Proposed Development of Land at the Hill, Littlebourne

Application Ref: CA/23/00484

Technical Review of Applicant's Ecological Appraisal

To inform:

Canterbury City Council

And copied to:

Kent County Council,

Natural England and

Environment Agency

by:

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1. EXECUTIVE SUMMARY

1.1. This technical review has been prepared by and experienced professional ecologist to help Canterbury City Council (CCC) assess the ecological implications of the Proposed Development of land at The Hill, Littlebourne, Kent (planning reference: CA/23/00484, hereafter 'the Application'). The scope of this report includes:

- a review of the Applicant's Ecological Appraisal (FPCR 2023) of the Proposed Development; and
- highlighting of any potential significant effects not mentioned or fully considered by the Applicant's ecologist (FPCR) in the Ecological Appraisal.

1.2. With regard to designated sites of international importance, this review should be read in combination with the author's separate review of the Applicant's Habitats Regulations Assessment (HRA) contained in "*Proposed Development of Land at the Hill, Littlebourne; Application Ref: CA/23/00484: Information to Inform an Assessment under the Habitats Regulations*" (Andrews & Bostock, April 2023).

1.3. This review finds that:

1.4. The Applicant's Ecological Appraisal (FPCR 2023) fails to recognise the presence or likely presence of certain important ecological features within the Proposed Development's ecological Zone of Influence that could be adversely affected. This means that it fails to assess the impact on these features.

1.5. These important features that have not been adequately recognised or assessed include:

- Sites formally designated and protected for nature conservation located downstream of the Proposed Development, including Preston Marshes Site of Special Scientific Interest (SSSI), and two Local Wildlife Sites along and including parts of the Little Stour river.
- Non-designated Habitat of Principal Importance: the Little Stour chalk river.
- Great crested newt (a European Protected Species)
- Species of Principal Importance recorded in the area and strongly associated with arable farmland including skylark, brown hare and harvest mouse.

1.6. The consequence of this is that CCC as the planning authority does not have sufficient information with which to judge the ecological impacts of the Proposed Development, and if it were to do so on the basis of the Applicant's flawed Ecological Appraisal, it would be at considerable risk to biodiversity and policy compliance.

2. INTRODUCTION

SCOPE

2.1. This review has been prepared by Richard Andrews to help Canterbury City Council (CCC) assess the ecological implications of the Proposed Development of land at The Hill, Littlebourne, Kent (planning reference: CA/23/00484, hereafter 'the Application').

2.2. Richard Andrews is a professional ecologist, Chartered Environmentalist and a Fellow of the Chartered Institute of Ecology and Environmental Management. He has 30 years of experience and is a very experienced practitioner and reviewer of Ecological Appraisals and Ecological Impact Assessments. He has produced many such reports for both developers and for public bodies.

2.3. This review provides information associated with potential effects arising as a result of the Proposed Development on designated sites, non-designated Habitats of Principal Importance, legally protected species and Species of Principal Importance for biodiversity.

2.4. CCC has a legal duty to have regard to such ecological features when determining planning applications, and this regard is equally prescribed by national and local planning policy.

2.5. The scope of this report includes:

- a review of the Applicant's Ecological Appraisal (FPCR 2023) of the Proposed Development; and
- highlighting of any potential significant effects not mentioned or fully considered by the Applicant's ecologist (FPCR) in the Ecological Appraisal.

2.6. With regard to designated sites of international importance, this review should be read in combination with the author's separate review of the Applicant's Habitats Regulations Assessment (HRA) contained in "*Proposed Development of Land at the Hill, Littlebourne; Application Ref: CA/23/00484: Information to Inform an Assessment under the Habitats Regulations*" (Andrews & Bostock, April 2023).

DESCRIPTION OF PROPOSED DEVELOPMENT

2.7. The Application (CA/23/00484) is for outline planning, formerly for up to 115 residential dwellings (previous ref from application submitted in 2021: CA/21/01657 covering 3.13ha), now being revised to comprise a residential development of up to 300 units (9.17ha), with associated infrastructure. The Application site is within farmland adjacent to The Hill in the village of Littlebourne. The earlier application in 2021 was refused by CCC on several grounds including matters pertaining to the Habitats Regulations.

CONCEPTUAL IMPACT ASSESSMENT MODEL

2.8. The potential impact of a development is not always limited to the boundaries of the site concerned. The development may also have the potential to impact on ecologically important sites, habitats or species beyond the site boundaries. The area over which a development may impact ecologically valuable receptors is known as the Zone of Influence (ZoI).

2.9. The 'source-pathway-receptor' concept provides a useful model for framing and objectively evaluating the mechanisms through which potential effects may occur. Table 1 below sets out the various parts of the model and how they relate to each other.

Table 1 Conceptual Impact Assessment Model

Source	Pathway	Receptor
Components of the development proposals that are likely to generate or contribute towards environmental effects or changes that may have implications for important ecological features.	Potential changes in environmental conditions resulting from the development proposals that have the potential to affect an important ecological feature.	The important ecological features within the ZoI of the proposals and the environmental conditions that are required to support these.

NATIONAL PLANNING POLICY

2.10. In addition to primary legislation, the government published the National Planning Policy Framework (NPPF) on 19th February 2019. Within the NPPF, Chapter 15 is headed 'Conserving and enhancing the natural environment' (Paragraphs 170 to 183).

2.11. Of relevance are the following statements:

2.12. *'Planning policies and decisions should contribute to and enhance the natural and local environment by… minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures* (Paragraph 170d); and

2.13. Paragraph 171 states that:

2.14. *'Plans should: distinguish between the hierarchy of international, national and locally designated sites; allocate land with the least environmental or amenity value, where consistent with other policies in this Framework; take a strategic approach to maintaining and enhancing networks of habitats and green infrastructure; and plan for the enhancement of natural capital at a catchment or landscape scale across local authority boundaries*.'

2.15. To protect and enhance biodiversity and geodiversity, plans should:

2.16. *'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* (Paragraph 174a); and

2.17. *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*.' (Paragraph 174b).

2.18. *When determining planning applications, local planning authorities should apply the following principles* (Paragraph 175):

2.19. *'a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused*;

2.20. *b) development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest*;

2.21. c*) development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists*; and

2.22. *d) development whose primary objective is to conserve or enhance biodiversity should be supported, while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity*.'

2.23. In addition to the above, Paragraph 176 confirms that Ramsar sites should be afforded the same protection as sites that are included within the definition at Regulation 8 of the Conservation of Habitats and Species Regulations 2017 (Special Areas of Conservation (SAC), Sites of Community Importance, Special Protection Areas (SPA) and any relevant Marine Sites).

2.24. Paragraph 177 states that: -

2.25. *'The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site*.'

2.26. This statement applies to the assessment of effects in relation to all confirmed, possible, potential and/or proposed designated sites of international importance, as identified above.

LOCAL PLANNING POLICY

2.27. The Canterbury Local Plan adopted in July 2017 sets out plans to develop Canterbury District until 2031. Extracts from this include the following statements and policies related to Biodiversity.

Paragraph 10.1

2.28. One of the City Council's objectives is to protect and enhance the countryside, acknowledging its own intrinsic value, the diversity of its landscapes, heritage and wildlife and recognising that a high-quality rural environment contributes to the economic, social and cultural well-being of the District.

Paragraph 10.5

2.29. The City Council will ensure that landscape improvements are secured for the long-term through the development process. The City Council will use a number of resources including the following documents and work areas to judge proposals affecting the landscape: The draft Canterbury District Landscape Character and Biodiversity Assessment (2012);

Paragraph 10.18

2.30. The Landscape Character and Biodiversity Appraisal (Draft 2012) will be adopted as Supplementary Planning Guidance and will be used as a material consideration when determining applications for development within the rural areas.

Paragraph 10.30

2.31. If there is a risk of a significant effect of a plan or a project on one of these internationally designated sites …, development proposals will require an Appropriate Assessment under the Habitats Regulations 2010 (as amended [now 2017]), to determine whether or not they would have an adverse effect on the integrity of the site either alone or in combination. Under European legislation, the City Council as a competent authority has a duty to exercise its functions to ensure that these sites are maintained in a favourable condition.

Policy LB5

2.32. No development will be permitted which may have an adverse effect on the integrity of an SAC, SPA or Ramsar site, alone or in combination with other plans or projects, as it would not be in accordance with the Habitat Regulations 2010 (as amended) [now 2017] and the aims and objectives of this Local Plan. Where a plan or project's effects on a SAC, SPA or Ramsar site, alone or in combination, cannot be screened out during Habitat Regulations Assessment as not likely to be significant, an Appropriate Assessment in line with the Habitats Regulations 2010 (as amended) [now 2017] will be required. …Any residual impacts may still require in-combination assessment.

2.33. In the event that the City Council is unable to conclude that there will be no adverse effect on the integrity of any internationally designated site, the plan, or project will be refused unless the tests of no alternative sites and the imperative reasons of overriding public interest in accordance with Regulation 62 of the Habitats Regulations 2010 (as amended) [now 2017] are proven.

Paragraph 10.38

2.34. Water quality is also a significant issue and it is essential that waste water discharges into the Stour do not decrease the quality of water in [Stodmarsh SAC/Ramsar site]. The City Council, in partnership with water companies and the Environment Agency should ensure that development is phased to ensure sufficient water supply is available and that development within the District keeps pace with the provision of necessary sewage treatment infrastructure development.

Policy LB7

2.35. Development or land-use changes likely to have an adverse effect, either directly or indirectly, on… Local Wildlife Sites…will be permitted if the justification for the proposals clearly outweighs any harm to the intrinsic nature conservation and/or scientific value of the site. Where development is permitted on such sites, careful site design should be used to avoid any negative impact. Where negative impact is unavoidable, measures should be taken to ensure that the impacts of the development on valued natural features and wildlife have been mitigated to their fullest practical extent. Where mitigation alone is not sufficient, adequate compensatory habitat enhancement or creation schemes will be required. Any application affecting locally important sites will be expected to demonstrate enhancement measures to benefit biodiversity.

Policy LB9

2.36. Developers will be expected to carry out appropriate ecological survey/s and present outline proposals for mitigation and enhancement prior to the determination of a planning application. Development which may harm (either directly or indirectly) Habitats or Species of Principal Importance will be permitted if:

- There are no reasonable alternatives and there are clear demonstrable social or economic benefits of the development which clearly outweigh the need to safeguard the site or species; and
- Adequate mitigation, compensation and enhancement measures are scheduled in advance of development, when damage to biodiversity interests are unavoidable.
- Over the long term the mitigation area is secured, to ensure that the site is protected against future development.
- The management of the habitats and funding for its implementation are provided by the applicant to ensure the habitats or populations of species are conserved and enhanced in the long term.

2.37. The full implementation of the mitigation measures must be secured as part of any planning permission.

Paragraph 10.88

2.38. Development should not harm water quality.

Policy LB13

2.39. Development shall show how the environment within river corridors and river catchments, including the landscape, water environment and wildlife habitats, will be conserved and enhanced. Supply of water, treatment and disposal of waste water and flood risk management should be shown to be sustainable and deliver environmental benefits, within the water environment.

3. REVIEW OF THE APPLICANT'S ECOLOGICAL APPRAISAL (FPCR 2023)

3.1. The Applicant's Ecological Appraisal (FPCR 2023) provided to CCC provides sound information and advice in some respects, but in others it fails to recognise the presence or likely presence of important ecological receptors within the Proposed Development's ecological Zone of Influence that could be adversely affected. This means that it fails to assess these features.

3.2. The consequence of this is that CCC as the planning authority does not have sufficient or sufficiently accurate information with which to judge the ecological impacts of the Proposed Development, and if it were to do so on the basis of the Applicant's Appraisal, it would be at considerable risk to biodiversity and policy compliance.

DESIGNATED SITES

Sites of international importance

3.3. Regarding designated sites of international importance, the reader is referred to the author's separate review of the Applicant's 'shadow' Habitats Regulations Assessment (sHRA) contained in "*Proposed Development of Land at the Hill, Littlebourne; Application Ref: CA/23/00484: Information to Inform an Assessment under the Habitats Regulations*" (Andrews & Bostock, April 2023).

3.4. In summary, that separate review raises significant, material concerns over the validity and completeness of the Applicant's sHRA, demonstrating that the Applicant's report cannot be relied on to properly inform CCC of the likely significant effects of the Proposed Development on the internationally important and protected Stodmarsh sites (SPA, SAC and Ramsar site), nor provide an 'appropriate assessment' as defined by the Habitats Regulations and case law.

3.5. This report particularly highlights a significant omission in the Applicant's sHRA in relation to effects on likely functionally-linked land (off-site supporting habitat for mobile species associated with Stodmarsh's legal protection) that exists directly downstream of the Application Site and which would be affected by wastewater and surface drainage from the Proposed Development.

3.6. More detail can be found in the aforementioned "*Proposed Development of Land at the Hill, Littlebourne; Application Ref: CA/23/00484: Information to Inform an Assessment under the Habitats Regulations*" (Andrews & Bostock, April 2023).

Sites of national importance

3.7. With regard to designated sites of national importance, the Applicant's Ecological Appraisal fails to identify that Preston Marshes Site of Special Scientific Interest (SSSI) falls within the Proposed Development's ecological Zone of Influence. This wetland SSSI is located approximately 4km directly downstream of the Proposed Development site, linked by the Little Stour river into which both surface water and waste-water will be discharged from the Proposed Development during construction and operation.

3.8. Preston Marshes SSSI is designated for its wetland and aquatic features, and so it is highly sensitive to water quality changes. SSSI's benefit from strict legal protection and are a material planning consideration.

3.9. As this nationally important designated site is not identified as a potentially affected feature by the Applicant's ecologist, no assessment of effect is made. This is a major omission of significant (i.e. national) potential consequence.

Sites of local (county) importance

3.10. With regards to non-statutory local designations, there are two wetland Local Wildlife Sites (LWS) of county importance along the Little Stour river immediately downstream of Littlebourne which the Applicant's Ecological Appraisal fails to recognise as potential impact receptors:

- Seaton Pits and Wenderton Manor Woods LWS
- Chislet Marshes, Sarre Penn and Preston Marshes LWS

3.11. These LWS are clearly within the Proposed Development's ecological Zone of Influence due to downstream hydrological connectivity. It is therefore highly surprising that they too have not been subject to any form of impact assessment relating to potential water quality changes.

3.12. Even the one wetland LWS that is included within the scope of the Appraisal due to its proximity (Littlebourne Stream LWS) is hardly assessed for impacts to its aquatic ecology. The LWS is described as: "*An area of wetland comprised of a mix of wet grassland, deciduous woodland, watercress beds and standing water associated with the Little Stour River and connecting ditches and dikes*…". This site of county importance is given only two sentences of assessment related to water quality impact, and these simply suggest that on-site sewage treatment and effluent discharge to the river will be of 'benefit' to this LWS (paragraph 5.13 of Applicant's Ecological Appraisal). It is hard to see how discharge to the LWS of wastewater from c.300 houses can be concluded as a benefit, with no evidence to support this.

3.13. Although LWS is a non-statutory designation, it is a material consideration in planning decisions (see Local Plan Policy LB7), and there is a general presumption against loss or damage to such sites of county importance for biodiversity.

IMPORTANT NON-DESIGNATED HABITATS

3.14. There is a complete absence of recognition in the Applicant's Ecological Appraisal that the Proposed Development will discharge both surface water and wastewater into chalk stream habitat which is a Habitat of Principal Importance under the NERC Act 2006. The NERC Act 2006 imposes a duty on public bodies and statutory undertakers to ensure due regard to the conservation of biodiversity when carrying out their functions in relation to Habitats of Principal Importance for biodiversity.

3.15. The Little Stour is a chalk stream, which is a globally rare habitat. There are only 210 true chalk streams anywhere in the world, and 160 of them are in England. These precious and unique freshwater ecosystems are at risk from pollutants and over abstraction. The Rivers Trust notes "*if government is serious about protecting our environment, our "green and pleasant land", the fate of England's chalk streams is the litmus test*."

3.16. The Canterbury District Draft Local Plan to 2040 is supported and evidenced by the Landscape Character and Biodiversity Appraisal Report (2020). This recognises the Little Stour as a priority habitat chalk river and key biodiversity corridor supporting a diverse flora and fauna. Amongst its recommendations are: '*To enhance and restore grazing marsh and wetland habitats as part of the county-wide targets of the Lower Stour Wetlands Biodiversity Action Plan'*.

3.17. The absence of any assessment of water quality impacts this very important habitat is highly problematic for decision-making and further undermines confidence in the Applicant's Appraisal.

IMPORTANT SPECIES

3.18. In addition to its intrinsic habitat qualities and status, the Little Stour is home to a variety of important and legally protected riverine species such as water vole, otter, beaver, kingfisher, eel, brown trout, and bat species, etc. All of these could be affected by changes in water quality. However, no assessment of offsite downstream impacts is made by the applicant.

3.19. Within the Application Site itself, three key Species of Principal Importance (NERC Act Section 41) that are associated with arable farmland also appear to have been ignored. These are: skylark, brown hare and harvest mouse. The NERC Act 2006 imposes a duty on public bodies and statutory undertakers to ensure due regard to the conservation of biodiversity when carrying out their functions in relation to Species of Principal Importance for biodiversity.

3.20. Brown hare and harvest mouse have both been recorded in the local area according to the Applicant's Appraisal (paragraph 4.17). Despite this, the apparent habitat suitability of the Application Site, and these species' national status under the NERC Act, no impact assessment has been provided, nor any justification for not assessing them.

3.21. The absence of any recognition that skylarks are at risk from the Proposed Development is highly surprising. Skylarks are regularly seen by the author, singing and displaying over the Application Site each year, and nesting behaviour has also been observed in the middle of the arable fields that are to be developed.

3.22. The absence of any recording of this declining farmland bird species by the Applicant's ecologist again undermines confidence in the quality and reliability of the Appraisal. Skylarks are likely to be one of the species that suffers the most from loss of habitat brough about by the proposed Development, which cannot be mitigated on site (skylarks are ground-nesting birds that require large open expanses of grassland and/or arable land to nest in).

3.23. The Habitats Regulations provide strict protection for great crested newts (*Triturus cristatus*), and make it an offence to:

- deliberately capture, injure or kill any wild animal of a European Protected Species;
- deliberately disturb animals of any such species in such a way as to be likely to:
  - impair their ability to survive, breed, rear or nurture their young, hibernate or migrate, or
  - significantly affect the local distribution or abundance of the species to which they belong;
- deliberately take or destroy the eggs of such an animal; or
- damage or destroy a breeding site or resting place of such an animal.

3.24. Great crested newts are also Species of Principal Importance for biodiversity under the NERC Act 2006 which imposes a duty on public bodies and statutory undertakers to ensure due regard to the conservation of biodiversity when carrying out their functions.

3.25. The Applicant's ecologist seems to dismiss the need for great crested newt surveys based on a lack of historic records in the local area. However, the records that are cited do not seem to include a locally well-known population in Littlebourne's 'Cherry Orchard' pond which is 480m

north from the Proposed Development site. This is within the recognised 500m migration distance for great crested newts. This should be enough to indicate a precautionary need to survey the ditches within and adjacent to the Application Site for great crested newt presence. However, this has not been done and so there remains a risk of this species being affected by the proposed development with no licence or mitigation in place.

3.26. There are also ponds and ditches within the floodplain of the Little Stour at Garrington Farm that are within 300m or less of the Application Site. These are close enough to the Application Site to pose a risk of any breeding populations of great crested newt in these waterbodies using terrestrial habitat within the Application Site. Therefore, these waterbodies in land to the immediate southeast of the Application Site (within 500m) should be surveyed for great crested newt before any absence of great crested newt on the Application Site can be assumed.

4. CONCLUSION

4.1. The Applicant's Ecological Appraisal (FPCR 2023) fails to recognise the presence or likely presence of certain important ecological features within the Proposed Development's ecological Zone of Influence that could be adversely affected. This means that it fails to assess the impact on these features.

4.2. The consequence of this is that CCC as the planning authority does not have sufficient information with which to judge the ecological impacts of the Proposed Development, and if it were to do so on the basis of the Applicant's flawed Ecological Appraisal, it would be at considerable risk to biodiversity and policy compliance.