

Proof of Evidence

1.0. Summary

1.1. My name is Patricia Holden. I studied Zoology BSc at the State University of Oswego (New York) graduating in 2003. Followed by a Graduate Diploma in Wildlife Biology and Management and Master of Applied Science in Natural Resource Management at James Cook University Cairns, Queensland, Australia in 2004 and 2006. I have been a practising ecologist since 2008, starting work in Essex as a field ecologist working for Catherine Bickmore Associates and Landscape Services. Following a move to the south, I was then self-employed and worked for various companies and schemes in the south of England during 2011 to 2016. In 2017 after my maternity leave, I started work at Syntegra Group as a Senior Ecologist followed by a promotion to Director of Ecology Services. I have over 15 years of experience as a practising ecologist. I am a full member of CIEEM (Chartered Institute of Ecology and Environmental Management) to which I am bound by their professional code of conduct. In addition, I hold protected species licences and have assisted on mitigation licences for numerous schemes.

1.2. I confirm that the evidence to which I have prepared and provided for this appeal is true to the best of my knowledge and belief and it has been prepared and is given in accordance with the guidance of the CIEEM. I confirm that the opinions expressed are my true and professional opinions.

1.3 The application 21/02112/FUL was supported by an outdated Preliminary Ecological Appraisal (PEA) Report covering previous proposals redline boundary and therefore rejected by the LPA on the grounds of insufficient evidence to comply with policies CS17, TS3 (which contains a requirement for the submission of a Phase 1 habitat survey). A retrospective PEA with Ecological Impact Assessment (EclA) Report, Reptile Report and Biodiversity Net Gain Report have now been submitted to the LPA at the appeal stage. The PEA and EclA Report have not surveyed or considered the proposed passing point. Therefore, with no details on the classification of the hedgerow or required mitigation and compensatory measures provided, the objection must be upheld. The retrospective EclA does not capture the baseline protected species on site and there are no compensatory measures for dormice, hedgehogs, great crested newts, or invertebrates provided. In addition, the PEA with EclA Report does not address the operational impacts on the select protected species deemed suited to the site. The EclA details compensatory and mitigation measures for select habitats and species however it lacks sufficient information on implementation and security. Where it is agreed that some of these compensatory measures should and can be located onsite, others in particular for protected species should be located offsite so that anthropogenic disturbances do not affect the ecological and environmental functionality and maturation of these offsite compensatory habitats.

1.4 The BNG (Biodiversity Net Gain) report should have addressed the passing point proposals to understand the impacts on the hedgerow and any identified habitat once this is surveyed by the appellants' ecologist. As queried in the statement of case there are also some discrepancies between the Southwest corner of the site with an area of scrub/other broadleaf woodland loss but not captured in the BNG Report and calculations.

1.5 The details provided to date have not adequately supplied the required information to inform a decision. It is not considered that the impacts highlighted in the PEA with EclA provide enough detail including sufficient assurances that they have identified adequate locations to deliver the necessary compensation and mitigation measures. However, at the time of writing this proof of evidence it has not been sufficiently demonstrated that the impact of the development adequately compensates for, and mitigates against, the impacts on ecology, biodiversity, and natural environment. Therefore, the appeal proposal runs contrary to Development Plan Policies CS17 and TS3 as well as the NPPF 174d and 179b.

2.0. Qualifications and Experience

2.1 My name is Patricia Holden. I studied Zoology BSc at the State University of Oswego (New York) graduating in 2003. Followed by a Graduate Diploma in Wildlife Biology and Management and Master of Applied Science in Natural Resource Management at James Cook University Cairns, Queensland, Australia in 2004 and 2006. I have been a practising ecologist since 2008, starting work in Essex as a field ecologist working for Catherine Bickmore Associates and Landscape Services. Following a move to the south, I was then self-employed and worked for various companies and schemes in the south of England during 2011 to 2016. In 2017 after my maternity leave, I started work at Syntegra Group as a Senior Ecologist followed by a promotion to Director of Ecology Services. I have over 15 years of experience as a practising ecologist. I am a full member of CIEEM (Chartered Institute of Ecology and Environmental Management) to which I am bound by their professional code of conduct. In addition, I hold protected species licences and have assisted on mitigation licences for numerous schemes.

2.2 I confirm that the evidence to which I have prepared and provided for this appeal is true to the best of my knowledge and belief and it has been prepared and is given in accordance with the guidance of the CIEEM. I confirm that the opinions expressed are my true and professional opinions.

3.0. Purpose and Scope of Evidence

3.1. This proof of evidence has been prepared in response to the appeal lodged by Ms Gumble (the Appellant) against the refusal of planning application (Council reference 21/02112/FUL) for the change of use to 7 no. Gypsy/Traveller pitches comprising 7 no. static caravans, 7 no. day rooms, 7 no. touring caravans and associated works at Land at Lawrences Lane, Thatcham (the Application).

3.2. This proof of evidence covers matters relating to ecology and biodiversity.

4.0. Reasons for Refusal

4.1. Relevant to this proof of evidence, the application was refused for the following reason:

Policy TS3 (Detailed Planning Considerations for Travellers Sites):

e) Provide an extended phase 1 habitat survey together with further detailed surveys arising from that as necessary. Appropriate avoidance and mitigation measures will need to be implemented, to ensure any protected species are not adversely affected.

f) Provide appropriate mitigation to offset impact on key species and habitats through appropriate buffering, on-site mitigation and off-site compensation measures.

Policy CS17 (Biodiversity):

Development which may harm, either directly or indirectly, locally designated sites (Local Wildlife Sites and Local Geological Sites), or habitats or species of principal importance for the purpose of conserving biodiversity, or the integrity or continuity of landscape features of major importance for wild flora and fauna will only be permitted if there are no reasonable alternatives and there are clear demonstrable social or economic benefits of regional or national importance that outweigh the need to safeguard the site or species and that adequate compensation and mitigation measures are provided when damage to biodiversity/geodiversity interests are unavoidable.

4.0. Procedural Matters

4.1. Contrary to development plan policy TS3e, initially the Appellant did not provide a Phase 1 Habitat Survey that was for the development proposals. Policy TS3 explicitly requires the submission of a Phase 1 habitat survey. In addition, Policy TS3f was not met as there was no information on the site impacts on habitats or biodiversity and proposed mitigation measures. The lack of any submitted Phase 1 Habitat Report and Biodiversity Net Gain Report did not enable the Council to assess the proposals against Policy CS17.

4.2. A preliminary ecological appraisal (PEA) with Ecological Impact Assessment (EclA), Reptile Survey Report and Biodiversity Net Gain (BNG) were not provided by the Appellant until the 31st of August 2022. It has not been possible to assess the proposals' impacts until the receipt of these three reports.

5.0. Planning Policy

The Development Plan

5.1. Policies CS17 and TS3 of the local plan are relevant to the Ecology Reason for Refusal. Policy CS17 of the West Berkshire Core Strategy states that "biodiversity and geodiversity assets across West Berkshire will be conserved and enhanced". It goes on to say, so far as relevant, that : "Development which may harm, directly or indirectly, [...] habitats or species of principal importance for the purpose of conserving biodiversity [...] will only be permitted if there are no reasonable alternatives and there are clear demonstrable social or economic benefits of regional or national importance that outweigh the need to safeguard the site or species and that adequate compensation or mitigation measures are provided when damage to biodiversity / geodiversity interests are unavoidable."

5.2. Policy CS17 also advises that "*in order to conserve and enhance the environmental capacity of the District, all new development should maximise opportunities to achieve net gains in biodiversity in accordance with the Berkshire Biodiversity Action Plan [...]*"

5.3. Policy TS3 (Detailed Planning Considerations for Traveller Sites) of the Housing Site Allocations DPD requires proposals to:

"Provide an extended phase 1 habitat survey together with further detailed surveys arising from that as necessary. Appropriate avoidance and mitigation measures will need to be implemented, to ensure any protected species are not adversely affected.

Provide appropriate mitigation to offset impact on key species and habitats through appropriate buffering, on-site mitigation and off-site compensation measures."

The National Planning Policy Framework 2021

5.4. NPPF para 8 states: *"Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives): [...] an environmental objective – to protect and enhance our natural, built and historic environment; including making effective use of land, improving biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy."*

5.5. Para 174 states: *"Planning policies and decisions should contribute to and enhance the natural and local environment by: [...] d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;"*

5.6. Para 179 states: *"To protect and enhance biodiversity and geodiversity, plans should: a) Identify, map and safeguard components of local wildlife-rich habitats and wider ecological networks, including the hierarchy of international, national and locally designated sites of importance for biodiversity; wildlife corridors and stepping stones that connect them; and areas identified by national and local partnerships for habitat management, enhancement, restoration or creation; and b) promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable net gains for biodiversity."*

6.0. Review of Appellant's Reports and the Proposals' Impact on Biodiversity and Ecology

6.1. As the site survey is retrospective, an indication of the baseline habitats and protected species has been provided with the Appellant's PEA with EclA and Reptile Report. As the Appellant also submitted a 2021 PEA Report produced by Ecology By Design this provides an insight to the site's condition and baseline prior to works being completed. Although the 2021 Report provides a different opinion to the Appellant's Reports, it is viewed as a 3rd party position and therefore should be given weight given the bias of the current retrospective site. There are some discrepancies between the reports in regard to the overall potential for hosting protected species.

6.2. The review of the 2021 Ecology By Design PEA notes that the site hosts suitability for the following notable and protected species: foraging and traversing grounds for bats, suitability for great crested newts within the rough grassland and scrub, suitability for reptiles within the rough grassland and scrub, and overall suitability on site for brown hare, hedgehogs and common toad, along with suitability for invertebrates including small heath (*Coenonympha pamphilus*) and shaded broad-bar (*Scotopteryx chenopodiata*). In comparison, the 2022 Co-ecology report does not report suitability for brown hare, hedgehogs, common toad, ground nesting birds, foraging bats, invertebrates, and great crested newts. It is of the opinion that as the Ecology By Design Survey was carried out prior to works and occupation and this represents a more likely baseline of the site in comparison to the retrospective PEA with EclA Survey and Report carried out by Co-ecology.

6.3. The review of the 2021 PEA Report by Ecology By Design notes areas of dense scrub within the South West section of the site as well as the rough grassland providing ground nesting bird

opportunities. The appellant's ecologist has had sight of this report, however, there is no offer of nesting habitat compensatory measures detailed in the report or any operational impacts to nesting birds.

6.4. The review of the 2021 PEA Report by Ecology By Design notes habitats on site providing suitability for use by brown hare, toads, great crested newts, and hedgehog. The Co-ecology Report has not considered these species nor provided any compensatory measures or any operational impacts to these species. Given that the 2021 PEA Report provides an insight of the true baseline, it is considered more reliable in providing a consideration of the overall species potential. It is of the view that these species should be included by Co-ecology along with a detailed operational mitigation and suitable compensatory measures in place.

6.5. Whereas the recommendations within the *Opportunities for Compensation & Enhancement and Compensation & Biodiversity Net Gain* Section in the Co-ecology PEA Report are welcomed, there is a clear lack of any details on implementation.

6.6. The proposed onsite compensation for reptiles noted in the Reptile Report gives no direction on implementation or ongoing management, nor is it considered suitable given the proximity of the area to the development site and lack of effective barriers to prevent usage from occupants. Neither the PEA with EclA Report or Reptile Report address operational impacts. This would contradict NPPF Policy 174 (d) and Policy CS17 given the future pressures that the reptile population can face in close proximity to the development site.

6.7. The scheme is contrary to local plan policy CS17 and NPPF in that a scheme that has caused harm to protected species and habitats cannot just state it will offset the impacts. The Council (and the decision maker) needs to ensure that the compensation measures and habitat enhancements and improvements for protected species will be implemented and will ensure an overall benefit for the species. The onsite compensation strategy offered does not secure this. Given the loss of habitats, shelter, nesting, and foraging areas for a range of protected species, unsuitable due to anthropogenic pressures, or opportunities for onsite mitigation for species, offsite compensation will be required in line with NPPF 174d, 179b and local plan policy CS17.

6.8. Although retrospective, if the scheme could not show that the impacts could not be avoided, mitigated, or compensated for on site, then the Appellant would need to demonstrate that there was an acceptable mitigation scheme that would ensure that there was a net gain for biodiversity in line with local plan policy CS17. The supporting documents have not provided this for the reasons as stated in paragraphs 6.1 to 6.3 of this PoE.

7.0. Further information required

7.1. In order for the proposals to be in compliance with Policy TS3, CS17 and the NPPF, the following is required:

1. Assessment of the Passing Point with information on the hedgerow and any habitat types, required mitigation and compensatory measures, and including this area into the site wide BNG calculations.
2. Given the loss of habitats, shelter, nesting, and foraging areas for a range of protected species with the lack of any security for onsite compensation, offsite compensation will be required. An area of Council owned land located north-west of the site hosts suitability for

protected species in comparison with the appeal site. This council land will be used to offset and mitigate for the development at Lawrences Lane. The Appellant's ecologist will be required to produce a 15 year management plan for the site. The plan would need to ensure it accounts for the overall loss from the appeal site and secures habitat requirements for use by great crested newts, reptiles, nesting birds, hedgehogs, and foraging bats. The plan would need to address the current habitats on site, management regime and methods to support protected species including additional enhancements (i.e. log piles, bird boxes, bat boxes) and their required ongoing maintenance and or management. This possibility has been suggested to the Appellant prior to exchange of proofs.

8.0. Conclusion

8.1. The information provided to date has not demonstrated that the impacts of the proposed development will fulfil the mitigation hierarchy ensuring that mitigation and compensation is in place for the habitats and biodiversity on site. The information provided to date has not satisfied nor met Development Plan Policies TS3, CS17 nor NPPF para 8, 174 and 179.

Appendices A Preliminary Ecology Appraisal. Ecology by Design Lawrences Lane January 2021.