

TOWN AND COUNTRY PLANNING ACT 1990

SECTION 78

APPELLANT: MR DREW PRICE AND MR JAMES BALL

LOCATION; LAND TO THE SOUTH OF CHEAR FEN BOAT CLUB
TWENTYPENCE ROAD COTTENHAM CAMBRIDGESHIRE

DEVELOPMENT: CHANGE OF USE OF LAND THROUGH INTENSIFICATION
TO THE STATIONING OF CARAVANS FOR RESIDENTIAL
PURPOSES, NINE DAYROOMS AND THE FORMATION OF
HARDSTANDING ANCILLARY TO THAT USE.

LPA REF: 22/01703/FUL

PINS REF: APP/W0530/W/22/3308444 AND APP/W0530/X/22/3308443

PROOF OF EVIDENCE

BY

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on behalf of

GREATER CAMBRIDGE SHARED PLANNING SERVICE

AND

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

TABLE OF CONTENTS

1	Introduction	3
1.1	Qualifications	3
1.5	Background	3
1.9	Summary of Sections	4
2	Relevant Policies, Guidance, Legislation, and Information	5
2.1	National Planning Policy Framework (December 2024)	5
2.5	South Cambridgeshire District Local Plan	8
2.10	Legislation	12
3	Harm to Important Ecological Features	15
3.1	Non-Statutory Protected Habitats	15
3.3	Legally Protected Species	17
4	Application of Policies NH/4 and NH/5	20
4.9	Non-Statutory Protected Habitats	23
4.11	Legally Protected Species	23
5	Response to the Appellant's Statement	24
5.5	Retrospective Ecological Appraisal and Biodiversity NET Gain Assessment	25
6	Summary and Conclusion	27
6.1	Policy and Guidance	28
6.5	Harm to Important Ecological Features	30
6.7	Application of Policy NH/4 and NH/5	31
6.9	Appellant's Statement	31
6.12	Conclusion	32
	Appendix 1	34
	Appendix 2	35

1. INTRODUCTION

1.1 Qualifications, Experience, and Declaration

I am Dr Daniel Weaver, Principal Ecology Officer for Greater Cambridge Shared Planning Service, a shared planning service across South Cambridgeshire District Council and Cambridge City Council. I have worked in local government planning since 2016. I am the Local Planning Authorities' Principal Ecology Officer leading a team of Ecology Officers that work across both Councils. I am experienced in assessing small- and large-scale complex development proposals with a variety of ecological constraints, and I have contributed to appeal hearings in the past.

1.2 I hold a PhD in Ecology, a Master's degree in Primate Conservation, and an Undergraduate honours degree in Wildlife Conservation. I am a full member of the Institution of Environmental Sciences, and I understand that I am bound by their code of conduct.

1.3 Prior to my various roles in local government planning, I worked as an ecological consultant for Mouchel/Kier/WSP, working on small- and large-scale infrastructure projects and large-scale residential developments.

1.4 The evidence which I have prepared and provide for this appeal is given in accordance with the code of professional conduct of the Institution of Environmental Sciences and I confirm that the opinions expressed are my true and professional opinions.

1.5 Background

Planning permission for the appeal scheme was refused under decision notice 22/01703/FUL. The decision notice cites insufficient ecology information as a matter for refusal.

1.6 Refusal reason 5 of decision notice 22/01703/FUL states:

“In the absence of submission of a biodiversity statement outlining the mitigation methods of the impact the proposal will have upon the local wildlife or existing planting, the proposed development is contrary to Policy NH/4 of the South Cambridgeshire Local Plan.”

1.7 The original planning application was not supported by any ecological assessment or statement regarding proposed ecological avoidance, mitigation or compensation. Therefore, no assessment of the ecological constraints on site was possible by Planning Officer, and as such, Ecology Officers were not consulted on the application prior to the decision notice being issued.

1.8 Had Ecology Officers been consulted on the application, the response would have stated that there was insufficient ecological information to determine the application, as there are obvious and apparent ecological constraints that require assessment and possible further survey to inform likely required mitigation; and therefore, contrary to Policy NH/4. Additionally, as Ecology Officers have access to the Cambridgeshire and Peterborough Ecological Records Centre data, a refusal of on the grounds of the application being contrary to NH/5 would have been recommended, due to the presence of a County Wildlife Site being part within the appeal site boundary.

1.9 Summary of Sections

This Proof of Evidence is structured to aid the Planning Inspector and parties in understanding the Council's concerns regarding the appeal scheme, with regards to ecology and biodiversity. In section 2 I provide relevant planning policies, guidance, legislation, and other information that I consider are material to the assessment of this appeal. In section 3 I explore and evidence the Council's case on the likely ecological impacts of the appeal scheme. In section 4 I look to apply the relevant development plan policies to each of the ecological impacts identified in section 3 and give an opinion on the acceptability of those impacts under the policies. In section 5 I review and

respond to the Appellant's ecological views presented in their appeal statement. In section 6 I summarise matters discussed in the previous sections and provide my conclusions on the acceptability of the appeal scheme with regards to ecology and biodiversity.

2 RELEVANT POLICIES, GUIDANCE, LEGISLATION, AND INFORMATION

2.1 National Planning Policy Framework (2024)

Please note that the National Planning Policy Framework has been updated since the submission of the application; however, there has been few material changes made to the relevant ecology and biodiversity sections of the document since 2019, with only Veteran Trees added as an irreplaceable habitat and the paragraph numbers changing to accommodate other changes to the document. The National Planning Policy Framework (NPPF), in seeking to achieve sustainable development, makes strong provisions for minimising impacts on, and securing net gains for, biodiversity, and the protection of important ecological features. These explicitly include priority habitats, priority species, and ecological networks. Relevant paragraphs are listed below, with emphasis added to matters of relevance to this appeal.

2.2 Paragraph 187:

"Planning policies and decisions should contribute to and enhance the natural and local environment by:

a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);

b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services –

including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland;

c) maintaining the character of the undeveloped coast, while improving public access to it where appropriate;

*d) **minimising impacts on and providing net gains for biodiversity**, including by establishing coherent ecological networks that are more resilient to current and future pressures;*

e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans; and

f) remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.”

2.3 Paragraph 193:

“When determining planning applications, local planning authorities should apply the following principles:

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;*

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;

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 reasons⁶³ and a suitable compensation strategy exists; and

*d) development whose primary objective is to conserve or enhance biodiversity should be supported; **while opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity** or enhance public access to nature where this is appropriate.”*

2.4 Paragraph 195:

*“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.

2.5 South Cambridgeshire District Council (SCDC) Local Plan

The SCDC Local Plan responds to the provisions of the NPPF by prohibiting net losses of biodiversity, encouraging net gains, and safeguarding important ecological features. Policies NH/4 and NH/5 are two main policies to assess the ecological implications of the appeal scheme. Priority and protected species, site of biodiversity or geological importance, irreplaceable habitats (please note that Veteran trees have been added to the list of Irreplaceable Habitats in later updates of the National Planning Policy Framework), and encourage gains in biodiversity through the form and design of the development.

Policies NH/4 and NH/5 are listed below, with emphasis added where relevant.

2.6 Policy NH/4: Biodiversity:

“1. Development proposals where the primary objective is to conserve or enhance biodiversity will be permitted.

2. New development must aim to maintain, enhance, restore or add to biodiversity. Opportunities should be taken to achieve positive gain through the form and design of development.

Measures may include creating, enhancing and managing wildlife habitats and networks, and natural landscape. **The built environment should be viewed as an opportunity to fully integrate biodiversity within new development through innovation.** Priority for habitat creation should be given to sites which assist in the achievement of targets in the Biodiversity Action Plans (BAPs) and aid delivery of the Cambridgeshire Green Infrastructure Strategy.

3. If significant harm to the population or conservation status of a Protected Species, Priority Species¹ or Priority Habitat 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 will be refused.

4. Where there are grounds to believe that a proposal may affect a Protected Species, Priority Species or Priority Habitat, applicants will be expected to provide an adequate level of survey information and site assessment to establish the extent of a potential impact. This survey information and site assessment shall be provided prior to the determination of an application.

5. Previously developed land (brownfield sites) will not be considered to be devoid of biodiversity. The reuse of such sites must be undertaken carefully with regard to existing features of biodiversity interest. Development proposals on such sites will be expected to include measures that maintain and enhance important features and appropriately incorporate them within any development of the site.

6. Planning permission will be refused for development resulting in the loss, deterioration or fragmentation of irreplaceable habitats, such as ancient woodland, unless the need for, and benefits of, the development in that location clearly outweigh the loss.

7. Climate change poses a serious threat to biodiversity and initiatives to reduce its impact need to be considered.”

2.7 Policy NH/5: Sites of Biodiversity or Geological Importance

“1. Proposed development likely to have an adverse effect on land within or adjoining a Site of Biodiversity or Geological Importance, as shown on the Policies Map (either individually or in combination with other developments), will not normally be permitted. Exceptions will only be made where the benefits of the development clearly outweigh any adverse impact.

2. In determining any planning application affecting Sites of Biodiversity or Geological Importance the Council will ensure that the intrinsic natural features of particular interest are safeguarded or enhanced having regard to:

a. The international, national or local status and designation of the site;

b. The nature and quality of the site's features, including its rarity value;

c. The extent of any adverse impacts on the notified features;

d. The likely effectiveness of any proposed mitigation with respect to the protection of the features of interest;

e. The need for compensatory measures in order to re-create on or off the site features or habitats that would be lost to development.

3. Where appropriate the Council will ensure the effective management of designated sites through the imposition of planning conditions or Section 106 agreements as appropriate."

2.8 Greater Cambridge Biodiversity Supplementary Planning Document (2022)

The Greater Cambridge Biodiversity Supplementary Planning Document (2022), referred to from this point forward as the Biodiversity SPD, was adopted by South Cambridgeshire District Council in February 2022, prior to the submission of the original application. It is therefore relevant to the

appeal. The Biodiversity SPD directly support Policy NH/4 (2) in requiring ecological enhancement (such as integrated bird bricks) and measurable net gain in biodiversity as supported by the National Planning Policy Framework (paragraphs 174, 180, and 182 of the 2018 version). Other issues within the document support National Planning Policy Framework and Local Plan Policies NH4 and NH/5

2.9 Issue B5: Biodiversity provision in the design or new buildings and open spaces.

- This issue has particular reference to the provision of integrated bird bricks, bat boxes, and hedgehog connectivity in all new developments.

2.10 Legislation

Please note that the Natural Environment and Communities Act 2006 (as amended) has been amended since the submission of the application. The below sections were included within the previous version relevant to the appeal, however, there has been updates to section numbering and some wording and sections have been removed, added, or amended. The principle of the legislation remains the same.

2.11

- Section 40: Duty to conserve - Natural Environment and Communities Act 2006 (as amended)

This section of the NERC Act confirms that the public authorities, including the Planning Inspectorate, have a statutory duty to further the conservation and enhancement of biodiversity in England. In relation to priority habitats and priority species, the minimum requirement in legislation is conservation.

2.12

- Section 41: Biodiversity Reports - Natural Environment and Communities Act 2006 (as amended)

This section of the NERC Act confirms that the priority species and priority habitats included in the lists published by the Secretary of State are of “principal importance for the purpose of conserving or enhancing biodiversity” in England.

2.13

- Regulation 9 – The Conservation of Habitats and Species Regulations 2017 (as amended)

This regulation confirms that public authorities, including the Planning Inspectorate, have a legal duty to have regard for the requirements of the Directives (Habitats Directive and Wild Birds Directive) when exercising any function, such as determining planning applications or appeals.

2.14

- Regulation 10 – The Conservation of Habitats and Species Regulations 2017 (as amended)

This regulation places a separate legal duty on relevant public authorities, including the Planning Inspectorate, to further the preservation, maintenance, and re-establishment of wild bird habitat.

2.15

- Schedule 5 - Wildlife and Countryside Act 1981 (as amended)

This section lists animal species that are protected under this Act. The list includes:

- Bats (all species)
- Water voles

Both of which are recorded within 1 km of the site, and there is likely suitable foraging, commuting, and resting habitat found within and adjacent to the site for those species.

2.16

- Schedule 2 - Conservation of Habitats and Species Regulations 2017 (as amended)

This section lists animal species that are protected under the Act. The list includes:

- Bats (all species)
- European Otter

Both the above species have been recorded within 1 km of the site, and there is likely suitable habitat on site for commuting, foraging, and resting for those species.

2.17

- Protection of Badgers Act 1992 (as amended)

The above legislation sets out the degrees of protection badgers have in England and Wales. It prohibits the killing, injuring, or keeping in captivity of any badger, or interfering with a badger sett. Badger has been recorded within 1 km of the site and there is likely suitable habitat for foraging, commuting, and resting found within and adjacent to the site.

3 Harm to Important Ecological Features

3.1 Non-Statutory Protected Habitats

No ecological assessment of potential impacts to non-statutory protected habitats was submitted in support of the original application, therefore, the application did not satisfy NH/4 or NH/5 of the SCDC Local Plan. Under the statutory duty required of Local Planning Authorities to make decisions with regard to biodiversity, the Local Planning Authority was unable to make such a decision as insufficient ecological information was submitted.

3.2 Prior to redevelopment the appellant site comprised of grassland, scrub, wooded areas, hedges, standing trees, a central water body running

east/west, riverine habitat, buildings, bare ground, and ephemeral vegetation (taken from aerial photography c. 2019). The site does sit within the Impact Risk Zones of 3 statutory protected sites; however, the application would be unlikely to meet the criteria that would require a consultation with Natural England; and therefore, there is unlikely to have been an impact to these statutory protected sites.

The appeal site lies part within the River Great Ouse County Wildlife Site (non-statutory protection), designated for being a major river not grossly modified by canalisation or poor water quality; supporting >0.5 ha National Vegetation Classification (NVC) *Carex riparia* swamp; >0.5 ha *Phragmites australis* swamp; >0.05 ha *Agrostis stolonifera*-*Alopecurus geniculatus* grassland; a nationally scarce vascular plant (*Nymphoides peltata*); and a breeding populations of a nationally rare dragonfly (*Libellula fulva*). The site is also within 100 m of Beach Ditch and Engine Drain County Wildlife Site, designated for supporting more than five submerged, floating and emergent plant species per 20 m stretch; and more than 10 species per 20 m if wetbank flora is included.

Given that the appeal site is located part within a non-statutory protected area, and within 100 m of a second on-statutory protected area, it would be reasonable to expect sufficient ecological information regarding the potential impacts of the development to be submitted in accordance with Policy NH/5 of the SCDC Local Plan. This in conjunction with a reasonable set of mitigations to ensure that no impact to the County Wildlife Sites was likely. Therefore,

the Local Planning Authority was right to refuse planning permission on the basis of insufficient ecological information. Furthermore, as there is still no assessment on impact to the County Wildlife Site at the time of writing this proof, the refusal continues to be justified.

3.3 Legally Protected Species

Data from the Cambridgeshire and Peterborough Ecological Records Centre shows that barn owls and other breeding birds, flowering plants, invertebrates, bats, brown hare, badger, otter, and water vole have been recorded within 1 km of the appeal site. Please note that this site is located on the South Cambridgeshire District boundary, and therefore, Greater Cambridge Shared Planning only has access to species data within South Cambridgeshire District and Cambridge City boundaries, further species data outside the boundary is held by the Cambridgeshire and Peterborough Ecological Records Centre and should have been requested by the Appellants.

- 3.4 Given the presence of riverine habitat both within the Great River Ouse and the ditch running east/west across the centre of the site it reasonable to assume that there is the possibility of either European otter and/or water vole being present within the vicinity. This would merit the requirement for an ecological assessment to be undertaken to either scope out the possibility of presence within the site boundary or provide suitable mitigation if found within the boundary. European otters are protected under the Convention of Habitats and Species Act 2018 (as amended) and would require a licence to be issued from Natural England for any disturbance to their resting places.

Water voles are protected under the Wildlife and Countryside Act 1981 (as amended) and would require suitable mitigation to prevent harm or disturbance both during construction and once the site was operation.

Given that no ecological assessment of the riverine or ditch habitats was undertaken the Local Planning Authority could not make an informed decision regarding the planning application, and therefore rightly refused the application on the basis of insufficient ecological information regarding protected species and in country to Policy NH/4 of the Local Plan. The submission of the Retrospective Ecological Appraisal and Biodiversity Net Gain Assessment (Project Ecology, January 2025) does provide an assessment of the appeal site as it is now; however, what has been lost, and the magnitude of that loss is unmeasurable.

- 3.5 The presence of the river, ditch, and other linear habitats and the presence of suitable foraging habitat, it is reasonable to assume that there is a possibility that bat species may be utilising the site for the purposes of foraging and commuting. Bats are protected under the Conservation of Habitats and Species Regulations 2018 (as amended); and therefore, the original application would need to pass the third derogation test, that the application would not result in any impact to the conservation status of bats species in the UK.

The impact can be mitigated in most cases; however, as no assessment was submitted in support of the original application, the Local Planning Authority

was unable to make an informed decision as the possibility of impacts to foraging and commuting bats could not be scoped out. Therefore, the Local Planning Authority was right to refuse the application on the basis of there being insufficient ecological information regarding protected species and, therefore, being contrary to Policy NH/4 of the SCDC Local Plan. The Retrospective Ecological Appraisal and Biodiversity Net Gain Assessment (Project Ecology, January 2025) which has now been submitted has assessed the remaining habitat and based on those assessments the LPA would likely impose a sensitive lighting condition, if there was no other evidence of roosting. However, as there are clearly trees removed from along the ditch (please see appendix 2) it is hard to accept that no damage to protected species resting places has occurred.

- 3.6 The presence of other protected species (badger and breeding birds for example) and priority species (European hedgehog or brown hare) could not be scoped out of the analysis without an ecological assessment being submitted. Species such as this would require reasonable avoidance measures, or a licence issued by Natural England to accommodate development. This would include a set of ecological enhancements as set out with the Graeter Cambridge Supplemental Planning Document (2022). However, these ecological enhancements would be based on a reasonable assessment of what species would benefit most within and adjacent to the appellant site. Therefore, without sufficient information such a condition could not reasonably be applied. The Retrospective Ecological Appraisal and

Biodiversity Net Gain Assessment (Project Ecology, January 2025), has recommended that ecological enhancements to the site can be installed; these would need to be inline with the Biodiversity SPD (2022) and secured through condition.

4. **Application of Policies NH/4 and NH/5**

4.1 Policy NH/4 can be applied in the following way when assessing a planning application such as the appeal case before the Inspectorate:

i) Have opportunities for positive net gains in biodiversity been taken through the form and design of the scheme?

ii) Will there be significant harm to the population or conservation status of a Protected Species, Priority Species, or Protected Habitat?

iii) Can any harm be avoided through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for?

iv) Has an adequate level of survey been undertaken to establish the extent of the potential impact?

4.2 Criterion (i) should assess the post development ecological benefits of the development in order to meet not only NH/4 (2) but also supported by National Planning Policy Framework and the Biodiversity SPD. These issues

would usually be secured though condition after careful consideration of supporting ecological evidence. However, as no supporting ecological evidence was submitted no assessment could have been made. The Retrospective Ecological Appraisal and Biodiversity Net Gain Assessment (Project Ecology, January 2025) submitted in support of the appeal shows that the development likely lost 5.35 biodiversity units as measured by the statutory biodiversity metric. These units are not proposed to be provided on site; therefore, the appellant would be required to purchase the required credits from an off-site provider. This can be secured through a time limited condition and informative.

- 4.3 Criterion (ii) and (iii) could not be assessed as no supporting ecological evidence was submitted with the original application. A preliminary Ecological Appraisal of baseline ecological conditions prior to development would have provided evidence of the presence or assumed absence of protected or priority species. The Appraisal should recommend if further surveys were necessary, or if reasonable avoidance strategies would be sufficient to remove any residual risk of harm or disturbance to protected and priority species or protected habitats.
- 4.5 As no ecological assessments were undertaken Criterion (iv) could not be met.
- 4.6 Policy NH/5 can be applied in the following way when assessing a planning application such as the appeal case before the Inspectorate:

i) Will the development have an adverse impact to land within a Site of Biodiversity or Geological Importance, and if so, development should not be permitted unless there are exceptional circumstances.

ii) What are the likely impacts, and how (if possible) can they be mitigated or compensated?

iii) Council should consider securing mitigation through conditions Section 106 agreements.

4.7 As the appeal site sits part within a County Wildlife Site, the likelihood of an adverse impact is apparent. A Preliminary Ecological Appraisal would assess such an impact as measured against the likely design and construction of the development. However, as no ecological assessment was submitted no such assessment of Criteria (i) and (ii) could be undertaken. The Retrospective Ecological Appraisal and Biodiversity Net Gain Assessment (Project Ecology, January 2025) does not provide such an assessment.

4.8 No mitigation or compensation for the potential impacts to the County Wildlife Site was submitted in support of the original application. Therefore, no assessment of conditions or potential Section 106 agreements could have been made. The Retrospective Ecological Appraisal and Biodiversity Net Gain Assessment (Project Ecology, January 2025). Does not provide any recommended mitigation or compensation for the County Wildlife Site.

4.9 Non-Statutory Protected Habitats

As discussed above, as no ecological assessment was submitted in support of the application; therefore, there was uncertainty of what impacts the development could have had the River Great Ouse County Wildlife Site or Beach Ditch and Engine Drain County Wildlife Site. These non-statutory protected sites are of material concern to planning, and the appellant is required to provide sufficient information to aid in decision-making.

- 4.10 As no baseline information regarding the County Wildlife Sites was submitted, and no mitigation details provided the application did not meet policies NH/4 or NH/5 and was therefore, refused.

4.11 Legally Protected Species

Criterion (ii), (iii), and (iv) of Policy NH/4 cannot be met without the submission of an ecological assessment to support the application. As no ecological enhancement strategy was included within the appellant scheme, criterion (i) could also not be met. Therefore, Policy NH/4 was not met, and the LPA was right to refuse the application.

- 4.12 Criteria (i) and (ii) of Policy NH/5 could not be met as no ecological information was submitted to support the application; therefore, no assessment of impact to the River Great Ouse County Wildlife Site could be made, nor could indirect impacts to Beach Ditch and Engine Drain County

Wildlife Site be scoped out without an ecological assessment of potential harm. Criterion (iii) could not be enacted as no ecological mitigation strategy for either County Wildlife Site was submitted to be either conditioned or secured through Section 106 agreement.

- 4.13 Due to the lack of ecological assessment neither SCDC Local Plan Policy NH/4 or NH/5 could be satisfied; therefore, the LPA was right to refuse the application on the grounds of insufficient ecological information.

5. **Response to the Appellant's Statement**

- 5.1 In support of Appeal 2 (APP/W0530/W/22/3308444) paragraph 44 of the Statement of Case on Behalf of the Appellant states that:

“It will be shown that any impact on local wildlife can be successfully mitigated, if necessary, and that biodiversity can be enhanced.”

No other statement regarding ecology or biodiversity has been made within the Statement of Case on Behalf of the Appellant.

- 5.2 Any evidence regarding the ecological constraints found on site should be regarded as void if there is no **pre-development** baseline survey presented to the Inspectorate. As the development has already been undertaken without permission, there is a likelihood of any ecological features present prior to the unauthorised development being undertaken no longer being present.

5.3 Any such pre-development baseline surveys should include:

- an assessment of potential harm to the River Great Ouse County Wildlife Site, and potential indirect impacts to Beach Ditch and Engine Drain County Wildlife Site;
- a Preliminary Ecological Appraisal that analyses the potential for protected and priority species (including those outlined within previous sections of this document) being present on site;
- recommendations for further surveys if required; and
- recommendation of mitigation which strictly reflect the mitigation hierarchy of avoid, mitigate, and if impacts cannot be removed then compensate.

5.4 The Local Planning Authority would expect the development to conform to the Biodiversity SPD, providing bird and bat boxes installed at appropriate locations, wildlife friendly planning, and a statement on how the development would deliver a measurable net gain as according to the National Planning Policy Framework and Biodiversity SPD.

5.5 Retrospective Ecological Appraisal and Biodiversity NET Gain Assessment

The appellant has provided a Retrospective Ecological Appraisal and Biodiversity Net Gain Assessment (Project Ecology, January 2025). Section 4.1.1 of the report states that the River Great Ouse County Wildlife Site is “*Adjacent to the sites northern boundary.*” This is surprisingly inaccurate.

Below, figure 1, shows the extent of the County Wildlife Site Boundary at the appellant site.



Figure 1. The appeal Site (red line) and County Wildlife Site boundary (green shaded area). Data taken from the Cambridgeshire and Peterborough Ecological Records Centre.

- 5.6 The above figure clearly shows that the County Wildlife Site boundary falls within the appeal site, not adjacent as stated in the submitted report. This has resulted in the report not addressing the possible impact to the County Wildlife Site, nor recommending any form or compensation for possible damage done.
- 5.7 Natural England's Priority Habitats mapping found on [Magic.defra.gov.uk](https://magic.defra.gov.uk) (accessed 25th February 2025) show the area between the ditch and river (the area within the County Wildlife Site boundary) as possible fen, marsh, or swamp priority habitat owing to the proximity of the river and the area being

part within flood zone 3 (Please see appendix 1). Historical “street views” found on Google Maps shows this grassland area has historically been minimally managed with a mixture of grasses and forbs; however, the latest “Street View” photograph from April 2023 shows a highly managed short-cropped grassland with minimal forbs or biodiversity interest and areas of bare ground. Showing there may have been some degradation of this habitat within the County Wildlife Site between September 2021 and April 2023. The additional photograph, taken from February 2025 shows that the grasslands area is now heavily grazed by ponies and has been greatly degraded (please see appendix 2)

- 5.8 Failure to address the possible impacts to the County Wildlife Site is in direct contravention of Policy NH/5 of the Local Plan.
- 5.9 The assessment of impacts to protected species concludes that there was no direct impact. This is not an assessment that can be easily accepted, as there is no way of knowing if there were signs of protected species within the redline boundary prior to the unconsented development being undertaken. Compensation for an unknown loss is unmeasurable.
- 5.10. The submitted report states that the ditch within the site is unsuitable for aquatic mammals; however, the report does not describe the ditch outside of the redline boundary or its suitability for aquatic mammals. The ditch may have been degraded by the unconsented development and an investigation of the connecting ditch would provide that evidence. There are many records of

aquatic mammals from Beach Ditch and Engine Drain less than 100 m to the south of the redline boundary and from the River Great Ouse, both being connected to the ditch within the appeal site via the Cottenham Lode.

5.11 Section 3.3.2 of the submitted report refers to a survey undertaken by RSK in June 2023. To the best of my knowledge this report has not been submitted to the LPA for reference either in support of the original application, nor in support of the appeal.

5.12 The submitted report has assessed the site for biodiversity net gain and concluded that a total of 7.42 habitat units are required to reach a 10% biodiversity net gain. As these units cannot be provided on site under the current landscape plan, they will need to be provided offsite. As this application would not have been eligible for mandatory biodiversity net gain at the point of the original submission; the LPA would revise that figure to 5.35 units which would achieve a measurable net gain conforming with both the NPPF and Biodiversity SPD.

6 Summary and Conclusion

6.1 Policy and Guidance

Achieving sustainable development is the purpose of the planning system. To further the environmental objective of sustainable development, the planning

decisions must contribute to the protection and enhancement of the natural environment and improve biodiversity. The National Planning Policy Framework makes clear and strong provisions for minimising impacts on biodiversity and the protection of important ecological features, including priority habitats, priority species and Ecological Networks. The National Planning Policy Framework is clear that where harm to biodiversity cannot be avoided, adequately mitigated, or compensated for, planning permission should be refused.

- 6.2 The local development plan responds to National Planning Policy Framework provisions by prohibiting net losses of biodiversity, encouraging net gains and safeguarding important ecological features. Priority and protected habitats, priority species, and legally protected species are identified as important ecological receptors. Policy NH/4 specifies criteria that must be satisfied for ecologically harmful development to be judged acceptable. Where any of these criteria are not met, planning permission should be refused.
- 6.3 Policy NH/5 prohibits damaging development to Sites of Biodiversity or Geological Importance, where there is potential harm to such sites, planning permission should be refused. Planning permission was refused specifically on the basis of Policy NH/4; however, as this document has argued, refusal on NH/5 is also justified.
- 6.4 The ecological records secured from the Cambridgeshire and Peterborough Ecological Records Centre and the habitats found within the site prior to the

unpermitted development of the site show the potential for protected and priority species to be present on site. Therefore, if present, with no mitigation, there was the potential of acts undertaken regarding harm or disturbance of legally protected species under both the Wildlife and Countryside Act 1981 (as amended) and the Conservation of Species Regulations 2018 (as amended).

6.5 Harm to important Ecological Features

This document has provided evidence that the appeal site sits part within a County Wildlife Site and within 100 m of a second County Wildlife Site; therefore, the appellant was required to provide an ecological assessment of potential impacts to these ecological features to comply with Local Plan Policies. No such information was submitted; therefore, the application was refused on that basis.

- 6.6 This document has provided information regarding the potential of legally protected and priority species being present on site prior to the unpermitted development of the appeal site. As such the appellant was required to provide ecological information regarding potential species, recommendations of further surveys if required, and provide potential mitigation strategies to remove any risk of residual harm or disturbance. Without such information the application did not meet the requirements of Policy NH/4 of the Local Plan.

6.7 Application of Policy NH/4 and NH/5

As stated above, for the application of Policy NH/4 and Nh/5 the applicant was required to submit sufficient ecological information regarding the potential ecological constraints found on site. Data obtained from the Cambridgeshire and Peterborough Ecological Records Centre shows that there are constraints regarding non-statutory protected sites, legally protected species, and priority species which may have been found within the appeal site prior to the unpermitted development taking place.

6.8 Therefore, without the submission of the required information the Local Planning Authority were right to refuse the original application under NH/4 of the Loca Plan. With additional information obtained for the purposes of the appeal, the presence of the County Wildlife within the appeal site means that refusal under NH/5 is also relevant.

6.9 Appellant's Statement

The Appellant's statement does not provide a rebuttal of the refusal under Policy NH/4. It states that information will be presented to show that "... *any impact on local wildlife can be successfully mitigated, if necessary, and that biodiversity can be enhanced.*".

6.10 To show that this can be successfully achieved the Appellant has provide a Retrospective Ecological Appraisal and Biodiversity Net Gain Assessment (Project Ecology, January 2025). The report has not provided the confidence that no impacts have been imposed on the County Wildlife Site and has not

provided a wider understanding of features like the ditch and its stability for protected species such as water vole.

- 6.11 The biodiversity Net Gain calculation is accepted; however, as the appeal site would not have been subjected to mandatory net gain at the time of the original application the LPA is open to revising down the required habitat area units to 5.36, which would provide a measurable gain on site in line with the NPPF and Biodiversity SPD.

6.12 Conclusion

Reason 5 of the Decision notice to refuse planning permission at the appeal site was that the application did not conform to Policy NH/4 of the SCDC Local Plan. Which supports National Planning Policy Framework and National Legislation on the protection of species. The evidence presented in this statement has provided the basis for that decision and concluded that the application would also have failed Policy NH/5 of the SCDC Local Plan. Both Policy failures stem from no ecological information being submitted in support of the original application and given the potential for harm to a Site of Biodiversity Importance and to protected and priority species, the Local Planning Authority was right to do so.

- 6.13 The information submitted within the Retrospective Ecological Appraisal and Biodiversity Net Gain Assessment does not provide the certainty that the County Wildlife Site has not been negatively affected, as it has failed to recognise that the appellant site boundary is within the County Wildlife Site, in

addition it is very difficult to prove that no harm or disturbance to protected species has occurred, given there is no pre-development assessment of habitats or suitability for protected species submitted.

- 6.11 It has not been demonstrated that harm to ecology and biodiversity has been avoided, mitigated or compensated for and the development is therefore contrary to NH/4 and NH/5. It also breaches statutory duties by virtue of sections 40 and 41 of the NERC Act as the remaining unresolved harms mean that there is not conservation or enhancement of biodiversity. Para 187(a) provides for the protection and enhancement of sites of biodiversity value i.e. no harm and enhancement. By virtue of the fact that the Site supports priority habitats and sits within a County Wildlife Site, it is a site of biodiversity value and therefore protection and enhancement is required.

Appendix 1. Magic Map (DEFRA) of the grassland to the north of the site.



Appendix 2. Google Street View Captures October 2021 and April 2023, photograph of grassland Captured February 2025

