

**LAND AT LAWRENCES LANE – TOWN AND COUNTRY PLANNING ACT
1990**

PROOF OF EVIDENCE ON ECOLOGY MATTERS

PREPARED BY

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1.0 INTRODUCTION

Qualifications and Experience

- 1.1 My name is Giles Coe. I am an ecological consultant with 20 years commercial experience, a BSc (hons) in Environmental Management from the University of North London and full membership of the Chartered Institute for Ecology and Environmental Management (CIEEM) which I have held for over 12 years. I have been retained by Ruston Planning on behalf of the appellant in a consultative capacity since January 2022, carrying out base-line surveys for habitats and reptiles, a retrospective Ecological Impact Assessment (EclA) and a Biodiversity Net Gain calculation.
- 1.2 I am experienced in the survey and assessment of sites in a wide range of situations that encompass single dwellings, through to large scale housing and infrastructure schemes. Having worked through my career in posts from field assistant, to suitably qualified ecologist and subsequently then at greater levels of seniority and responsibility, I have gained a solid understanding and appreciation of the practical application of ecological principals in development scenarios.
- 1.3 I have been a Registered Consultant on Natural England's Badger Class License scheme since 2018, and since 2011 have annually held and implemented multiple licences to disturb badgers for reasons of development and/or agricultural damage. I am a Registered Consultant on Natural England's Bat Mitigation Class Licence scheme (BMCL - previously Bat Low Impact Class Licence, BLICL), since 2015, and since 2010 have acted annually as named ecologist on multiple bat EPSM licences. My other professional certifications include a great crested newt survey licence which I have held since 2005 and acting as named ecologist on great crested newt European Protected Species Mitigation licences (EPSM) for a range of schemes and levels of impact. This includes, since 2012, overseeing the compilation and delivery of a suite of EPSM licences for the London Gateway Logistics Park and Port developments for Dubai Ports World.
- 1.4 Much of my project work requires an in-depth working knowledge of the National and International legislative framework surrounding nature conservation and wildlife. This involves working within the interface between legislation and the planning system, interpreting the nuances of the National Planning Policy Framework (NPPF), the Circular from the Office of the Deputy Prime Minister (ODPM), the Natural Environment and Rural Communities Act (NERC) and local plans and policies. For a large proportion of project

work, this role extends to a detailed understanding of the species licensing system and applying that knowledge to advise clients on consent applications.

- 1.5 I am currently running my own company (Co-ecology Ltd) and a small team of ecological consultants, previous to this I was working for The Ecology Consultancy one of the UK's largest dedicated consultancies.
- 1.6 As Executive Director for The Ecology Consultancy, I had board level responsibility for our five regional offices (Devon, Sussex, Norfolk, Midlands and North) ensuring not just the commercial success of these locations but that the teams work to consistently high technical standards. From 2015 to 2019, on behalf of the CIEEM I co-delivered a training course: Preliminary Ecological Appraisal – An Applied Approach. In my own office in Sussex, I had a team of 33 technical and support staff working under me and delivering the ecological surveys, assessments and mitigation measures for approximately 300 projects per annum. We covered a wide suite of ecological receptors and I was called on by senior and principal grade ecologists to guide and direct them on complex ecological issues, often surrounding legislation, policy and licensing.

Overview

- 1.7 I confirm that the evidence presented below in relation to this Section 78 appeal against the refusal of planning permission for Land at Lawrences Lane is a true and accurate representation of my professional opinion and of the ecology work carried out on this project to date.
- 1.8 As the appellant's ecologist I attended a virtual Teams meeting with the case officer (Matthew Sheppard) and the council's ecologist (Gareth Ryman) and external consultant Trish Holden. **Following on from that meeting and in review of the council's updated Statement of Case (SoC), this proof of evidence robustly addresses all outstanding issues and the local authority are invited to review their case.**

Scope and structure of evidence

- 1.9 This proof provides additional statements and evidence in addition to that already submitted to the inquiry in the following documents:
- *CE22005 Ruston Thatcham PEA - Report V1.1;*
 - *CE22005 Ruston Thatcham Biodiversity Net Gain - V2.2;*
 - *CE22005 Ruston Thatcham Reptile Survey – Report;*

- *Biodiversity Metric 3.0 Auditing and accounting for biodiversity Calculation tool v2.*

1.10 In light of the above my proof of evidence concentrates primarily on responding to issues raised by the council in Chapter 12 Ecology of their updated Statement of Case (SoC) dated October 2022.

1.11 In Chapter 2 below, I provide a narrative regarding the applicable reasons for refusal as set out in the SoC and a point by point discussion of the issues from Chapter 12 of the SoC.

1.12 In Chapter 3 below I provide a concluding statement.

Documents considered

1.13 This proof of evidence is based on information set out in the following documents;

1.13.1 Inquiry documents;

- CE22005 Ruston Thatcham PEA - Report V1.1;
- CE22005 Ruston Thatcham Biodiversity Net Gain - V2.2;
- CE22005 Ruston Thatcham Reptile Survey – Report;
- Biodiversity Metric 3.0 Auditing and accounting for biodiversity Calculation tool v2;
- Updated SoC – Land at Lawrences Lane;
- TDA.2692.02 (Rev. A) - Lawrences Lane Thatcham - Revised Site Layout Landscape Strategy Arboricultural Mitigation Measures;
- Email from Gareth Ryman to Bob Dray, 08 November 2021.

1.13.2 Extracts from external documents;

- British Standards Institute (2013) *BS42020 Biodiversity. Code of Practice for planning and development.*
- CIEEM (2019) *Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater, Coastal and Marine.* Chartered Institute of Ecology and Environmental Management, Winchester.
- Defra (2022) *List of habitats and species of principal importance in England.*
 - UK Biodiversity Action Plan Priority Habitat Descriptions *Wood-Pasture and Parkland* (Updated in 2011) From: UK Biodiversity Action Plan; Priority Habitat Descriptions. BRIG (ed. Ant Maddock) 2008.

2.0 PROOF OF EVIDENCE

Reasons for Refusal

- 2.1 The council's SoC asserts that in relation to ecology matters the reasons for refusal came under principles of development and in particular criteria within Policy TS3 (Detailed Planning Considerations for Travellers Sites). Namely failure to;
- *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.*
- 2.2 In regards paragraph e), two Preliminary Ecological Appraisals (PEA) have been written for the application site, Ecology by Design in 2021 and by Co-ecology in 2022 (Co-ecology, 2022a). The former, whilst for an application to convert the existing barn, does provide a habitat baseline prior to the appellant's current occupation of the land. The latter was drafted specifically for this application but meant as a retrospective assessment of the habitats and species that were likely present prior to occupation. Although using different habitat classification systems both reports drew comparable conclusions regarding the relative value of the habitats and the risk of different protected species being present.
- 2.3 Arising from the latter PEA/EcIA (Co-ecology, 2022a), was the need for a dedicated presence/likely absence survey for reptiles. As the impact to any potential reptile habitat had already occurred this was primarily to both confirm the assumptions made during the retrospective EcIA and to inform the final landscaping scheme for the site. If (as is the case) reptiles were confirmed to be present within the wider site (Co-ecology, 2022b), then their presence within the developable area would be assumed and mitigation measures introduced to off-set previous impacts.
- 2.4 The Co-ecology appraisal did not recommend any surveys for bat roosts or bat activity as suggested by the council previously (Ryman, 2021). This was on the basis that *"No roosting habitat is present on or adjacent to the construction footprint and no impacts to this receptor could be reasonably be expected to have occurred from the works carried out to-date"* (Paragraph 5./15, Co-ecology, 2022a).
- 2.5 In regards paragraph f) above it is accepted that impacts to reptiles would have been likely to have occurred when the site was cleared for the installation of the seven pitches.

Therefore, in line with the impact assessment, the appellant can commit to provide new opportunities for shelter and foraging slow worms in the form of both a dedicated purpose built hibernacula, a series of log/habitat piles and new scrub planting to create the greater structural complexity favoured by reptiles.

- 2.6 Using the revised layout for the scheme, and taking into account the wider site within the control of the appellant, post development of the 1.14ha site there will be approximately 0.363ha of hard-standing/built areas and 0.777ha of soft-landscaping or semi-natural habitats. The current soft landscaping scheme and the revision of the BNG metric (pending) both clearly demonstrate how the wider landholding will be managed in the future and the latter quantifies the percentage of net gain for habitats that is achievable. This was measured against the original base-line using the 2021 and 2022 habitat surveys to determine the type and condition of the habitats lost.
- 2.7 If the veracity of the BNG metric approach (soon to be a statutory requirement) is accepted as robust then what is presented as part of this appeal demonstrates that a significant and measurable net gain is achievable within the application site and the wider landholding. In the initial BNG metric this is measured as 12.59% in Habitat Units and 125.6% in new hedgerow units (Co-ecology, 2022d). The habitat proposals provide *appropriate buffering* (new hedgerows), *on-site mitigation* (scrub planting for reptiles) and *off-site compensation measures* (using the wider landholding) as per the relevant reason for refusal.
- 2.8 In specific regard to legally protected species, the identified impacts are to reptiles and not other species groups. The retention of such a proportionately larger area of open green space post development and the addition of the proposed reptile hibernacula and log-piles, must be regarded as more than adequate to off-set any previous impacts to this species which the survey identified in the wider site at a peak count of two adults.
- 2.9 It is sensible to determine that the occupation of the pitches would not have a deleterious effect or negative impact on a population of slow worms adjacent to the built area. Slow worms are very often found in close proximity to human habitation, commonly encountered in domestic gardens and allotments.
- 2.10 The habitats lost to the construction of the pitches has been restricted to an area of neutral grassland which was tussocky (Photo 4, Page 24, Ecology by Design, 2021) and provided suitable habitat for reptiles and great crested newts. It is both reasonable and balanced to determine that no further impacts to protected species have occurred as result of the

construction of the seven pitches, or could occur during the current or future operation of those pitches. Great crested newt habitat was certainly present prior to construction but the ponds closest to the actual development area are in excess of 250m distant and the risk must be assessed as residual.

2.11 In regards to other protected species, no habitat suitable for nesting birds or roosting bats has been lost. If a layby area is required external to the site then impacts to nesting birds can be adequately mitigated through correct timing of works to avoid the nesting season. During operation, no new lighting is currently being used or is proposed and bats would be unlikely to be deterred from commuting or foraging along the northern boundary adjacent to the new pitches, or indeed throughout the wider site. The soft landscaping/BNG scheme will increase the structural complexity of the retained open green space and arguably provide a better value foraging resource.

2.12 The provided ecological surveys and assessment, along with the proposals for mitigation, compensation and enhancement laid out within the reporting and soft landscape scheme represent a proportionate approach to the conservation of habitats and species at this site.

Assessment of Appeal Proposal

2.13 The Paragraphs below provide a direct response to comments within Chapter 12 of the Council’s SoC:

2.14 *12.9 – Preliminary Ecological Appraisal (PEA) Report V1.1 the Council would welcome use of Rapid Risk Assessment for GCN to better support the conclusions of Table 4.3*

2.14.1 The table below provides the results of the requested rapid risk assessment tool when assuming breeding of this species within the pond closest to the developed area, and taking the area lost during the construction of the current pitches to be 0.45ha.

Component	Likely effect (select one for each component; select the most harmful option if more than one is likely; lists are in order of harm, top to bottom)	Notional offence probability score
Great crested newt breeding pond(s)	No effect	0
Land within 100m of any breeding pond(s)	No effect	0
Land 100-250m from any breeding pond(s)	No effect	0
Land >250m from any breeding pond(s)	0.1 - 0.5 ha lost or damaged	0.005
Individual great crested newts	No effect	0
	Maximum:	0.005
Rapid risk assessment result:	GREEN: OFFENCE HIGHLY UNLIKELY	

2.15 *12.10 – Use of DEFRA’s MAGIC Maps (extract included below) identified the site as woodpasture and parkland, a habitat of principal importance. Whereas the site itself may not meet the criterion this is not mentioned or discussed within the PEA Report. Potential impacts on the woodpasture and parkland either on site or directly adjacent to the site have not been addressed nor any requirements of operational mitigation and/or compensation has not been mentioned within the report.*

2.15.1 It is accepted that this mapped Habitat of Principal Importance (HPI) was not flagged during the process of compiling the PEA report. It would seem that this habitat layer was updated in December 2021 and so it may possibly have been added to MAGIC after the site was interrogated for the PEA.

2.15.2 The broad definition of these habitat types is provided in Brigg (2008), as follows:

2.15.3 *“Wood-pasture and parkland are mosaic habitats valued for their trees, especially veteran and ancient trees, and the plants and animals that they support. Grazing animals are fundamental to the existence of this habitat. Specialised and varied habitats within wood pasture and parkland provide a home for a wide range of species, many of which occur only in these habitats, particularly insects, lichens and fungi which depend on dead and decaying wood. Individual trees, some of which may be of great size and age, are key elements of the habitat and many sites are also important historic landscapes”.*

2.15.4 Given that the habitats within the application site are largely dominated by tussocky, ungrazed neutral grassland with no ancient/veteran trees or grazing animals present it is reasonable to conclude that the on-site habitats do not meet the definition of this HPI.

2.16 *12.11 - The PEA Report also lacks any assessment for Species of Principal Importance under Section 41 of the NERC such as hares, hedgehogs, or invertebrates. Although a retrospective PEA, recognition of the potential impacts that could have transpired as well as any required compensatory measures are welcomed.*

2.16.1 It is accepted that the PEA could have been more rigorous in this regard and didn’t explore the potential for other SPIs to be present and impacted by the works. It should be noted though that there over 940 SPI, albeit many of those are only found in specialist and/or aquatic habitats. Of the above mentioned species, the habitats within the developable area and the wider landholding are certainly not optimal for brown hare which may generally favour more open habitats with an arable component. It is possible, although low risk, that this species may have used

the developed area for cover at some juncture, although if this was the case and an individual was present during construction this highly mobile species would be more likely to have fled when construction started. It is similarly possible that hedgehogs would use the site for foraging or other activity, although they would have been more likely to be sheltered in adjacent cover than within the grassland whilst works were progressed.

- 2.16.2 The development site and wider landholding does not afford the variety, complexity and extents of different habitats that may ordinarily trigger the requirement for dedicated invertebrate surveys. However, the proposed soft landscaping scheme and measures for reptile mitigation would start to increase the habitat complexity and would likely favour a greater diversity of invertebrates.
- 2.17 *12.12 - In point 5.19 of the PEA Report, further clarification should be given on how the appellant's ecologist reached the conclusion that the impact on reptiles would be minor negative without the support of a baseline population to draw that conclusion.*
- 2.17.1 There is now a suitable baseline to be able to reasonably conclude that the construction of the seven pitches may have impacted a small number of reptiles of a single species which would have resulted in a minor negative impact to that population.
- 2.18 *12.13 - Whilst the recommendations within the Opportunities for Compensation & Enhancement and Compensation & Biodiversity Net Gain Section are welcomed, there is a clear lack of any Implementation which would be best supported by use of a Management Plan that details the ongoing management regimes. Furthermore, review of the 2021 PEA Report by Ecology By Design notes areas of dense scrub within the SW section of the site, with the appellant's ecologist having sight of this report there is no offer of nesting habitat compensatory measures detailed in the report.*
- 2.19 There has been no previous mention of such a management plan from the council, whilst there has been an acknowledgement that providing a BNG metric is not mandatory but would be helpful to the council. The BNG was subsequently provided in good faith and on instruction from the appellant. It is more usual for such management plans to be secured post planning by means of a suitable planning condition, an approach which is set out in BS42020.
- 2.20 In regards the second point concerning dense scrub, the 2021 (Ecology by Design) and the 2022 (Co-ecology) habitat maps both map an equivalent habitat type in the same location. This area of woody habitat remains post the construction of the

seven pitches, therefore no loss of nesting habitat and no compensatory measures were proffered.

2.21 *12.14 - The report also does not include the proposed vehicle passing point as noted in the Highways Technical note. In order to inform a decision, it is requested that a survey is undertaken by the appointed ecologist to inform if the hedgerow is classed as Important along with any protected species constraints and required mitigation measures.*

2.21.1 This was an omission on my part having not read the technical note that covered the passing point at the time the ecology reports were compiled. It should be noted however, that the woody habitat in this location does not key out as a hedgerow and therefore fall within the hedgerow regulations. The 2021 report (Ecology by Design) has mapped this feature as a broadleaved tree line whilst in 2022 an equivalent UK habitats classification noted this strip of adjacent habitat as *w1g other woodland broadleaved*.

2.22 *12.15 - In regards to the Biodiversity Net Gain Report V2.2 this report has reviewed Ecology By Design's 2021 PEA Report to assist with the baseline habitats, the only clarification needed by the Council is why the south-western treeline (broadleaved woodland) was not included in Table 4.2.*

2.22.1 All of the habitats within the development and wider site boundary were mapped, quantified and included within Table 4.2 of the BNG report. The habitat maps from 2021 and 2022 whilst not identical are comparable in (equivalent) habitat classification and extents.

2.23 *12.16 - In regards to the reptile Survey Report the Council request clarification and justification to why the appellant's ecologist felt that only undertaking 5 surveys to determine presence/absence along with peak count was suitable. The appellants ecologist states that 5 surveys are in line with Sewell et al 2012, however, Sewell et al 2013 also states that the previous 2012 is met with caveats and that marginal sites are best met by increasing the survey effort to capture sites that may have lower detectability. It would therefore be contended that at least 7 surveys would have been best to support this site.*

2.23.1 There are unfortunately no current, up to date and accepted best practise guidance for the survey of reptiles with much of what is done for development surveys predicated on an advice note published by a wildlife charity several decades ago (FrogLife, 1999). It has become custom that 5-7 surveys are used to determine presence or likely absence with 20 replicates throughout the year to determine a

population estimate. The objective for survey of the appellant's site was to determine presence/likely absence and gain an understanding of likely distribution. In practise, the surveys were conducted in an appropriate fashion at an appropriate time of year and an additional two survey visits would have been unlikely to produce any significantly different results.

2.24 12.17 - *Also, there seems to be either an error or oversight in 4.2 and clarification is sought.*

2.24.1 This is simply a typo, a result of accidentally importing text along with the format from a different report.

2.25 12.18 - *It is also noted that only roofing felt was used for the artificial refugia, in line with Sewell et al 2013, a variety/combination should be used on sites, and to account for any potential snakes, tins should have also been used.*

2.26 Indeed, tins could have been used, however, although wide ranging grass snakes require aquatic habitats for foraging and the nearest ponds were over 250m distant, the site does not provide an optimal habitat for adders which prefer land with free draining acidic soils, and are more commonly found around bracken and heathland flora.

2.27 12.19 - *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.*

2.28 The above statement from the council's ecologist is not sustained by any documentary evidence or from any reasoned and supported impact assessment, and seems by supposition to completely refute the findings from the PEA/EcIA report, and the calculated BNG metric.

2.29 Using the revised final landscaping scheme, the loss of habitat is restricted to a maximum of 0.363ha of neutral grassland, whilst retained and managed habitats are calculated to be 0.777ha which more than adequately compensates for the habitat loss. In fact, the calculated Biodiversity Net Gain is 12.59% for habitats and 125.65% for hedgerows, this is ably demonstrated and unpinned by the empirical data used within the calculation of the metric.

2.30 There has been no loss of nesting (bird) areas as a result of the proposals, and any that could conceivably arise from the construction of a passing place would be more than adequately off-set within the land available to the appellant through the proposed scrub and tree planting.

- 2.31 Equally, there is no explanation or provided definition for what a “*range of protected species*” refers to and what those species are and how they may have been impacted e.g which species were likely to be residing in or gaining a supporting function from which habitats.
- 2.32 If the council can provide an explanation as to what is meant by a lack of security for on-site compensation then this could be addressed, the usual route is for the appropriate conditions and obligations to be imposed as per BS42020.

3.0 CONCLUSION

- 3.1 It is the contention of this proof that the evidence and assessments submitted thus far, alongside the clarification of the points raised in the council's SoC provided in the previous chapter, demonstrate that the scheme has provided sufficient information to comply with the relevant criteria of Policy TS3. The mitigation, compensation and enhancement strategy contained within the PEA, the BNG Metric and soft landscaping scheme more than adequately address the impacts to habitats and species that have occurred as a result of the occupation of the site.
- 3.2 The proposals contained in the submitted ecology documents are balanced to match the assessed impact to protected species and habitats, and therefore accord with the concept of proportionality as described throughout BS42020 (Section 5.5, Page 18, and 6.12, 6.18, 6.6b).
- 3.3 To secure the proposed BNG measures and those additionally proposed for reptiles (log piles etc) it is correct that suitable conditions are imposed and those that are imposed are proportionate and capable of being delivered. For Land at Lawrences Lane, the proposed habitat measures and subsequent management, are straightforward to implement, either by the appellant or by an external contractor working on their behalf. Because the habitat measures are presented within the formality of the BNG Metric, the length of the habitat management term would be 30 years.
- 3.4 It is proposed that an appropriate condition would cover the formulation of a 30 year habitat management plan based on the prescriptions for a Landscape and Ecological Management Plan (LEMP) as described in Annexe D.4.5 of BS42020.

4.0 REFERENCES

British Standards Institution (2013) Biodiversity. *Code of practice for planning and development: 42020*. BSI, London.

CIEEM (2019) *Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater, Coastal and Marine*. Chartered Institute of Ecology and Environmental Management, Winchester.

Defra (2022) *List of habitats and species of principal importance in England*.

Froglife (1999) *Reptile Survey An introduction to Planning, conducting and interpreting surveys for snake and lizard conservation*. Froglife Advice Sheet 10.

Co-ecology (2022a) *CE22005 Ruston Thatcham PEA - Report V1.1*.

Co-ecology (2022b) *CE22005 Ruston Thatcham Biodiversity Net Gain - V2.2*.

Co-ecology (2022c) *CE22005 Ruston Thatcham Reptile Survey – Report*.

Co-ecology (2022d) *Biodiversity Metric 3.0 Auditing and accounting for biodiversity Calculation tool v2*.

West Berkshire Council (2022) *Updated SoC – Land at Lawrences Lane*.

TDA (2022) *TDA.2692.02 (Rev. A) - Lawrences Lane Thatcham - Revised Site Layout Landscape Strategy Arboricultural Mitigation Measures*.

Email from Gareth Ryman to Bob Dray, 08 November 2021.

BRIG (ed. Ant Maddock) (2008) *UK Biodiversity Action Plan Priority Habitat Descriptions Wood-Pasture and Parkland* (Updated in 2011) From: UK Biodiversity Action Plan; Priority Habitat Descriptions.