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Date: 14 February 2024

please contact	our ref	your ref
Heather Twizell Environment Team Email: heather.twizell@eastsussex.gov.uk	E EBC/230800	EB230800

Dear Ms Timm

CONSTRUCTION AND OPERATION OF A SOLAR PHOTOVOLTAIC FARM WITH BATTERY ENERGY STORAGE AND ASSOCIATED INFRASTRUCTURE INCLUDING TRANSFORMERS, INVERTERS, DNO SUBSTATION, CUSTOMER SWITCHGEAR, SECURITY CAMERAS, FENCING, ACCESS TRACKS, LANDSCAPING, AND SAFEGUARDING OF LAND FOR POTENTIAL PEDESTRIAN/CYCLE LINK.

LAND SOUTH OF CROSS LEVELS WAY, EASTBOURNE, EAST SUSSEX

ECOLOGICAL CONSULTATION

Recommend for refusal due to insufficient information	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.	**YES**

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.

Policy Context

1. 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.

2. The National Planning Policy Framework (NPPF, December 2023) 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 180).

3. 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 186).

4. 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^2 or >5 dwellings produce a biodiversity survey demonstrating how impacts will be addressed through enhancement and mitigation measures.

5. Relevant saved policies of Eastbourne Borough Plan 2011 – 2021 (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 and ancient species-rich hedgerows.

6. Eastbourne Borough Council's Biodiversity Net Gain (BNG) Technical Advice Note (2021) 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. The council's expectation for major schemes is that a minimum 10% BNG is delivered.

7. Policy D11 of Eastbourne Core Strategy Local Plan (2013) relates directly to Eastbourne Park (which the application site lies wholly within). The purpose of the policy is "*to conserve and enhance the existing environmental and ecological characteristics of Eastbourne Park for future generations, whilst at the same time sensitively developing the town's most important under-utilised resource…*" In relation to renewable energy the policy states "*with the exception of wind-turbines, renewable energy generation will be encouraged, taking care to ensure that new installations do not cause obstructions to watercourses or have an unacceptable effect on the local fauna*" and "*Applications for alternative sources of renewable energy such as Biomass and Solar would be considered subject to outcomes of detailed Landscape Impact and Biodiversity Impact Assessments and a woodland management plan*." Eastbourne Park is also covered by a Supplementary Planning Document (SPD) adopted in 2013.

Potential Impacts on Biodiversity

Designated Sites

Statutory Sites

8. The site is not subject to any statutory nature conservation designations and there are no statutory sites within a 2km radius. Beachy Head East Marine Conservation Zone (MCZ) lies c. 1.6km south, Willingdon Down Site of Special Scientific Interest (SSSI) lies c. 2.1km northwest, Seaford to Beachy Head SSSI lies c. 2.5km south and Pevensey Levels SSSI, Special Area of Conservation (SAC) and Ramsar site lies c. 4.6km northeast. In addition, the South Downs National Park (SDNP) lies c. 1.8km west.

9. The Shadow Habitat Regulations Assessment (sHRA, Tyler Grange, 12/12/23, ref: 15432_R03_sHRA_Suncoast Solar Farm) assesses the potential impact of the scheme on Pevensey Levels SAC and Ramsar site. Given the distance between the application site and Pevensey Levels all direct impacts have been scoped out at screening stage, as have indirect impacts via changes to water quantity and loss of functionally-linked land. Impact pathways which have been scoped in are changes to water quality (associated with surface water runoff during both construction and operation) and potential spread of invasive species (although from the associated Ecological Impact Assessment none have been confirmed on site). These screening decisions are supported.

10. Construction effects from this type of development are likely to be less impactful than other types of development schemes given the lack of earth movement (beyond creation of a limited number of interception swales) and the small amount of new hardstanding proposed. The solar array panel supports are to be securely piled into the ground. Onsite and adjacent watercourses are to be retained and buffered, although it is not clear at this point if any new access across ditches will be required; clarification should be provided. Proposed mitigation measures to address potential water pollution and spread of invasive non-native species (INNS) during the construction phase are summarised in paragraph 6.20 of the sHRA:

    - *Minimising dust generation through dust suppression techniques (i.e. regular irrigation of site), using dust suppressors on machinery, providing wheel wash facilities);*
    - *Following appropriate pollution prevention measures;*
    - *Adequate spill kit provision;*
    - *Use of hessian mesh on heras fencing around the site and ditches to capture excess dust; and*
    - *Appropriately buffering all watercourses or adjacent to site (circa 8m).*
    - *Pre-works check for any non-native invasive species.*

11. Paragraph 6.20 goes on to state that the draft Construction Environmental Management Plan - Biodiversity (CEMP, Tyler Grange, 21/11/23, ref. 15432_R02_CEMP_27092023) included as Appendix 3 of the sHRA provides more detail. However, as this document makes no direct reference to the Pevensey Levels sites it is difficult to be clear exactly which measures are being relied on to conclude no adverse effect on site integrity (although it is assumed that it is the measures relating to ditches). Neither the summary measures listed in paragraph 6.20 nor those listed for ditches in Table 4.1 of the draft CEMP appear sufficiently detailed to support such a conclusion at this stage. For example, measures to collect potential run-off are left vague (double-stacked straw bales or bunds), there is no confirmation that vehicle refuelling or material storage areas will be impermeably surfaced and or bunded, diesel tanks will be double-skinned, vehicle washing procedures will take place etc.

12. Given the presence of onsite and adjacent waterbodies that are designated for their nature conservation importance (see below) and that have hydrological connection to Pevensey Levels, it is recommended that a greater level of detail is provided on; (i) works being undertaken in and adjacent to watercourses, (ii) potential indirect hydrological impacts to watercourses during construction, and (iii) pollution prevention measures to mitigate potential impacts. Following the *People Over Wind ruling*, measures intended to avoid or reduce likely harmful effects cannot be taken into account when determining whether or not a plan or project is likely to have a significant effect on a site. As such, the sHRA should be updated to include these details at Stage 2 of the HRA process i.e. Appropriate Assessment. The applicant's ecologist should work more closely with the Design Team to fully understand those aspects of the scheme that could result in impacts to watercourses.

13. The operational phase of the development presents a lower water pollution risk than the construction phase as it will produce no foul water, require extremely limited vehicle movements and the intended move to a more conservation-focused grazing regime is likely to result in reduced stocking rates. Paragraph 6.18 of the sHRA indicates that operational phase impacts are primarily considered to result from the increase in impermeable areas on site (c. 445m^2) although we consider that while this could result in very minor changes to site hydrology, overall it will not necessarily result in reduced water quality. Mitigation measures proposed are summarised in sHRA paragraph 6.21:

    - *Creation of SUDs in the form of interception swales and retention of grassland under solar panels which will be raised above ground;*
    - *Changes in grassland management to include annual cutting/low-intensity grazing regime*
    - *Habitat creation: native species rich hedgerow planting; and*
    - *Rotational / sensitive management of ditches on site.*
    - *Any plant or organic material brought to site will need to follow best practice guidelines to ensure that no non-native invasive species are transported to site.*

14. It is our view that most, if not all, these measures could be considered integral to the proposals and have not been included specifically to avoid adverse impacts on the Pevensey Levels sites. Any habitat and/or vegetated SuDS that *is* required to mitigate for impacts on protected sites can only contribute up to the point of no-net-loss and cannot count towards 0-10% BNG, i.e. BNG must be 'additional' to any protected sites mitigation. The sHRA should list all protected sites mitigation and following on from this, the BNG Metric should clearly demonstrate how any additionality has been dealt with.

15. The proposed development falls within the Impact Risk Zone (IRZ) for the Pevensey Levels designated sites (the SSSI as well as the SAC and Ramsar site). Relevant triggers for likely impacts in this zone, potentially requiring consultation with Natural England (NE) are: (1) Solar schemes with footprint >0.5ha. Following the update of the sHRA we would recommend re-consultation with NE on the potential impacts to the Pevensey Levels SSSI and SAC/Ramsar site. Under Regulation 63 of The Conservation of Habitats and Species Regulations 2017, as amended (the Habitats Regulations), it is the responsibility of Eastbourne Borough Council as the competent authority to assess whether the proposed development could have likely significant effects on Pevensey Levels SAC and Ramsar site.

16. Given their distance, 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 remaining statutory designated sites initially listed.

Non-Statutory Sites

17. The Ecological Impact Assessment (EcIA, Tyler Grange, 11/11/23, TG Report No. 15432_R01_Ecological Impact, Assessment_November2023_V2.0) is clear that the red-line boundary falls wholly within the Eastbourne Park Wetland Local Wildlife Site (LWS). This site is particularly important for its grazing marsh and ditch habitats and supports some notable species of flora and fauna, particularly reptiles and birds. The EcIA doesn't explicitly assess the importance of this site but it is our opinion that Sussex LWSs are of at least 'District' importance. In accordance with local planning policy, any impacts to Eastbourne Park Wetland LWS should be avoided. Where this is not possible the impacts should be minimised with any residual impact compensated for. In particular see our comments relating to coastal and floodplain grazing marsh (CFGM) habitat in the next section.

18. The next nearest non-statutory designated site is Crumbles and Horsey Sewers LWS which lies c. 100m east and is hydrologically connected to the application site.

19. Table 4.1 of the draft CEMP provides pollution prevention measures to mitigate potential impacts on Eastbourne Park Wetland and Crumbles and Horsey Sewers LWS, but as requested under statutory sites (see above), a greater level of detail on this mitigation should be provided.

20. The EcIA lists a further eight non-statutory sites within 2km of the application site but given a combination of the distance, reasons for designation and the nature of the proposed development, any significant impacts to these are considered unlikely.

Habitats

21. An initial 'extended' Phase I survey was undertaken on the 23 March 2023, broadly following JNCC (2010) methodology. This provided an inventory of the broad habitat types present and was followed up by a detailed botanical survey of the grassland areas in June 2023 by a suitably experienced botanist. The ditches were also assessed as part of this later survey although this did not include a detailed assessment of submerged species. The site comprises CFGM although this is categorised as either modified grassland (F3) or other neutral grassland (F1, F2, F4), ditches (D1-D15), small areas of mixed scrub and scattered trees. No buildings/structures are present onsite.

Priority Habitat

22. All the fields within the red-line boundary are mapped on MAGIC and the Priority Habitat Inventory (England) as CFGM which is a Habitat of Principal Importance (HPI) under Section 41 of the NERC Act 2006. It is acknowledged that CFGM may include grassland habitats of low or medium distinctiveness, but clarification should be provided as to why all fields were inputted into the Metric as 'modified grassland' or 'other neutral grassland' and not CFGM, which is a habitat of high distinctiveness and includes associated ditches.

23. The botanical survey of the fields (EcIA Appendix 3) describes the site as in good condition overall, with a lack of negative indicator species and moderate overall species diversity. Current management includes intensive sheep and cattle grazing and hay cuts. The middle field on the western site had highest floristic diversity (F2) although it was considered that the two fields below them likely had a similar species composition, but had recently been cut for hay (F4). The species list for the site includes some notable plants including divided sedge which is nationally scarce and a Species of Principal Importance (SPI) under Section 41 of the NERC Act. The location/s for divided sedge (and any other relevant notable plants) should be confirmed along with any appropriate mitigation to ensure their populations are maintained.

24. The proposal will result in all fields being predominantly covered by solar arrays. It is accepted that with appropriate management i.e. low intensity grazing and a more sensitive cutting regime as set out in paragraph 3.8 of the Landscape, Ecology and Arboricultural Management Framework (LEAMF, The Environmental Dimension Partnership Ltd, Nov 2023, edp7922_r002b) the condition of the grassland could improve. This is only likely to occur where light levels are not significantly altered e.g. between PV rows and beyond the footprint of the arrays, such as the buffers. The proposal to re-seed the grassland areas not covered by the solar arrays, as recommended in paragraph 4.6 of the EcIA, is not currently supported, as this is likely to be a damaging activity to both the soils and grassland/plants present, which have an overall moderate plant diversity and are in good condition. This proposal is also not referenced in the LEAMF.

25. Of greatest concern are the areas of grassland directly under the solar panels which paragraph 3.9 of the LEAMF states will be "*over-seeded with local provenance grassland species which are shade and grazing tolerant*". Details of the proposed seed mix should be provided along with clarification as to whether the areas will be over-seeded (a less invasive measure whereby seed can be drilled into existing vegetation) or re-seeded (as stated in the EcIA). Whilst the principal of using local provenance seed is supported, the shading caused by panels is likely to result in significant floristic change to a Section 41 habitat (HPI), as shading is not a characteristic of CFGM or the plants it supports. This is of particular relevance for the more floristically diverse fields (F2 and potentially F4). The extent of likely change is acknowledged in the Metric which categorises the 15.26ha of grassland (almost half the total site area) under the solar panels as newly created habitat with a condition of 'poor' (presumably due to the level of shading it will receive).

26. It is recommended that the scheme is revised to avoid impacting the more floristically diverse areas of grassland and that the least invasive options to enhancing and managing grassland (particularly the more floristic areas) are considered.

Watercourses

27. All onsite waterbodies i.e. D1-D15 are recorded as ditches, which are medium distinctiveness habitats in the Metric. Where watercourses meet the definition of a higher distinctiveness watercourse such as 'priority habitat rivers' or 'other rivers and streams', which both have high distinctiveness, they should not be recorded as ditches, even if they are less than 5m wide. The

Lottbridge Sewer runs through the site and is designated on the Environment Agency (EA) Statutory Main River Map as a main river and looks to correspond with D1. It is recommended that the BNG Assessment of the Lottbridge Sewer uses the river condition assessment (RCA) methodology.

28. It is noted that the ditches onsite are considered to be of exceptional quality and regional importance, with the ditches themselves and their associated riparian edges supporting a diverse range of species. All ditches are to be retained post-development and Table 4.1 of the draft CEMP sets out how they will be buffered and protected during the construction period, but as requested under statutory sites (see above), a greater level of detail on pollution prevention mitigation should be provided.

29. Various documents make reference to the intention to use existing bridges / access over ditches where possible in order to minimise impacts. However, the possibility remains that some new access may need to be created. Paragraph 3.19 of the EcIA states "*Where upgrades to existing crossings over ditches are required, these will be assessed for their impacts individually to ensure the functionality of the ditches are maintained.*" The ditches and their associated riparian habitat are the most biodiverse features onsite. They are also a key location for many of the mitigation and enhancement measures proposed for protected species. For these reasons further information and clarity on bridge design and the location of new access points over ditches should be provided prior to determination (see also our comments later in this response relating to otter and water vole).

Trees

30. Arboricultural surveys were undertaken within the site boundary and the immediate surroundings, finding a total of 13 trees (predominantly young willow sp.), 14 groups and two hedgerows. The Tree Constraints Plan (Appendix EDP 5), as part of the Arboricultural Impact Assessment, identifies that the proposed development does not require any tree removal, nor that any encroachment into the Root Protection Areas (RPA) occurs. The measures set out in the draft CEMP to protect retained trees are supported.

Invasive Species

31. 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). No Schedule 9 species were recorded, but the absence of invasive species should not be assumed even if no such species were detected. Particular attention should be paid to the potential presence of invasive aquatic plants such as floating pennywort especially, as this plant is problematic in the Eastbourne and Pevensey areas.

32. The draft CEMP currently makes no reference to how the potential transport of INNS into the site will be managed during construction and landscaping. The final CEMP should provide details on how the import of INNS will be safeguarded against e.g. vehicle checks, cleaning of plant (particularly tyres/tracks), wheel washing etc.

Bats

33. 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. It is an offence to: deliberately kill, injure, disturb or capture them; damage or destroy their breeding sites and resting places (even when bats are not present); possess, control or transport them (alive or dead). Under the Act it is also an offence to intentionally or recklessly: disturb bats while they occupy a structure or place used for shelter or protection; obstruct access to a place of shelter or protection.

34. No buildings are present on site but there are a number of trees, primarily young willows. These are all considered to have negligible potential to support roosting bats, barring one tree on the southern boundary of the eastern site which is considered to have high potential. This tree is being retained as part of the proposals therefore no further surveys of it have been undertaken to date. The measures set out in the draft CEMP to protect both trees and bats are supported. Should proposals change such that removal of this tree is required then further survey work should be undertaken.

35. Paragraph 2.36 of the EcIA states that a single bat activity survey of the site was conducted in 2023. Current Bat Survey Good Practice Guidelines (Collins, J. (ed.), 2023) for low suitability habitat require one survey visit per season i.e. spring (April/May), summer (June-July-August), autumn (September/October) and static surveys for a minimum of five consecutive nights, both undertaken in suitable weather conditions for bats. The EcIA justifies this significant departure from best practice on the basis that all habitats of higher value for foraging and commuting bats (ditches, scrub and scattered trees) will remain unaffected by the proposals. EcIA Appendix 6 Bat Survey Methodology and Results appears incomplete, covering just a single page focused on the Preliminary Bat Roost Assessment (PBRA) of the onsite trees. Full details of the bat activity survey should be provided.

36. The summary of the bat activity survey (EcIA paragraph 2.36) states that low levels of foraging and commuting were recorded, primarily by common pipistrelle. Without the detailed survey results it is not clear what other species were present but the desk study returned 50 records of at least 10 different species from within 2km. Comments on the overall robustness of bat surveys will be provided following receipt of all bat survey information.

37. The habitat enhancements currently proposed for the site would improve connectivity and potentially increase its foraging value. No lighting is currently proposed for the site during operation. Should this change the recommendation in paragraph 5.9 of the EcIA that a sensitive lighting strategy be developed is supported and could be secured via planning condition.

Great Crested Newts

38. 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. Under the Regulations, it is an offence to: deliberately kill, injure, disturb or capture them; deliberately take or destroy their eggs; damage of destroy their breeding sites and resting places, even if GCN are not present; possess, control or transport them (alive or dead). It is also an offence under the Act to intentionally or recklessly: disturb GCN while they occupy a structure of place used for shelter or protection; obstruct access to a place of shelter or protection.

39. A network of interconnected ditches (D1 to D15) is present on site. These are considered to have potential to support amphibians as they lack a flow and provide suitable egg laying material. No ponds are present within the site itself but 11 ponds were identified within 500m of the site boundary. The site offers suitable terrestrial habitat for GCN. A Habitat Suitability Index (HSI) Assessment for GCN was carried out in 2023 (EcIA Appendix 4), with all ponds assessed as providing between poor and average potential to support GCN. eDNA surveys of ponds and ditches carried out in 2021 all recorded negative results. Best practice guidance (CIEEM, 2019. Advice Note on the Lifespan of Ecological Surveys and Reports) is that survey data 18 months to 3 years old is likely to require updating (especially for mobile species). The site lies within the red zone of the impact risk maps for the District Licence scheme, indicating highly suitable habitat and a high likelihood of presence of GCN. No GCN presence/absence surveys or updated eDNA surveys have been undertaken, however due to the site being located within the red impact zone they are assumed to be present.

40. EcIA paragraph 3.30 states that the site will enter the District Licence scheme, administered by NatureSpace on behalf of the Council and acknowledges that mitigation onsite will be required which will be detailed within a Habitat Management and Monitoring Plan (HMMP) to be submitted with the NatureSpace DLL application. No waterbodies will be lost but a temporary translocation exercise is proposed to move any GCN to suitable areas of retained habitat for the duration of the 6-month construction period. After this it is proposed that they will be able to access the site as normal, including the grassland beneath the new solar arrays. This approach is supported in principle, but a NatureSpace Report or Certificate is required before the application can be determined.

41. Should the applicant decide not to enter the DLL scheme, then the presence/likely absence of GCN will need to be confirmed by up-to-date surveys. Should GCN presence be confirmed then it is likely that a site specific European Protected Species (EPS) mitigation licence will be required.

42. As discussed above for protected sites, any habitat that is required to mitigate for impacts on protected species cannot count towards BNG. The BNG Metric should clearly demonstrate how any additionality in respect of GCN mitigation habitat (namely the receptor area) has been dealt with.

Reptiles

43. 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.

44. Seven reptile surveys were undertaken on the eastern site between 04 May 2023 and 29 May 2023 and recorded peak counts of eight slow worm (good population), four common lizard (low population) and three juvenile grass snake (low population). The surveys were broadly in line with best practice as set out in Froglife Advice Sheet 10 although the total survey period was undertaken across a relatively compressed time frame. This may have resulted in an underestimate of population size. In addition, the western site was not surveyed due to the presence of cattle and short sward grassland. It has been assumed that the same sized populations are present. It is our opinion that these limitations do not significantly affect the proposed mitigation, given that the vast majority of suitable reptile habitat associated with boundary habitats and watercourse banks is to retained.

45. Due to much of the site being heavily grazed and the fact that most of the site will be returned to a similar condition post-development it is not currently proposed to carry out a translocation exercise for reptiles. Instead, habitat manipulation is proposed to keep grassland within the works footprint appropriately short and sub-optimal for reptiles while grassland outside the future fence line, mainly along the riparian zones, will be allowed to grow longer and more tussocky and enhanced with new hibernacula and log piles. The retention of reptiles onsite is supported.

46. Table 4.1 of the draft CEMP recommends that prior to construction a Reptile Mitigation Strategy is produced which will include:

- exclusions fencing;
- habitat manipulation – receptor areas;
- habitat manipulation – donor area (to include creation of new hibernacula features); and
- ECOW (fingertip search and supervision).

47. This is very limited detail and also incorrectly states that new hibernacula features will be added to the donor areas as opposed to the receptor areas (the EcIA correctly states that hibernacula will be added to the retained riparian zones to increase carrying capacity). Provision of a detailed Reptile Mitigation Strategy is supported and could be secured by planning condition. It is recommended that it includes the following:

- all works to be undertaken during the reptile active period;
- two-staged vegetation management i.e. a first cut of suitable retile habitat to a short sward height, a fingertip search carried out by a competent ecologist, followed by a second cut down to ground level;
- direction removal of vegetation from the centre of fields out towards the receptor areas;
- potential refuge features, including piles of rubble, logs, brash, to be fingertip-searched by an ecologist prior to being carefully disassembled. Any reptiles present will be carefully moved to agreed receptor areas;
- a plan showing the receptor areas, donor areas, exclusion fencing type and location and any additional fencing required to protect any features/areas during construction;
- details of the habitat manipulation for both donor and receptor areas. The receptor areas are primarily along the riparian zones which are proposed for various habitat enhancement measures (not solely for reptiles). Reptiles should not be negatively impacted by any habitat enhancement measures within receptor areas.
- details of any other techniques used to stop any reptiles re-entering the construction site e.g. management of vegetation contiguous with retained areas as a short sward; and
- clarification on how discrete work areas will be managed for reptiles.

48. It is important that mitigation for reptiles and GCN is closely aligned and coordinated and the EcIA's acknowledgement of this is welcomed. As discussed above for protected sites, any habitat

that is required to mitigate for impacts on protected species cannot count towards BNG. The BNG Metric should clearly demonstrate how any additionality in respect of reptile mitigation habitat (namely the receptor area) has been dealt with.

Otter

49. The Eurasian otter 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. Under the Regulations, it is an offence to: deliberately kill, injure, disturb or capture them; damage or destroy their breeding sites and resting places, even if otters are not present; possess, control or transport them (alive or dead). Under the Act, it is also an offence to intentionally or recklessly: disturb otters while they occupy a structure or place used for shelter or protection; obstruct access to a place of shelter or protection.

50. Surveys for otter were undertaken in April and September 2023. The EcIA contains conflicting information regarding the presence of otter on site. Paragraph 2.63 states that while a number of mammal runs were identified there were no field signs that could be attributed specifically to otter. However, the detailed survey results included in EcIA Appendix 9 state that "*One run and one footprint were identified along the eastern boundary of the eastern site and one run was identified along the southern boundary of the western site*." Nothing is said regarding any ambiguity in these results so it is assumed that otter are present on site. The Mitigation section of the EcIA also supports this assumption.

51. It is accepted that otter activity is likely to be focused along the riparian zones adjacent to the onsite ditch network. These areas are largely unimpacted by the development and will be retained and buffered with buffer zones in excess of 10m. However, paragraph 3.73 of the EcIA goes on to state:

    Where possible, access across ditches will use existing bridges and field entrances. Should any new access be required, bridges will be installed across the ditches. Prior to the construction of the bridge, each area and 10m either side along the ditch will be searched by a suitable experienced ecologist for evidence of otter and water vole, including burrows. If evidence of otter and/or water vole is identified within the crossing location, the location will either be moved or a licence from Natural England acquired prior to work commencing to enable the works to proceed legally.

52. Given the assumed presence of otter and its level of protection we do not consider that this is a sufficient level of certainty for a full planning application. It is noted from the Transport Report (Mott Macdonald, November 2023, ref. 410558BA20-TR-B) that at least one new watercourse crossing will be required over the Lottbridge Sewer to provide temporary construction access to the eastern site. Further information on bridge design and the location of any new access over watercourses should be provided prior to determination.

Water Vole

53. The water vole is fully protected under Schedule 5 of the Wildlife and Countryside Act 1981, as amended. It is an offence to intentionally: kill, injure or take them; or to possess of control them (alive or dead). It is also an offence to intentionally or recklessly: damage or destroy a structure or place used for shelter or protection; disturb them in a place used for shelter or protection; or obstruct access to a place used for shelter or protection.

54. Again, the EcIA presents conflicting information regarding the survey work for water vole. Paragraph 2.63 states that "*otter and water vole survey was undertaken in April and September 2023. Full survey methodology and results are detailed in Appendix 9. The survey didn't identify any field signs that could be directly attributed to either species, although a number of mammal runs were identified*." This implies that signs of water vole were searched for but no evidence was found. However, Appendix 9 states that "*Whilst the requirement for water vole surveys were scoped out due to the implementation of an appropriate buffer, otter surveys were carried out on the ditches within the site in conjunction with the Phase I habitat survey…*"

55. As per our comments above for otter, further detail should be provided of any new access across watercourses prior to determination. At least one new access point appears to be confirmed

(temporary construction access over the Lottbridge Sewer). Targeted water vole survey should be carried out following best practice at all new crossing points.

56. **The presence or absence of protected species, and the extent to which they could be affected by the proposed development, should be established before planning permission is granted; otherwise all material considerations might not have been considered in making the decision.**

Badgers

57. 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.

58. A badger survey was carried out and although the survey date is not provided, badger surveys can be carried out at any time of year and the relatively open nature of the site is less likely to cause restrictions to access and survey robustness. No signs of badger were observed and no evidence of any badger activity was found during any of the other ecology surveys undertaken at the site. Table 4.1 of the draft CEMP recommends best practice construction measures to mitigate any harm to badgers (as well as other wildlife) should they be present on-site, which is supported. The recommendation in the EcIA to undertake an update walkover survey prior to construction commencing and implement best practice measures to prevent any badgers becoming trapped in any excavations during construction and to maintain permeability of the site during operation (through the provision of strategic gaps in the security fencing) are supported.

Breeding Birds

59. Under Section 1 of the Wildlife and Countryside Act (WCA) 1981, as amended, all wild birds are protected from being killed, injured or captured, while their nests and eggs are protected from being damaged, destroyed or taken. Additional protection applies to birds listed in schedule 1 of the WCA 1981. It is an offence to intentionally or recklessly disturb a schedule 1 bird: on or near a nest containing eggs or young; when it's building a nest; or its dependent young. The site provides opportunities for birds to nest in trees, scrub, reeds in ditches and at ground level in the arable fields/field margins.

60. A single breeding bird survey was carried out by Bioscan in June 2022. Further surveys were carried out between April and June 2023 although it is not completely clear how many. Paragraph A7.1 of the EcIA states that "*three breeding bird surveys were undertaken…*" but both Tables 2.1 and A7.1 indicate five survey visits and given the level of detail provided in the tables it is assumed that five is correct. The most northerly field of the western site was only surveyed twice (in April) due to the presence of cattle on the latter three survey visits. Best practice is to carry out six surveys but given the survey results and the fact that most suitable habitats on site will remain largely unimpacted further survey work is not recommended.

61. Moorhen (amber listed) was the only species confirmed breeding onsite as an adult with fledglings was seen. Red or amber listed species probably breeding on site were mallard, sedge warbler, woodpigeon, wren, dunnock and reed bunting along with Cetti's warbler, a schedule 1 species. All these species are likely to utilise the ditches, scrub and trees for nesting. No species were confirmed as nesting in the open fields. Starling and house sparrow were confirmed using buildings offsite for breeding and the site itself for foraging.

62. The proposals do not currently require the removal of any of the key types of nesting habitat although there will be a temporary reduction in foraging habitat while the solar arrays are installed in the open fields. Habitat creation and improved management following construction is considered to maintain the value of the site as a foraging resource. To avoid disturbance to nesting birds, the EcIA and draft CEMP recommend that any removal of habitat that could provide nesting opportunities 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. These measures are supported.

Non-breeding (Wintering) Birds

63. While they are not subject to specific legal protection the site is utilised by a number of non-breeding bird species of conservation importance. Non-breeding bird surveys have been carried out onsite over the course of several winters:

- 2020/21 – four surveys between December and February;
- 2021/22 – four surveys between December and March; and
- 2023 – three surveys in February / March with two further surveys November / December.

64. This level of survey effort over several years provides a consistent picture of how non-breeding birds are using the site. While it seems unlikely that the final two surveys carried out in November and December would change this picture they do not yet appear to have been submitted and this should be done prior to determination.

65. Between 42 and 46 species have been recorded during each of the winters surveyed. Most target species were recorded outside the red-line boundary in and around Broadwater Lake. To date at least ten species of conservation concern have been found onsite including red listed species herring gull, lapwing and snipe. While snipe were found along ditches both herring gull (peak count 40-500, historic) and lapwing (peak count of 70 birds in January 2021) appear to have been found in the open fields (those wettest during winter) although some of this data comes from the older surveys where detailed results have not been provided.

66. All ditches are to be retained and buffered and impacts on species using these marginal habitats are considered to be temporary and insignificant, which is supported. It is considered that lapwing could be impacted from the loss of wet grassland under the solar arrays but that the provision of new wetland / SuDS features is sufficient to address this. The loss of other areas of open grassland will reduce the foraging resource available for a number of passerine species including linnet, starling, reed bunting and skylark. Improved management including an increase in sward height is proposed to address this. It should be noted that the passerine species listed generally prefer a shorter sward for foraging. Care will also need to be taken in balancing the differing habitat requirements of all key species found on site (not just birds).

Hedgehog

67. The hedgehog is a SPI with populations having suffered significant declines in recent years. The site provides suitable habitat, particularly in the form of areas of denser vegetation associated with ditch banks. Paragraphs 3.77 to 3.79 of the EcIA recommend best practice construction measures to mitigate any harm to hedgehogs (as well as other wildlife) should they be present on-site, which are supported.

Invertebrates

68. The EcIA currently doesn't address the potential for the proposed scheme to impact on invertebrates. Given that the entirety of the red-line boundary falls within the Eastbourne Park Wetland LWS and that coastal and floodplain grazing marsh (with its associated ditches) is a habitat which often supports specialist invertebrate species consideration of the potential for impacts on this species group should be provided prior to determination.

Enhancements and Biodiversity Net Gain

69. 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. The BNG Assessment currently indicates that the development will result in +25.94% habitat area (+46.59 units) and +28.54% net gain in watercourses (+8.11 units). It is also proposed that 11.51 linear hedgerow units are created but the percentage change cannot be calculated as hedgerows do not form part of the site baseline. The standalone Excel version of the Metric along with supporting condition assessment sheets have been provided which is welcomed. Site surveys for the BNG assessment were undertaken March, April and June 2023 and included a Modular River Physical (MoRPh) Survey. The BNG Assessment states that post-

development habitat creation and enhancement are indicative only and based on the current Illustrative Masterplan as detailed planting plans are not yet available.

70. *BS8683:2021 – Process for designing and implementing Biodiversity Net Gain* and industry best practice guidelines (CIRIA, 2019) BNG must be 'additional' to any measures or obligations to mitigate a scheme's biodiversity impacts and which would have happened regardless. It is good practice to include the calculations for obligatory mitigation as a separate part of the Metric so that the approach to BNG can be clearly understood by consultees. The BNG Assessment should be updated to ensure the principle of additionality is applied to protected sites, GCN/reptile mitigation and any other protected species mitigation as required.

71. As discussed above, justification should be provided as to why fields were not inputted into the Metric as CFGM, which would increase habitat distinctiveness with potentially significant implications for the Trading Rules and overall net gain achieved.

72. While the EcIA states that a MoRPh survey was undertaken for the onsite watercourses they have all been categorised as 'Ditches.' As stated previously we do not believe that this is the correct classification for the Lottbridge Sewer and the Metric should be revisited on this basis. There appears to be an inputting error on the On-site Watercourse Baseline tab. The total length of onsite ditches, excluding the Lottbridge Sewer, is given as 2.94km. This total length is then repeated in column T as the length retained. However, a figure of 0.931km is given in column U as the length of these ditches to be enhanced. The figures in columns T (retained) and U (enhanced) should come to the total length of the habitat feature. The correct figure for column T should therefore be 2.009km (2.94 – 0.931). If this figure is inputted it reduces the net gain for watercourse units to +4.91% which is below the required 10%.

73. Clarification should be provided as to why the baseline condition of all onsite ditches is given in the Metric as 'moderate' when the condition assessment sheet included as part of EcIA Appendix 3 gives their condition as 'good' with all 8 criteria met. If 'good' is the correct condition this would further change the net gain percentage for watercourse units, potentially into negative figures. The lengths of both the Lottbridge Sewer (0.31km) and the other onsite ditches (0.931km) which are shown as enhanced appear to be relying solely on the new SuDS features (interception swales) for this. Given the current condition of the ditches and the relatively basic nature of the SuDS, further explanation should be provided as to the nature and effectiveness of this enhancement.

74. Currently all area and watercourse habitats at both baseline and post-development have been allocated high 'strategic significance' in the Metric i.e. they are formally identified in a Local Nature Recovery Strategy (LNRS) or documents set out by the local planning authority and thereby receive a multiplier of x1.15. Paragraph 4.4 of the EcIA indicates that this is due to most habitats on site being within 'Priority Habitat Coastal and Floodplain Grazing Marsh' although it states that the ditches are excepted and does not qualify what documents evidence this. On the basis that CFGM is a Priority Habitat whose protection and enhancement is supported through local planning policy and it is additionally designated as a LWS, this approach is generally supported. We recommend that ditches also qualify for high strategic significance (as currently assigned in the Metric) as they are an integral element of CFGM and also form part of the LWS. All other habitats (bare ground, developed land, mixed scrub etc.) should not. In practice however these changes make an insignificant difference to the overall net gain.

75. Two other discrepancies have been noted within the Metric. Onsite trees do not appear to be included anywhere and there is a small difference between the site area as stated in the application documents (31.9ha) and the total site area given in the Metric (28.6ha). Clarification should be provided on both points.

76. As part of the onsite enhancements it is proposed to create c. 2.9km of native hedgerows. While these are included in the Metric the percentage change cannot be calculated as no hedgerows are present as part of the baseline. It is noted that most, if not all, new hedgerow planting is directly adjacent to existing ditches. While it is appreciated that hedgerows can benefit multiple species they may not be the most appropriate feature to add to CFGM which is a very open habitat. In particular the EcIA does not consider the potential for the new hedgerows to negatively impact on the onsite ditch network through increased shading. Further information should be provided.

Summary

In summary, further information is required prior to determination to ensure that appropriate mitigation, compensation and enhancement can be delivered. Further advice will be provided upon receipt of additional information.

Yours sincerely

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