habitat is legally protected, so any vegetation clearance could cause an offence under current legislation (e.g., killing, injuring, disturbance, or habitat destruction).

3.5 A further consideration in assessing the suitability of the existing habitats is its degree of habitat connectivity. Connectivity refers to the degree to which the landscape facilitates

² Great Crested Newt Habitat Suitability Index, ARG UK Advice Notes, May 2010.

movement between different habitat patches.³ There are two types of connectivity: structural connectivity and functional connectivity.

3.6 Structural connectivity refers to physical connections in the landscape between habitat patches (often called “corridors”, although they do not necessarily have to be linear features). Functional connectivity refers to how much the landscape helps or hinders the movement of species and often relates to the vegetation structure or the management intensity. Functional connectivity is species-specific (as it depends on the mobility of the species and the habitat types present in the landscape).⁴ Permeability refers to a species' ability to move through the landscape and depends on the species and the structural similarity of the landscape to the habitat the species prefers, such as hedges and scrub.

3.7 The county ecologist is concerned that the proposed development will sever a commuting route for great crested newts. The habitat cited is rough grassland. The site has a low degree of habitat connectivity across the grazed modified grassland, while the habitat surrounding the site offers good connectivity, i.e., hedges and scrub.

3.8 However, the habitat is a modified grassland grazed by horses, a sub-optimal habitat for great crested newts. In addition, the permeability and connectivity across this habitat type is poor. Therefore, migration routes to other ponds would follow suitable habitats like hedges.

3.9 Natural England response to Barnet (17/12/24) stated ***“Should the development area be considered GCN habitat, and the favourable conservation status of the local population be impacted by the works under a precautionary method statement without a licence from Natural England, then this would again constitute a wildlife crime.”*** The area for the proposal includes a short modified grassland that is horse-grazed, a sub-optimal habitat for GCN.

³ Kuttunen, M., Terry, A., Tucker, G. & Jones, A. (2007) Guidance on the maintenance of landscape connectivity features of major importance for wild flora and fauna: Guidance on the implementation of Article 3 of the Birds Directive (79/409/EEC) and Article 10 of the Habitats Directive (92/43/EEC). Brussels: Institute for European Environmental Policy.

⁴ Eycott, A. E, Marzano, M. & Watts, K. (2011) Filling evidence gaps with expert opinion: The use of Delphi analysis in least-cost modelling of functional connectivity. *Landscape and Urban Planning*, 103: 400-409

3.10 Another concern raised by the county ecologist was the lack of adequate survey data and the fact that both ponds may support breeding adult great crested newts. Firstly, no ponds are lost as part of the proposal, and these ponds are outside the proposed development site.

3.11 In the worst-case scenario, the developer can apply for a mitigation licence from Natural England. Natural England has introduced four policies ecologists can use for European Protected Species. Natural England states they are most likely useful for great crested newt and bat mitigation licencing. This includes Policy 4: Alternative sources of evidence to reduce standard survey requirements. The proposal shows that it benefits the local EPS population. This can be done by increasing the distribution of suitable habitats, improving the quality of occupied habitats, improving connectivity between habitats and enhancing the long-term maintenance and security of the habitat to improve future populations.

3.12 Due to the scale of the works, it is considered reasonably unlikely that the works will result in the deliberate capture, injury or killing of great crested newts. It is considered reasonably unlikely that the vegetation clearance will result in deliberate disturbance to great crested newts in such a way as to be likely to impair their ability to survive, breed, reproduce, rear or nurture their young, hibernate, or affect the local distribution or abundance of great crested newts significantly. In addition, it is reasonably unlikely that the vegetation clearance will damage or destroy their resting places.

3.13 As the works will not affect a breeding pond during the breeding season, they will not involve deliberate taking or destroying the eggs of great crested newts. Therefore, based on specialist knowledge and experience working with great crested newts, it is considered on balance that the vegetation clearance is reasonably unlikely to result in an offence under Regulation 41 of the Conservation of Habitats and Species Regulations 2010 (as amended) and no protected species mitigation licence is required.

3.14 Similarly, it is considered reasonably unlikely that works disturb a great crested newt in its shelter or obstruct access to such a place. Therefore, vegetation clearance is reasonably unlikely to result in an offence under the Wildlife & Countryside Act 1981 (as amended). However, to further ensure that such an offence is not committed, it is proposed to proceed under the Precautionary Method of Working (Ecology) detailed within this report.

4.0 Ecological Protection Measures

Pre-construction

Land Management

4.1 It is understood that the development will be delivered in a single phase and not last 12 months. Therefore, It is recommended that any ongoing grounds management care be continued until the point of the development. Any site neglect will make the area attractive to wildlife and may invalidate the Precautionary Method of Working (Ecology).

Appointment of Ecological Advisor

4.2 A Project Ecologist (also acting Ecological Clerk of Works ECoW) is appointed to provide an advisory role when required.

Ecological Toolbox Talks

4.3 The ECoW will provide contractors with toolbox talks. These talks will explain the potential presence of protected or notable species on site, their implications, required work methods, and the locations of any exclusion zones. Toolbox talks will be updated when any new ecological issues arise (including seasonal variations/restrictions), or changes to working methods are required. The Project Ecologist will provide the initial toolbox talk before each phase of work.

4.4 Any appropriate root protection zones will be implemented following an Arboriculture Impact Assessment. Root Protection Zones Exclusion fencing will be installed around retained trees to protect them from accidental damage following BS5837:2012 Trees concerning design, demolition, and construction.

Construction

Great crested newts

4.5 Great crested newts hibernate below ground during the winter months. Therefore, removing the portion of any stumps from November to March is inappropriate as this may disturb newts. The affected stumps cannot be removed entirely during this period.

4.6 The stumps should be removed in two stages:

- Shrub and woody vegetation is to be cut by hand to about 15 centimetres above ground level and removed from November to March; and,

- The remaining stumps and field layers will be removed following a detailed search from April to October.

4.7 The following action is to be followed if the vegetation cannot be cleared during the winter:

- Before clearance, the area affected will be subject to a detailed inspection conducted by an experienced ecologist. Then, shrubs and woody vegetation should be removed by hand to about 15 centimetres above ground level.
- The remaining stumps and field layers are to be removed following a detailed search. Any animals found will be removed from the affected area and placed in a suitable natural habitat.
- Then, a final destructive search of the remaining habitat will be conducted under ecological supervision. Destructive searches typically involve carefully using a small excavator fitted with a narrow-toothed bucket. The machine will slowly strip the vegetation.
- Upon completion of the destructive search, the ecologist will notify the developer that the construction area is clear and has a negligible risk of harming protected species.

4.8 Deep trenches will be covered at the end of each working day or (in the case of shallower trenches only) will include a means of escape for any animal falling in. This will comprise wooden boards placed no steeper than a 45° angle. The appointed person will check at the end of each working day to ensure that excavation is covered or that provision is made for animals to escape.

4.9 Storage areas will be located away from sensitive areas, mainly retained habitats. During construction, store materials off the ground to avoid creating standing water that may become attractive to amphibians.

5.0 General Precautionary Measures

Harmful substances

5.1 If any equipment or harmful substances (such as petrol) are on-site, these should be stored within a secure, locked compound to prevent wildlife from potentially harming themselves.

Pollution Prevention

5.2 Measures outlined within the Best Practice Pollution Prevention Guidelines will be followed to avoid pollution incidents which may indirectly affect terrestrial or aquatic habitats. Measures will include, but are not limited to, the following:

- Arrive at the site with clean footwear;
- Ensure footwear is visually clean from soil and debris before leaving the site;
- Ensure vehicles are kept clean. Remove any accumulated mud before leaving the site using a stiff-haired brush. Cleaning should be carried out over a root barrier membrane or hard surface that can contain and collect any contaminated material that has been washed off the vehicle;
- Make use of facilities on-site to clean footwear and equipment;
- Keep vehicles to established tracks and park vehicles on hardstanding;
- Any works carried out by contractors should be accompanied by a Risk Assessment Method Statement (RAMS). The RAMS should detail appropriate biosecurity measures to be observed during the work's duration and outline the work's scope and any ongoing monitoring/works required.
- Where possible, water will be prevented from entering excavations.
- Standard dust prevention measures will be implemented.
- The risk of such contamination to the adjacent pond can be minimised by retaining a buffer around the hedge – these also offer valuable hibernacula habitats for GCNs.

Trees - Root Protection Areas

5.3 Any root Protection Areas and fencing zones will be adhered to following the Arboriculture Impact Assessment.

Consideration to Wildlife

5.4 Staff will remain vigilant throughout the work. Should any protected or notable animals be encountered during the works, advice will be sought immediately from the Project Ecologist or ECoW. If new solid fencing is installed, ensure gaps at the base of at least 15 cm and intervals of 10 metres to ensure hedgehogs and other wildlife can move freely between sites.

5.5 Nesting birds need consideration from March to August.

6.0 Roles and Responsibilities

6.1 The developer and project ecologist will manage sensitive wildlife issues. All personnel have a duty of care concerning protected species and wildlife legislation.

6.2 a construction environment management plan (CEMP) will be produced based on this strategy, recognised industry guidance, and British standards to avoid and mitigate potential adverse effects that may occur during construction phases.

Appendix 1: Qualifications and Competence of the Ecologist

I am an experienced and qualified ecologist with years of conservation experience. I founded a new conservation charity and previously worked as Head of Conservation for a Wildlife Trust, Director of Studies for the Field Studies Council and Course Director and Lecturer for the University of Essex and Cambridge.

I have been nationally recognised by respected organisations and awarded various fellowships for my outstanding or significant contributions to these disciplines, including conservation and biodiversity for landscape-scale conservation projects.

Amongst my CV items, I would highlight the following:

- Over 25 years of conservation experience
- Fellow of the Chartered Institute of Ecology and Environment Management (CIEEM)
- Fellow of the Royal Entomological Society
- Fellow of the Royal Society of Biology
- Fellow of the Linnean Society
- Executive Fellow of the School of Biological Science – University of Essex
- External advisory board member for the University of Essex
- CIEEM Representative at the University of Southampton, judging national ecological projects
- CIEEM Representative as an Ecological expert for the Southwood Foundation
- Ex-head of Conservation for a Wildlife Trust
- Ex-director of Studies for the Field Studies Council
- Ex-Course Director and Lecturer for the Universities of Essex and Cambridge

- Experience in assisting numerous clients with ecological matters on planning applications and at appeals (including hearings/public inquiries)
- Respected organisations have nationally recognised me and awarded various fellowships for my ‘outstanding or significant contribution’ to disciplines, including conservation and biodiversity, to delivering landscape-scale conservation projects. Fellowship demonstrates endorsement of leadership, knowledge, skills, and experience.

While at the Trust, I was responsible for over 6,500 acres of land, ensuring that the management and monitoring of the land delivered the higher-level stewardship targets and the Positive Conservation Management of the Local Wildlife Sites. Projects include the re-alignment of 300 metres of seawall and the creation of an international wetland, the development of a new biological recording website, a new biological records centre for Essex, safeguarding over 284 km² of Marine Conservation Zone (MCZ), making it the largest inshore MCZ in England, safeguarded the oysters with over 25,000 breeding oysters translocated on 6 hectares of seabed in the Blackwater estuary and secured water voles recolonising 1500 km² of north-east Essex. As Conservation Manager for a Local Wildlife Trust Site, I oversee all nature reserves, policies, management plans, and local wildlife sites in Essex.

ACJ Ecology is a preferred biodiversity provider for Chelmsford City Council (a local authority in Essex) and has suitable land within Essex and beyond for offsetting biodiversity. This includes habitats for biodiversity offsetting approved by the Local Authority.

I have worked on biodiversity offsetting sites for the last five years before the mandatory net biodiversity gain. I have over 2,500 acres of land for biodiversity strategically selected to deliver the recommendations from the Lawton report—bigger, better, and more joined up. Our sites are generally over 200+ acres and are located to contribute to the ecological landscape. We have the full range of habitats and are working with the local oystermen on marine biodiversity offsetting in preparation for the marine aspects becoming mandatory.

Before the mandatory biodiversity requirements for development, I worked with a colleague on a digital biodiversity platform to ensure the local authority could track and use the



biodiversity units and provide developers with the units that have not been sold several times over.

I am currently on the external advisory board for the University of Essex and represent the Chartered Institute of Ecology and Environmental Management at the University of Southampton. I also judge national ecological projects and serve as an ecological expert for the Southwood Foundation.