

Ashland Road West, Sutton-in-Ashfield Appeal

Proof of Evidence on behalf of Ashfield District
Council for Ecology

By

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1. Qualifications

1. I am Andrew Baker and I am Director of the ecological consultancy Baker Consultants Limited. I hold the degree of Bachelor of Science with Honours in Botany from the University of Nottingham (1986). I have been a member of the Chartered Institute of Ecology and Environmental Management (CIEEM) since 1994.
2. I have been a practising ecologist for over 30 years working in public, private and voluntary sectors.
3. I am actively involved in the development of the ecological profession. I am a member of the United Kingdom Environmental Law Association (UKELA) and a former Convenor of its Nature Conservation Working Group. In 2015 I was made a Fellow of CIEEM in recognition of my contribution to nature conservation law. I am currently a standing member on CIEEM's disciplinary board and I am frequently called upon to hear cases that are brought against members of the profession, often chairing the hearings.
4. I am frequently called upon to give evidence to both local plan examinations and public inquiries into individual planning applications. I have also presented evidence to a Parliamentary Select Committee on the proposed ABLE UK port development on the Humber.
5. The evidence I have prepared and provided to this hearing is true and I confirm that the opinions I express here are my true and professional judgements based on scientific evidence and my professional experience.

2. Background

6. Baker Consultants Ltd were commissioned on behalf of Ashfield District Council (ADC) in June 2021 to review the ecological issues associated with this planning application.
7. Reason for refusal 2 is relevant to ecology, which states that the *“loss of greenfield and associated habitats would also result in significant and irreversible harmful impacts to biodiversity. In addition, the density of the development is considered to be too high and*

out of keeping with the surrounding area. Accordingly, the proposal would be contrary to Policies ST... and EV2. There would also be conflict with Part 15 of the National Planning Policy Framework: 'Conserving and enhancing the natural environment'. It is considered that these harms would significantly and demonstrably outweigh the benefits of the development."

8. The site consists of two fields enclosed by boundary features such as hawthorn-dominated hedgerows, ditches and wide sown grassland margins. The smaller field contains species-poor semi-improved grassland, whilst the larger field contains uncultivated arable habitat that is a mix of grasses, ruderal herbs and former crop plants. To the north of the site is Brierley Forest Park Local Nature Reserve (LNR) / Local Wildlife Site (LWS).
9. The land is not allocated for housing.
10. In order to assess biodiversity loss Defra has developed a Biodiversity Metric Calculator to provide empirical evidence of measurable net gain for biodiversity. Currently the NPPG states: "*The National Planning Policy Framework encourages net gains for biodiversity to be sought through planning policies and decisions. Biodiversity net gain delivers measurable improvements for biodiversity by creating or enhancing habitats in association with development. Biodiversity net gain can be achieved on-site, off-site or through a combination of on-site and off-site measures.*"¹. The Appellant has submitted evidence that makes use of the Defra Biodiversity Metric Calculator (Beta version 2.0). The 2.0 metric has now been superseded by metric version 3.0 and associated guidance.
11. Natural England has stated that the "*Biodiversity metric 3.0 supports and reinforces the application of the **mitigation hierarchy** which is an important principle of ecological good practice. Applying the mitigation hierarchy means aiming to retain habitats in situ and avoiding or minimising habitat damage so far as possible, before looking to enhance or recreate habitats. This sequential approach is encouraged by biodiversity metric 3.0 because it allows overall biodiversity gains to be achieved more easily through the avoidance of on-site habitat losses, rather than relying solely on the creation of new habitat or the enhancement of existing habitat. It works this way*

¹ <https://www.gov.uk/guidance/natural-environment>: Paragraph: 022 Reference ID: 8-022-20190721

because the metric applies multipliers that are based on the risks inherent in creating or restoring habitat, and which are not applicable when existing habitat is safeguarded.”

3. Planning and Policy Context

National Planning Policy Framework (2021)

12. The proposed development fails to meet the requirements of paragraphs 174a, 174d and 180a of the NPPF. This is because the application:

- has not applied the ecological mitigation hierarchy and there is no evidence to show that the applicant has considered ways in which they could avoid ecological damage by changes to the design of the proposal;
- the proposal does not demonstrate how the development will achieve biodiversity net gain, and
- the proposed development will have an adverse impact on Brierley Forest Park LNR/LWS.

Ashfield Local Plan Saved Policies

13. The proposed development is also contrary to Local Plan Policy EV6.

4. Scope of Evidence

14. In order to understand the issues underlying reason for refusal 2 I have reviewed:
- a. the FPCR Ecological Appraisal (EA), February 2020;
 - b. the Delta-Simons Environmental Consultants Independent Ecological Review (July 2020);
 - c. the FPCR response to the independent review (August 2020);
 - d. FPCR Biodiversity Metric Calculation (Defra Beta version 2.0);
 - e. the Appellant’s Statement of Case (April 2021), and
 - f. the Pegasus Group’s Illustrative Masterplan Reference P19-1014 007 Rev F (February 2021) – see Appendix 2.

15. This assessment has also been informed by a site visit.
16. The evidence demonstrates that the proposed development will not result in 'betterment' of biodiversity as claimed by the applicant.

5. Impacts on Appellant's Site

17. It is common ground that the proposed development will cause the loss of 23.69 habitat units and 2.94 boundary units as calculated using the Defra Biodiversity Metric 2.0. Such a significant loss should be replaced and include a net gain.
18. The appellant has not provided any significant on site mitigation and that which has been offered lacks any meaningful detail.
19. The applicant relies on offsite compensation, but no detail of how this will be achieved has been given and there is no evidence that on site losses will be appropriately compensated.
20. As well as habitat loss there is also risk of impacts on species which are protected by law including barn owl and other notable birds, badger, great crested newts and reptiles.

6. Impacts on Brierley Forest Park

21. The proposed development will have negative ecological impacts on the neighbouring Brierley Forest Park. These impacts will arise through increased access to Brierley Forest Park (e.g dog walking) provided by two proposed new access points. These impacts will be manifest through trampling of vegetation (a population of the uncommon broadleaved helleborine being of most concern), disturbance of wildlife, dog fouling, and increased risk of fire and arson. Other impacts include introduction of non-native species, impacts on trees close to the development, and fly tipping.
22. These impacts have not been fully assessed by the applicant and no mitigation is offered. Given the impacts described above the proposed development has not safeguarded local wildlife-rich habitats and a locally designated site of importance for biodiversity.

7. Impacts on Fauna

23. The ecological evidence also shows that the proposed development site may also support a number of important and/or legally protected species including reptiles, great crested newts, badgers and birds such as barn owl, yellowhammer, bullfinch and kestrel. A comprehensive range of surveys have not been completed and the full faunal interest of the site has not been established.

8. Conclusions

24. The lack of application of the Mitigation Hierarchy; lack of net gain for biodiversity; the potential harm to the Brierley Forest Park LWS, and the lack of assessment with regards to the impacts on legally protected fauna means that the proposed application is not compliant with national or local plan policies designed to protect biodiversity. Based on the evidence it is my professional judgement that reason for refusal 2 is entirely justified.



baker*consultants*