

Ecology Practice

Proof of evidence of Mark Morgan (for the Applicants) on Ecology

Call-in by the Secretary of State of an application made by Omega St Helens Limited / TJ Morris Limited

Land To The West Of Omega South & South Of The M62, Bold, St Helens

LPA REF: P/2020/0061/HYBR

PINS REF: APP/H4315/V/20/3265899

CD 38.6

March 2021

Summary

- There is Common ground between the Applicants, the Council, and Consultees with regard to European Protected Sites, European Protected Species, UK Protected Species, Priority and notable species, ES Chapter 9: Biodiversity and its findings.
- I provide clarification upon the observations made by the St Helens Countryside Development and Landscape Officer upon the 'appropriateness' and 'significance' of loss of woodlands and associated habitats. Those officer comments contended that the extent of biodiversity loss would not be appropriate. However, the officer also recognised the specific benefits that would arise under the section 106 agreement.
- The evidence confirms that there is no ancient woodland on site. Existing woodland is non-designated, with the exception of TPOs, that are considered to apply for amenity rather than ecological reasons.
- The proposals conform to local and national policy in following the mitigation hierarchy. Following on-site avoidance and substantial mitigation, the proposals result in a net gain for grassland, ponds and hedgerow habitats on site. The biodiversity metric results in a biodiversity loss, albeit cropland accounts for the overwhelming majority of the Habitat Unit deficit by a factor of four times. Woodland habitat should be replaced like-for-like while other habitats may be compensated by any other habitat type.
- Off-site compensation is agreed via a S106 agreement, which will provide a minimum planting of 9.4ha to put woodland in a net gain position by way of the metric and to exceed local policy CQL 2 (a requirement of 0.13ha of off-site planting).
- The S106 ensures that the contributory money is focused towards both habitats requiring compensation from the development (i.e. woodland) and habitats of local and national importance. Priority is given towards the development of projects within Bold Forest Park, and widened to the larger region, where considered appropriate, targeting specific policies within the Bold Forest Park Area Action Plan and the Mersey Forest Plan that will be of clear biodiversity benefit.
- The sum of money provided by way of the S106 payment is considered to be sufficient in creating or enhancing those habitats contained under policies within the S106 and to an extent that will at least alleviate the deficit reached in the metric, while in reality, is likely to provide a net gain scenario.

1 Witness Introduction

- 1.1.1 My name is Mark Morgan BSc (Hons) MCIEEM, a Full member of the Chartered Institute of Ecology and Environmental Management (CIEEM) and Senior Ecologist at the Ecology Practice.
- 1.1.2 I began working as an ecologist in 2013, alongside studies, later joining the Ecology Practice in 2019. I have a First-Class Honours degree in Plant Biology from the University of Aberystwyth.
- 1.1.3 As part of my daily role, I undertake surveys and assessments for protected and notable species and habitats, including European Protected Species and those protected by domestic law, priority species/habitats, and vegetation surveys for complex and important habitats across the United Kingdom. I regularly undertake a range of formal assessments which include Ecological Impacts Assessments and Environmental Statements, Protected Species Reports, Habitat Regulations Assessments and Biodiversity Net Gain Assessments, among others. I hold a protected species licence for great crested newts from Natural England.
- 1.1.4 My involvement in these proposals has been from the initial concept, undertaking much of the ecological field and desk-study survey work, the production of the ES Chapter 9: Biodiversity and biodiversity assessments, including the undertaking of the Biodiversity Metrics.
- 1.1.5 In accordance with the guidance set by CIEEM, of which I am duty bound to uphold as a full member, I can confirm that the evidence which I have prepared in this Proof of Evidence and the views expressed are true and of my professional opinion. The evidence detailed within is formed irrespective of by whom I have been instructed.

2 Purpose of PoE

2.1 Scope of Evidence

2.1.1 I am acting on the instructions of Omega St Helens Ltd hereafter known as 'the Applicants', to examine the ecological implications of development at 'Omega Zone 8' hereafter known as 'the Proposals', on a site in St Helens west of the Warrington Borough Council administration boundary at grid reference SJ550906 hereafter known as 'the Application Site'.

2.1.2 The application has been called-in to Public Inquiry under application reference APP/H4315/V/20/3265899.

2.2 Evidence Focus

2.2.1 In my evidence I will set out my assessment of the position on biodiversity matters from initial scoping discussions with the relevant authorities, through to St Helen's Borough Council (SHBC) recommending the grant of planning permission subject to conditions and the drafting of an agreement under section 106 of the Town and Country Planning act 1990.

2.2.2 The Planning Inspectorate, in its letter dated 26th January 2021, requested witnesses "focus only on the matters that are in dispute and give detailed consideration as to exactly what topics could most efficiently be dealt with as a round table discussion at the inquiry (or even just by written submissions) in order to ensure that the inquiry is conducted in an efficient and effective manner, optimising inquiry time". I have sought to follow that approach in this proof of evidence.

3 Review of Biodiversity & Effects of Proposals

3.1 Policy & Legal Framework

3.1.1 The relative legislative instruments considered within my Proof are summarised below. The policy frameworks relevant to the proposals, and against which the proposals have been assessed, are on national and local levels. Those policies that are relevant to the assessment of biodiversity are summarised below. The most pertinent documents are, for reasons of convenience, set out below.

Legislation

- Wildlife and Countryside Act, 1981 (as amended)
- Countryside Rights of Way (CRoW) Act 2000
- NERC Act, 2006
- The Conservation of Habitats and Species Regulations 2017
- The Town and Country Planning (Tree Preservation (England) Regulations 2012

National Policy

- The National Planning Policy Framework (2019)

Local Policy

- Saved policies of the 1998 Unitary Development Plan (amended 2007): Policy EN12.
- Core Strategy Local Plan (adopted October 2012): Policies CQL 2 & CQL 3.
- St Helens Draft Local Plan (2020 – 2035): Policies LPC06 & LPC10
- Bold Forest Park Area Action Plan: Policy BFP ENV2

3.2 Ecology Baseline

Common Ground

3.2.1 The following areas of assessment are considered as common ground following agreement with SHBC and their external advisers Mersey Environmental Advisory Service (MEAS) with no outstanding objections on biodiversity grounds from external consultees:

- (i) European Protected Sites: Wintering bird surveys were undertaken with respect to the Mersey Estuary SPA and the potential use of the Application Site as 'functionally linked land' for those species that qualify for the designation of the SPA. All survey findings (**CD 33.57, item 9.2.27; CD 33.171**) have been approved by MEAS (**CD 35.1, item 3.27**). A Stage One (Screening) HRA was provided to SHBC (**CD 43.34**) who agreed that advancement to a Stage Two (Appropriate Assessment) was not required (**CD 35.1, item 3.27**). In consequence, European Protected Sites are not considered further within my Proof.
- (ii) European Protected Species: All surveys, survey methodologies, results, and findings (**CD 33.57**) with respect of EPS have been approved (**CD 35.1, item 3.27**). There are no great crested newts and only 1 bat roost was found on the Application Site in Duck Wood, TPO W5 (**CD 33.127**) despite extensive surveys of all trees and woodlands in the site, including endoscope or activity surveys of Potential Roost Features in 169 trees (**CD 35.1, item 3.27**). In consequence, EPS species as a standalone feature are not considered further within my Proof.
- (iii) UK Protected Species: All surveys, survey methodologies, results, and findings (**CD 33.57**) have been approved for water voles, reptiles, badger and invasive species (**CD 35.1, item 3.27**). In consequence, UK Protected Species are not considered further within my Proof.
- (iv) Priority and Notable Species: All surveys, survey methodologies, results, and findings (**CD 33.57**) have been approved for S41 Priority Species (brown hare, breeding birds, purple rampion fumitory) (**CD 35.1, item 3.27**).

In consequence, Priority species are not considered further within my Proof.

- (v) ES Chapter 9: Biodiversity: MEAS confirmed they accept the findings detailed within the ES Chapter 9: Biodiversity (**CD 35.1, item 3.29**).
- (vi) DEFRA Biodiversity Metric 2.0: To quantify the net gain that will likely result from the proposals, results for biodiversity metrics for both the detailed and outline areas of the site were agreed following much consultation with MEAS (**CD 35.1, item 3.27**). While the outcome of biodiversity net gain (BNG) is considered an area of common ground in terms of consultee responses, it is a matter identified for further consideration within my Proof.

Outstanding observations in respect of the proposals

3.2.2 SHBC have approved the proposals in principle (**CD 35.1, item 9.1**).

However, comments received by Michael Roberts, the Countryside Development and Landscape Officer (hereafter referred to as ‘the Officer’) identified a number of observations indicating some divergences between his opinion of the proposals with mine and those of the Applicants. The Officer’s comments state (**CD 35.1, item 3.46**):

*“With regards to previous comments relating to Biodiversity Net Gain, the DEFRA Biodiversity Net Gain Metric has been [provided] and this has shown that there is a -39 biodiversity unit deficit for the full application part of the site and -74.12 biodiversity unit for the outline part of the site. These figures reflect that there are much wider and greater impacts to biodiversity that the removal of 5.63ha of woodland. They also show that even with on site compensation for the loss of habitats...there is still a large and **significant loss of biodiversity** being caused, with farmland, ponds, grassland and hedgerows all being lost or adversely impacted by [these] development proposals. Whilst this **level of loss of biodiversity should not be acceptable**, were the application to be approved then significant funds would have to be made available through Section 106 agreement to be able to create compensatory habitats and biodiversity from these proposals...”*

And in his summary:

*“...our position still remains that we are objecting to this application. This is primarily due to the impacts on **protected woodlands**, as well as other associated habitats such as ponds and streams...”*

3.2.3 The Officer’s comments form the primary focus within my PoE. Other consultation responses are dealt with in section 5.

3.3 Qualification of Disputed Grounds

3.3.1 The Officers statement of ‘significant loss of biodiversity’ is not accepted. The issue must properly be considered by reference to (1) significance in terms of the *extent* of loss, and (2) significance in terms of the *quality* of habitat being lost. Further, it is questionable as to what he attributes ‘protected woodland’ status and how much this refers to biodiversity status rather than one of ‘landscape’. These should not be conflated or it would lead to a lack of clarity in overall assessment of impact and a clear danger of “double counting” impacts which would be methodologically inappropriate. Finally, there is question as to what is considered as an ‘*acceptable level of loss of biodiversity*’. Below I determine my opinion on these matters under the following subheadings;

- Extent;
- Quality;
- Protected Woodland Status; and
- Acceptable Level of Loss.

Extent

3.3.2 Defra’s Biodiversity Metric 2.0 details the habitat types and the extent or scale of loss across both the full and outline areas of the Application Site. SHBC and the Officer does not suggest any disagreement with this, and I accept such scale of loss arising from the development proposals as follows:

- (i) Woodland: The proposals will result in the permanent loss of ~4.2ha of Lowland Deciduous Woodland priority habitat, and ~1.4ha of non-priority scattered trees, totalling ~5.6ha of trees and woodland across the Application Site (**CD 33.57; CD 33.91; CD 33.179; CD 33.180; CD 33.181**).
- (ii) Ponds: The proposals will result in the permanent loss of 13 ponds totalling ~1.02ha (**CD 33.57; CD 33.91; CD 33.179; CD 33.180; CD 33.181**).
- (iii) Hedgerow: The proposals will result in the permanent loss of ~534 linear metres of non-important, priority habitat hedgerow (**CD 33.57; CD 33.91; CD 33.179; CD 33.180; CD 33.181**).
- (iv) Farmland: The proposals will result in the permanent loss of ~44.74ha of farmland or cropland habitat of site value (**CD 33.57; CD 33.91; CD 33.179; CD 33.180; CD 33.181**).
- (v) Grassland: The proposals will result in the permanent loss of ~10.46ha of non-priority grassland habitat (**CD 33.57; CD 33.91; CD 33.179; CD 33.180; CD 33.181**).
- (vi) Streams: Whittle Brook will be subject to diversion under the proposals within the outline area. The Water Framework Directive (WFD) dictates that when diverting a main watercourse such as Whittle Brook, a betterment in ecological quality must be achieved to avoid an objection from the Environment Agency. Initial concept designs for the diversion of the watercourse have been undertaken which considers that a betterment will be reached. The Environment Agency have requested to review the supporting documents at the detailed design stage to ensure that a betterment is reached (**CD 35.1, item 3.35**).

Quality

- 3.3.3 It is relevant to examine the Defra metric assessment of quality for individual habitat features. This is common ground via the agreement of the biodiversity metric findings and thus the assigned condition of habitats ascribed within the metrics (**CD 35.1, items 3.27 & 3.46**). I discuss significance of independent habitat features below to make clear my professional opinion on the habitat

status, in accordance with the ES and metric assessments. Other than scale and age of woodlands and other associated habitats, for which there is common ground, from a biodiversity perspective the significance of loss should be viewed in the context of value afforded to those individual habitats i.e. no impacted habitats are formally designated or recognised as such for their specific ecological value.

- (i) Woodland: All woodland blocks have been identified as Lowland Deciduous Woodland priority habitat. No woodlands on site are afforded statutory protection, and with the exception of Booth's Wood LWS, which will remain largely avoided by the proposals (**CD 33.57, table 9-7**), none of the woodlands are designated in any other way other than TPO. The woodlands are considered to be of no higher than 'moderate' condition (moderate being the lowest condition rating for this woodland type as per the metric 'Condition Assessment', (**Appendix 01**)). Woodlands cannot reach a higher condition status owing to i) the presence, and at times abundance, of non-native species, ii) the presence of invasive species, iii) the lack of protection from agricultural practices, and iv) the distinct lack of woodland regeneration. In addition, a distinct lack of ground flora diversity was noted during the field surveys (**CD 33.57, item 9.3.19; CD 33.77**). Woodlands are ascribed National value in the ES as they are a priority habitat (**CD 33.57, item 9.3.21**) as most broadleaved woodlands are in the UK, being considered widespread throughout Britain, yet in decline (**Appendix 02**). While a large number of trees offer potential roosting opportunity for bats, only a single bat roost was present on the applicant site, with two bat roosts located offsite within 30m of the boundaries (**CD 33.57, item 9.3.68; CD 33.127**).
- (ii) Ponds: All ponds have been identified as priority habitat, but this is largely due to their association with another existing priority habitat, i.e. Lowland Deciduous Woodland, or landscape context i.e. within Bold Forest Park (**Appendix 03**), assessed as such taking a precautionary measure for pond value. Ponds at the Application Site do not class as priority habitat as independent features for their ecological merit and are no higher than 'fairly poor' condition (as per the metric 'Condition Assessment' (**Appendix 04**)).

- Ponds cannot reach a higher condition status due to i) signs of agricultural pollution and sediment, ii) lack of poor turbidity of water (brown), iii) lack of submerged plants, iv) lack of emergent marginal plants, v) lack of diversity of pond plants, and vi) artificial drainage (at times). Ponds are ascribed National value in the ES as they are a priority habitat (**CD 33.57, item 9.3.54**).
- (iii) Hedgerow: Hedgerows have been identified as priority habitat, fundamentally due to the presence of native species accounting for at least 80% of their lengths (**Appendix 05**). Hedgerows are classed as between 'poor – moderate' condition (as per the metric 'Condition Assessment' (**Appendix 06**)). They are non-important and species poor, subject to high levels of intensive management. Hedgerows are of Regional value (**CD 33.57, item 9.3.34**).
- (iv) Farmland: Agricultural land has been acknowledged for the opportunity to support Priority species (ground nesting birds and brown hare) which have been treated as a separate item. However, the habitat itself is of no ecological significance and contains no form of designation. As termed within the metric, cropland receives the lowest level of habitat distinctiveness and does not qualify for a 'Condition Assessment' due to its poor contribution to biodiversity. Farmland is of Site value only, and not detailed within ES Chapter 09: Biodiversity as not considered a 'significant' habitat.
- (v) Grassland: All grassland is non-priority, undesignated and 'poor' condition (as per the metric 'Condition Assessment' (**Appendix 07**)). Grasslands are species-poor containing a number of undesirable indicator species associated with agricultural environments (**CD 33.57, item 9.3.24 -9.3.29**). Grassland at the Application Site is of Site value only.
- (vi) Streams: Whittle Brook is regarded as a National receptor (**CD 33.57, item 9.3.49**). The condition of the watercourse is classed as 'moderate' condition (as per the metric 'Condition Assessment' (**Appendix 08**)). The river cannot score higher status owing to i) the abundance of non-native invasive

species, and ii) the highly modified nature of the watercourse. Furthermore, the condition afforded to Whittle Brook by the Environment Agency was also taken into account here, reaching the same assessment of 'moderate' status (**Appendix 09**).

Protected Woodland Status

3.3.4 The Officer states his objection is primarily due to the loss of "protected" woodlands. I consider the status of protected woodlands at the Application Site below.

(i) Tree Preservation Orders: The woodlands are afforded protection so far as they are covered by Tree Preservation Orders (TPOs) (**CD 33.79**). TPOs were covered in the ES Chapter 09 as a holistic approach when considering designations of features on site. A tree or woodland is afforded TPO status for its amenity value. While 'amenity' is not defined in law, the government advise assessing amenity based on i) visibility, or ii) individual, collective and wider impact (**Appendix 10**). The latter of these matters extends to woodlands characteristics including rarity, contribution to, and relationship with, the landscape, or contribution to the character or appearance of a conservation area. While not a defining reason for making a TPO, other factors can be considered when making a TPO such as the importance to nature conservation or response to climate change, although these factors alone would not warrant making an Order. In this context I consider that the overarching reason for the TPO status of these woodlands is not an ecological one and is in turn considered in the following manner:

- In the context of landscape and visual matters it is addressed within the evidence of Mark Steele (**CD 38.1**);
- In the context of green belt green belt (and the associated Bold Forest Park) is a planning issue that is addressed in the ES Planning Statement (**CD 38.4**) and the evidence of Sean Bashforth; and
- the 'medieval deer park' is a cultural heritage issue that is addressed in ES Chapter 08 (**CD 33.56**) (where it is referred to as the 'Site of Medieval and Post-Medieval park').

- (ii) Ancient Woodland: Separate to the Officer's comments, additional comments were received suggesting ancient woodland may be affected by the proposals (see section 5). Some clarification of this is required. There is no ancient woodland on or near to the Application Site and ancient woodland is not identified in the ES, nor by Defra or by Natural England (**Appendix 11**). The Forestry Commission is a non-statutory consultee for development proposals that contain or are likely to affect ancient woodland (as defined and recorded in Natural England's ancient woodland inventory), including proposals where any part of the development is within 500 metres of the boundary of ancient woodland. Comments were received by the Forestry Commission which confirmed the absence of ancient woodland at the Application Site (**CD 35.1, item 3.31**). The comments read as follows:

"I have reviewed the application and our mapping browser does not indicated there is any Ancient & Semi-Natural Woodland (ASNW) or Plantations on Ancient Woodland Sites (PAWS) in the area. Therefore, the Forestry Commission has no comments on this application."

- (iii) Field surveys confirmed (**CD 33.77**) that ancient woodland was not present due to the following reasons:

- Distinct lack of ancient woodland indicator species within the ground flora;
- Distinct lack of diversity within the ground flora or woodland canopy;
- No evidence of historic management (such as coppicing or pollarding);
- No presence of ancient or veteran trees;
- No evidence of site being wooded since or before 1600 AD (the key criteria for ancient woodland presence (**Appendix 12**)).

3.3.5 Ancient woodland is not discussed further within my Proof.

Acceptable Level of Loss

3.3.6 It is understood that the Officer's statement of 'acceptable level of loss of biodiversity' refers to whether the proposals follow the appropriate legislative

and policy frameworks for post-development biodiversity status. This is explored in tandem with the issue of Biodiversity Net Gain (BNG). While BNG is not raised as issue of dispute by consultees, it nonetheless forms a material consideration with my Proof.

- 3.3.7 Properly analysed it would appear that the Officer's observations indicates that he is in agreement to those assessments as described above and that the assessment of habitat quality and relative significance are matters of common ground. It is considered that there is no ancient woodland on or near to the Application Site, and woodland covered by a TPO is designated so for its landscape merit, and not ecological value.
- 3.3.8 The remainder of my Proof focuses on what is considered as an 'acceptable level of loss' and the concurrent issue of BNG by exploring the proposals in relation to relative legislation and policy on a national and local level.

4 Mitigation Proposed

4.1.1 I now consider the mitigation proposals and how they accord to relevant legislation and policy.

4.2 Mitigation hierarchy

4.2.1 The mitigation hierarchy is a fundamental principle to be considered when assessing impacts on biodiversity. The NPPF (2019) outlines the principle of the mitigation hierarchy under paragraph 175a, which states:

'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.'

4.2.2 While the SHBC Core Strategy does not contain reference to the principle, it is recognised within the emergent plan (policy LPC06, not yet adopted). The mitigation hierarchy is further detailed within British Standard 42020:2013 (**CD 43.35**) at section 5.2, which states that the hierarchy should underpin all decisions made by professionals working within the planning and development sectors. It is evidenced below how the mitigation hierarchy has been applied within the biodiversity assessment with regard to habitats of concern.

Avoid

4.2.3 The scheme was altered to avoid woodland covered by any designation other than TPO. The neighbouring Local Wildlife Site (LWS) - Booths Wood (W8) the single area of any designation within the area of influence from the proposals other than TPO (**CD 33.79**), was retained in its entirety (with the exception of three trees as detailed below). It was possible to also avoid Plain Plantation (W16). The scheme was also designed to retain as much of Duck Wood (W5) as possible.

- (i) The scheme went through a considerable process of liaison with the Officer to avoid impacts to Booth's Wood LWS when setting out the surface water

drainage outfalls from the detailed plot. Specifically, to avoid the trees and their roots along the northern and eastern boundaries, as agreed with the Officer, the drainage routing was adjusted to minimise impacts to the LWS:

- three trees at the periphery of Booths Wood (marked as ‘unsuitable for retention’ by the arborist’s studies) to facilitate the drainage solution (**CD 31.9**) will unavoidably be lost at the easternmost drainage outfall;
 - A northernmost drainage connection was altered to avoid Booths Wood LWS entirely (**CD 31.9**).
- (ii) The extent of alteration also avoided two ponds (Pond H & Booth’s Wood Pond) (**CD 33.57, item 9.7.1**) along the western boundary of the Application Site under the proposals.

Mitigate

4.2.4 The landscaping strategies include the provision of ~8.35ha¹ of woodland planting within the site boundaries, notably within the ‘Green Triangle’. Further compensation is required to be compliant with local policy CQL 2, which states that where trees covered by a TPO are lost, then these should be replaced at a ratio of 2:1. It was confirmed with the Officer that this ratio is in terms of woodland area and not tree numbers (**Appendix 13**). To comply fully with policy CQL 2, an additional planting of ~0.13ha of woodland should be provided offsite, a figure not informed by the otherwise objective Biodiversity Metric calculation. Planting this woodland would actively contribute a benefit to habitat within the North Merseyside Biodiversity Action Plan (BAP), in accordance with local policy CQL 3.

4.2.5 A woodland deficit of -22.48 Habitat Units, objectively calculated by the Biodiversity Metric, remains following on-site mitigation (**CD 33.57, Table 9.7; CD 33.179; CD 33.180; CD 33.181**). In Biodiversity Metric terms, to compensate for the woodland metric deficit, ~9.4ha of off-site woodland

¹ ES Chapter 9, Table 9-7, erroneously provides the habitat areas for Stage 1 of the proposals. Stage 2 of the proposals included landscape amendments during the production of the biodiversity metrics following consultation with MEAS. The changes in these figures are insignificant. The figures used within the biodiversity metrics, and reference to the metric outcome in the ES remains correct as agreed with MEAS and has been fully available for public consultation.

planting would have to be achieved to put woodland habitat in a net gain position. This is due to the fact that the metric takes into account the difficulty and time it takes to create new habitat. However, it is recognised that there is no legislative driver or local SHBC policy at present to require the use of the metric within biodiversity assessments. It is recognised that the forthcoming Environment Bill could potentially be a material consideration in decision-making though it is notable that an inspector, in dealing with an appeal in Milton Keynes (**Appendix 14**), considered that the local policy then in force was that in the adopted plan and that had greater weight than any potentially forthcoming matters. I am of the opinion that SHBC policy CQL 2 should take priority in these circumstances, and in terms of woodland habitat, any off-site woodland provision exceeding ~0.13ha may be considered as net gain.

- 4.2.6 An additional eight high quality ponds within the 'Green Triangle' (**CD 33.197**) together with attenuation features within the detailed and outline areas are proposed to provide aquatic habitat totalling ~2.19ha¹. Pond habitat would provide a net gain of +12.69 Habitat Units for ponds (**CD 33.57, Table 9.7; CD 33.179; CD 33.180; CD 33.181**) actively contributing a benefit to habitat within the North Merseyside BAP^{Error! Bookmark not defined.}. No further habitat compensation for ponds is required. In addition, a fish rescue strategy has been provided in the proposals and approved by the EA for the consideration of fish across the Application Site dealing with welfare issues, although the initial presence/absence survey of all ponds to be affected by the proposals found only 1 eel (**Appendix 15**).
- 4.2.7 The landscaping strategies provide an additional ~2,978 linear metres¹ of native hedgerow planting within the site boundaries providing a +14.57 Hedgerow Unit gain (**CD 33.57, Table 9.7; CD 33.179; CD 33.180; CD 33.181**) actively contributing a benefit to habitat within the North Merseyside BAP. No further habitat compensation for hedgerows is required.
- 4.2.8 A total of ~7.21ha of species-rich high-quality grassland is proposed within the 'Green Triangle', remaining outline areas and detailed portion of the Application Site, in addition to lesser quality grasslands across the Application Site, contributing a total of +27.24 Habitat Units (**CD 33.179; CD 33.180**). In

terms of grassland as a broad habitat, this will realise a net benefit of +4.8 Habitat Units.

- 4.2.9 In addition to on-Site habitat creation the proposal has sought to enhance those habitats that remain via the provision of an invasive species method statement for the control of Himalayan balsam (**CD 33.151; CD 32.02**) and rhododendron across the site, the enhancement of woodlands (**CD 32.02**), and the retention of fungi species (**Appendix 16; CD 32.02**).
- 4.2.10 With regard to Whittle Brook, as it is a main river any future watercourse diversion requires a permit from the Environment Agency. The watercourse diversion must fully with the Water Framework Directive (WFD), which imposes legal requirements to protect and improve the water environment (including rivers). I would anticipate that the Environment Agency are unlikely to permit an activity on a watercourse unless plans are compliant with the WFD assessment whereby an improved status of the watercourse must be demonstrated with a high level of confidence².

Compensate

- 4.2.11 At the request of MEAS two updated independent metrics were undertaken using the Defra Biodiversity Metric 2.0 as an objective tool to assess the change in habitat balance that remained at the Application Site after avoidance and on-Site mitigation had been applied, for the detailed and outline portions of the site, respectively. SHBC subsequently agreed text for a draft S106 to guide the provision of compensation calculated by the Metric.
- 4.2.12 MEAS requested that all habitats were accounted for within the metrics including the outline area where habitat creation for future reserved matters was unknown. The metrics were produced in in the following ways:
- The detailed area: further to a detailed 2019 Phase I Habitat survey (**CD 33.77**) all baseline habitat was inputted into the metric (**CD 33.179**). The detailed landscape plans for both the development plot

² <https://www.gov.uk/government/publications/water-framework-directive-how-to-assess-the-risk-of-your-activity>

and the Green Triangle were used to inform the post-construction off-set within the metric.

- The outline area: all baseline habitat inputted into the metric (**CD 33.180**) from the 2019 Phase I Habitat survey, including the river assessment baseline. In the absence of detailed landscape plans for reserved matter plots, all likely habitat creation outside of the development plots i.e. to the peripheries of the outline area, and within the Green Triangle was inputted into the metric as mitigation.

4.2.13 Within these hybrid proposals the detailed application area resulted in -39 Habitat Units and the outline area resulted in -74.12 Habitat Units, totalling -113.12 Habitat Units across the entire Application Site. The outstanding unit deficit is due to shortfall in on-site mitigation for the following habitat types in order of their contribution to the overall unit deficit: cropland, priority woodland, modified grassland, scrub, scattered trees, and bare ground. Table 1 provides evidence that the loss of low ecological value cropland accounts for the largest contribution of unit deficit under the proposals (by almost 4 times as much).

4.2.14 Under the existing proposals (**CD 33.205**) the diverted watercourse will result in +4.46 River Units or +32.31% under the metric (**CD 33.180**).

Table 1: Summary of Habitat Unit distribution per habitat type adding to the overall metric deficit.

Habitat Type	Habitat Unit Loss	Habitat Distinctiveness	Status
Cropland	-88.93	Low	None
Woodland	-22.48	High	Priority / BAP habitat
Scrub	-3.22	Medium	None
Scattered trees	-1.52	Medium	None
Bareground	-0.51	Low	None

Section 106 Agreement

4.2.15 The S106 agreement states that the Biodiversity Contribution should be expended in the following way:

- (i) a minimum of 9.4ha of woodland planting within the Mersey Forest Area (as delineated on the Mersey Forest Map) which is the Defra Biodiversity Metric 2.0 net gain minimum hectareage (exceeding the 0.13ha required by Policy CQL2 of the St Helens Core Strategy (October 2012)), with priority given to planting within the Bold Forest Park Area;
- (ii) the delivery of local initiatives and projects that prioritise the Bold Forest Park Area (as delineated on the Bold Forest Park Map), and considering projects in the wider Borough or region, where deemed appropriate, that focus on habitat creation and enhancement for high-value habitats (such as those identified in Policy 13 of the Mersey Plan) in accordance with:
 - Policies SH7 (Bold Forest Park north), SH8 (Bold Forest Park south) and Policy 13 (Wildlife, biodiversity and ecosystems) of the Mersey Forest Plan;
 - Policies CQL1 (Green infrastructure), CQL2 (Trees and Woodland) and CQL3 (Biodiversity and Geological Conservation) of the St Helens Core Strategy (October 2012);
 - Policies BFP ENV1 (Enhancing Landscape Character) and BFP ENV2 (Ecological Network) of the Bold Forest Park Area Action Plan,

4.3 Suitability of Mitigation / Compensation

4.3.1 The National Planning Policy Framework (2019) (**CD 1.1**) sets out national policy with regard to biodiversity in Chapter 15 'Conserving and Enhancing the Natural Environment', for example paragraph 174b states that plans should '*identify and pursue opportunities for securing measurable net gains for biodiversity*'.

4.3.2 Saved UDP policy ENV12A & B (**CD 2.1**) seek replacement planting at a replacement ratio of 2:1, with Adopted Core Strategy (**CD 2.2**) policy CQL2 seeking this ratio for trees covered by a TPO. In the draft Local Plan (2020-2035) (**CD 3.18**) emerging policy LPC10 further supports policy CQL2.

- 4.3.3 Core Strategy policy CQL3 requires proposals to 'ensure that where harm to protected species or habitats is unavoidable, developers implement suitable mitigation measures either on or off-site'. Emerging policy LPC06 in the draft Local Plan permits development that causes harm to those features where 'the benefits of development clearly outweigh any harm to nature conservation value of the site' and specifies that developers should essentially adhere to the mitigation hierarchy.
- 4.3.4 The forthcoming Environment Bill (**CD 43.36**) proposes quantifying the acceptable level of post-development status to a 10% net gain in biodiversity, to be measured by use of the DEFRA Biodiversity Metric. However, this is not yet law and there may be a further two to three years before it comes into effect, including allowing for a proposed transitional period of two years following Royal Assent. As noted above, in a recent decision by the Planning Inspector at an Inquiry at Milton Keynes (**Appendix 14**) he attached greater weight to the adopted plan which does not set out any specific level of biodiversity net gain, similar to SHBC, than the Environment Bill which is not yet law.
- 4.3.5 Current adopted policy in St Helens defines the level of compensation for loss of TPO or otherwise protected woodlands, where the benefit of the proposals outweighs any harm to nature conservation value, at a ratio of 2:1 replacement by area (**CD 2.2, policy CQL 2**). This would be achieved at ~0.13ha of off-site woodland planting (refer to 4.2.4 above), but the S106 is aimed at 9.4ha (refer to 4.2.5 above) when converting the woodland unit deficit into a measurable area of woodland habitat creation. The delivery of 9.4ha of woodland would put woodland habitat in a net gain position achieving +22.59 Habitat Units (**Appendix 17**). In addition, proposals comply with adopted policy CQL 3 in securing suitable mitigation and/or compensation both on and off-site.
- 4.3.6 For these reasons I consider the proposed mitigation not only meets but exceeds the requirement for mitigation under policy and provides a suitable approach to seek this appropriate mitigation.

4.4 Effectiveness of Mitigation / Compensation

4.4.1 Mitigation should be appropriate in compensating what has been lost, to the extent that it is suitable by way of policy and legislation (as in 4.3 above) and effective in terms of providing habitats (by way of creation, enhancement or accelerated succession) of equivalent or greater benefit to those habitats being lost (see Table 1).

Compensation under the Biodiversity Metric

4.4.2 The metric assigns habitats to distinctiveness bands, based on an assessment of distinguishing features, which ranges from 'low– high'. Indicative advice is provided in the metric as to how habitats being lost within the baseline should be compensated (**Appendix 18**). Habitats of notable importance, such as 'irreplaceable habitats' e.g. ancient woodland, should be avoided altogether. Habitats that are of 'high' distinctiveness call for like-for-like compensation and trading down should be avoided; this means not replacing habitats of higher distinctiveness with large areas of habitat of less distinctiveness.

4.4.3 The distinctiveness of habitats requiring compensation at the Application Site can be seen in Table 1. The metric states that woodland habitat should be replaced like-for-like, but all other habitats can be replaced by the same habitat distinctiveness or better. For example, cropland may be compensated effectively by grassland, scrub, ponds or woodland etc.

4.4.4 This is an important consideration as to the effectiveness of compensation, and I would not find it appropriate to replace the loss of woodland with an alternative habitat, or that of a lesser distinctiveness. The replacement of woodland to a minimum defined area should be stated within any agreement for compensation between the applicants and SHBC to ensure this habitat is compensated by the metric values.

Local Delivery Schemes

4.4.5 Bold Forest Park is specified as one of the five forest parks within the wider Mersey Forest. The Mersey Forest is a partnership between seven local authorities, including St Helens, whose aim is to increase tree cover across the area via the Mersey Forest Plan.

The Mersey Forest Plan

4.4.6 Regionally, the Mersey Forest Plan (**CD 22.36**) identifies woodland cover targets across its entire area. Policy SH7 provides an indicative woodland coverage target of 30% for Bold Forest Park north, and policy SH8 provides a target of 20% for Bold Forest Park south. Actions to achieve the target coverage of woodland in Bold Forest Park are:

- to restore, expand and plant woodland blocks, copses, shelterbelts and hedgerows in balance with the open landscape in Bold Forest Park (south) to tie this area in with the rest of Bold Forest Park to the north;
- reinstate fragmented woodland and hedgerows along roads and field boundaries, linking woodlands with hedgerows;
- create smaller wet woodlands by water pits and field ponds.

4.4.7 Within Bold Forest Park (north) the aim is to diversify the landscape for brown hare and provide a significant and diverse recreational resource for St Helens.

4.4.8 Policy 13 of Mersey Forest Plan aims to plant and manage woodland and associated woodland habitats, such as wildflower meadows, wetlands, ponds and hedgerows. Policy 13 further targets the positive management for Red List and UK and local priority species.

4.4.9 The Mersey Forest Plan is recognised within the St Helens Local Plan as a means to implement local policy and is a material consideration and important in ensuring compensation is effective when delivered.

Bold Forest Park Area Action Plan (BFPAAP)

4.4.10 Locally, the BFPAAP (**CD 43.1**) policies identified under 'Safeguarding and Enhancing the Environment' provide strategies for delivering policy targets.

- (i) Policy BFP ENV1: Enhancing Landscape Character seeks to increase tree cover through a programme of targeted tree planting to increase tree cover to 30% north of the M62 and 20% south of the M62 in conjunction with The Mersey Forest and Forestry Commission.
- (ii) Policy BFP ENV2: Ecological Network seeks to develop an Ecological Network by designing and developing a network linking habitats within the Forest Park and to the wider landscape. In conjunction with SHBC and The Mersey Forest. This may be achieved in the Plan by:
 - creating networks of hedgerows, grass field margins and woodland planting linking to the large community woodland sites;
 - increasing connectivity between priority habitats by creating corridors and stepping stones;
 - Identifying and safeguarding priority habitats and species.

4.4.11 In addition, the BFPAAP recognises that 11 Local Wildlife Sites are key assets to the area, a key challenge is to improve these assets, while recognising that most are within private ownership. An incentive is needed to influence unsympathetic landowners.

4.4.12 The BFPAAP forms part of the St Helens Local Plan and is a statutory document which details policies and actions required to develop and sustain the Park, in which the Application Site exists. It is a material consideration and important in ensuring compensation is effective when delivered.

St Helens BAP Habitats

4.4.13 In addition to those habitats recognised by the Plans above, the North Merseyside Biodiversity Action Plans determine 'SMART' targets for habitats that are of regional importance, in recognition of the National UK BAP habitats as listed by JNCC. UK BAP habitats and the North Merseyside BAP are enshrined within local policy CQL 3, which seeks to create, extend and provide better management for those habitats of concern. Emerging policy LCP10 in turn makes reference to North Merseyside BAP making it a material consideration and important in ensuring compensation is effective when delivered.

Effective Net Gain

4.4.14 The proposals are already contributing a benefit (increase in area and quality) for grasslands, ponds and hedgerow (see 4.2.6, 4.2.7 and 4.2.8 respectively), and as this mitigation is on-site the net gain will be effective as well as suitable.

4.4.15 To continue to achieve an effective net gain at the local and regional scale, off-site compensation should ideally contribute towards the targets set by local delivery schemes in a manner that provides betterment, or by providing habitats of increased distinctiveness. As detailed in section 4.4.2, the metric requires that there should not be a 'trading down' when compensating habitats. The habitat types detailed within the above initiative targets are of at least equivalent or greater distinctiveness to those habitats being lost under the proposals, and so, compensation targeting these actions and habitats under the BFPAAP, Mersey Forest Plan and in line with St Helens BAP habitats would provide a suitable net gain. Under the metric guidance, the suggested actions for compensating lost habitats at the applicant site are shown in Table 2.

Table 2: The suggested action to provide effective net gain for those habitats being lost under the proposals.

Habitat Type	Habitat Unit Loss	Habitat Distinctiveness	Suggested Action to Provide Effective Net Gain
Cropland	-88.93	Low	Same distinctiveness or better habitat required
Priority woodland	-22.48	High	Same habitat required
Scrub	-3.22	Medium	Same broad habitat or a higher distinctiveness habitat required
Scattered trees	-1.52	Medium	
Bareground	-0.51	Low	Same distinctiveness or better habitat required

4.4.16 The S106 agreement draft between the Applicants and SHBC includes a sum of money which SHBC considered sufficient to compensate the loss of habitat. It is common amongst local planning authorities to apply a monetary value per Habitat Unit within a metric to provide funds which can be used to compensate habitat off Site, costed to reflect the local market habitat creation and management costs. A sum of £1,696,800 has been requested by SHBC, while it is recognised that there is no legislation, policy or guidance currently in force in SHBC, or across local authorities more generally, to guide monetary values to apportion to a metric's findings. It was confirmed via verbal coms with the Officer that the council attributed £15,000 per Habitat Unit within the metric. It was further confirmed that the £15,000 per Habitat Unit was an elevated figure when SHBC considered the type of habitat being lost i.e. priority woodland.

4.4.17 It is my professional opinion and from experience that the types of habitats targeted by policies within the S106 (including national and local priority habitats) will a) be of at least 'medium-high distinctiveness' under the metric terms, likely providing habitat of a greater distinctiveness to that being lost, b) that these habitat types can be easily achieved by the sum of money provided, and c) that the amount provided will be sufficient enough to at the very least alleviate the metric deficit in real terms, if not go to provide a net gain in biodiversity.

5 Review of consultation responses

5.1.1 A number of consultees provided comments with regard to biodiversity matters and the proposals. These include:

- Merseyside Environmental Advisory Service
- Forestry Commission
- Warrington Borough Council
- Natural England
- Other third parties

5.1.2 One relevant consultee that did not provide any comment was:

- Mersey Forest

5.2 Merseyside Environmental Advisory Service (MEAS)

5.2.1 MEAS provided five consultation responses dated 27th February 2020, 13th March 2020, 15th April 2020, 13th July 2020 and 16th September 2020 (**CD 35.1, item 3.27**). Following these responses, a series of documents were produced or amended to address the issues raised. Internal rounds of consultation were also undertaken in email exchange to confirm the scope of surveys, confirming that wintering bird surveys could discontinue and Microsoft Teams meetings to discuss the appropriate undertaking of the Biodiversity Metrics.

5.2.2 MEAS accept the outcome of the ES and its supporting ecology documents and hold no objection to the proposals (**CD 35.1, item 3.27**).

5.2.3 MEAS recommend that the Biodiversity Metric should form the basis of any S106 agreement for off-site compensation (**CD 35.1, item 3.27**).

5.2.4 I consider that all the issues raised by MEAS have been addressed within the ES, the supporting documentation and response documents.

5.3 Forestry Commission

5.3.1 The Forestry Commission provided clarification (**CD 35.1, item 3.31**) that no Ancient & Semi-Natural Woodland (ASNW) or Plantations on Ancient Woodland Sites (PAWS) are present at the Application Site and they therefore have no further comment on the application.

5.4 Warrington Borough Council (WBC)

5.4.1 WBC provided comment on 12th August 2020 (**CD 35.1, item 3.56**). They stated that they make no objection to the proposals but had erroneously requested that the presence of ancient woodland at the Application Site is recognised and assessed properly.

5.4.2 As discussed within my Proof at item 3.3.4(ii), and further confirmed by Forestry Commission, there is no ancient woodland present at the Application Site.

5.4.3 I consider that there are no outstanding issues to address from WBC.

5.5 Natural England

5.5.1 Natural England have no objection to the proposals (**CD 35.1, item 3.74**) stating that the proposals will not have a significant adverse impact on designated sites.

5.5.2 Natural England provide advice on ecological networks, encouraging the protection and enhancement of wetland habitats and associated terrestrial habitats. The proposals will provide a pond habitat and associated species-rich grassland of greater quality and extent than those that exist on site (see 4.2.6 - 4.2.8).

5.5.3 Natural England advocate the use of the Biodiversity Metric.

5.5.4 I consider that the proposals have considered and provided for the matters covered by the relevant advice provided from Natural England.

5.6 Other Third Parties

- 5.6.1 Several general comments on biodiversity were received from third parties including members of the public, interested parties, and local parish councils, as referred to at section 3.78 onwards of the Committee Report (**CD 35.1**).
- 5.6.2 References were made with regard to biodiversity net gain, loss of habitat (including erroneous reference to ancient woodland on site), bats, water vole, great crested newt, amphibians, barn owl, brown hares, and priority and notable bird species.
- 5.6.3 All survey work and the assessments carried out for the production of the ES Chapter 9 is comprehensive, thorough, and has proper regard for protected and notable species, loss of habitat, habitat mitigation and compensation and future enhancements. It is my opinion that all of these points are addressed.

6 Conclusions

- 6.1.1 The Council resolved to grant planning permission, and subsequently the application was called-in to Public Inquiry under application reference APP/H4315/V/20/3265899.
- 6.1.2 There is common ground between the Applicants, the Council, and consultees with regard to:
- European Protected Sites (Mersey Estuary SPA)
 - European Protected Species (bats and great crested newts)
 - UK Protected Species (water vole, reptiles, badgers and invasive species)
 - Priority and notable species (brown hare, breeding birds, purple ramping-fumitory)
 - ES Chapter 9: Biodiversity and its findings
 - DEFRA Biodiversity Metric 2.0: assessment and its findings
- 6.1.3 Comments received by the Countryside Development and Landscape Officer put forward the opinion of the Officer at odds with the Applicants, with specific regard to the 'significance' and 'appropriateness' of loss of biodiversity, with specific concern for the loss of 'protected' trees.
- 6.1.4 The Application Site contains woodland blocks with TPOs, as such protected for their amenity value as opposed to their ecological merit. There are no ancient woodlands present at the Application Site, as confirmed by the Forestry Commission and field survey. Priority habitat exists in the form of woodland, ponds and hedgerow, which is accurately assessed in terms of value and extent. There are no statutory designated sites present and a single non-designated Local Wildlife Site (LWS) partially extends on-site from the western boundary. The LWS will remain unimpacted by the proposals with the exception of three trees that require removal for drainage purposes and are marked as 'unsuitable for retention' by the arboriculturalist.

- 6.1.5 The biodiversity assessment has followed the mitigation hierarchy, a key principle within the NPPF to avoid, mitigate and compensate. Following the avoidance of biodiversity features on site, an unavoidable loss of priority woodland, ponds and hedgerow is realised, with significant losses of cropland and other habitats of lesser biodiversity value.
- 6.1.6 Extensive on-site mitigation provides an increase in value and extent for priority pond, hedgerow, species-rich grassland and wetland habitat, providing a net gain for these habitats, recognised as either local or national BAP features. The metric also results in a net gain for River Units in response to the proposed Whittle Brook diversion. Extensive planting of high-quality woodland is mitigated on-site. While there will be an increase of woodland on-site, planting falls short of the 2:1 ratio required by policy CQL 2, requiring additional off-site compensation of 0.13ha. Additional mitigation includes fish rescue strategies and the retention of deadwood to preserve identified fungi species. On-site enhancements to retained features include woodland thinning and understorey planting and the removal and control of invasive species within woodland and along Whittle Brook. Proposed changes in respect of the Whittle Brook (in the outline area) must comply with the Water Framework Directive, and any diversion must realise a betterment.
- 6.1.7 Defra's Biodiversity Metric 2.0 realised an overall deficit of -113.12 Habitat Units (HUs) following on-site mitigation and enhancements. The unit deficit is overwhelmingly due to the loss of cropland, itself a low ecological value habitat which dominates the Application Site. Of the -113.12 HUs, -22.48 HUs are apportioned to woodland loss, with the remaining deficit overwhelming due to cropland loss, scattered trees, scrub, and bare ground, recognised as lesser value habitats.
- 6.1.8 The Council agree to a S106 financial payment to compensate for the remaining loss of biodiversity, providing a total of £1,696,800. It has been confirmed by the Officer that £15,000 per Habitat Unit has been applied, elevated to such to account for the priority woodland habitat being lost on site. The approach contained in the S106 agreement is compliant with the NPPF, local policy CQL 3 and emerging policy LPC06. To comply with policy CQL 2,

off-site woodland planting to a minimum of 0.13ha must be achieved to satisfy policy CQL 2, using the S106 monies. The S106 is targeted to provide a minimum of 9.4ha to put woodland habitat in a net gain position by way of the metric, and in turn exceeding requirements within policy CQL 2 by multiple factors.

- 6.1.9 The Environment Bill, currently still before Parliament, is a material consideration for the proposals, and which when in force is expected to require developers to result in a measurable 10% biodiversity net gain. However, it is not yet law and may be several years before it is put into effect. It is considered that, at this stage, greater weight should be given to current adopted policy. This was the approach adopted by the Inspector at the recent Milton Keynes Public Inquiry.
- 6.1.10 Compensation should be effective in terms of providing or enhancing habitats of equivalent or greater benefit to those habitats being lost. With the exception of woodland, which should be replaced like-for-like, all other habitats may be compensated by other habitat types off-site. The S106 prioritises the spending of monies on biodiversity projects and initiatives within the Bold Forest Park, considering the wider region or Borough, where considered necessary. The S106 targets local initiatives within the Bold Forest Park Action Plan (BFPAAP) and the Mersey Forest Plan that target habitats of local, regional, and national importance. Specifically, applying contribution payments towards the enactment of polices ENV1 and ENV2 within the BFPAAP and polices SH7, SH8 and 13 within the Mersey Forest Plan that will create habitat at least equal to and greater than that which currently exists or is being lost at the Application Site. It is my professional opinion and experience that these habitats may be sufficiently created or suitably enhanced effectively using the contribution payment, and to an extent to fully satisfy the deficit within the metric, with the likely outcome of a net gain being achieved.
- 6.1.11 After reviewing the consultation responses, I note there are no objections from Merseyside Environmental Advisory Service, Natural England, Forestry Commission or Warrington Borough Council. St Helens Council has resolved

to grant permission. Comments received by the Countryside Landscape and Development Officer have been addressed within my Proof. Third party comments have been addressed herein and by reference to the ES Chapter 9: Biodiversity.

6.1.12 To conclude, I consider that the proposals have undertaken a thorough and accurate assessment of the status of biodiversity at the Applicant Site. It is recognised that there is an impact to biodiversity, but those impacts are adequately addressed via on-site and off-site mitigation and compensation. With the spending of S106 monies targeting specific initiatives within the local area that focus on habitat creation and enhancement for high-value habitats, a benefit to biodiversity will be realised. It is my professional opinion that there will be no ecological reason to refuse the granting of permission for this scheme.