

**London Borough of Barnet**

**SUMMARY Proof of Evidence – Ecology** - on behalf of Local Planning Authority

Nathan Nicholls (MSc, BSc, ACIEEM) – Senior Ecologist

**Appeal By:** Mr Patrick Casey

**Proposed Development:** “A material change of use for stationing of caravans for residential use with hardstanding and dayrooms ancillary to that use”.

**Appeal Site:** Land On The North West Side Of Mays Lane, Arkley, Barnet. EN5 2AH

Appeal Reference: APP/N5090/W/23/3330577

**LPA Reference:** 23/3816/FUL

**Public Inquiry:** 21 January 2025

Appeal under Section 78 of the Town and Country Planning Act (As Amended) 1990

## **Summary Proof of Evidence Ecology**

### **1. Introduction**

1.1 This Summary Proof of Evidence is submitted on behalf of London Borough of Barnet with reference to the decision to refuse planning permission, for the scheme which is the subject of this appeal.

1.2 I am Nathan Nicholls, and I work for London Borough of Barnet as a Senior Ecologist in the Planning Department. I have BSc (Hons) in BSc Wildlife Conservation with Zoo Biology at the University of Salford, and an MSc in Conservation Biology from University of Kent. I am an associate member of the Chartered Institute of Ecology and Environmental Management (CIEEM), hold a Great Crested Newt Survey Class License Level 1 CL08 (2023- 55073-CLS-CLS),

1.3 I have provided evidence focused on the relevant ecology planning policy framework, wildlife law implications, and planning matters that apply to the proposed development at Land On The Northwest Side Of Mays Lane, Arkley, Barnet. EN5 2AH, in particular the planning balance. I am an ecologist, not a lawyer, however, and legal submissions are for the Council's advocate at the inquiry.

### **2.0 Summary Scope of Evidence**

2.1 My evidence focuses on the relevant ecology planning policy framework, wildlife law implications, and planning matters for the proposed development, particularly the planning balance. And provides an overview of the respective sections of the Proof of Evidence.

2.2 Since initially drafting my proof, the appellant submitted a late Precautionary Working Method (PWM) report (received on 9 December 2024), claiming the proposed works would benefit the conservation status of great crested newts through unspecified habitat enhancements, negating the need for further surveys. This new position contradicts their previous stance that further surveys were required. Section 6 covers this new evidence. I conclude that planning permission should be refused as submitted documents are insufficient to mitigate the risk of offences under wildlife protection legislation, and further survey data is needed to determine the impact on great crested newts' conservation status.

### **3.0 Application Site and Surrounding Context**

3.1 There is no previous planning history applicable for the site.

3.2 Planning permission is sought for the material change of use of the land for the stationing of caravans for residential use, including hardstanding and dayrooms ancillary to that use. The application is supported by a proposed block plan depicting 2no. pitches comprising 2no. mobile homes, 2no. touring caravans and 2no. utility / day rooms located

in the northeast corner of the application site. Built under a clay tile roof the utility timber structures proposed measure 22.1sqm.

3.3 The application was refused on 6 December 2022. The application had been recommended for refusal on ecological grounds due to insufficient supporting ecological information in the form of the recommended eDNA survey and any further traditional survey to confirm the presence or likely absence of great crested newt within those ponds identified within the *Preliminary Ecological Appraisal report* (Arbtech, 14/11/2023).

3.4 Six months after the Applicant's planning application was refused by the Council, Green Planning Studio ('GPS') submitted an s78 appeal on behalf of the appellant, on 21st Jun 2024, which was accompanied by several new planning documents including a GCN eDNA report.

#### **4.0 Relevant Planning Policies**

4.1 General summary of the relevant policies and statutory legislation to take into consideration. These include National Planning Policy Framework (NPPF) 193, London Plan 2012 Policy G6 (Biodiversity), Barnet Local Plan The Core Strategy (September 2012), Barnet Adopted Local Plan Development Management Policies DPD (December 2012) DM01 and DM16. Emerging Barnet Local Plan policies EC006 (Biodiversity) and Policy HOU06 (Gypsies, Travellers and Travelling Showpeople form core part of the reason for refusal.

4.2 The Local Planning Authority (LPA) has raised legal concerns were the development to be granted planting permission due to the potential risk of an offence being committed under section 43 Conservation of Habitats and Species Regulation 2017, Section 9 5 of the Wildlife and countryside Act 1981 (as amended), article 12 of the Habitats Directive 1992. The Government's guidance on 'Protected species and development: advice for local planning authorities' (updated 25 October 2023), and Natural England's Standing Advice on GNC (last updated 26 July 2022) provide clear instruction as requirement for full protected species survey information to be provided prior to determination of a planning application.

#### **5.0 Main Ecology Issues**

5.1 The continued reason for refusal in relation to ecology can be divided to three sections; likely unacceptable impact on the Favourable Conservation Status of great crested newt; failure of the proposed scheme to meet the Three Tests necessary to grant a licence from Natural England (NE), and the eDNA survey report is still insufficient survey information for the following reason:

5.2 The LPA holds that insufficient survey information has been provided in the form of the eDNA survey report submitted at appeal and, as of 9 December 2024 a Precautionary Method of Work (Ecology) – Barnet (ACJ Ecology, November 2024) [CD2 2.5]. The latter

document attempts to negate the requirement for further surveys and a supporting European Protected Species licence and implies that all precautionary mitigation measures can be secured by means of planning condition. NE hold the view (17.12.2024) that were the Appellant to submit for an European Protected Species licence at a later date, the survey information submitted would be unlikely to be acceptable to NE to grant a licence.

5.3 The LPA holds that the works if granted planning permission would likely result in a negative impact of the Favourable Conservation Status of the GCN, as the PWM fails to appropriately acknowledge the risk of damaging suitable terrestrial habitat for GCN so close to pond 1, no effort has been made to address the likelihood of newts traversing onto an unsecured development site from the pond, and the development in question would serve a likely direct commuting route through the grazing fields between Ponds 1 and 6. These potential impacts on the GCN which has yet to be adequately assessed would be contrary to both UK and international law.

5.4 The LPA also holds that the development as it stands fails to meet the three derogation test under section 55(9) of the Conservation of Habitats and Species Regulation 2017. NE must be satisfied that the development meets the ‘three test’ (see below):

- (i) Imperative Reasons of Overriding Public Interest (IROPI)
- (ii) No Satisfactory Alternative
- (iii) Favourable Conservation Status

As the location of the development could in principle be altered to not directly impede the movement of newts between Ponds 1 and 6, and given the insufficient survey information on the GCN population combined with the inappropriate precautionary mitigation strategy would result in the direct disturbance of GCN and the loss of habitats important for their survival which would be directly contrary to the Favourable Conservation Status.

5.5 NE have confirmed in writing on two occasions that they are unable to consider conditions without satisfactory efforts to secure complete surveys. NE have reiterated as of December 17<sup>th</sup> 2024 that full effort must be made to obtain complete survey data and evidenced when applying for a license , and that given the location and nature of the works in relation to ponds near the site, the development if implemented under a precautionary method statement without a licence would constitute a wildlife crime (see Appendix 1 and 3). In R. (on the application of Morge) v Hampshire CC [CD6 6.22], the Court held that the decision maker must have regard to the derogation tests.

## **6.0 Other Material Consideration**

6.1 The Council argues that without reconsideration of the project, and further surveys to support a detailed mitigation strategy for great crested newts, the proposed development as it stands would harm the conservation status of this EPA, conflicting with crucial planning policies. The submitted PWM is deemed inadequate to replace the need for full surveys, as it fails to address the serious risk to great crested newts and appears to be a late attempt to avoid necessary further surveys.

6.2 To conclude, the proposed development would likely significantly impact the Favourable Conservation Status (assuming a worst-case scenario) in the absence of appropriate survey effort and mitigation strategy and thus runs the risk of committing a serious offence under the UK and international law. Therefore, planning permission should not be granted without sufficient survey information and an appropriate mitigation protocol.

## **7.0 Declaration**

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