

Technical Note 01

Project: 6771-01

Planning Ref: 24/00484/OUT

Date: 02/08/2024

Land East of Leicester Road, Earl Shilton

Consideration of Consultation Response Received

1 Introduction

- 1.1 Aspect Ecology Ltd is advising Manor Oak Homes in relation to ecological matters at the site, located east of Leicester Road, Earl Shilton, Leicestershire .
- 1.2 The site is proposed for development to provide new residential dwellings and associated works, for which an outline planning application (for up to 33 dwellings and associated open space with all matters reserved apart from access) has been submitted to Hinkley and Bosworth Council (ref 24/00484/OUT). The application was informed by ecological survey and appraisal work, the results of which are set out within the submitted Ecological Appraisal and Biodiversity Net Gain Assessment Reports (Biodiversity Net Gain information having been subsequently updated following further in-season survey work in line with the submitted information, as set out within the accompanying updated Biodiversity Net Gain Assessment – ref: 6771-01 BNG vf1, dated August 2024).
- 1.3 Further to the application, consultation comments have been received in relation to ecological matters (dated 13th June 2024), which are stated to be provided on behalf of Leicestershire County Council (Ecology Team).
- 1.4 This note provides further consideration/response in regard to the ecological matters set out within the consultation response, with reference to the previously submitted information where appropriate.

2 Consideration of Matters Raised

- 2.1 The consultation response sets out a number of queries and concerns in relation to the submitted information:
- *Requirement for update site visit between May and September*
 - *Inclusion of 'Other Neutral Grassland' within BNG metric*
 - *Assessment of individual trees within hedgerows*
 - *Assumption that boundary vegetation will be retained*
 - *Great Crested Newt Survey*
 - *BNG Hierarchy*
 - *Suggested Pre-commencement Conditions*
- 2.2 Further consideration is therefore set out below in relation to each of the individual headings raised.

3 Requirement for update site visit between May and September

- 3.1 The comments received identify that *“An update site visit between May and September should be carried out...”*
- 3.2 As acknowledged within the consultation response, the previously submitted information identified that an in-season survey would be undertaken to confirm the position, albeit could not be completed at the time, awaiting progression of the season.
- 3.3 This has now been completed, as set out within the accompanying updated BNG assessment (dated August 2024) and accordingly, the associated results incorporated into the updated assessment such that this requirement has now been addressed.
- 3.4 (Reference is also made to the previous records of *Centaurea cyanus* highlighted from the search area within the submitted information. The consultation response incorrectly states these are located adjacent to the site whereas (as stated within the submitted information at section 4.1.2.) *‘none of these appear to relate to the site or immediately adjacent areas’*, instead being located within the wider (2km radius) search area around the site, with the closest such record situated approximately 0.9km from the site. In any event, no evidence for this species was recorded during the in-season survey, whilst the site is generally lacking in disturbed/cropped areas representing typically suitable habitats for this annual (cornfield weed) species, such that no further consideration is appropriate in relation to this species.
- 3.5 The previous information did note background records of the invasive species Japanese Rose *Rosa rugosa* from a grid reference apparently adjacent to the site and this species was indeed identified within hedgerow H5 during the June 2024 survey work (as identified within the accompanying updated BNG Assessment report, albeit the presence of this species does not affect the associated condition assessment of the hedgerow) and accordingly, it is recommended that the opportunity is taken as part of the proposals to eradicate this species, which is listed on Schedule 9 of the Wildlife and Countryside Act 1981 (as amended).

4 Inclusion of ‘Other Neutral Grassland’ within BNG metric

- 4.1 The consultation comments assert that *“The other neutral grassland within Table 3.1 has been missed from the metric calculation and should be included within the calculation”*.
- 4.2 Other Neutral Grassland was clearly included at line 1 within the ‘On-site Habitat Baseline’ worksheet within the previously submitted BNG metric (including as shown at the excerpts appended within the submitted BNG report, dated May 2024) and as such was included within the calculation. This comment is therefore erroneous.
- 4.3 In any event, following the in season grassland survey, the Other Neutral Grassland previously identified on the basis of out of season survey information has been re-categorised to Modified Grassland (Good Condition) under the current assessment and as such is included accordingly within the accompanying updated BNG Assessment (dated August 2024).

5 Assessment of individual trees within hedgerows

- 5.1 The consultation comments state that *“Individual trees including those located within hedgerows H5 and H7 (section 5.3.7.) and indicated on page 37 of the PEA are missing from the*

baseline metric. Additionally H5 and H7 should be assigned as 'hedgerows with trees' in the metric as appropriate".

- 5.2 A single individual tree located adjacent to building B2 was previously inadvertently omitted from the BNG assessment and accordingly, has been included within the accompanying updated BNG assessment (dated August 2024). The trees shown adjacent to the southern site boundary within the ecological appraisal plan are offsite and are therefore not included within the metric calculation for the site.
- 5.3 In regard to trees within the hedgerows H5 and H7, BNG metric guidance is clear that trees within hedgerows should only be included within the baseline as individual trees if they are to be removed (e.g. page 52 within 'The Statutory Biodiversity Metric User Guide', dated February 2024, as in place at the time of submission, with further clarification included (p55) within the most recently updated version of the guidance (dated July 2024), which states '*Where there is no loss (or change of condition) of individual trees within a hedgerow or 'rural' line, the individual trees within that feature do not need to be recorded separately in the baseline.*'
- 5.4 None of the trees within hedgerows H5 and H7 are proposed for removal and accordingly, the guidance is clear that these trees should not be individually captured within the metric.
- 5.5 Definitions for hedgerow types are set out within the Hedgerow Survey Handbook (Defra, 2007 – Figure 4), which identifies that '*hedgerows with trees*' should include tall trees <20m apart over most of their length (whereas other categories of hedgerow '*may have hedgerow trees along its length, but their canopies should be more than 20m apart*'). Given the number of individual trees present within H5 and H7, such that tree canopies within H5 in particular average substantially greater than 20m apart across the hedgerow length, under the standard definition these hedgerows are not classed as a 'hedgerow with trees'. Nonetheless, on a precautionary basis, H7 (which supports larger trees and is more outgrown and associated with the woodland group) has been re-categorised as "species-rich hedgerow with trees" within the accompanying updated BNG assessment (dated August 2024).

6 Assumption that boundary vegetation will be retained

- 6.1 Within the consultation comments, it is stated that "*Recommendations for protected species are based on the assumption that boundary vegetation (hedgerows and trees) will be retained. Proof that this is the case should be provided in the form of a landscape scheme clearly indicating retained and removed habitat with the understanding that if the scheme changes, further protected species surveys will be necessary.*"
- 6.2 The planning application is in outline, such that detailed design and layout information would remain to be determined at the reserved matters stage and therefore clearly it would be premature for any detailed landscaping scheme to be provided at this stage, albeit the application included an illustrative layout and associated Landscape Strategy Plan (upon which the BNG assessment is based – noting that this goes beyond the minimum statutory requirements, which only require the baseline habitat value to be defined at the planning application stage). Further, based on the submitted information, the stated vegetation could be suitably retained, whilst this could be ensured through appropriate planning conditions and/or determination at the reserved matters stage, with further such surveys required at that stage should relevant changes be proposed.

7 Great Crested Newt Survey

- 7.1 It is asserted within the consultation response that *“Given the historic presence of GCN, update HSI and eDNA surveys should be carried out on ponds within the buffer zone”*.
- 7.2 As set out within the submitted Ecological Appraisal the site does not include any potentially suitable breeding habitats for Great Crested Newt, whilst there are no previous records of Great Crested Newt from within or adjacent to the site. Similarly, no historic records of Great Crested Newts from any potential breeding ponds within 250m of the site have been identified (with indeed a previous *negative* result indicating absence from the offsite pond located approximately 210m west of the site, which in any event is further separated by Leicester Road).
- 7.3 Similarly, no previous records of GCN are available from the offsite pond located 240m east of the site, albeit given the lack of survey work in relation to this pond it was assumed that this species may be present and accordingly, Natural England’s rapid risk assessment completed (as set out within the submitted Ecological Assessment), which clearly identifies that *even should the offsite pond 240m east of the site represent a breeding pond for this species*, the proposals within the site would be *highly unlikely* to represent any offence in regard to Great Crested Newt such that no further survey or consideration should be required.
- 7.4 Planning policy guidance, including NPPF and associated Circular 06/2005 set out that the potential presence or absence of protected species (such as Great Crested Newt) and the extent to which they may be affected represents a material consideration in relation to planning applications. However, the guidance is very clear that *“bearing in mind the delay and cost that may be involved, developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the development.”* As clearly set out (including within the previously submitted information), based on Natural England’s own rapid risk assessment tool, on the basis of the available evidence Great Crested Newt is highly unlikely to be adversely affected by the proposed development at the site and as such, any requirement for further survey work in respect of this species would be unwarranted, including in line with planning policy guidance in this regard.

8 BNG Hierarchy

- 8.1 The planning application is in outline, such that detailed design and layout information would remain to be determined at the reserved matters stage and therefore clearly it would be premature for any detailed landscaping scheme to be provided at this stage, albeit the application included an illustrative layout and associated Landscape Strategy Plan (upon which the BNG assessment is based – noting that this goes beyond the minimum statutory requirements, which only require the baseline habitat value to be defined at the planning application stage). Further, based on the submitted information, the stated vegetation could be suitably retained, whilst this could be ensured through appropriate planning conditions and/or determination at the reserved matters stage, with further such surveys required at that stage should relevant changes be proposed. The consultation response sets out that *“At present the concept masterplan does not demonstrate that BNG hierarchy has been followed, In the first instance, existing habitats should be retained where possible and enhanced where possible to the habitat and condition indicated by the metric.”*
- 8.2 The Biodiversity Gain Hierarchy and its effect for the purpose of the statutory framework for BNG is set out in Articles 37A and 37D of the Town and Country Planning (Development

Management Procedure) (England) Order 2015. This hierarchy (which does not apply to irreplaceable habitats) sets out a list of priority actions:

- i. firstly, in relation to on-site habitats which have a medium, high and very high distinctiveness (a score of four or more according to the Statutory Biodiversity Metric), the avoidance of adverse effects from the development and, if they cannot be avoided, the mitigation of those effects; and
- ii. secondly, in relation to all on-site habitats which are adversely affected by the development, the adverse effect should be compensated by prioritising in order, where possible, the enhancement of existing onsite habitats, creation of new on-site habitats, allocation of registered offsite gains and finally the purchase of biodiversity credits.

8.3 In relation to point (i), there are no high or very high distinctiveness habitats within the site. Indeed, following the in-season habitat survey work, the only medium distinctiveness habitat that will be affected is the single semi-mature Scots Pine located north of building B2. Given the location and nature of this tree, it is unlikely to be feasible for it to be retained (albeit this would be subject to any detailed layout considerations at the appropriate, reserved matters, stage), with substantial numbers of new native trees provided, which will provide compensation for the loss of the single tree in any event.

8.4 In relation to point (ii), given the outline nature of the development, the loss of the existing (low distinctiveness) habitats have been assumed on a precautionary basis, with adverse effects compensated wherever possible by creation of new on-site habitats in order to provide an accurate reflection of the position appropriate to the current stage. Nonetheless, depending on the final layout, should the enhancement of the existing/retained habitats in particular be possible, this could be incorporated.

9 Suggested Pre-commencement Conditions

9.1 A number of pre-commencement conditions are advised within the consultation comments received, which would appear reasonable in relation to any planning permission granted and are consistent with the previously submitted information. Such conditions could therefore reasonably be applied to any outline planning permission granted should the Council consider these appropriate.

10 Other Considerations

10.1 With the exception of the individual matters discussed above, no other specific ecological considerations or concerns appear to be raised within the comments received and accordingly no such matters appear to require further consideration in relation to the proposed development.