



Town and Country Planning Act 1990, Section 77

Town and Country Planning (Inquiries Procedure) (England) Rules 2000

The Proposed Development of Land to the West of Omega South and  
South of the M62 Bold, St Helens

# Topic Statement

## ECOLOGY AND BIODIVERSITY

Planning Application Reference  
P/2020/0061/HYBR

Planning Inspectorate Reference  
APP/H4315/V/20/3265899

## 1. INTRODUCTION

- 1.1 Topic Statements have been prepared to inform the Secretary of State on the matters identified in the Inspector's case management notes which are not addressed in the Council's main proofs of evidence. This Topic Statement is concerned with ecology and biodiversity.

## 2. THE APPLICATION

- 2.1. The proposed development is a Schedule 2 development under the Town & Country Planning (Environmental Impact Assessment) Regulations 2017 and an Environmental Statement (ES) accompanied the application. The original ES ("the ES") assessed the impact of the application on ecology and biodiversity. This was supplemented by an ES addendum's dated June 2020 and August 2020.
- 2.2 Additional information has been provided to the Council in response to comments and observations by Merseyside Environmental Advisory Service ("MEAS").
- 2.3 The proposal will cause habitat loss, habitat fragmentation, pollution and disturbance of important species along with permanent loss of woodland and tree cover and damage to trees covered by Tree Preservation Orders.
- 2.4 The mitigation proposed is as follows:
- A newly planted woodland within the north west of the site referred to a 'Green Wedge' ,
  - Pond and attenuation features
  - Replacement hedgerow and bat boxes.

## 3. TECHNICAL REVIEW OF THE ECOLOGY AND BIODIVERSITY

### Review by MEAS

- 3.1 MEAS were instructed to advise the Council about the ecological and biodiversity impacts of the Application. Comments were received from MEAS on 27<sup>th</sup> February 2020, 13<sup>th</sup> March 2020, 15<sup>th</sup> April 2020, 30<sup>th</sup> June 2020, 13<sup>th</sup> July 2020 and 16<sup>th</sup> September 2020.
- 3.2 The substantive response from MEAS is set out in their comments dated 30<sup>th</sup> June. Key points raised are set out below.

### *Impacts to Habitats Defra Metric*

- 3.3 The proposed development scheme will result in significant woodland and tree loss (5.6Ha). The proposed development would also result in the loss of additional existing Priority habitat in the form of an additional seven ponds and 770m of hedgerow in comparison with that anticipated by the proposed allocation in the emerging Local Plan. Pond and hedgerow losses will be mitigated through replacement hedgerow and habitats. Whilst replacement woodland is proposed, additional off site woodland creation would be required to fully mitigate for the loss. In addition, timescales in any woodland planting reaching maturity are considerable.

- 3.4 The applicant has submitted Defra Biodiversity Metric calculations for both the full and outline sites. The metrics show that with the proposed landscaping within the development site there will be net loss of 43% for the full application site and net loss of 50% of onsite biodiversity value for the outline planning area. For woodlands there would be a net loss across the whole hybrid scheme of 22.48 BU. This would require the creation of approximately 10 ha of lowland mixed deciduous woodland offsite.
- 3.5 Attention is drawn to the timescales associated replacing mature woodland. The time taken for any planted woodland to mature and become of equivalent ecological value and function of the existing woodland is considerable and will take decades. Until then there will be a loss of woodland habitat that will be significant. This is recognised within the ES which identifies a large negative loss to woodland initially, reducing over time.
- 3.6 The scale of habitat loss and the impacts of this on ecological networks is of significant concern.

#### *Designated Sites*

- 3.7 Regarding Habitats Regulations Assessment, the development site is near to European sites. The applicant has submitted a shadow HRA document (*Habitats Regulations Assessment: Stage One, Likely Significant Effects, Omega Zone 8, the ecology practice, dated 24/01/2020*). The conclusions of the shadow HRA are accepted, and the document can be adopted by the Council.
- 3.8 The site is located close Designated Sites. The ES and submitted CEMP (*Woodland, Tree and hedgerow clearance method statement, CEMP: Biodiversity (Unit 1), Plot 1, Omega Zone 8, the Ecology Practice, 31 March 2020*) details construction phase mitigation measures which will prevent impacts to Booths Wood during construction and are acceptable.
- 3.9 The development will result in the loss of woodland adjacent to Booths Wood LWS. This will reduce the network of woodland in this area for associated species. Proposed landscaping (Proposed landscaping strategy Rev F) has been designed to maintain linkages with Booths Wood and is appropriate. However, there is a timescale issue to any woodland creation.
- 3.10 Impacts to Whittle Brook LWS, Mersey Valley Golf Course LWS and Dog Kennel Plantation LWS are unlikely to be significant due to the distance from the development site.

#### *Protected Species*

- 3.11 Regarding protected species, the bat survey is acceptable, and no further bat survey is required. Bat roosts are present within trees T23, T32 (both just off site) and T115 (on the site). The bat roost on site will be lost. The Bat tree roost assessment survey identifies 169 trees with bat roost potential of low or above. There are a total of 63 trees with moderate potential on site and a total of 17 trees are identified as having high roost potential. The removal of trees will result in the loss of potential bat roosting habitat. The ES proposes the provision of 17 bat boxes however, given the scale of the loss of potential bat roost habitat greater bat box provision is required. A suitable worded condition to secure bat mitigation measures is required.
- 3.12 Regarding water voles, surveys confirm that no water vole presence on the site. Should two years elapse from the date of the survey, updated water vole survey will be required to inform subsequent reserved matters applications. This can be secured by a suitable worded planning condition. The development will result in the diversion of

Whittle Brook. Any diversion should be designed to incorporate habitats suitable for water vole.

- 3.13 There is no evidence of reptiles on the site.
- 3.14 Habitats on site provide suitable habitat for nesting birds, including ground nesting species. Breeding bird survey recorded a total of 27 species including a number of Priority species (Section 41 NERC Act) and Birds of Conservation Concern (BOCC). The proposed development will lead to a loss of habitat for breeding birds, including Priority farmland species. Although proposed habitat mitigation will provide alternative nesting sites there will be an initial loss of habitat whilst these habitats mature. There will be a loss of habitat for farmland birds and farmland species such as brown hare. Any S106 will need to ensure that it provides sufficient funds to either create suitable habitat for farmland species or to enhance existing farmland habitats.
- 3.15 The Ecology chapter of the ES proposes provision of 19 bird boxes, given the scale of habitat loss this is not sufficient. To mitigate for this loss, details of bird nesting boxes (e.g., number, type and location on an appropriately scaled plan) that will be erected on the site should be provided to the Local Planning Authority for agreement. A planning condition is required.
- 3.16 Regarding other protected species, no evidence of recent badger use was recorded during survey. There was also no evidence of great crested newt. English bluebell is present within Duck Wood on the boundary of the outline application boundary. Mitigation measures which protect these species will be required to be incorporated into a CEMP for any future reserved matters application. Priority species purple rampion is present within the motorway verge adjacent to the northern site boundary. Protective measures are detailed within the CEMP
- 3.17 An Ecological Clerk of Works (ECW) is to be provided during the construction phase and an Ecological Clerk of Work method statement has been submitted. The proposed method statement is acceptable. The provision of an Ecological Clerk of Works and CEMP can be secured by a suitably worded condition.
- 3.18 The applicant has submitted a method statement to address invasive species. The method statement is acceptable subject to a suitable worded planning condition.
- Landscape and Planting Scheme and SUDS Design*
- 3.19 The proposed landscaping scheme is to include woodland planting, hedgerows, grassland and wetlands including large SUDS ponds. The proposed planting includes field maple (*Acer campestre*), however this species is not locally native to this area and should be replaced with a more locally native species, such as hawthorn or holly. *Viburnum opulus* is also not locally native and should be replaced in hedgerow planting with blackthorn. In woodland edge planting it should be replaced by an increase in other native species listed.
- 3.20 The applicant submitted a landscape management plan (*Landscape maintenance strategy – Omega Zone 8, St Helens, March 2020, PlaceOnEarth landscape design*). The plan is acceptable. The implementation of the management plan can be secured by a suitably worded planning condition. Full and detailed management plans will be required for any landscaping associated with the reserved matters applications. A review of the management plan and an assessment of the habitat condition of the proposed habitat creation within the 'The Triangle' landscaping area will be required at

year 5. The submission of a 5-year review can be secured by a suitably worded planning condition.

- 3.21 The proposals include SUDS attenuation ponds; these should be designed to benefit nature conservation.
- 3.22 The three tests are set out in Regulation 55 of the Habitats Regulations 2017. If the mitigation/compensation recommended in the biodiversity chapter of the ES is implemented, then the tests would be satisfied.
- 3.23 MEAS has noted that the applicant has provided an updated Alternative Site Assessment (Progress Planning Consultancy Apr 2020) as well as an Operator Statement (Appx 4 of the Planning Statement) to provide further justification for the use of the proposed development site and the design layout. From an EIA perspective the assessment is acceptable.

#### *Ecology*

- 3.24 The applicant has made a number of post-submission changes in response to consultation comments from the Environment Agency requiring an 8m easement on both sides of Whittle Brook. This has resulted in changes to the cycleway / footpath location, position of unit 1 and associated attenuation pond and landscaping. This has implications for proposed landscaping. As a result, a range of updated documents and plans have been submitted.
- 3.25 The applicant has submitted an ES addendum (*Environmental Statement Addendum, Omega Zoe 8, St Helens, WSP, OPP DOC.17*). The addendum confirms that the ecological baseline remains unchanged following the post submission changes. There are no changes to the ecological assessment or conclusions.
- 3.26 The current route of Whittle Brook passes from Booths Wood, eastwards across an arable field to join a watercourse to the south. Under the proposals this is the proposed location of Unit 2 and Unit 4. The diversion proposed takes the watercourse from Booths Wood directly south close to the western boundary of the proposed site close to Duck Wood then to the south of Unit 4. The newly proposed route takes it further east to allow for an 8m easement. The proposed change will not make any significant ecological impacts or changes to the proposed landscaping in these areas.
- 3.27 A further water course diversion is proposed to a ditch in the NE corner of the site. This area is identified as future expansion land. The proposed diversion will route the ditch along the northern boundary of the site close to the motorway embankment. This does not have any additional ecological impacts.
- 3.28 The proposed cycleway and footpath is now positioned to allow for an 8m easement along Whittle Brook. This has had the effect of pushing the cycleway/ footpath away from the brook and Booths Wood and this is beneficial in terms of disturbance to these habitats.
- 3.29 An updated Landscape Maintenance Strategy (Omega Zone 8: Landscape Maintenance Strategy, March 2020 (Rev D – issues 05.08.20) Place on Earth). The proposed landscape management is acceptable. Landscape management plans are also acceptable.
- 3.30 Conditions are recommended in relation to bat and bird box provision, tree clearance and SUDs.

### **Representations by Natural England**

- 3.31 A full description of the representation by Natural England is set out in the Committee Report.
- 3.32 Natural England considers that the proposed development will not have significant adverse impacts on designated sites and has no objection. Natural England's further advice on other natural environment issues is set out below.
- 3.33 Regarding ecological networks, the proposed development is within an area that Natural England considers important as part of a landscape scale network of wetland habitats that act as stepping stones for wildlife. As such, Natural England would encourage the protection and enhancement of wetland habitats and associated terrestrial habitats into this development which can perform a range of functions including improved flood risk management, provision of accessible green space, climate change adaptation and biodiversity enhancement. It notes that the development provides opportunities to secure biodiversity net gain for nature and local communities, as outlined in paragraphs 9, 109 and 152 of the NPPF.
- 3.34 Natural England advocated the use of the Defra Metric to calculate any potential biodiversity losses and compensation to be measured

### **Representations by the Council's Countryside and Development Officer.**

- 3.35 A full description of the representations of the Council's Countryside and Development Officer is set out in the Committee Report.
- 3.36 The Countryside and Development Officer expresses concern about the loss of historic woodland and the habitats that it provides. Replacement tree planting exceeds the number of trees removed but does not meet a minimum of 2 for 1 tree replacement as required by policy. New planting would take at least 150 years to be mature and offer comparable habitats. There was criticism that the application as submitted did not use the DEFRA Biodiversity Net Gain Metric to assess the impact of the development.
- 3.37 Following the submission of an assessment using the DEFRA metric, the Countryside and Development Officer noted that it shows that there is a -39.0 biodiversity unit deficit for the full application part of the site and -74.12 biodiversity unit for the outline part of the site. A requirement arises for the creation of additional compensatory habitats and biodiversity enhancements or as a last resort, a financial contribution to fund off site biodiversity enhancements. Reference is made to NPPF paragraphs 170d and 175.

## **4. OTHER REPRESENTATIONS ABOUT ECOLOGY AND BIODIVERSITY**

- 4.1 A full description of the representations is set out in the Committee Report. The main issues raised are summarised as follows:
- There are 11 Local Wildlife sites across the area.
  - This woodland and ponds are prime environment for wildlife including barn owls, tawny owls, bats, brown hares, bats, toads, frogs, newts, insects, waterfowl, swans, geese and mallards and birds of prey.
  - The Government has set guidance of net gain for Biodiversity at +10% in order to achieve its Environmental Plan over the next 25 years.
  - Major damage to local wildlife and eco-systems including habitats destroyed, loss of wildlife and creatures and farmland.

- Loss of protected species
- Re-routing of river destroying habitat

## 5. POLICY

5.1 Relevant planning policy is the following:

- St Helens Core Strategy Policy CP2: Trees and Woodland
- St Helens Core Strategy Policy CQL3: Biodiversity and Geological Conservation; and
- National Planning Policy Framework (“NPPF”), paragraphs 170 and 175.
- Bold Forest Park policy ENV2: Ecological Network
- Unitary Development Plan ENV12a and ENV12b ‘Development Affecting Existing Tree’s’ and ENV13 ‘New Tree Planting on Development Sites’

## 6. ASSESSMENT

6.1 Paragraph 170 of the NPPF states that planning decisions should contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity.

6.2 Paragraph 175 states that when determining planning applications, local planning authorities should refuse permission if significant harm to biodiversity cannot be avoided or adequately mitigated; or, as a last resort, compensated for and opportunities to incorporate biodiversity improvements in and developments should be encouraged, especially where this can secure measurable net gains in biodiversity.

6.3 Policy CQL3 reflects this, but also requires that all development proposals be based on ecological assessments where appropriate and that developments affecting protected species will only be acceptable if there is clear evidence that the development outweighs the nature conservation interest. Policy CQL3 and states that the Council and its project partners will, within a woodland and farming framework, enhance biodiversity in Bold Forest Park by developing an ecological network which reduces habitat fragmentation and increases the resilience of wildlife in the Forest Park.

6.4 Policy CQL2 states that the multipurpose value of tree, woodlands and hedgerows will be protected and enhanced by:

- Requiring developers to plant new trees, woodlands and hedgerows on appropriate sites;
- To conserve, enhance and manage existing trees, woodlands and hedgerows;
- Ensuring that development does not damage or destroy any tree subject to a tree preservation order (TPO) or any tree of value unless there is a clearly demonstrated public benefit, and where trees are justifiably lost, they should be replaced on at least a 2:1 ratio; and
- Supporting proposals which assist in the positive use of woodlands for green infrastructure purposes including recreation, education, health, biodiversity and economic regeneration.

6.5 Bold Forest Park policy ENV2 compliments wildlife protection set out in Core Strategy. Policy UDP ENV12a and ENV12b aim to avoid the significant loss of trees and

incorporation of measures for the successful retention of existing trees. Policy ENV13 aims for trees protection and replacement trees and woodland.

- 6.6 The application site comprises of arable fields, intersected by a network of ditches, woodland, trees, hedgerows, grassland and ponds. The development will result in a significant loss of these habitats. This network currently links to Booths Wood LWS and to Mersey Valley Golf Course LWS to the south (both off site). They form part of a network of habitats that provide wildlife corridors through the wider arable landscape.

#### *Habitats Regulations*

- 6.7 The development site is close to protected European sites, one of the closest being Mersey Estuary SPA. The applicant has submitted a Habitats Regulations Assessments which concludes no likely significant effects from the proposed development for both full and outline elements. MEAS has reviewed the HRA and agrees with the conclusions.

#### *Designated Sites*

- 6.8 There is potential for Booths Wood Local Wildlife Site to be impacted through by construction impacts to trees within the woodland, release of construction related pollutants into the woodland, lighting of the woodland both during construction and operational phases and impacts to woodland from loss of the wider ecological network of woodland, ponds and hedgerows. The ES and submitted CEMP along with a tree protection plan for Booths Wood detail construction phase mitigation measures which will prevent impacts to Booths Wood during construction. MEAS and the Councils Countryside Development Officer have reviewed the submission and have advised that the submission is acceptable.

#### *Surveys under-taken*

- 6.9 A number of ecological surveys are included in the ES and have been reviewed by MEAS and Natural England. The surveys show that Great Crested Newts, Badgers, reptiles, wintering birds and water voles are absent from the site. Breeding birds, Brown hares and Purple rampion (plant species) which are all Local and UK Priority Species are on the site and the habitat will be lost. The submitted CEMP sets out how the site will be cleared, and suitable protection measures put in place. MEAS has advised that this is acceptable. A planning obligation will secure sufficient funds to either create suitable habitat for farmland species or to enhance existing farmland habitats. The provision of bird and bat boxes on site can be secured by condition.
- 6.10 MEAS has advised the surveys show that the only protected species to be affected by the development are bats found to be roosting in trees on the site. The proposed development would result in the loss of these trees and consequently the bat roosts. Bats are a European protected species and in accordance with Regulation 53 of the Conservation of Habitats and Species Regulations 2010, a 'three test' assessment is required.
- 6.11 The first test under Regulation 53(2)(e) is: "preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment." The proposals represent a significant economic development within the St Helens area, and it is considered that this test has been satisfied.
- 6.12 The second test under Regulation 53(9)(a) is "that there is no satisfactory alternative."



The ASA and this report consider alternatives to the proposed development. There is a significant need for a development of this scale in St Helens, and this proposal would meet that need. Neither the full nor outline element of the development could be disaggregated. In relation to the full element, the size, scale and orientation within the plot is the only viable option. It has been demonstrated that there are no other sites in the urban area that could accommodate this development. It is considered that alternatives have been assessed, and that this test has been satisfied.

- 6.13 The third test under Regulation 53(9)(b) is “that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range” The ES details soft felling techniques using best practice for the removal of the tree containing the bat roost. Alternative bat roost provision is proposed in the form of bat boxes. By applying the mitigation/compensation recommended in the biodiversity chapter is implemented, then this test would be satisfied

#### *Bio-diversity Net Gain*

- 6.14 The Environment Bill requires a specific figure for the level of biodiversity net gain required, in this case it is likely to be 10%. However, the Bill has not yet been enacted. Paragraph 170 of the NPPF requires biodiversity net gain to be clearly demonstrated, even though an amount is not quantified.
- 6.15 The applicant has submitted DEFRA metric spreadsheets for both the full and outline element where an assessment of the existing habitats on site have been used to calculate a baseline bio-diversity value. Factors including distance from the development, time for the habitat to mature and the difficulty involved in creating it. The final score is found by subtracting the baseline from the post-development score.
- 6.16 The metrics show losses to woodland, scrub and farmland biodiversity and gains to ponds, tall herb and floodplain wetland mosaic habitat. The metric shows that a total of 22.49 woodland biodiversity units (BU) will need to be provided offsite. This equates to approximately 10 ha of woodland planting. Other habitats which will require off site compensation include scrub habitats (3.22 BU) and farmland habitats. The Biodiversity Net for the full element of the scheme would be - 39 Units and -74.12 Units for the outline.
- 6.17 Significant harm to biodiversity is being caused by this proposal. The applicant has argued in their case for very special circumstances that this cannot be avoided, due to the identified need for the scale and location of the proposed development. The applicant is providing landscaping on site through the Green Wedge in the north west of the site and replacement hedgerows, however the harm cannot be fully mitigated on site. In accordance with the mitigation hierarchy, the applicant has agreed to off-site compensation. The amount is based on the DEFRA calculations and equates to £1,696,800. This can be secured by a planning obligation and could help to fund a variety of appropriate projects such as the creation of new wetlands and pond habitats.

#### *Landscaping*

- 6.18 Broad-leaved woodland falls across the application site, forming distinct woodland blocks, occupying a total area of approximately 61,533 m<sup>2</sup>. All the woodland is local and UK priority habitat and Booth’s Wood which sits on the western boundary is also a Local Wildlife Site. All woodland blocks within the application site are covered by TPO’s and arboriculturally, are mostly considered to be of ‘high quality’.

- 6.19 A permanent loss of woodland and trees totalling an area of 56,339 m<sup>2</sup> would result of allowing the development. Plantation woodland would be retained as part of the ecological/woodland area in the north west of the site and Booths Wood. Based on information submitted with the ES there are no good arboricultural reasons to fell the areas of woodland, it is only necessary to deliver the proposed development. It is considered that the need for this development and the lack of alternatives would justify the loss of the trees, provided that suitable mitigation is provided. The loss of such trees is nonetheless a significant impact to weigh in the planning balance.
- 6.20 The proposed landscaping scheme is to include woodland planting, hedgerows, grassland and wetlands including large SUDS ponds as well as a footpath/cycle path through the site for improved connectivity within Bold Forest. Landscaping is a reserved matter in the outline element; however, a parameters plan has been provided. Tree replacement provision in this area will be considered under any reserved matters application. Harm will be caused by the loss of existing woodland and this would be contrary to policy CQL2 and the Bold Forest Park AAP. The level of mitigation on site would not be a direct comparison. The financial contribution mentioned in paragraph 2.258 will also assist in projects for the creation and enhancement of existing woodland and tree planting.
- 6.21 A Landscape and Biodiversity Management Plan that secures long term management and maintenance of the ecological/woodland area and the proposed on-site mitigation 'Green Wedge' has been provided by the applicant. It is considered that this would provide sufficient mitigation to ensure that harm would not be caused to the priority habitat during the course of construction and operation.

#### *Invasive Plant Species Report*

- 6.22 Policy CQL 3 of the Core Strategy aims to reduce habitat and species fragmentation by developing a functioning ecological framework for the Borough.
- 6.23 The invasive species walkover survey of the application site identified two invasive non-native plant species which were Himalayan Balsam and Rhododendron. The applicant has confirmed the removal of the Rhododendron and has supplied a method statement for the removal of the Himalayan Balsam which MEAS consider suitable.
- 6.24 The site is within Bold Forest Park and policy BFP ENV2. The proposal would not meet this policy as it would result in habitat fragmentation and does not safeguard Priority habitats and species highlighted within the Bold Forest Park plan.
- 6.25 The proposed development would cause a significant loss of natural habitat for both protected and Local and UK Priority Species which is harmful and does not accord with policies CQL2, CQL3 and BFP ENV2. The applicant has argued in their case for very special circumstances that this cannot be avoided, due to the identified need for the scale and location of the proposed development which will be considered in the planning balance. The applicant will incorporate some ecological mitigation on site and opportunities for landscape enhancement on the site would be provided. However, there would not be adequate mitigated and therefore in accordance with paragraph 175 of the NPPF, as a last resort a compensatory figure has been secured through a planning obligation. There would however, be harm in the planning balance.

## **7. CUMULATIVE EFFECTS**

- 7.1 Each chapter of the Environmental Statement also considers the cumulative effects of other developments. Of these other developments, there is Omega South (Zone 3-6)

which has outline planning for 1100 residential units and a mixed-use zone and Lingley Mere which has permission for a residential development. These are considered across all areas in the Environmental Statement.

- 7.2 In terms of the cumulative effects, the EIA identifies that there would not be significant effects in relation to noise and vibration, air quality, ground and contamination, drainage, flood risk and biodiversity.

## **8. OVERALL SUMMARY AND CONCLUSION ON ECOLOGY AND BIODIVERSITY**

- 8.1 The proposed development would cause a significant loss of natural habitat for both protected and Local and UK Priority Species which is harmful and does not accord with policies CQL2, CQL3 and BFP ENV2. The applicant has argued in their case for very special circumstances that this cannot be avoided, due to the identified need for the scale and location of the proposed development which will be considered in the planning balance. The applicant will incorporate some ecological mitigation on site and opportunities for landscape enhancement on the site would be provided. However, there would not be adequate mitigation and therefore in accordance with paragraph 175 of the NPPF, as a last resort a compensatory figure has been secured through a planning obligation. There would however, be harm in the planning balance.