

ECOLOGY PROOF OF EVIDENCE

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

at Land East of Albion Road and North of Copper Lane, Marden

Local Authority Ref: 23/504068/OUT

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1. QUALIFICATIONS AND EXPERIENCE

- 1.1. My name is Daniel Wood. I hold a BSc (Hons 1st Class) degree in Environmental Science from the University of the West of England, Bristol. I am a Full member of the Chartered Institute of Ecology and Environmental Management (CIEEM).
- 1.2. I have been employed as a Director by Ecology Solutions Ltd since April 2024. Prior to my employment with Ecology Solutions, I worked as Director of Ecology at ACD Environmental Ltd, a multi-disciplinary environmental consultancy. My employment at ACD Environmental Ltd spanned 13 years, 10 years of which I was employed as a company Director.
- 1.3. Ecology Solutions undertakes all types of environmental planning work in relation to ecology, with recent clients including National Grid, BAE Systems, Aggregate Industries, This is Gravity, Rigby Real Estate, CEMEX, the Hanson Group, Belfast City Airport, SITA, EDF Energy, E.on, Prudential, Aviva, Prologis, Helios, Pfizer plc, Dalradian Gold, British Aerospace, Legal and General, Stanhope, Northern Ireland Electricity and a range of national house-builders including Countryside Properties, Persimmon, Taylor Wimpey, Linden, Redrow, Bellway, Robert Hitchins, Fairview and Crest Nicholson.
- 1.4. I have extensive experience of Ecological Impact Assessment (EclA), the projects of which have assessed development proposals in relation to a range of sensitive ecological receptors, including Special Areas of Conservation (SACs), Special Protection Areas (SPAs), Ramsar Sites, Sites of Special Scientific Interest (SSSIs), and Local Wildlife Sites (LWSs).
- 1.5. I hold Natural England Class licences for bats (all species), barn owl *Tyto alba*, hazel dormouse *Muscardinus avellanarius*, and great crested newt *Triturus cristatus*. I am a Registered Consultant on the Bat Mitigation Class Licence (BMCL), and the Badger *Meles meles* Class Licence. I am qualified to act under the Otter *Lutra lutra* Class Licence. I have held multiple development project mitigation licences for the above species, including high conservation status bat roosts, including rare species, maternity colonies, and hibernation roosts. I am qualified to carry out River Condition Assessment (RCA) and have managed river restoration projects, in collaboration with the South East Rivers Trust (SERT) and Bristol Avon Rivers Trust (BART). I am experienced in the implementation of the Biodiversity Metric and Biodiversity Net Gain (BNG) in relation to development projects.
- 1.6. I have acted as an Expert Witness at public inquiry and have attended planning appeal hearings.

2. INTRODUCTION AND CONTEXT

- 2.1. This Ecology Proof of Evidence is written by Ecology Solutions on behalf of B.Yond Homes (“the Appellants”) in support of a Planning Appeal that has been made against the decision of Maidstone Borough Council (“the Council”) to refuse the planning application 23/504068/OUT (“the Application”).
- 2.2. The Application sought permission for:
- “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.”*
- 2.3. The planning application was refused on 22nd December 2023. The planning application decision notice comprised 7 reasons for refusal. Reason for refusal 5 concerns ecology, specifically:
5. *The ecology appraisal is deficient in terms of provision of habitat and/or mitigation for badgers, breeding birds, turtle doves, great crested newts and reptiles and in the assessment of the ecological value of the orchard in situ. The applicant has not taken account of local information provided by Kent Wildlife Trust and Marden Wildlife Group nor engaged with those groups. Therefore, it is not possible to confirm compliance with statutory species protection legislation, contrary to paragraph 180 of the NPPF, policy DM3 of the Maidstone Borough Local Plan 2017 and policy NE4 of the Marden Neighbourhood Plan.*
- 2.4. The main concerns regarding the ecology reason for refusal in respect of this Appeal related to uncertainty regarding the impact of the proposed development on protected species, specifically the provision of habitat and/or mitigation for badgers, breeding birds, turtle doves, great crested newts, and reptiles.
- 2.5. This document provides the salient information regarding how the Council's concerns have been addressed, and specifically, why the proposed development is considered to be acceptable in terms of ecology and nature conservation, and relevant planning policy and legislation.

3. LEGISLATION AND PLANNING POLICY

National Planning Policy Framework (December 2023)

- 3.1. Guidance on national policy for biodiversity and geological conservation **is** provided by the NPPF, published in March 2012, revised on 24 July 2018 and updated on 19 February 2019, 20th July 2021, 5th September 2023, and 19th December 2023. It is noted that the NPPF continues to refer to further guidance in respect of statutory obligations for biodiversity and geological conservation and their impact within the planning system provided by Circular 06/05 (DEFRA / ODPM, 2005) accompanying the now-defunct Planning Policy Statement 9 (PPS9).
- 3.2. A number of policies in the NPPF are comparable to those in PPS9, including reference to minimisation of impacts to biodiversity and provision of net gains to biodiversity where possible (paragraph 170).
- 3.3. The NPPF also considers the strategic approach that Local Authorities should adopt with regard to the protection, maintenance and enhancement of green infrastructure, priority habitats and ecological networks, and the recovery of priority species.
- 3.4. Paragraphs 185 to 186 of the NPPF comprise a number of principles that Local Authorities should apply, including encouraging opportunities to incorporate biodiversity in and around developments; provision for refusal of planning applications if significant harm cannot be avoided, mitigated or compensated for; applying the protection given to European sites to potential SPAs, possible SACs, listed or proposed Ramsar sites and sites identified (or required) as compensatory measures for adverse effects on European sites; and the provision for the refusal for developments resulting in the loss or deterioration of 'irreplaceable' habitats – unless there are 'wholly exceptional reasons' (for instance, infrastructure projects where the public benefit would clearly outweigh the loss or deterioration of habitat) and a suitable compensation strategy exists.
- 3.5. National policy therefore implicitly recognises the importance of biodiversity and that with sensitive planning and design, development and conservation of the natural heritage can co-exist and benefits can, in certain circumstances, be obtained.

Draft NPPF

- 3.6. A consultation on a revised NPPF took place between 30th July 2024 and 24th September 2024.

Maidstone Borough Local Plan

- 3.7. The Maidstone Borough Local Plan was adopted in October 2017 and sets out the framework for development in the Brough until 2031. There are two policies that relate in whole or in part to nature conservation, Policy DM1 which relates to the protection and enhancement of biodiversity and Policy DM3 which relates to the protection of priority habitats and biodiversity.

Marden Neighbourhood Plan (2017 – 2031)

- 3.8. The Marden Neighbourhood Plan was adopted in 2019 with aims to ensure future sustainable development. There are four policies within this document which relate in whole or in part to nature conservation, Policy NE2 which relates to water quality, Policy NE3 which relates to the conservation and enhancement of the landscape through native hedgerow planting and sensitive artificial lighting systems, Policy NE4 which relates to the protection of priority habitats and achieving a biodiversity net gain, and Policy NE5 which relates to the planting of native species.

Maidstone Borough Council Biodiversity Strategy 2020

- 3.9. The Maidstone Borough Council Biodiversity Strategy was published in 2020 and includes policies that detail the protection and enhancement of biodiversity.

Kent Environment Strategy 2016

- 3.10. The Kent Environmental Strategy (published March 2016) details the protection and enhancement of biodiversity and the conservation of wildlife sites.

4. BASELINE ECOLOGICAL CONDITIONS AND BIODIVERSITY NET GAIN

- 4.1. The majority of the Appeal Site is a commercial plum and apple orchard, situated on the south-east side of the village of Marden in Maidstone Borough. The Appeal Site is bounded by hedgerows and trees with an area of scrub within the northwest of the site and a series of ponds fringed by grassland in the south.
- 4.2. The Appeal Site is bordered to the north by a new development site (for 124 dwellings planning ref MA/17/504754/FUL) with further existing residential development beyond Stanley Road. To the east are a small number of existing properties and associated gardens with open countryside beyond.
- 4.3. Albion Road lies to the west with existing residential development beyond (including recent developments at Stanley Farms MA/13/1585 and The Parsonage MA/13/0693). The site is bordered to the south by Copper Lane with open countryside beyond.
- 4.4. To support the planning application, a comprehensive suite of ecological surveys was carried out by Ecology Solutions over a number of visits between May 2019 and July 2023, as detailed in the Ecological Assessment¹. A summary of ecological surveys is provided in **Table 1**.

Table 1: Summary of ecological surveys carried out to support the planning application.

Survey	Date
Extended Phase 1 Habitat Survey.	2019 and 2023.
Bat tree potential roost feature (PRF) assessment.	2019, 2022, and 2023.
Bat activity transect surveys.	2021 (3 visits) and 2023 (1 visit).
Bat static automated surveys.	May, July, and September 2021, and May 2023.
Badger field signs surveys.	2019 and 2023.
Great crested newt eDNA survey (Ponds 1-4).	2019.
Great crested newt eDNA surveys (Ponds 1-9).	2021.
Great crested newt aquatic survey (Pond 9).	2021 (6 visits).
Great crested newt aquatic survey (Pond 1).	2022 (4 visits).
Great crested newt aquatic survey (Pond 9).	2023 (6 visits).
Great crested newt aquatic survey (Ponds 1, 2, 3, and 4).	2024 (6 visits).
Reptile presence/absence surveys.	2021 (7 visits).

- 4.5. To address outstanding concerns regarding the ecology reason for refusal 5, additional/updated surveys were carried out between April and September 2024, as provided in **Table 2**.

Table 1: Updated and additional ecological surveys carried out to support the planning appeal.

Survey	Date
Breeding bird surveys.	2024 (6 visits).
Updated reptile surveys.	2024 (7 visits).
Updated great crested newt aquatic surveys (Ponds 1-4).	2024 (4 visits).

¹ Ecology Solutions (2023). Land East of Albion Road & North of Copper Lane, Marden. Ecological Assessment. August 2023. 8372.Eco.Ass.vf.

Habitats

- 4.6. A summary of the habitats and species recorded during the ecological surveys is provided below. Further information is available within the Ecological Assessment (2023).

Orchard

- 4.7. The majority of the Appeal Site comprises a commercial plum and apple orchard, which is intensively cultivated. This limits its ecological value due to application of herbicides and pesticides, *i.e.* the area beneath the tree rows was subject to frequent herbicide treatments to create bare ground and prevent colonisation of grasses and other plants that would compete with the fruit trees.
- 4.8. In accordance with the Biodiversity Metric, the intensive orchard habitat is categorised as a low distinctiveness habitat, and it is not possible to calculate a condition score.

Modified grassland

- 4.9. Within the Appeal Site, areas of species-poor, modified grassland were present between the rows of fruit trees, which allowed access to 'service' the fruit trees. These grassland strips were subject to frequent mowing and were generally kept to a short-sward with the arisings left on site. The margins to small parts of the site were less intensively cut.
- 4.10. In accordance with the Biodiversity Metric, the modified grassland habitat was assessed as 'poor' condition. Modified grassland is a 'low' distinctiveness habitat.

Ponds

- 4.11. There are five ponds (P1-P5) within the Appeal Site. Ponds P1-P4 are located along the southern boundary, while pond P5 is located in the northwest of the Appeal Site, along hedgerow H6.
- 4.12. Pond P1 is a small pond surrounded by species-poor grassland with areas of Hawthorn and Bramble scrub and Bulrush *Typha orientalis* present around the banks.
- 4.13. Pond P2 is a small pond at the base of hedgerow H4 with Bramble, Spear Thistle, and Bulrush present around the banks.
- 4.14. Pond P3 is a large fishing pond in the south of the site.
- 4.15. Pond P4 is also a fishing pond located in the southeast corner of the site.
- 4.16. Pond P5 is a small pond in a natural depression along hedgerow H6 and almost completely shaded by an Ash tree and Bramble scrub. This pond was recorded as dry during surveys undertaken in 2023 and 2024.
- 4.17. In accordance with the Biodiversity Metric, the ponds within the Appeal Site were assessed as 'poor' condition. Non-priority ponds are "medium" distinctiveness habitats.

Hedgerows and tree lines

- 4.18. The Appeal Site supports a total of 9 hedgerows. Hedgerows H1-H3 are native hedgerows with trees. In accordance with the Biodiversity Metric, they were assessed as 'moderate' condition. Hedgerows with trees are a 'medium' distinctiveness habitat.
- 4.19. Hedgerows H4-H6 are native hedgerows. In accordance with the Biodiversity Metric, H4 and H5 were assessed as 'moderate' condition. H6 was assessed as 'poor' condition. Native hedgerows are 'low' distinctiveness habitats.
- 4.20. Hedgerows H7-H8 are native hedgerows with trees. In accordance with the Biodiversity Metric, H7 was assessed as 'moderate' condition, and H8 was assessed as 'poor' condition.
- 4.21. Hedgerow H9 is a native hedgerow. In accordance with the Biodiversity Metric, H9 was assessed as 'poor' condition.
- 4.22. In addition to hedgerows, the Appeal Site supports 3 lines of trees – TL1, TL2, and TL3. In accordance with the Biodiversity Metric, TL1 was assessed as 'poor' condition. TL2 and TL3 were assessed as 'moderate' condition. Lines of trees are 'low' distinctiveness habitats.

Scrub

- 4.23. The northwest of the site comprised an area of overgrown scrub dominated by Bramble. Small areas of the invasive species Japanese Knotweed were also identified within the scrub.
- 4.24. In accordance with the Biodiversity Metric, the scrub was assessed as 'poor' condition. Scrub is a 'medium' distinctiveness habitat.

Buildings

- 4.25. The Appeal Site supports 2 buildings.
- 4.26. Building B1 was an open metal structure with plaster board and corrugated metal walls and all glass has been removed from the windows.
- 4.27. Building B2 was a corrugated structure that had collapsed and is now overgrown with Bramble scrub.

Biodiversity Net Gain

- 4.28. To support the planning application, a Biodiversity Metric was completed in August 2023, using the DEFRA v4.0 calculation tool².

² Ecology Solutions (2023). 8372: Land East of Albion Road & North of Copper Lane, Marden. Biodiversity Net Gain Assessment.

- 4.29. The results of the BNG analysis confirmed that the proposed development can deliver a net gain in habitats of 27.77%, and a net gain in hedgerows of 59.36%.
- 4.30. An updated Biodiversity Metric was completed in October 2024, using the DEFRA v4.0 calculation tool to reflect additional planting of scrub habitat, the removal of several trees and a section of hedgerow³.
- 4.31. The results of the BNG analysis confirmed that the proposed development can deliver a net gain in habitats of 25.91%, and a net gain in hedgerows of 57.05%.
- 4.32. As explained in further detail in the Biodiversity Net Gain Assessment, the proposed scheme has been designed to incorporate a range of ecologically valuable habitats. The package of habitat creation includes wildflower grassland, native mixed scrub, enhancement/restoration of the on-site ponds to 'moderate' condition, and enhancement of part of the existing orchard, to 'traditional orchard', which is a 'high' distinctiveness habitat.
- 4.33. In Maidstone Borough, residential developments are required to deliver on-site BNG of 20%.
- 4.34. Although the planning application was submitted prior to mandatory BNG, the proposed development's calculated BNG is more than both the standard mandatory required (10%) and Maidstone Borough's requirement (20%).

Protected and notable species

Bats: Trees

- 4.35. No trees within the Appeal Site were recorded as having features with potential to support roosting bats.

Bats: Transect and static and automated surveys

- 4.36. The bat activity transects and static automated surveys recorded a total of 7 species of bats – common pipistrelle, soprano pipistrelle, Nathusius' pipistrelle, *Nyctalus* sp., *Myotis* sp., serotine, and brown long-eared. No rare species were recorded.
- 4.37. Overall, the majority of the activity recorded from the surveys was from Common Pipistrelle and Soprano Pipistrelle with more occasional registrations by other species. The activity surveys suggest that boundary features were utilised mainly with very limited use of the central orchard rows, and some usage around the ponds. Hedgerows H5 and H7 and TL2, and to a lesser degree hedgerow H8 and TL1, appeared to have relatively greater usage by bats.

Bats: Static automated surveys

- 4.38. Overall, the vast majority of activity recorded on the automated detectors was from Common Pipistrelle bats with more occasional registrations by other species. Overall bat activity recorded is generally low to moderate for Common

³ Ecology Solutions (2024). 8372: Land East of Albion Road & North of Copper Lane, Marden. Updated Surveys and Biodiversity Net Gain Assessment.

Pipistrelle and low for other species with peaks on certain nights.

- 4.39. As confirmed in the Ecological Assessment, the scheme design included new planting of hedgerows native scrub, and species rich grassland, to provide new and enhanced foraging opportunities for bats. While the retained hedgerows and trees and enhancement of orchard areas will maintain existing navigational and foraging opportunities.
- 4.40. If deemed necessary, a sympathetic lighting regime associated with any proposals would also minimise light spillage into key areas, such as retained hedgerows, which would maintain foraging and navigational opportunities in these areas in the form of 'dark corridors'. Such a strategy can involve the use of warm white LED lights, which produce less light spillage than other types of lighting and have low / no UV content, or UV-filtered lights. In addition, the spillage of the light can be reduced further through use of low-level lights and the employment of lighting 'hoods' or 'cowls'. As an enhancement, new bat boxes would also be provided on retained trees. These details are typically imposed as a suitably worded planning condition, following planning consent.

Badgers

- 4.41. The Appeal Site supports a main badger sett. The proposed scheme will result in the loss of the onsite badger sett. The Ecological Assessment confirmed that the badger sett would be closed under the Badger Class Licence, which would be registered/licenced by Natural England, and a condition of the licence would be the creation of an artificial sett.
- 4.42. The proposed scheme includes new orchard planting and creation of significant areas of hedgerows, which will provide food sources. Connectivity to offsite habitats will be maintained. Overall, it was concluded that the proposed scheme would not generate significant impacts to badgers.

Birds

- 4.43. Specific breeding bird surveys were not carried out to support the planning application, however incidental observations of birds were recorded during ecological surveys.
- 4.44. During the public consultation, it was raised that one of the main colonies of the Red List species Turtle Dove was present within Marden and a local ecologist relayed that they had recorded evidence of them nesting along the eastern boundary (TL2) of the site.
- 4.45. To help protect local Turtle Dove populations, within the scheme design, native scrub planting was proposed along the eastern boundary of prickly vegetation, to help deter cats and maintain current nesting opportunities, while new native hedgerow and scrub planting was proposed to provide new and enhanced nesting opportunities for this species.
- 4.46. The perceived lack of adequate mitigation for Turtle Doves was raised as one of the reasons for the ecology reason for refusal.
- 4.47. To address the concerns and support the planning appeal, additional scrub planting, and cat-proof fencing, have subsequently been incorporated into the scheme design, which have been accepted by Kent Wildlife Trust (**Section 5**).

- 4.48. In addition, a full suite of breeding bird surveys was carried out within the Appeal Site.
- 4.49. Breeding bird surveys were commissioned and carried out on 4th April 2024, 22nd April 2024, 8th May 2024, 5th June 2024, 18th June 2024, and 27th June 2024 by experienced Senior Field Ecologists Alex Hogg and Gavin O'Seachnasaigh. The results of these surveys can be seen below and in Plans ECO1-ECO6 within the Technical note dated October 2024.
- 4.50. On the breeding bird survey carried out on 4th April 2024, the following species were recorded within the Application Site:
- Blackbird *Turdus merula* (green listed)
 - Blue tit *Cyanistes caeruleus* (green listed)
 - Chaffinch *Fringilla coelebs* (green listed)
 - Chiffchaff *Phylloscopus collybita* (green listed)
 - Dunnock *Prunella modularis* (amber listed)
 - Goldfinch *Carduelis carduelis* (green listed)
 - Great tit *Parus major* (green listed)
 - Green Woodpecker *Picus viridis* (green listed)
 - Lesser black backed gull *Larus fuscus* (not assessed)
 - Magpie *Pica pica* (green listed)
 - Moorhen *Gallinula chloropus* (not assessed)
 - Reed bunting *Emberiza schoeniclus*
 - Robin *Erithacus rubecula* (green listed)
 - Rook *Corvus frugilegus* (not assessed)
 - Song thrush *Turdus philomelos* (amber listed)
 - Wood pigeon *Columba palumbus* (amber listed)
 - Wren *Troglodytes troglodytes* (amber listed)
- 4.51. On the breeding bird survey carried out on 22nd April 2024, the following species were recorded within the Application Site:
- Blackbird
 - Blackcap *Sylvia atricapilla* (green listed)
 - Blue tit
 - Canada goose *Branta canadensis* (not assessed)

- Chaffinch
- Chiffchaff
- Dunnock
- Goldfinch
- Mallard *Anas platyrhynchos* (not assessed)
- Moorhen
- Robin
- Wood pigeon
- Wren
- Yellowhammer *Emberiza citronella* (red listed)

4.52. On the breeding bird survey carried out on 8th May 2024, the following species were recorded within the Application Site:

- Blackbird
- Blue tit
- Carrion crow *Corvus corone* (green listed)
- Chiffchaff
- Collared dove *Streptopelia decaocto* (green listed)
- Goldfinch
- House sparrow *Passer domesticus* (red listed)
- Jackdaw *Coloeus monedula* (green listed)
- Jay *Garrulus glandarius* (green listed)
- Lesser black backed gull
- Magpie
- Mallard
- Moorhen
- Red kite *Milvus milvus* (green listed)
- Robin
- Rook
- Starling *Sturnus vulgaris* (red listed)
- Swallow *Hirundo rustica* (green listed)
- Whitethroat *Curruca communis* (amber listed)

- Wren
- Yellowhammer

4.53. On the breeding bird survey carried out on 5th June 2024, the following species were recorded within the Application Site:

- Blackbird
- Blackcap
- Blue tit
- Chaffinch
- Chiffchaff
- Collared dove
- Eurasian coot *Fulica atra* (green listed)
- Dunnock
- Goldfinch
- Lesser black backed gull
- Magpie
- Robin
- Starling
- Turtle dove *Streptopelia turtur* (red listed)
- Wood pigeon
- Wren

4.54. On the breeding bird survey carried out on 18th June 2024, the following species were recorded within the Application Site:

- Blackbird
- Blue tit
- Carrion crow
- Chiffchaff
- Goldfinch
- Greenfinch
- Magpie
- Robin

- Wood pigeon
- Wren

4.55. On the breeding bird survey of 27th June 2024, the following species were recorded within the Application Site:

- Blackbird
- Blackcap
- Blue tit
- Chaffinch
- Chiffchaff
- Collared dove
- Garden warbler *Sylvia borin* (green listed)
- Goldfinch
- Great tit
- Green woodpecker
- House sparrow
- Jackdaw
- Long-tailed tit *Aegithalos caudatus* (green listed)
- Magpie
- Moorhen
- Pheasant *Phasianus colchicus* (not assessed)
- Robin
- Skylark *Alauda arvensis* (red listed)
- Song thrush
- Starling
- Swallow
- Wheatear *Oenanthe oenanthe* (amber listed)
- Wood pigeon
- Yellowhammer

4.56. With regards to skylark (a ground nesting bird), a single singing skylark was recorded on the survey of 27th June, along the south east boundary. Based on the surveys results, the Appeal Site is not of any significant value to nesting skylarks. With regards to yellowhammer, the recordings were individual singing

males along the south-east and south-west boundaries of the Appeal Site.

- 4.57. In summary, a small number of ground nesting birds (including skylark and yellowhammer) were recorded during the breeding bird surveys. Whilst the Application Site supports some bird interest (including red and amber listed species), particularly the grassland and scrub habitats, the proposed scheme includes significant green infrastructure and a range of ecologically valuable habitats including wildflower grassland, SuDS, and native scrub.
- 4.58. On the survey of 5th June 2024, one turtle dove was recorded on site on the eastern boundary, which subsequently moved to an adjacent hedge off site, where it spent the vast majority of the survey calling. It was not considered to be nesting on site.

Great crested newts

- 4.59. The majority of the site represents unsuitable terrestrial habitat for Great Crested Newts, owing to the commercial nature of the orchard business, intensive management of the majority of grassland, and regular applications of herbicides and pesticides.
- 4.60. There are 5 ponds within the Appeal Site. P1-4 were subjected to eDNA surveys in 2019, 2021, and 2023, of which the results were negative for great crested newts. An aquatic survey of P5 in 2021 and 2022 did not record any Great Crested Newts. An eDNA survey of P5 in 2023 did not record any Great Crested Newts. A full suite of updated aquatic surveys was carried out on P1-4 in 2024, which again returned negative results for Great Crested Newts.
- 4.61. There are a further 10 ponds within 250 metres of the Appeal Site (P6-P11, P16, P17, P25 and P26), although P16 and P17 are located on the other sides of roads, which are a significant dispersal barrier. Of the other ponds within 250m, in 2021, access was granted to survey P6 and P8-P11, and P8-P9 again in 2023.
- 4.62. Pond P9 is an offsite pond located approximately 180m northeast of the site and is a small garden pond. After returning a positive eDNA result for great crested newts, P9 was subjected to aquatic surveys in 2023 and recorded as having a small population of great crested newts with a maximum count of 9 females and 3 males. In 2021, P10 was recorded to have 3 positive replicates out of 12 through eDNA survey. This is a low positive and therefore does not alone conclusively confirm the presence of Great Crested Newts, however access for further surveys was denied. All other ponds within 250m either were found to not support populations of great crested newts, and/or they are spatially separated from the Site.

Reptiles

- 4.63. Surveys for reptiles were carried out between June and September 2021 along the taller grassland field margins. During these surveys, a peak count of 7 Grass Snakes, 7 Common Lizards, and 2 Slow Worms were recorded on any one survey.
- 4.64. Updated reptile surveys were carried out in April, May, June, and September 2024. Results were similar to the 2021 surveys, in that Grass Snake, Common Lizard, and Slow Worm all recorded. Slow worm numbers were higher in 2024 (peak count 20 adults) compared to the 2021 results.

- 4.65. The results of these surveys can be seen in table 1 within the Technical Note dated October 2024.
- 4.66. Although the Appeal Site supports 3 species of reptiles, given the significant provision of green infrastructure, no significant impacts on reptiles are anticipated. A comprehensive mitigation strategy can be produced as a suitably worded condition.

5. CONSIDERATION OF ECOLOGY REASON FOR REFUSAL

- 5.1. The ecology reason for refusal (5) specifically references badgers, breeding birds, turtle doves, great crested newts, and reptiles. Therefore, I will consider these species in the same order.
- 5.2. Prior to determination of the planning application, consultation responses were received from Kent County Council's Ecological Advice Service (KCC EAS) (dated 1st November 2023) and Kent Wildlife Trust (dated 31st October 2023).

Badgers

- 5.3. The Officers Delegated Report stated that KCC EAS required clarification on badger mitigation.
- 5.4. The proposed scheme will result in the loss of the onsite badger sett. The badger sett will be closed under the Badger Class Licence, which will be registered/licenced by Natural England.
- 5.5. The appellant has committed to the creation of an artificial sett, which will be located in the southern part of the Site. The sett will be of a high-quality design, at least 100m² in area, with at least six entrances.
- 5.6. The sett will be created to the following specification:
- At least six nesting chambers made from hardwood plywood, comprising two different sizes, 100cm x 100cm and 100cm x 60cm.
 - Tunnels will be constructed from 300mm diameter plastic drainage pipe.
 - The bottom of the pipes will be cut out to create earth floors.
 - The sett's internal architecture will include a range of undulations/levels to improve airflow/circulation.
 - Sand will be imported to make the sett more attractive to badgers.
 - Post and rail fencing will be installed around the sett
 - Thorny scrub will be planted around the sett.
- 5.7. The proposed scheme includes new orchard planting and creation of significant areas of hedgerows, which will provide food sources for badgers. Connectivity to offsite habitats will be maintained.
- 5.8. My professional opinion is that the proposed scheme will not generate significant impacts to badgers.

Turtle Doves/breeding birds

5.9. With regard to Turtle Dove, the KCC EAS consultation response stated:

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 and the latest Chartered Institute of Ecology and Environmental Management (CIEEM) good practice guide.

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 reexplored. 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);*
- *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”.

- 5.10. The KWT response stated, with regard to ‘Loss of Turtle Dove habitat’:

“Built development is proposed in close proximity to hedgerow along the eastern boundary where turtle dove have been recorded nesting and a large area of scrub, habitat often utilised by turtle dove, is to be removed from the access road to the west of the site. Small areas of mixed scrub are proposed throughout the site as part of the mitigation and enhancement measures however it is likely that the development will detrimentally impact on turtle dove populations not just within the site but within the wider area and so the provision of small areas of scrub are unlikely to be of benefit to turtle dove. It is recommended that a larger area of scrub is provided close to the southern boundary along Copper Lane to provide nesting habitat for other bird species and that additional off-site compensation is provided for turtle dove. It may be possible to secure off-site compensation for turtle dove by providing a contribution to KWT and Marden Wildlife Group’s 2024 turtle dove research programme and to off-site compensatory nesting habitat. A financial contribution would help deliver GPS trackers, a seasonal research person on-the-ground, and acoustic sound recorders to assist with surveying. This in turn will allow for a more targeted approach when putting in new feeding strips at other suitable sites in the local area, creating new breeding habitat for habitat that is lost due to development and creating or restoring ponds which turtle dove require for drinking water.”

- 5.11. The KWT response stated, with regard to ‘Cat predation on Turtle Doves’:

“It is noted that the submission proposes planting native scrub of prickly vegetation along the eastern boundary to help deter cats away and maintain current nesting opportunities. It is not anticipated that the proposed planting will provide the reassurances required to ensure that turtle doves are protected from predation by increased numbers of cats associated with residential development. This vegetation will take time to become established and its success will be reliant on effective long-term management with a risk of areas of scrub failing to establish. It is recommended that cat proof fencing is also installed to better mitigate against the impacts of predation on priority species.”

- 5.12. The applicant has re-visited the site layout and incorporated additional blocks of scrub (amounting to just over 0.2ha) in the south of the site close to Copper Lane to provide additional compensatory habitat for the loss of scrub in the north-west. The revised habitat creation was provided as an ‘Additional Enhancements Plan’ within a Technical Note⁴, which was submitted to the Council in April 2024, following determination of the planning application, and prior to the Appeal. An Outline Landscape and Ecological Management Plan (OLEMP) has been produced by Allen Scott, which provides outline habitat creation and management prescriptions. The updated OLEMP includes consideration of turtle dove and reptiles.

- 5.13. The additional habitat creation for Turtle Dove includes additional bolstering of hedgerow H5 along Copper Lane, which is currently tall and narrow and not

⁴ Ecology Solutions (2024). 8372: Land East of Albion Road & North of Copper Lane, Marden. Technical Note: Ecology Response. March 2024.

optimal habitat for Turtle Dove (which prefer denser/wider hedgerows). It is important to highlight that the proposed scheme includes restoration/enhancement of the on-site ponds, and creation of SuDS, which will provide sources of drinking water for Turtle Dove (and other wildlife).

- 5.14. In email correspondence from Nicholas Trower to Ecology Solutions, dated 15th May 2024, Mr Trower stated the following regarding the additional on-site habitat provision for Turtle Doves:

“The other measures outlined in the technical note and shown on the additional enhancement measures plan are welcome and encouraging to see. KWT and, I understand, those within the Marden Wildlife group are not opposed to the principle of the development and having had sight of the additional measures are somewhat reassured that adequate steps are being taken to address the impact of the development through onsite mitigation”.

- 5.15. The perceived lack of adequate mitigation for Turtle Doves was raised as one of the fundamental reasons for the ecology reason for refusal.
- 5.16. To address the concerns and support the planning appeal, additional scrub planting, and cat-proof fencing, have subsequently been incorporated into the scheme design, which have been accepted by Kent Wildlife Trust.
- 5.17. In addition, a full suite of breeding bird surveys was carried out within the Appeal Site, which only recorded 1 Turtle Dove, which was not observed to be nesting.
- 5.18. Whilst the Appeal Site evidently supports moderate numbers of breeding birds, including small numbers of skylark and yellowhammer, the Appeal Site is only of importance to birds at the local level, which is the lowest afforded under recognised methodology.
- 5.19. It is considered that the proposed scheme would not cause significant impacts to breeding birds, given the low numbers of notable species recorded, and provision of significant habitat creation/green infrastructure, and enhancement of retained ecologically valuable habitats, all of which will benefit birds.
- 5.20. In my professional opinion, given the level of mitigation, and considering the survey results, no significant impacts would occur on the local Turtle Dove population (or other breeding bird assemblages), as a result of the proposed scheme.

Great crested newts

- 5.21. KCC EAS stated the following with regard to ‘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. Following that, evidence of the full conservation payment can be conditioned if planning permission is granted.

- 5.22. Although the Site is within an 'amber' zone for great crested newts, none of the onsite ponds support great crested newts.
- 5.23. Only pond 9 (an offsite pond 180m northeast of the Site) has been confirmed to support a small population of great crested newts, and it is a considerable distance from the Site. In any case, the on-site ponds will be retained and enhanced.
- 5.24. With regards to terrestrial habitat, given the intensive mowing of the orchard grassland and application of pesticides, it is not considered that the on-site terrestrial habitats are exploited to any significant extent by great crested newts. The highest quality terrestrial habitats for great crested newts are the onsite hedgerows. Of the 1.29km of hedgerows, only c.0.2km will be lost to facilitate the development. In contrast, 1.33km of native hedgerow will be created.
- 5.25. Based on these factors, and the fact that the onsite ponds will be retained (and enhanced to make them more suitable for great crested newts), along with provision of high-quality terrestrial habitat, it is considered an offence is highly unlikely, provided that precautions are taken prior to construction, with additional measures carried out under licence if required.
- 5.26. It is considered that a licence could be obtained if required, but is not considered strictly necessary, based on the absence of great crested newts within onsite ponds, regular management of the majority of grassland, and very low numbers of great crested newts within small numbers of offsite ponds.
- 5.27. Given that only small number of newts are present in the local environment, and the onsite ponds are not used for breeding, in my professional opinion, non-licensed precautionary methods of working to avoid harm to amphibians, would be acceptable in this case.
- 5.28. Precautionary methods of working would include phased cutting of grassland and scrub habitats, that were scheduled for removal, during suitable weather conditions, under supervision by suitably qualified ecologists.
- 5.29. In addition to restoration/enhancement of existing ponds, new waterbodies will be created, which will be linked by green corridors of rough grassland and hedgerows, which will create terrestrial dispersal routes for amphibians between waterbodies, and to off-site habitats.
- 5.30. In my professional opinion, the habitat provision (particularly restoration of ponds to make them suitable for breeding, along with terrestrial habitat) is a betterment to the existing situation and would attract great crested newts to the Appeal Site, which would benefit the local metapopulation and make it more resilient to future threats.

Reptiles

5.31. With regard to 'Reptiles' KCC EAS stated:

"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. 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".

- 5.32. Updated reptile surveys have been carried out in 2024. The surveys have confirmed that reptiles are still present within the Appeal Site, with higher numbers of slow worms than previously recorded. Notwithstanding this, my professional opinion is that the provision of greenspace is sufficient to accommodate the reptile populations.
- 5.33. The reptiles would be relocated to the receptor areas within the south of the Site, which would include wildflower grassland, native scrub, ponds, and hedgerows.
- 5.34. A trapping and translocation exercise would comprise installation of reptile fencing, and deployment of reptile refugia, followed by a programme of trapping and relocation, by suitably qualified ecologists, between March and September during suitable weather conditions. As such, this would ensure injury/killing is avoided and would address the concerns raised by KCC. It would be reasonable for the Council to request final details of any reptile mitigation measures, within a Reptile Mitigation Strategy, as a suitably worded planning condition.
- 5.35. The revised OLEMP provides wording on habitat management for reptiles.
- 5.36. In my professional opinion, the proposed scheme design includes a sufficient quality and quantity of reptile habitat, and the proposed scheme would not generate any significant effects on reptiles.

6. SUMMARY AND CONCLUSIONS

- 6.1. In summary, the ecology reason for refusal (5) has been addressed by incorporating additional habitat for Turtle Dove into the scheme design, carrying out breeding bird surveys, updating great crested newt and reptile surveys, and providing additional information/clarification regarding mitigation for badgers, great crested newts, and reptiles.
- 6.2. In addition, significant efforts have been made to engage with Kent Wildlife Trust, who have accepted the on-site Turtle Dove mitigation.
- 6.3. In my professional opinion, the ecology reason for refusal should be removed.