

Mr Matthew Worsley  
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Date: 02 March 2023

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our ref  
E EBC/220849

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By email: [Chloe.Timm@rother.gov.uk](mailto:Chloe.Timm@rother.gov.uk)

Dear Mr Worsley

**ERECTION OF CLASS E FOODSTORE ALONGSIDE ACCESS, PARKING, LANDSCAPING, AND ASSOCIATED WORKS**

**SITE 7A (ALDI STORE), PACIFIC DRIVE, EASTBOURNE, EAST SUSSEX**

**ECOLOGICAL CONSULTATION**

<b>Recommend for refusal due to insufficient information</b>	Insufficient information has been provided to assess the potential impacts on biodiversity and to inform appropriate mitigation, compensation and enhancement. Further advice will be provided upon receipt of additional information.	<b>YES</b>
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With reference to your recent consultation, I have now had the opportunity to consider the application and offer the following comments.

This advice is provided to the Local Planning Authority by the County's Ecology Officer in line with the Service Level Agreement and is not a statutory consultation response.

**Background**

1. It is understood that outline planning (Ref:131002) for a much wider development at Sovereign Harbour was approved in 2014 and included this application - as part of 'Site 7'. Site 7 is divided into three sections with Site 7a relating to this application. As part of Site 7a, two other applications have been submitted; by McCarthy Stone for the development of retirement apartments (Ref:220850); and by LNT Care Developments for a care home (Ref:220852). Housing to the east of Sites 7a falls under Site 7b that was granted full planning in Feb 2022 (Ref:200876).

2. To ensure the three proposed developments under Site 7a present a consistent approach, an overarching landscape masterplan has been prepared by Vector Design Concepts (Landscape Plan, 2022 Drwg. Nos: 17800-VL-L01-RevC/-L04-RevC/-L05-RevC/-L06). This is supported with a *Planting Palette* document (Vector Design Concepts, 14/10/2022, Drwg. No:17800). It is proposed to create an 'ecology area' as part of Public Open Space to the north of the proposed Care Home. The ecology area is included as part of this application, but it is understood it will provide mitigation, compensation and enhancement measures for the wider Site 7a.
3. An ecological survey of Site 7a was undertaken in March 2022 by Ecology Solutions and whilst separate reports have been submitted for each application, they are essentially the same report, that assesses all three applications together i.e. Site 7a. This combined approach to ecology is very much supported as it allows for impacts and associated mitigation, compensation and enhancement measures to be more effectively addressed including Biodiversity Net Gain (BNG). As such, the comments in this response also relate to application 220850 and 220852. Where comments relate specifically to this application they are marked with (220849) for clarity.

### Policy Context

4. Section 40 of the Natural Environment and Rural Communities (NERC) Act 2006, as amended by the Environment Act 2021, states that:
 

*"A public authority...must from time to time consider what action the authority can properly take, consistent with the proper exercise of its functions, to further the conservation of biodiversity."*

*"After that consideration, the authority must...a) determine such policies and specific objectives as it considers appropriate for taking action to further the general biodiversity objective, and b) take such action as it considers appropriate, in the light of those policies and objectives, to further that objective."*

The Duty applies to all public authorities in England and Wales, including all local authorities. Conserving biodiversity includes restoring and enhancing species and populations and habitats, as well as protecting them.
5. The National Planning Policy Framework (NPPF, 2021) states that *"the planning system should contribute to and enhance the natural and local environment by... protecting and enhancing ... sites of biodiversity or geological value or soils..."*, *"...recognising the wider benefits from natural capital and ecosystem services..."* and *"minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures ..."* (paragraph 174).
6. The NPPF sets out principles that local planning authorities should seek to apply when determining planning applications to protect and enhance biodiversity; these include refusing planning permission if significant harm to biodiversity from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for; refusing development that would result in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees), unless there are wholly exceptional reasons and a suitable compensation strategy exists; and encouraging opportunities to incorporate biodiversity improvements in and around developments, especially where this can secure measurable net gains for biodiversity (paragraph 180).
7. Policy D9 of Eastbourne Core Strategy Local Plan (2013) seeks to promote effective conservation and enhancement of wildlife by; producing Biodiversity Actions Plans (BAPs) to identify measures to preserve and enhance habitats and species of importance; safeguard protected nature conservation sites from inappropriate development; ensure development enhances biodiversity by including the needs of wildlife in design and that unavoidable impacts are appropriately mitigated; and all development >500m<sup>2</sup> or >5 dwellings produce a biodiversity survey demonstrating how impacts will be addressed through enhancement and mitigation measures.
8. Relevant saved policies of Eastbourne Borough Plan 2011 – 2011 (2013) include Policy NE19: Local Nature Reserves, Policy NE20: Sites of Nature Conservation Importance, Policy NE22: Wildlife Habitats and Policy NE23: Nature Conservation of Other Sites. Permission for developments which

would have a significant adverse effect, directly or indirectly, on the nature conservation interest of Local Nature Reserves (Policy 19), a Site of Nature Conservation Importance [syn. Local Wildlife Site] (Policy 20) or a habitat and/or species of flora and fauna of demonstrable nature conservation importance (Policy 23) will be refused. Policy 22 will not permit development to destroy or cause unacceptable adverse effects on habitats which are of particular nature conservation value in Eastbourne and cannot be satisfactorily moved or replaced, including flower-rich grasslands, ancient species-rich hedgerows and ancient coastal shingle ridges.

9. Eastbourne Borough Council's Biodiversity Net Gain (BNG) Technical Advice Note (2012) requires that prior to BNG becoming mandated, that development proposals incorporate BNG principles and provide evidence with the planning application of how BNG will be achieved.

## **Potential Impacts on Biodiversity**

### Designated Sites

10. The site is not designated for its nature conservation interest. South Downs National Park (SDNP) lies c. 5.4km west, Pevensey Levels Site of Special Scientific Interest (SSSI), Special Area of Conservation (SAC) and Ramsar site lies c. 2.15km north, Pevensey Levels National Nature Reserve lies c. 2.9km north and Beachy Head Marine Conservation Zone (MCZ) lies c. 535m south. Under Regulation 63 of The Conservation of Habitats and Species Regulations 2017, as amended (the Habitats Regulations), it is the responsibility of Rother District Council as the competent authority to assess whether the proposed development could have likely significant effects on Pevensey Levels SAC and Ramsar site. Given the distance of all of these designated sites, the type of proposed development, and the offshore/marine nature of Beachy Head MCZ, development is considered unlikely to have any significant effect on the nature conservation interest of the SDNP, SSSI, SAC, Ramsar site or MCZ. As such, an appropriate assessment under the Habitats Regulations is not required.
11. Langley Levels Local Wildlife Site (LWS) lies c. 22m north, on the opposite side of the A259 (Pevensey Bay Road) to the site. The LWS is designated for its field system of lowland coastal grazing marsh and network of drainage channels that are rich in higher plants. Given the proximity of this LWS, indirect impacts such as surface water, ground water and dust pollution could occur. The recommendation in the Ecological Assessment (Ecology Solutions, October 2022, Ref:10802.EcoAs.vf2) to mitigate these risks during construction, by implementing a Construction Environmental Management Plan (CEMP) is supported and should be conditioned. The degree to which there is a hydrological connection to the LWS is not discussed, but a ditch is present in the LWS running adjacent to the A259, flowing west into Langney Sewer. Langney Sewer itself is c. 35m from the site. It is understood that should the proposal for on-site infiltration of surface water run-off not be viable, then the alternative proposal would be to connect via an outfall into the adjacent LWS ditch. If construction of a new outfall is required then the ecological impact of this work would need to be included in the Ecological Assessment. The Environment Agency has commented on the potential risk of ground contamination being mobilised by the proposed SuDS system and affecting off-site watercourses. In summary, given the risks associated with the proposed SuDS scheme, the potential operational effect on Langley Levels LWS from changes to ground and surface water and constructing an outfall (if required) should be assessed.
12. Sovereign Harbour Beach LWS lies c.545m south east, Eastbourne Park LWS 1.1km south west and Langley Crematorium and Cemetery lies 1.14km north west. Given the distance of these LWSs and nature of the proposed development any impact on these LWSs is considered unlikely.

### Habitats

13. The site comprises bare ground/substrates, ephemeral/short perennial vegetation, tussock grassland, remnant dune grassland, earth ridges, dense scrub and trees and scattered young trees. The Arboricultural Assessment and Method Statement (Barrell Tree Consultancy, August 2022, Ref:22038-AA-PB) for this application (220849) recorded nine individual trees and two tree groups present on site, all of which are to be removed. Less than half of the dense scrub and young scattered trees forming a band around the north boundary will be retained as a wildlife corridor. Landscape plans indicate that all remaining habitats will be lost. The key to landscape plans

includes 'existing grassland to be retained' but no areas appear to be marked on current (Revision C) versions of the plans. Clarification on the location of any retained grassland should be provided.

14. Natural England's draft mapping layer for Open Mosaic Habitat (OMH) shows Site 7a forming part of a larger area of OMH, along the A259. OMH can include a diverse range of habitats that in turn can support rich invertebrate assemblages, which is the primary reason OMH was added as a Habitat of Principal Importance (HPI) under Section 41 of the NERC Act. There are multiple records of priority and notable invertebrates from the site and immediate surrounds, several of which are typical of OMH and nutrient poor coastal habitats. These records highlight the importance of the area for invertebrates, albeit historically, and should inform the landscape design for habitat retention, restoration and enhancement.
15. An Invertebrate Scoping Assessment (Arachne Ecology, May 2022) was undertaken in April 2022 and comprised a rapid assessment of habitat quality. Overall, the Ecological Assessment considered the heterogeneity of the OMH to be limited and in conjunction with the results of the invertebrate scoping assessment thought it to be in poor condition. No further invertebrate surveys were considered necessary, but as part of mitigation, the retention and incorporation into landscape proposals of the narrow strip of remnant dune grassland was recommended. Landscape plans show site access points and ornamental planting in its current location. As it occupies proposed frontage along Pacific Drive, areas will be lost with any retained areas divided into smaller parcels and set within a formally managed landscape, significantly decreasing its ecological value and viability. As such, it is recommended that to secure this important habitat long-term, it is better translocated and used to create OMH habitat in other parts of the site.
16. There are historic records for notable plant species on-site including a 2018 record for yellow vetch (nationally scarce). Other noteworthy plants, typical of dry/sandy grasslands and shingle habitats that have been recorded for 100m grid squares in which the site falls, include strawberry clover, suffocated clover, carline thistle, yellow horned poppy and sickle medick (nationally scarce/county rare) etc. As expected for OMH, a range of opportunistic plant species were recorded on-site. With the exception of green figwort, no notable plants were recorded. However, the habitat survey was undertaken in March which is a sub-optimal time for plant recording and therefore species could have been missed. No surveyor information was provided in the Ecological Assessment, which is not good practice for ecological report writing, and therefore it was not possible to determine the level of botanical competence. Green figwort (*Schrophularia umbrosa*) is typical of damp shady places, is rare in the county and established in only one location in East Sussex, at Wannock Glen in Willingdon, Eastbourne. It is recommended that the presence of green figwort be clarified and if confirmed as present, botanical advice sought and any further survey and/or mitigation undertaken.

#### Invasive Species

17. It is illegal to plant or otherwise cause the spread of any plants listed on Schedule 9 of the Wildlife and Countryside Act, 1981 (as amended). The PEA recorded buddleia as present onsite and whilst it is not on Schedule 9, it was considered as an invasive non-native species that should be appropriately removed and disposed of. This is supported and should be added to the CEMP. There is a historic (2008) on-site record for Japanese Rose and adjacent records for spreading cotoneaster, which are both Schedule 9 plants. Given the history of the site as OMH and its continued use/disturbance for material storage it is recommended that a pre-construction check for any invasive plant species is undertaken prior to works, with any Schedule 9 plants removed in accordance with best practice, and that this requirement be included in the CEMP.

#### Badgers

18. Badgers are protected under the Protection of Badgers Act 1992. Under the Act, it is an offence *inter alia* to: wilfully kill, injure or take a badger, or attempt to do so; cruelly ill-treat a badger; or intentionally or recklessly interfere with a badger sett, by a) damaging a sett or any part of one, b) destroying a sett, c) obstructing access to or any entrance to a sett, d) causing a dog to enter a sett, or e) disturbing a badger when it is occupying its sett. Activities that can affect badgers include noise, additional lighting or vibration. Badger sett tunnels can extend for 20 m or more from the entrance holes.

19. No signs of badger were observed during the survey, but as the site offers suitable sett building, foraging and commuting habitat, the recommendation in the Ecological Assessment for a pre-commencement check of the site for badgers alongside a series of best practice construction measures is supported and should be detailed in the CEMP.

#### Bats

20. All species of bats are fully protected under the Wildlife and Countryside Act 1981, as amended, and the Conservation of Habitats and Species Regulations 2017, as amended, making them European Protected Species. The site provides foraging and commuting habitat most notably along the north west / north boundary. No buildings/structures are present on site and trees did not support potential roosting features. It is acknowledged that artificial lighting is already present along the north and south boundaries of the site. The recommendations in the Ecology Assessment that lighting be sensitively designed following best practice guidelines, to avoid any increased levels of illumination, particularly to the north boundary, are supported. The Design and Access Statement (The Harris Partnership, October 2022, Ref: 17800-DA01-A) for this application (220849) states that the proposed public path through the ecology area will not be lit. It is recommended that a sensitive lighting strategy is produced, required by condition, and that as part of this no lighting in the ecology area occurs and any internal lighting of the northern boundary is minimised to levels that allow for its use as a wildlife corridor for bats and other mobile animal species.

#### Great Crested Newts

21. The great crested newt (GCN) is fully protected under Schedule 5 of the Wildlife and Countryside Act 1981, as amended, and Schedule 2 of The Conservation of Habitats and Species Regulations 2017, as amended, making it a European Protected Species. The site lies within the green zone of the impact risk maps for the district licence scheme, indicating moderate habitat suitability and that GCN may be present. There are no waterbodies present on site and the only pond within a 500m radius is c. 380m north east at Bay View Golf Course. Sovereign Harbour lies c. 130m south, but is considered unsuitable, due mainly to its saline nature. Despite the site being separated from the golf course pond by a road and housing development, this was not considered a significant barrier to dispersal and the Ecology Assessment concluded that there remains a low risk that GCN could disperse onto the site. The recommendation in the Ecology Assessment to undertake works under a non-licensed method statement are supported, and GCN mitigation should be detailed in a Biodiversity Method Statement (BMS), required by condition.
22. It is worth noting that the aforementioned ditch in Langney Levels LWS is c. 25m north and forms part of a wider network of waterbodies. Ditches are generally considered sub-optimal habitat for GCN, but in the absence of any information on this ditch being presented in the Ecology Assessment, including any connection it may have to the site, the potential presence of GCN cannot be discounted. However, the precautionary approach proposed for works is considered sufficient to safeguard against this risk, should GCN be present. If GCN are encountered during development, work should cease immediately and advice should be sought on how to proceed from a Suitably Qualified Ecologist (SQE).

#### Reptiles

23. Slow worms, grass snakes, common lizards and adders are protected against intentional killing or injuring under Schedule 5 of the Wildlife and Countryside Act 1981, as amended. Reptile surveys were undertaken May to June 2022 and recorded a 'low' population of common lizard and a 'medium' population of slow worm, including juveniles of both species. These surveys were undertaken in a relatively compressed period between 03.05.2022 and 06.06.2022 which does not follow best practice and may therefore underestimate the population size. Additionally, it is not clear what guidelines were followed in determining the estimated population class sizes as this was not detailed in the Ecology Assessment and no bibliography is included. Following either Froglife (1999) guidance or withdrawn Natural England TIN102 (2011) guidance, the peak count of 26 common lizards and 50 slow worms is considered to be an 'exceptional/large' population for both species and mitigation should be designed accordingly.

24. It is understood that translocation to an off-site receptor site will be undertaken. No further detail is provided on this receptor site other than to confirm that best practice guidelines will be followed and that it will support suitable habitat/conditions and have the required carrying capacity. The carrying capacity must be for the revised estimated population class sizes. Best practice guidance on the selection of receptor sites (HGBI, 1998) requires them to be local to the donor site; not currently supporting a population of the species to be translocated; not subject to planning or other future threats; be subject to a written, agreed and funded pre- and post-translocation management agreement; be subject to a written, agreed and funded pre- and post-translocation monitoring programme. In this case, a Reptile Mitigation Strategy, including evidence that the HGBI requirements are met, should be required by condition; this will need to be informed by surveys of the receptor site. Subject to confirmation that the proposed receptor site is suitable, or if not, that an alternative site is identified and secured, it is recommended that a Landscape and Ecological Management Plan (LEMP) is required for the reptile receptor site so that details of long-term management, monitoring and funding mechanisms can be secured.

#### Breeding Birds

25. Under Section 1 of the Wildlife and Countryside Act 1981, as amended, wild birds are protected from being killed, injured or captured, while their nests and eggs are protected from being damaged, destroyed or taken. The site provides opportunities for nesting species in both scrub/trees and at ground level in the OMH. To avoid disturbance to nesting birds, any removal of scrub/trees and grassland/OMH that could provide nesting habitat should be carried out outside the breeding season (generally March to August). If this is not reasonably practicable within the timescales, a nesting bird check should be carried out prior to any demolition/clearance works by an appropriately trained, qualified and experienced ecologist, and if any nesting birds are found, advice should be sought on appropriate mitigation.

#### Hedgehog

26. The hedgehog is a Species of Principal Importance (SPI) under Section 41 of the NERC Act, with populations having suffered significant declines in recent years. The site is likely to provide some foraging and hibernating habitat. Recommendations in the Ecology Assessment to clear vegetation outside of the winter hibernation period, to check potential hibernacula or dense vegetation prior to works and to implement good construction practice (as per badgers) is supported. Hedgehog mitigation details should be included in the BMS /CEMP. Gaps should be provided in the proposed close board fencing to ensure permeability for hedgehogs throughout the site.

#### Other species

27. The site is unlikely to support any other protected species. If protected species are encountered during development, work should cease immediately and advice should be sought on how to proceed from a SQE.

#### **Mitigation Measures and Biodiversity Net Gain**

28. In addition to the mitigation measures above, the site offers opportunities which will help the Council address its duties and responsibilities to provide measurable BNG under national and local planning policy. All compensatory habitat and enhancement measures should be detailed in an Ecological Design Strategy (EDS) secured by condition. The long-term management of retained and newly created habitats should be detailed in the LEMP and secured by condition. Measures proposed include:
- c. 70 trees comprising 16 species, seven being native or of recognised wildlife value
  - Native species rich hedgerows comprising seven species
  - Native scrub planting comprising eleven species
  - Formal single species native hedgerows
  - Formal single species ornamental hedges
  - Ornamental planting comprising 26 species of shrubs, grasses, herbaceous perennials and bulbs, 22 being native or of recognised wildlife value
  - 3388m<sup>2</sup> wildflower meadow areas
  - 2766m<sup>2</sup> wildflower rich amenity lawn

- 172m<sup>2</sup> scrape
  - 65m<sup>2</sup> hibernacula
29. The DAS states that log piles from site-won material will be placed near to retained scrub, which is supported, but not carried forward into the landscape design. It is recommended that at least five log piles are provided. All log piles should be constructed from hardwood with a minimum length of 1m and diameter of 150mm, ideally sourced from on-site arboricultural work.
  30. The Ecological Assessment recommends bird boxes be installed on building and trees/poles. Integrated nesting bricks (as opposed to externally mounted boxes) are preferred for reasons of security, longevity, reduced maintenance, reduced predation, thermal stability and aesthetic integration with the building design. A specification for the bird boxes should be provided as part of the EDS and include information on target species and box number, type, location, installation and maintenance. Provision for swift as well as other species should be considered. Swift bricks are a cost-effective approach for biodiversity as they are considered a 'universal' fix for small cavity-nesting bird species as they will also be used by house sparrows, starlings, great tits, blue tits and occasionally house martins and nuthatches.
  31. Native species rich hedgerows proposed for this application (220849) include short sections, with five of these being between 5m and 15m long. To maximise the function of hedgerows as wildlife corridors it is recommended that they be provided as continuous habitat, particular in the ecology area and where they border the retained scrub along the north boundary. Given that there are no hedgerows present on site it would be acceptable to include any proposed hedgerows as an appropriate scrub category in the proposed Defra Metric (see below). This will allow for a more accurate assessment of scrub loss/compensation.
  32. The Ecological Assessment has mapped c. 1.25ha of OMH with the total area of Site 7a being c. 2.2ha. This does however exclude the area of bare ground/substrate at the site access, earth ridge to the east and area of remnant dune grassland. As these three habitats form an intrinsic part of the mosaic present on site, it is recommended they be included as part of OMH. Following *Priority Habitat Descriptions* for OMH (Maddock (ed.), 2010), any continuous blocks of closed plant community <0.25ha in size, should be considered as part of the OMH. It is recommended that the inclusion of any blocks of scrub, e.g. the block west of the site access, be reviewed and where applicable be included as part of OMH, and that the final area of OMH is quantified.
  33. It is acknowledged that landscape proposals are seeking to compensate for the loss of OMH by providing a range of newly created habitats and that the scrapes will be periodically re-worked so that open sandy areas of value to plants and insects are maintained. However, the 237m<sup>2</sup> of scrapes and hibernacula will be the only 'open' habitats provided as compensation for the loss of OMH. Biodiverse green roofs designed for invertebrates (see [Buglife's Best Practice Guide](#)) are strongly advocated as a way to help deliver OMH.
  34. The wildflower meadow mix has been selected for dry/sandy soils and is to be sown into low fertility subsoil/topsoil. This is very much supported as it is recommended that any native species-rich grassland or habitats intended to replicate OMH are created using low fertility substrates/soils, and ideally using those that are already present at site. As discussed above it is recommended that the remnant dune grassland is translocated, including both the substrate and plant propagules.
  35. Eastbourne Borough Council's BNG Technical Advice Note (2012) requires that as part of the planning application all development provides evidence of how BNG will be achieved. It is currently understood that all of the OMH present on-site and more than half of the dense scrub/scattered trees along the north boundary will be lost. It is recommended that the current version of the Defra Metric be completed for Site 7a and utilising the landscape masterplan that covers all three applications i.e. 220849, 220850 and 220852. OMH is a habitat of 'high distinctiveness' in the Defra Metric i.e. it has high biodiversity value, thereby requiring 'like for like' compensation if lost. Trading down in distinctiveness must be avoided i.e. OMH cannot be replaced with large areas of less biodiverse habitats. It is however acknowledged that the condition of the existing OMH is 'poor' and therefore there is the opportunity to enhance any retained areas of OMH or provide new, higher quality OMH in order to deliver the required BNG.

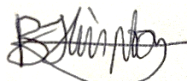
## Summary

In summary, further information on the following is required prior to determination to ensure that appropriate mitigation, compensation and enhancement can be delivered:

- potential ground and surface water impacts to Langley Levels LWS
- impacts of constructing an outfall in Langney Levels LWS (if required)
- status of green figwort and any further mitigation required
- areas of existing grassland/OMH to be retained and/or translocated
- component habitats included under OMH and total area of OMH
- completed Defra Metric to demonstrate BNG

Further advice, including details of recommended conditions, will be provided upon receipt of additional information.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ben Kimpton', written over a faint horizontal line.

Ben Kimpton MCIEEM

Ecology Officer, East Sussex County Council