



16th February 2022

Eleanor Moss
Colchester Borough Council

By email only

Thank you for requesting advice on this application from Place Services' ecological advice service. This service provides advice to planning officers to inform Colchester Borough Council planning decisions with regard to potential ecological impacts from development. Any additional information, queries or comments on this advice that the applicant or other interested parties may have, must be directed to the Planning Officer who will seek further advice from us where appropriate and necessary.

Application: 202604
Location: Land at, Brook Meadows, Tiptree Colchester CO5 0QF
Proposal: Outline application for the erection of up to 221 dwellings and associated infrastructure and works.

Dear Eleanor,

Thank you for re-consulting Place Services on the above outline application and providing additional & updated documents to support determination.

No ecological objection subject to

- a) **overcoming the policy constraints for development affecting a LoWS**
- b) **the adoption of the updated shadow Habitats Regulations Assessment screening report**
- c) **securing ecological mitigation, sufficient compensation for loss of part of a designated site (LoWS) and biodiversity enhancements**

We note the policies in the Local Plan (DDP21) and Tiptree Neighbourhood Plan (TIP15 and SS14) that seek to protect designated sites including coastal Habitats sites & Local Wildlife Sites (LoWS).

We welcome the updated Shadow Habitats Regulations Assessment (Aspect Ecology, January 2022) to reflect the above analysis in respect of wintering birds and now consider it sufficiently robust for adoption by the LPA for formal consultation with Natural England.

The development of part of Co10 Inworth Grange Pits has been properly assessed in terms of likely impacts and the mitigation hierarchy followed to minimise impacts using proportionate mitigation measures including the restoration of habitats which could support the recovery of protected and Priority species. The bespoke compensation proposal offered is considered sufficient & adequate and could be secured by a planning obligation or legal agreement attached to any consent. We therefore consider that this meets the ecological requirements of the NPPF (2021) and Government's Biodiversity Metric and, with biodiversity enhancements also secured, can deliver net gain for the development.



In addition to our response dated 30 November 2021 and a subsequent meeting on 6th January 2022 with the applicant, we have now reviewed the updated Shadow Habitats Regulations Assessment (HRA), Response to Ecology Consultation Comments, updated Technical Briefing Note on Biodiversity Net Gain (BNG) Assessment using Defra Biodiversity Metric 3.0, full Biodiversity Metric 3.0 calculations and Indicative Ecological Enhancements Plan (all Aspect Ecology, Jan 2022).

We are now satisfied that there is sufficient ecological information available for determination of this application. This provides certainty for the LPA of the likely impacts on protected and Priority species & habitats and, with appropriate mitigation, compensation and enhancement measures secured, the development can be made acceptable.

Habitats Regulations Assessment

We note that the additional ecology clarification & information provided in the Response to Ecology Consultation Comments Aspect Ecology, Jan 2022) includes a statement relating to the need for *“Before granting planning consent, wintering bird surveys will be undertaken at the appropriate time of year to identify any offsite functional habitat.”*

The statement includes an assessment of potential impacts on wintering birds as required by the Inspector and refers to Natural England’s advice¹ (para 4.10) that its recognised distance for the consideration of offsite functionally linked land for wintering birds is generally 2km, but for certain wader species, namely Golden Plover and Lapwing, a greater distance of 15km may be appropriate. The 15km zone was therefore considered within the applicant’s updated shadow HRA for each of the relevant Habitats sites that are designated for supporting these qualifying bird species (Abberton Reservoir SPA, Colne Estuary SPA and Ramsar and Blackwater Estuary SPA).

We note that the Local Plan HRA states that Lapwing and Golden Plover *‘may rely on offsite pastures and arable fields for feeding’* and agree that this the application site does not contain any pasture or arable and therefore does not trigger further consideration in respect of the relevant wintering bird species.

Further detail has been included in the updated shadow HRA that the application site is bound by tall vegetation along most boundaries and partly overlooked by housing, which are counter-indicators for wintering waders and the site is subject to regular disturbance by local residents and dog walkers and, as such, is highly unlikely to support Lapwing or Golden Plover associated with the above designations during winter.

Further, the site is separated from the nearest Habitats sites (Abberton Reservoir and Blackwater Estuary) by the existing settlement of Tiptree, with extensive intervening arable and pasture, making it unlikely birds would travel beyond these more suitable areas to the application site, which does not support suitable habitat. Therefore, we agree with the conclusion that the application site is highly unlikely to be a preferred feeding area or provide functionally linked land to any of the relevant ecological designations. As such, based on this analysis, and in accordance with the approach outlined in the September 2021 HRA, we also agreed that it is not reasonable or proportionate for a wintering bird survey to be required to inform the planning application, and no further consideration of wintering birds is therefore necessary.

¹ Colchester Borough Council’s Habitat Regulations Assessment (HRA) of the Publication Draft Colchester Local Plan Section 2: Proposed Main Modifications (LUC, September 2021)



Biodiversity Net Gain Assessment

We note that there is currently no Local or National Policy basis to require Biodiversity Net Gain to be calculated using a formal metric, or indeed for a particular percentage gain to be demonstrated by planning applications. Nonetheless, we understand that demonstrating at least a 10% biodiversity net gain is identified as a future policy requirement within the emerging Local Plan and given the advanced status of the emerging policy, this requirement can be afforded significant weight.

Based on the scenarios presented in the requested full Biodiversity Metrics v3.0 and the updated Technical Briefing Note Biodiversity Net Gain Assessment Using the Defra Biodiversity Metric 3.0 (Aspect Ecology, January 2022), we provide the following further comments below:

We requested that the feasibility stage BNG Assessment for the application proposals needed to help objectively quantify the effects of the proposed development and to determine an appropriate level of mitigation / compensation. We are now satisfied that with the submitted BNG documents and agree that, in line with the emerging policy aspirations, for scenario 2, the proposed development should seek to achieve a minimum 10% net gain in hedgerow units as well as 10% net gain for habitat units.

We therefore welcome the updated Defra 3.0 metric calculations to demonstrate how a 41.84% net gain in hedgerow units can be achieved, through enhancing existing, retained hedgerows within the site. As the full landscape details, including planting and specifications would be provided at the Reserved Matters stage, we recommend that a Design Stage BNG Assessment report for scenario 2 is secured by a condition of any consent with a prior to commencement trigger for these details.

In relation to habitats losses and gains, we agree that the existing grassland within the site does not meet the criteria for Priority Lowland Meadow habitat. We consider that the Biodiversity Metric v 3.0 calculations for habitats have now been accurately included and assessed to demonstrate the losses and gains on the site, and that, trading rules are fully satisfied. We understand from Natural England training on Biodiversity Metrics that the precise location for offsite land to deliver BNG does not need to be agreed at outline stage, providing there is a suitable legal agreement in place to secure a minimum 10% BNG. It will be necessary to provide details of any offsite prior to determination of any Reserved Matters applications in order to reflect the detailed plans including the final Landscape Strategy Plan.

We note that if details of offsite habitat compensation and net gain for future Reserved Matters are submitted after 10% BNG becomes mandatory, that offsite land will need to be listed on the national BNG register. We therefore consider that, to make sure any offsite land which may be required is provided in the best possible place, as better locations may exist in the future particularly as the Colchester Local Nature Recovery Network emerges, rather than tying down a specific location now. We welcome the updated Defra Biodiversity Metric v3.0 calculations which show that in see Scenario 3 calculation, 9.25ha of offsite land would be required to achieve a 10% net gain. We note that the Environment Bank has confirmed that sufficient land is available within Colchester Borough to provide a suitable offset which provides sufficient certainty that the emerging ENV1 policy requirement can be met at Reserved Matters stage. It is not appropriate to tie the delivery to any offsite BNG provider at outline stage as alternatives are likely to exist when the Local Nature Recovery Network for Colchester has been

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approved and adopted, in line with Environment Act 2021 and the BNG Regulations when they come into force. We would therefore recommend that reference to the future Colchester Local Nature Recovery Network is included in the text of a condition to secure a Design Stage BNG Assessment report. This can then inform the location of offsite BNG required for any future Reserved Matters application with the details needed prior to determination.

We accept that in ecological terms, an offsite location would be acceptable and that the offsite grassland habitat creation should add value to any existing core habitats e.g. LoWS, to buffer them or increase connectivity. We therefore strongly recommend that the emerging Local Nature Partnership for Essex is consulted on any details for offsite provision to be submitted within a Design Stage BNG Assessment to discharge such a condition of any consent at Outline stage.

Although the proposed development located on a designated site, Local Wildlife Site (LoWS) - Co10 Inworth Grange Pits, is contrary to national and local policy, Government guidance on the use of Biodiversity Metric v 3.0 states that bespoke compensation is required for this situation.

Botanical Assessment of Grassland Habitats

Further to our recommendation that further botanical assessment of the site is undertaken, it has been recognised that extensive botanical survey work has been carried out at the site to date, including the original LoWS survey, the 2017 survey by Skilled Ecology, and the Phase 1 and NVC surveys undertaken by Aspect Ecology in 2020. These all confirm that it is appropriate to consider the existing grassland as 'other neutral grassland' in the Defra 3.0 Biodiversity Metric. Therefore, it was agreed that sufficient survey information is already available and that no further botanical assessment is necessary to inform the planning application or would indeed be likely to alter the proposed mitigation strategy.

In response to our clarification request regarding the botanical skill level of the surveyors, we accept that the Phase 1 survey was undertaken by one of Aspect Ecology's Principal Ecologists who is a Chartered Ecologist and full member of CIEEM, with over 13 years' experience in botanical survey and assessment, and the NVC survey was carried out by one of Aspect's Senior Ecologists under the direction of the Principal Ecologist and Ecology Director, who holds a BSc and PhD in Environmental Sciences, and has over six years' experience in ecological consultancy, during which time they have demonstrated a high degree of competency in botanical survey work and have received relevant training. We agree that this level of competency is sufficient to fully assess the conservation value and condition of the grasslands on the site.

Visibility of Faunal Enhancements

We welcome the submission of an Indicative Ecological Enhancements Plan (Aspect Ecology, January 2022) showing the quantum of bat / bird boxes, hedgehog friendly fencing throughout the development etc. to be provided within the development. We recommend that this is a consented document to secure delivery of additional ecological enhancements listed at paragraph 3.3 of the previous (November 2020) BNG Assessment Technical Note which have not yet been embedded into the indicative Concept Masterplan and Landscape Strategy Plan Rev D (June 2021). We agree that the information should be finalised and shown on more detailed plans at any Reserved Matters stage and secured under a

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condition of any outline consent. We recommend that this includes and some of the bird boxes provided are appropriate for swifts.

The mitigation, compensation and enhancement measures identified in the Ecological Appraisal (Aspect Ecology, November 2020), (Ecology Response to the comments (Aspect Ecology, March 2021) and Response to Ecology Consultation Comments Aspect Ecology, Jan 2022) Landscape Strategy Plan Rev E Drawing 7024/ASP4/LSP (Aspect Landscape Planning, June 2021) and Green Infrastructure & Landscape Management Plan Drawing 7024/ASP5/GIP (Aspect Landscape Planning, July 2021), should be secured and implemented in full. This is necessary to conserve and enhance protected and Priority species.

This is needed to enable the LPA to demonstrate its compliance with its statutory duties including its biodiversity duty under s40 NERC Act 2006.

We also support the proposed reasonable biodiversity enhancements, which have been recommended to secure measurable net gains for biodiversity, as outlined under Paragraph 174d of the National Planning Policy Framework (2021). The reasonable biodiversity enhancement measures should be outlined within a Biodiversity Enhancement Strategy and should be secured by a condition of any consent.

As such, it is up to the LPA to consider the application in its entirety in the planning balance and secure any conditions to make the development acceptable for provision of details for discharge at any future Reserved Matters stage.

Should the LPA be minded to approve this outline application, we recommend that submission for approval and implementation of the details below should be a condition of any planning consent. Impacts will be minimised such that the proposal is acceptable, subject to the conditions below based on BS42020:2013.

Recommended conditions

1. CONCURRENT WITH RESERVED MATTERS: ACTION REQUIRED IN ACCORDANCE WITH ECOLOGICAL APPRAISAL RECOMMENDATIONS

"All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Ecological Appraisal (Aspect Ecology, November 2020), (Ecology Response to the comments (Aspect Ecology, March 2021) and Response to Ecology Consultation Comments Aspect Ecology, Jan 2022) Landscape Strategy Plan Rev E Drawing 7024/ASP4/LSP (Aspect Landscape Planning, June 2021) and Green Infrastructure & Landscape Management Plan Drawing 7024/ASP5/GIP (Aspect Landscape Planning, July 2021), as already submitted with the planning application and agreed in principle with the local planning authority prior to determination.

This will include the appointment of an appropriately competent person e.g. an ecological clerk of works (ECOW) to provide on-site ecological expertise during construction. The appointed person

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shall undertake all activities, and works shall be carried out, in accordance with the approved details.”

Reason: To conserve and enhance protected and Priority species and allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (Priority habitats & species).

2. CONCURRENT WITH RESERVED MATTERS PRIOR TO COMMENCEMENT: CONSTRUCTION ENVIRONMENTAL MANAGEMENT PLAN FOR BIODIVERSITY

“A construction environmental management plan (CEMP: Biodiversity) shall be submitted to and approved in writing by the local planning authority.

The CEMP (Biodiversity) shall include the following.

- a) Risk assessment of potentially damaging construction activities.*
- b) Identification of “biodiversity protection zones”.*
- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).*
- d) The location and timing of sensitive works to avoid harm to biodiversity features.*
- e) The times during construction when specialist ecologists need to be present on site to oversee works.*
- f) Responsible persons and lines of communication.*
- g) The role and responsibilities on site of an ecological clerk of works (ECOW) or similarly competent person.*
- h) Use of protective fences, exclusion barriers and warning signs.*
- i) Containment, control and removal of any Invasive non-native species present on site*

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority”

Reason: To conserve protected and Priority species and allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 (as amended) and s40 of the NERC Act 2006 (Priority habitats & species).

3. CONCURRENT WITH RESERVED MATTERS PRIOR TO ANY WORKS ABOVE SLAB LEVEL: BIODIVERSITY ENHANCEMENT STRATEGY

“A Biodiversity Enhancement Strategy for protected and Priority species shall be submitted to and approved in writing by the local planning authority.

The content of the Biodiversity Enhancement Strategy shall include the following:

- a) Purpose and conservation objectives for the proposed enhancement measures;*
- b) detailed designs to achieve stated objectives;*
- c) locations of proposed enhancement measures by appropriate maps and plans;*

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- d) *timetable for implementation demonstrating that works are aligned with any proposed phasing of development;*
- e) *persons responsible for implementing the enhancement measures;*
- f) *details of initial aftercare and long-term maintenance (where relevant).*

The works shall be implemented in accordance with the approved details prior to occupation and shall be retained in that manner thereafter."

Reason: To enhance protected and Priority species & habitats and allow the LPA to discharge its duties under the s40 of the NERC Act 2006 (Priority habitats & species)

**4. CONCURRENT WITH RESERVED MATTERS PRIOR TO ANY WORKS ABOVE SLAB LEVEL:
BIODIVERSITY NET GAIN DESIGN STAGE REPORT**

"A Biodiversity Net Gain Design Stage Report, in line with Table 2 of CIEEM Biodiversity Net Gain report and audit templates (July 2021), shall be submitted to and approved in writing by the local planning authority which provides a minimum of 10% measurable biodiversity net gain, using the DEFRA Biodiversity Metric 3.0 or any successor.

The content of the Biodiversity Net Gain report should include the following:

- *Baseline data collection and assessment of current conditions on site;*
- *A commitment to measures in line with the Mitigation Hierarchy and evidence of how BNG Principles have been applied to maximise benefits to biodiversity;*
- *Provision of the full BNG calculations, with detailed justifications for the choice of habitat types, distinctiveness and condition, connectivity and ecological functionality;*
- *Details of the implementation measures and management of proposals;*
- *Details of any off-site provision to deliver increased value of the Colchester Nature Recovery Network to be secured by a planning obligation;*
- *Details of the monitoring and auditing measures.*

The proposed enhancement measures shall be implemented in accordance with the approved details and shall be retained in that manner thereafter."

Reasons: In order to demonstrate measurable net gains and allow the LPA to discharge its duties under the NPPF (2021)

Please contact me with any queries.

Yours sincerely

Sue Hooton CEnv MCIEEM BSc (Hons)
Principal Ecological Consultant
Place Services at Essex County Council

Place Services provide ecological advice on behalf of Colchester Borough Council

¹ Colchester Borough Council's Habitat Regulations Assessment (HRA) of the Publication Draft Colchester Local Plan Section 2: Proposed Main Modifications (LUC, September 2021)



Please note: This letter is advisory and should only be considered as the opinion formed by specialist staff in relation to this particular matter.

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