



## ECOLOGICAL ADVICE SERVICE

**TO:** *Marion Geary*

**FROM:** *Emma England*

**DATE:** *01 November 2023*

**SUBJECT:** *23/504068/OUT / Land E Of Albion Rd And N Of Copper Ln, Marden*

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*The following is provided by Kent County Council's Ecological Advice Service (KCC EAS) for Local Planning Authorities. It is independent, professional advice and is not a comment/position on the application from the county council. It is intended to advise the relevant planning officer(s) on the potential ecological impacts of the planning application and if sufficient/appropriate ecological information has been provided.*

*Any additional information, queries or comments on this advice that the applicant or other interested parties may have must be directed in every instance to the planning officer, who will seek input from the EAS where appropriate and necessary.*

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### **SUMMARY – ADDITIONAL INFORMATION REQUIRED**

We have reviewed the ecological information submitted in support of this application and advise that additional information is sought from the applicant prior to determination of the planning application. This includes:

- Breeding bird surveys carried out in line with the latest best practice guidelines;
- Further information regarding habitat quality at the site for turtle dove;
- A decision regarding the approach to be taken for great crested newt mitigation;
- Further information regarding how impacts to reptiles will be mitigated for during site clearance and construction;

### **Breeding Bird Surveys**

We have reviewed concerns raised by both Kent Wildlife Trust and Marden Wildlife Group regarding these proposals. One of the primary concerns appears to relate to potential impacts from proposals upon turtle doves, a Section 41 Species of Principal Importance for conservation concern under the Natural Environment and Rural Communities (NERC) Act 2006. This species has become increasingly restricted in the UK, with 32.6% of the UK population occurring in Kent. Turtle dove populations have crashed since the 1970s across its range meaning the species is classified as Vulnerable to extinction at a European and

global scale. The UK population has gone from around 125,000 breeding pairs in 1972 to 2,092 breeding pairs in 2021<sup>1</sup>.

Section 40 of the Natural Environment and Rural Communities (NERC) Act 2006 places a general duty on all public authorities, including the local planning authorities, to conserve and enhance biodiversity. Natural England guidance '*Wild birds: advice for making planning decisions*', published 14 January 2022<sup>2</sup>, states (for local planning authorities) "you must have regard for the conservation of Section 41 species [under the NERC Act 2006] as part of your planning decision".

Despite being aware of the concerns raised by Kent Wildlife Trust and Marden Wildlife Group, the applicant does not appear to have undertaken breeding bird surveys of the site to understand the importance of the site for nesting turtle doves, including in the context of the local population. Kent Wildlife Trust have supplied data to indicate records of turtle doves around the site boundaries in 2023. However, these data are not understood to represent targeted or comprehensive site surveys.

We consider that insufficient information has been provided by the applicant, assessing the impacts of the proposed development on breeding birds. It is therefore recommended that breeding bird surveys are carried out in line with the latest bird survey guidelines<sup>3</sup> and the latest Chartered Institute of Ecology and Environmental Management (CIEEM) good practice guide<sup>4</sup>.

We also note, that whilst the submitted ecology report recognises the potential value of the boundary tree lines/hedgerows for turtle dove, it does not provide a full assessment of the value of the site for foraging turtle doves (to support nesting), nor does it provide a detailed assessment of the suitability of the entire site for turtle dove nesting. For example, no detailed commentary regarding the suitability of the scrub on-site for nesting, or regarding the current value for turtle dove of the hedgerows/tree lines is provided (e.g., in the context of width and height criteria).

We further note that the submitted ecology report dismisses impacts from the proposed development upon turtle doves as most of the hedgerows on-site are to be retained. The report does not acknowledge any potential impacts from increased disturbance, predation or a loss of foraging habitat. Once the scale of mitigation necessary for turtle dove is identified through further survey, mitigation options for turtle dove may need to be re-explored. This could include off-site contributions to habitat enhancements and/or on-site mitigation such as:

- Habitat buffer zones between hedgerows and gardens/housing/areas of public open space;
- Provision of foraging habitat for turtle dove;
- Enhancement of retained hedgerows to meet 'ideal' nesting habitat dimensions (i.e., over 4m high and around 3m wide);

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<sup>1</sup> [The status of the UK breeding European Turtle Dove \*Streptopelia turtur\* population in 2021: Bird Study: Vol 0, No 0 \(tandfonline.com\)](https://www.tandfonline.com)

<sup>2</sup> [Wild birds: advice for making planning decisions - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

<sup>3</sup> Bird Survey Guidelines. Available [here](#).

<sup>4</sup> [Good-Practice-Guide-July-2021-Update.pdf \(cieem.net\)](https://www.cieem.net)

Engagement with interested parties such as Kent Wildlife Trust and Marden Wildlife Group would likely be beneficial to understanding the wider issues and possible solutions.

The additional survey data (along with any necessary mitigation and compensation measures) should be included within the submitted EclA prior to determination of the planning application. This is in alignment with paragraph 99 of ODPM 06/2005 which states, *“it is essential that the presence or otherwise of protected species and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision”*.

### **Great Crested Newts**

The applicant has not made clear within the submitted ecology report what the expected impacts to great crested newts (GCN) are, or how these impacts are proposed to be mitigated for. There are positive records for GCN within ponds directly adjacent to the site. Mitigations for GCN are expected to be required as GCN are likely to make use of habitat present on-site.

The applicant will need to decide at this stage, what route to take for GCN. If licensing is not considered necessary, this will need to be fully justified with precautionary measures put in place. It is currently unclear to KCC EAS how much suitable GCN habitat will be affected by proposals. For example, the extent of areas of longer grass across the site are unclear. It would be helpful for these areas to be more clearly mapped/identified. Where seeking licensing, the applicant will need to choose between traditional licensing or District Level Licensing (DLL). If the former, a full mitigation strategy will have to be proposed to demonstrate that mitigation for impacts are achievable. Alternatively, a countersigned DLL impact assessment and conservation payment certificate (IACPC) should be submitted to the local planning authority prior to determination of the application<sup>5</sup>. Following that, evidence of the full conservation payment can be conditioned if planning permission is granted.

### **Reptiles**

Whilst it is indicated that habitat post-development will be improved for reptiles, it is unclear how impacts to reptiles will be mitigated for during the site clearance and construction process. The extent of areas off-site or on-site suitable to support reptiles displaced during habitat manipulation whilst construction takes place are unclear.

If habitat manipulation is deemed an appropriate mitigation measure, the reptiles must have suitable habitat to move into for the duration of construction. We request clarity on how this will be dealt with effectively to avoid injury/killing, but also to avoid a loss of the on-site population between site clearance and operation. We note that whilst the report indicates that there is only habitat suitable for reptiles along the margins of the site, there are a cluster of reptile records along H4, around P1/a spoil mound, H5, P3 and P4. These areas are all to be lost/relandscaped within proposals and is suggestive of more habitat available than indicated in the main text of the report.

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<sup>5</sup> [Great crested newts: district level licensing for local planning authorities - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

Additional information regarding reptile mitigation measures should be supplied prior to determination. This is in alignment with paragraph 99 of ODPM 06/2005 which states, "*it is essential that the presence or otherwise of protected species and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision*".

Reptiles are protected from killing and injury under the Wildlife and Countryside Act 1981 (as amended). British reptiles are also listed under section 41 of the NERC Act 2006 and the local planning authority must have regard for their conservation in its planning decision.

If you have any queries regarding our comments, please do not hesitate to get in touch.

**Emma England**  
**Biodiversity Officer**

This response was submitted following consideration of the following documents:

*Allen Scott (August 2023) Outline Landscape and Ecological Management Plan (OLEMP). Land East of Albion Road and North of Copper Lane, Marden, Kent.*

*Ecology Solutions (August 2023) Ecological Assessment. Land East of Albion Road and North of Copper Lane, Marden.*

*Ecology Solutions (August 2023) Biodiversity Net Gain Assessment. Land East of Albion Road and North of Copper Lane, Marden.*

*Kent Wildlife Trust (October 2023) RE: Application Ref. 23/504068/OUT – Outline application with some matters reserved (access only sought) for the removal of 2 former agricultural sheds and erection of up to 117no. dwellings and associated infrastructure including partial footways on Albion Road.*