



## ECOLOGY (BIODIVERSITY) OBSERVATIONS ON A PLANNING APPLICATION

<b>To:</b> Emma Pickernell Senior Planning Officer, Cheltenham BC	<b>Date:</b> 02/09/2020 <b>My Ref:</b> 20(030A)
<b>From:</b> Gary Kennison, Principal Ecologist	
20/00683/OUT Outline application for 43 dwellings including access, layout and scale, with all other matters reserved for future consideration, Land Adjacent To Oakhurst Rise, Cheltenham, Gloucestershire GL52 6JU Grid Ref (approx.) 396492 221592	

*Based on inspection of submitted drawings and other documents including ecological reports (and letters)*

### 1. SUMMARY OF RECOMMENDATION

No observations and/or minor observations	
<b>No objections, subject to reserved matters (conditions) and informatives</b>	✓
Further information and/or clarification required	
Refusal (for the reasons set out below if details remain unchanged)	
Consider enforcement or other action	

### 2. Advice by Topic

Item (Topic)	Coverage	General Observations
Ecological Reports	Ecological Appraisal (April 2020) by Aspect Ecology	Updates previous site surveys/assessments between 2016 and 2018. Aspect Ecology added a botanical survey of the grassland in July 2019 and an overview survey of the site in April 2020.
Designated Sites	Cotswold Beechwoods Special Area of Conservation (SAC)	The SAC is about 8km away to the south west and there is potential for increased recreational disturbance to occur on this European Site. To make sure this development is not harmful the Appropriate Assessment stage of HRA must be triggered by the LPA.  If the LPA after consulting Natural England is able to conclude in its Appropriate Assessment (HRA) that there

Item (Topic)	Coverage	General Observations
		<p>would be no adverse effect on the integrity of the SAC then planning permission could be approved if no other matters warranted refusal.</p> <p>The developer's consultant Aspect Ecology has commented on HRA at paragraph 3.1.3 of the Ecological Appraisal. It references the previous HRA process for application 18/02171/OUT and the associated submitted document entitled 'Information to inform a Habitats Regulations Assessment' dated November 2018. This is relevant to the Appropriate Assessment that the LPA needs to carry out for the current application which is for less residential units (reduced from 69 to 43). In summary the developer's ecologist conclusions are that the latest development is also unlikely to have an adverse effect on the integrity of the SAC. A homeowner's information pack has been proposed previously by Natural England (application 18/02171/OUT) and this is included in my recommended LEMP condition (reserved matter) below.</p>
	Site of Special Scientific Interest (SSSI)	If potential significant effects on the SAC (above) from recreational disturbance can be avoided then they would also be on the Cotswold Commons and Beechwoods SSSI too.
	Local (Key) Wildlife Site (LWS)	Nearest is KWS is Glenfall Wood (almost 1km away to the east). Further distant is Ashgrove Meadow and Charlton Kings Railway Line to the south west and south. Development unlikely to significantly affect these KWSSs if the SAC is also deemed to be materially unaffected (see above).
	National or Local Nature Reserve (NNR or LNR)	Part of the Cotswold Commons & Beechwoods SSSI is an NNR (so above comments apply). Nearest LNR is Griffiths

Item (Topic)	Coverage	General Observations
		Avenue (about 4km to the west). Development unlikely to significantly affect these sites if the SAC is also deemed to be materially unaffected. (see above)
	Regionally Important Geological Site (RIGS)	Development unlikely to significantly affect such sites. None are nearby
Conservation Road Verges (CRVs)	As in current version of the Highways Authority's register	Nearest CRV is Colegate Farm, Dowdeswell.  Development unlikely to significantly affect it.
Priority Habitats (including hedgerows)	Hedgerows	<p>See also trees below.</p> <p>The condition of the hedgerows H1 and H2 was checked in April 2020 in comparison to a previous survey in 2017. Hedge 1 is re-confirmed as still being important using the Hedgerows Regulations methodology. Hedge 2 is again not considered to meet the importance test under the Hedgerow Regulations.</p> <p>H1 and H2 will suffer some loss (comparing the Landscape Strategy drawing with the Habitats &amp; Ecological features drawing in the ecology report). H3 to H6 are poorer quality and are fragmented already. Proposed landscaping will improve this situation somewhat but importantly the connectivity provided by the site hedgerows will be improved by significant new tree/shrub planting for a range of animal species (birds, mammals and invertebrates). Given this the residual impact of the modest tree and hedgerow loss proposed will have little residual (if any) impact on biodiversity and a net gain overall.</p> <p>The Tree Protection Plan (Dwg No. 38-1036.02 Rev B) provides details for the protection of all retained trees and hedges during the construction phase.</p>

Item (Topic)	Coverage	General Observations
Trees	Many, various species	<p>See also hedgerows above.</p> <p>Trees (including aged or veteran ones) on site. The consultant ecologist states that all of the veteran trees will be retained. The Planning Statement at 3.10 says there will be “the loss of two mature trees (3016 ash; 3017 sycamore), as well as one mature tree deemed unsuitable for retention (3004). There is a good chance that the ash will be lost to ash die-back disease in the coming decade even if the development does not go ahead. These trees are situated up against the northern hedgerow H4. Additionally a few shrubs not obviously of retained hedgerows may also be lost but most will probably be retained.</p> <p>It is crucial that the retained trees (the vast majority on site) are properly protected during the construction and occupation phases along the lines of government advice and British Standard ‘BS 5837, Trees in relation to design, demolition and construction.’ The Tree Protection Plan (Dwg No. 38-1036.02 Rev B) provides details for the protection during development of all retained trees and hedges. The application also comes with proposed significant new tree and shrub planting (landscape strategy drawing) and a proposed Management Plan for these. Most of the new trees will form a relatively wide native woodland belt of great potential future value for biodiversity</p> <p>There will be a small negative impact on trees and an improvement upon the previous schemes. Taking an ecological viewpoint the landscape proposals if</p>

Item (Topic)	Coverage	General Observations
		<p>implemented as soon as possible would be good mitigation for the immediate limited impact on trees (as a habitat) in the medium to long-term.</p> <p>Conditions are needed to confirm and successfully implement the landscape strategy and tree protection plan which incorporates the arboricultural methods and supervision.</p>
Other habitats / features of interest	Several	<p>Scrub, semi-improved grassland, ruderal vegetation &amp; standing water (temporary) occur in places. Grassland reported to be grazed informally and also annually mown in places with arisings not being removed. A bonfire site with creeping thistle and stinging nettle has also been noted. Current management and use of the site is not likely to conserve or enhance biodiversity value long-term. Most of these site features mentioned are relatively common in Gloucestershire and not of particularly high value for biodiversity.</p> <p>The pond (which has no aquatic vegetation and dries out very regularly) will be lost by the proposals but well replaced by a new (surface water attenuation) pond towards the south of the site. Although this may be dry at times it is of a design that at least marginal plant species and associated fauna will be able to establish there. About 57% of the semi-improved grassland will be lost but the remaining will be retained as green space for use by a nearby school. The area of semi-improved grassland and ruderal vegetation to be lost to new housing , roads and gardens is a biodiversity loss that needs factoring in but the overall long-term outcome for biodiversity is likely to be</p>

Item (Topic)	Coverage	General Observations
European Protected Species (EPS)	Bats – Some common pipistrelles but a few soprano pipistrelles, noctules, serotines, <i>Myotis</i> species and lesser horseshoe recorded in the vicinity/nearby	<p>positive (see below).</p> <p>A variety of species have been recorded on site and in the general area - which is to be expected given the location and habitat features on site. The site certainly has some value for commuting and foraging bats due to presence of hedgerows and trees with associated grassland.</p> <p>Aspect Ecology carried out an updated Preliminary Roost Assessment of the trees with Potential Roosting Features (PRFs) in April 2020. Table 5.1 in the ecology report provides a useful summary. It updates the information in All Ecology's June 2018 detailed survey of trees to see which might be being used by bats (application 18/02171/OUT). Plan 2 within the All Ecology report shows the location of trees (labelled T1 to T19). The updated assessment of trees by Aspect Ecology in April 2020 reports only 2 notable changes from 2018 and that was that trees T12 and T14 now had lower potential for roosting bats (5.1.12). T6 which had a single common pipistrelle bat roosting in it in 2017 is not of high conservation significance but it is being retained as part of the proposed development. The two trees proposed for removal (an ash and sycamore –see trees above) have not been identified as likely to harbour bat roosts.</p> <p>The proposals will produce a few gaps in existing hedgerows H1 &amp; H2 (see above) but due to the additional and reinforcement planting elsewhere (not least the new woodland belt) the impact on bat movements and foraging overall will be positive. This is conditional on no unnecessary obtrusive lighting. A suitable lighting scheme that does not adversely impact on existing</p>

Item (Topic)	Coverage	General Observations
		<p>and increased bat activity of the site is entirely possible. The scheme must ensure that the majority of the retained and habitats/features are available for bats to use.</p> <p>It is noted that additionally some bat boxes will also be provided so that roosting opportunities will be as good if not better than the current situation (see EE4 and Appendix 5487/4 in the ecology report). These are proposed for erection on trees <u>and integrated into a proportion of the new buildings</u>. This will boost the value of the site as until new trees mature roosting opportunities will be limited.</p> <p>Mitigation measures MM1 to MM6 plus ecological enhancements EE1 to EE4 are appropriate and relevant to conserve and enhance bats on site. These can be secured within a CEMP and LEMP (see recommended conditions below)</p>
	Dormouse	Unlikely to be present and the development is unlikely to significantly affect them.
	Great Crested Newt (GCN)	GCN District Licencing mapping indicates the area impacted by development works site is within an amber risk zone for GCNs. I am content to accept the justification that the development is unlikely to adversely affect great crested newts (ecology report 5.4.2 to 5.4.4 & 5.8.2).
	Otter	Unlikely to be present and the development is unlikely to significantly affect them.
Apply 3 derogation tests? [Habitats Regs for EPS licencing]	Although quite unlikely given the revised proposals the need for a bat licence cannot be completely ruled. There is only a low risk of an unknown roosts being discovered that may be affected by the development works.	If the assertions of the ecological assessments are correct then the 3 derogation tests in the Habitats Regulation do not need to be considered. See 'Bats' above.

Item (Topic)	Coverage	General Observations
Other Protected Species	Water vole	Unlikely to be present and the development is unlikely to significantly affect them.
	Badger	The effect or not on badgers from the proposed development site has been reviewed by additional updated surveys and reported in a separate confidential appendix (Aspect Ecology October 2018) that has been submitted to the LPA. The revised proposals for mitigating any effect upon and conserving local badgers are acceptable in my view.
	Reptiles	In addition to previous on site surveys Aspect Ecology carried out an artificial refugia survey for reptiles between July and August 2019. Reptiles and evidence of them being present was also directly searched in suitable places/features. I can accept that there is only a low population of reptiles present consisting of only very few individual slow worms and grass snakes. The mitigation and enhancement measures (MM8, EE2, EE3, EE6 & EE7) plus proposed new landscaping should have a neutral to positive impact overall.
	Nesting birds	A good variety of birds are present in the general area and on site mainly utilising the boundary trees and hedgerows. There are much potential nesting sites present but much of this will be retained. Measures MM1, MM2, MM9, EE1, EE2, EE3, and EE5 are protective and beneficial for birds. In the long term the development would likely to have a short term small adverse impact but in the long-term a positive overall outcome is certain.
Priority Species	Hedgehog (for house sparrow and lesser spotted woodpecker see birds above)	Hedgehogs are use hedgerows and nearby gardens. A small population may use the proposed development site. However overall with the mitigation measures MM1, MM2, MM6, MM7 and enhancement measures EE1,



Item (Topic)	Coverage	General Observations
		EE2, EE6 and EE7 the proposed development is unlikely to affect the local population which is likely to be enhanced. This excludes the fact there will be gardens which may have additional accessible habitat.
Invertebrates	Generally	A number of species have been recorded in the vicinity but none are particularly rare or are protected by law. A reasonable invertebrate assemblage is likely to be associated with the trees, scrub and hedgerows. The presence of old trees with some rotting wood is an important feature for some not common invertebrates. Compensation for lost habitat and enhancement for invertebrates is offered. Measures MM1, MM2, MM6, EE1, EE2, EE3, EE6, EE7 and EE8 are appropriate and relevant for invertebrates. Overall the development should be beneficial for invertebrates including pollinating insects.
Mitigation (Compensation) included?	Yes	<p>The mitigation/compensation and enhancement proposals are set out as measures in Section 6 of the Ecological Appraisal. Mitigation measures MM1 to MM9 and enhancement measures EE1 to EE8 are appropriate and relevant to the site and development.</p> <p>Enhancements include extensive native tree/shrub planting, new wildflower grassland, creation of wetland habitat, bat and bird boxes, and also features for reptiles, amphibians and invertebrates.</p>
Landscaping/Aftercare included?	Yes	<ul style="list-style-type: none"> <li>• Landscape Strategy drawing 192.16.101 Rev. D</li> <li>• Further details of aftercare need to follow as part of reserved matters, i.e. production of a LEMP (Landscape &amp; Ecological Management Plan)</li> <li>• Funding and aftercare</li> </ul>

Item (Topic)	Coverage	General Observations
		management responsibilities will need to be secured through a S106 agreement if the development is approved
<b>Biodiversity Net Gain (BNG)?</b>	Yes	<ul style="list-style-type: none"> <li>• Losses to biodiversity have been reduced compared with previous proposals for the site.</li> <li>• Tree planting and a good variety of other landscape features are being proposed, these including new hedgerows, wildflower (meadow) planting and a new wetland feature.</li> <li>• In my view BNG would be achieved given proposals and safeguards (including a S106 agreement).</li> </ul>
<b>Further information/action including survey work required before determination?</b>	Yes	Cheltenham Borough Council needs to complete an Appropriate Assessment (HRA) of this development proposal.
<b>Planning conditions and/or Informatives (Advice Notes)?</b>	Yes	See below but cannot be confirmed until an HRA (AA) has been completed and agreed with by Natural England.

### 3. Additional Comments on Advice (above)

If this development is allowed and does not commence before the end of April 2022 then there is a need to repeat the preliminary tree roost assessment. The ecology report includes this as mitigation measure MM3. This is in accordance with British Standard BS 42020:2013 and is captured in one of the recommended conditions below (CEMP).

Compared to previous development schemes for this site (17/00710/OUT & 18/02171/OUT) there will be fewer units and more retention of habitats and features which is welcomed. Together with mitigation measures, extensive planting and additional new feature proposals net gains for biodiversity are likely.

### 4. Assessment against Legislation, Policy and Guidance

Relevant legislation, policy and guidance considerations have been taken into account as part of this response, including as relevant the following:

- *Wildlife and Countryside Act 1981 (as amended)*
- *The Conservation of Habitats and Species Regulations 2017 (as amended)*
- *Natural Environment and Rural Communities Act 2006*
- *Protection of Badgers Act 1992*
- *Biodiversity – Code of practice for planning and development BS 42020:2013*
- *Natural England's Standing Advice*
- *National Planning Policy Framework and Planning Practice Guidance*

- ODPM Circular 06/2005 Biodiversity and Geological Conservation – Statutory Obligations and their impact within the Planning System
- Local Development Plan(s) <https://www.gloucestershire.gov.uk/planning-and-environment/planning-policy/>

## 5. Conclusion

The appeal decision of earlier application 18/02171/OUT cites some uncertainty that biodiversity value overall could be conserved into the occupation phase. This current application 20/00683/OUT is for a smaller number of residential units (now 43 down from 69) and so conservation and enhancement of biodiversity is very likely. It is my conclusion that the latest development proposal would not have a significant adverse effect upon biodiversity overall and with the proper addressing of reserved matters including a S106 agreement a biodiversity net gain would accrue.

## 6. Recommended Action

The following items should be addressed to be able to consent this development.

### Pre-determination:

1. Item - The LPA must complete an Appropriate Assessment which is Stage 2 of Habitats Regulations Assessment (HRA). A draft must be sent to Natural England to see if they agree with its conclusions before the HRA is confirmed. In my view a conclusion of no adverse effect on a European Site's integrity could be affirmed to make the development acceptable in law.

### Determination:

If given consideration of all matters the LPA is minded to grant consent for this outline development then the reserved items such as the following below are recommended:

1. Condition – *The development shall be implemented in accordance with the Tree Protection Plan drawing 38-1036.03-A dated 17.04.20 which incorporates arboricultural methods and supervision details. All protective structures installed shall be maintained until construction work has been completed. No materials, soils, or equipment shall be stored under the canopy of any retained tree or hedgerow within the application site.*

**Reason:** *To prevent unnecessary loss of amenity and biodiversity value of trees and shrubs to be retained in accordance with Local Plan Policy X, ODPM Circular 06/2005 plus National Planning Policy Framework paragraphs 8, 170 and 175.*

2. Condition – *No development shall take place until a Lighting Scheme is submitted to the Planning Authority for approval. The Scheme is to be based on mitigation measure MM6 (Sensitive Lighting) within the Ecological Appraisal by Aspect Ecology dated April 2020. The scheme shall include the following details:*

- (a) *the position, height and type of all lighting;*
- (b) *the intensity of lighting and spread of light as a lux contour plan;*

(c) the measures proposed must demonstrate no significant effect of the lighting on the environment including preventing disturbance to bats so that light falling on vegetated areas and features used by bats will be below or not exceed 2.0 lux;  
(d) the periods of day and night (throughout the year) when such lighting will be used and controlled for construction and operational needs.

The approved scheme shall be implemented for the duration of the development and maintained in accordance with the manufacturer's recommendations and scheme details.

**Reason:** To ensure that foraging and commuting of bats is not discouraged at this location and in accordance with Local Plan Policy X, ODPM Circular 06/2005 plus National Planning Policy Framework paragraphs 170, 175 and 180 and Section 40 of the Natural Environment and Rural Communities Act 2006 which confers a general biodiversity duty upon Local Authorities whilst exercising their functions.

3. Condition – Prior to the commencement of the development hereby permitted including ground works and vegetation clearance a Construction Environmental Management Plan (CEMP) should be submitted to and approved in writing by the Planning Authority. The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details. Any modifications to the approved details for example as a result of requirements of a protected species license must be submitted to and agreed in writing by the Planning Authority. The CEMP shall include final details of the following items:

#### Ecology

(i) Outline Mitigation Strategy based on Section 4.6 of the Confidential Badger Appendix by Aspect Ecology dated April 2020.

(ii) Other Mitigation Measures MM1 (Hedgerow & Tree Protection), MM2 (Veteran Trees), MM3 (update Preliminary [tree] Roost Assessment), MM4 (Bat Survey and Soft-felling of Trees), MM5 (Re-installation of any affected Retained Bat Boxes), MM7 (Wild Mammal Construction Safeguards), MM8 (Habitat Manipulation/Destructive Search for Reptiles & Amphibians) and MM9 (Timing of Works to avoid Nesting Birds) based on the Ecological Appraisal by Aspect Ecology dated April 2020.

(iii) Adherence to the Tree Protection Plan incorporating arboricultural methods

(iv) The role and responsibilities on site of an Ecological Clerk of Works (ECoW) and other responsible persons plus lines of communication

#### Other Items

xvi) [insert relevant text here for other items as deemed necessary, e.g. hours of working, visual impact, dust, noise, water management, travel plan, management of hazardous substances]

**Reason –** To protect the local environment including its landscape and biodiversity value in accordance with Local Plan Policy X and paragraphs 8, 170, 175 and 180 of the National Planning Policy Framework. This is also in accordance with Section 40 of the Natural Environment and Rural Communities Act 2006, which confers a general biodiversity duty upon Local Authorities.

4. Condition – Prior to the commencement of the development a Landscape and Ecological Management Scheme based on the Landscape Strategy drawing 19216.101 revision D dated 14-04-20, Proposed New Tree Planting Management Plan – Head of Terms and the Ecological Appraisal dated April 2020 (Ecological Enhancements EE1 to EE8 inclusive) shall be submitted to and approved by the Planning Authority. The scheme shall comprise of a drawing and document that

covers:

(a) *Aims and objectives of the scheme including*

*conservation of protected and priority species and a net gain for biodiversity appropriate green infrastructure;*

(b) *A plan with annotations showing the soft landscape, hard landscape, habitat, vegetation and artificial features to be retained, created and/or managed;*

(c) *Measures (including establishment, enhancement and after-care) for achieving the aims and objectives of management;*

(d) *Provision for educational but not public access;*

(e) *A work and maintenance schedule for 5 years and arrangements for beyond this time;*

(f) *Monitoring and remedial or contingency measures;*

(g) *Organisation or personnel responsible for implementation of the scheme;*

(h) *Issue of a homeowner's information pack on local recreational opportunities and the sensitivity of the Cotswolds Beechwoods SAC.*

*The Scheme shall also include details of the legal and funding mechanisms by which the long-term implementation of the scheme will be secured by the developer with the management body responsible for its delivery. The scheme shall be implemented as approved by the Planning Authority.*

**Reason:** *To conserve and enhance the landscape and biodiversity value of the land and in accordance with Local Plan Policy X, ODPM Circular 06/2005 plus National Planning Policy Framework paragraphs 8, 170 and 175. This is also in accordance with Section 40 of the Natural Environment and Rural Communities Act 2006, which confers a general biodiversity duty upon Local Authorities.*

5. Planning Obligation (S106) [Linked to recommended condition above] – Funding and aftercare responsibilities need to be put in place to ensure the long-term management of landscaping and other installed [ecological] features so that important biodiversity is conserved and a net gain achieved. The arrangements must adequately ensure for the maintenance of habitats, trees, hedgerows and artificial biodiversity features. There should be a guarantee that the site will be used for educational and biodiversity conservation purposes and not be developed in the future.
6. Advice Note - *In relation to the County Council's Service Level Agreement with the Local Biological Records Centre and to assist in the strategic conservation of countywide biodiversity, all species and habitat records from the ecological work commissioned by the applicant should be copied [if not already] to the Gloucestershire Centre for Environmental Records (GCER).*

It is my view that the above advice is in accordance with the National Planning Policy Framework (NPPF), Planning Policy Guidance (PPG), National Design Guide (N1 to N3), ODPM Circular 06/2005, Natural England's Standing Advice, and with Section 40 of the Natural Environment and Rural Communities Act 2006 which confers a general biodiversity duty upon Local Authorities whilst exercising their functions. Opportunities to produce measureable gains for biodiversity have been explored (NPPF paragraph 175(d)).