

Appendix A

Full response from Ecologist (Email 31 October 2016)

To : **Linda Hayden**
From : **Terry Franklin, Ecologist**
Date : **31 October 2016**

Application Ref : **15/04770/FUL – North Street Trading Estate**

Subject : **Ecology**

I've noted the *Ecological Impact Assessment and Mitigation Strategy* (Encompass Ecology Ltd, October 2016). I've also visited the site and have been involved in discussions with the agent. **I have no overall objection subject to various conditions.**

My comments are arranged under the following broad headings:

1. Designated nature conservation sites (Millwater SSSI and adjoining County Wildlife Site).
2. European Protected Species (dormouse and great crested newt).
3. Species protected by UK legislation.
4. Other associated issues and recommendations.

1. Designated nature conservation sites (Millwater SSSI and adjoining County Wildlife Site)

Immediately to the south is the statutorily designated Millwater Site of Special Scientific Interest (SSSI). The SSSI citation gives the following reasons for its notification:

Millwater consists of a complex mosaic of pasture, wet grassland, tall-herb fen, standing and running water, Alder and Willow carr. The invertebrate fauna of the site has been extremely well documented and 1744 species have been recorded in the period 1978--1988 including many nationally scarce species in a wide range of groups. A nationally scarce species of sedge also occurs here.

A high diversity of bird species have also been recorded on the SSSI.

Adjoining the SSSI are two parcels of land designated as a County Wildlife Site. This is designated for habitats that are contiguous and compliment the SSSI and also act as a buffer to the SSSI.

The proposed development encroaches a little onto both parcels of the County Wildlife Site. The proposed new school car park encroaches about 15m into the south east parcel and the housing encroaches about 8m into the western parcel of the County Wildlife Site.

A 5m buffer zone free of any development is provided around the SSSI perimeter. Also proposed is protective fencing of a design that should significantly reduce incursion into the SSSI by people, dogs and cats (that could otherwise cause disturbance to wildlife).

I have no objection in respect of designated sites but recommend further details of the protective fencing is subject of a pre-commencement condition:

The development shall not commence until full details of fencing to provide protection to the SSSI, including a plan and timing of installation, has been submitted to and approved in

writing, following consultation with Natural England and the site owner, by the local planning authority. The fencing shall be installed in accordance with the approved details and timing.

Reason: For the protection of Millwater Site of Special Scientific Interest in accordance with the NPPF, Local Plan policy EQ4, and to ensure compliance with the Wildlife and Countryside Act 1981 (as amended).

Natural England has raised the following concern:

Our principal concern is that the development may affect hydrology which in turn may affect the SSSI. For example, improved drainage in the area could lead to the drying out of the SSSI or backing up of water which would raise water levels.

I agree that maintaining the current hydrological conditions (subject to variability in the weather) is essential to maintaining the habitats and associated wildlife for which the SSSI is notified.

I've noted the exchanges of correspondence on this matter. Whilst it would be preferable to have details of hydrological protection prior to determination, I note Natural England aren't objecting to this information being submitted via a pre-commencement condition.

I therefore recommend a condition:

The development shall not commence until full details of measures for the protection of the hydrological conditions and features of the Millwater Site of Special Scientific Interest have been submitted to and approved in writing, following consultation with Natural England, by the local planning authority. The measures shall be informed by an appropriately qualified hydrological consultant. The drainage plans for the development will need to accord with the protective measures for the SSSI. The approved measures shall be implemented in full.

Reason: For the protection of the hydrological conditions and features of Millwater Site of Special Scientific Interest in accordance with the NPPF, Local Plan policy EQ4, and to ensure compliance with the Wildlife and Countryside Act 1981 (as amended).

The drainage plans for the development will need to accord with the protective measures for the SSSI. It may therefore be appropriate to link this condition with others relating to drainage?

2. European Protected Species (dormouse and great crested newt)

Dormice have been recorded within the application site.

Great crested newts are likely to be present within the application site. Although the owner of the SSSI has refused access to the pond for newt surveys, the presence of records of great crested newts nearby, and highly suitable habitat in both the application site and the adjoining SSSI, makes it reasonably likely that great crested newts are present.

Both of the above species are protected by the Conservation of Habitats and Species Regulations 2010. There is a high likelihood that the development will result in the offences of:

- damage or destruction to a breeding site or resting place,
- direct harm to and/or disturbance of animals.

(Further details on potentially damaging operations are given in the Ecological Assessment report).

A derogation in the form of a European Protected Species Licence (from Natural England) will therefore be required (following grant of planning permission).

Habitats Regulations reporting

Regulation 9(5) requires:

'a competent authority, in exercising any of their functions, must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions.'

Three 'derogation tests' have to be satisfied before the above licence can be issued. Case law has determined that these tests should also be considered as part of the determination of planning applications.

The officer or committee report will therefore need to include an assessment against the three tests below. Permission should only be granted if all three derogation tests are considered to be satisfied. The tests are:

1. the development must meet a purpose of *'preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment'*
2. *'there is no satisfactory alternative'*
3. the development *'will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range'*.

See appendix 1 for Natural England guidance on tests 1 and 2.

I provide comments below (separately for dormouse and great crested newt) in respect of test 3:

Dormouse

Dormice have been confirmed in the established woodland in the western part of the site, which is being retained as a 'nature reserve'. They have also been reported in the adjoining SSSI.

Habitat loss:

Dormouse presence hasn't been confirmed from the nest box surveys undertaken in the young alder and other scrub that has colonised the 'brownfield' part of the site. Whilst use of this habitat can't be ruled out (due to proximity and connectivity with recorded dormouse habitat), its' relatively recent origin, and lack of dense structure and natural nesting opportunities, is likely to make it sub-optimal for dormice. It is also relatively limited in extent compared to the larger areas typically required to support dormice. **I therefore conclude that the habitat loss resulting from removal of the recent alder and other scrub is too small in size and sub-optimal in quality to be detrimental to the maintenance of favourable conservation status.**

Loss of connectivity:

Dormice are principally arboreal and are very reluctant to cross open ground. Loss of habitat that results in fragmentation of arboreal links within dormouse territory can therefore have a significant detrimental effect, leaving otherwise suitable parcels of habitat inaccessible.

The alder and other scrub on site currently provides a possible/probable arboreal link between parcels of wooded habitat to the south east of the site (in the adjoining County Wildlife Site and Site of Special Scientific Interest) and the recorded dormouse habitat along the western part of the site (which also links to the adjoining network of hedges providing a link for dormice to the wider countryside). The urban habitats that otherwise surround the application site and adjoining designated sites aren't suitable for dormice, which makes the woody and scrub habitat on the application site an important link for maintaining access for dormice between adjoining sites/areas.

The landscaping proposals include planting along the western edge and along the SSSI buffer zone that will replace the connectivity that will be lost from clearance of scrub vegetation on site.

With this restoration of habitat connectivity, provided it is provided in good time (which could be subject of a condition and/or licence requirements) then I conclude that the development and associated loss of scrub will not be detrimental to the favourable conservation status of dormice.

In order to ensure mitigation for dormice, I recommend a condition:

The development hereby permitted shall not commence (including any tree, scrub or vegetation clearance) until there has been submitted to and approved in writing by the Local Planning Authority, full details of a Dormouse Mitigation Plan detailing timing restrictions and protective measures to avoid and mitigate for harm to dormice, and details of replacement habitat to compensate for loss of dormouse habitat connectivity. The works shall be implemented in accordance with the approved details and timing, as modified to meet the requirements of the 'European Protected Species Mitigation Licence' issued by Natural England, unless otherwise approved in writing by the local planning authority.

Reason: For the conservation and protection of species of biodiversity importance in accordance with NPPF and Policy EQ4 of the South Somerset Local Plan, and to ensure compliance with the Wildlife and Countryside Act 1981 and The Habitats Regulations 2010.

Great crested newt

I agree with the ecological consultant's statement that:

'Great crested newt are most likely present on site and use the SSSI site for breeding and foraging and the application site for foraging and likely hibernation. This latter point is of particular relevance given the significant mounds of crushed hard core present on site originating for the demolition of the flax factory and the likely opportunity these piles now present for GCN hibernation.'

Apart from habitat in the western part of the site (which is to be retained as a 'nature reserve') the majority of other habitat likely to be used by newts is of relatively recent origin and has only developed following clearance of buildings after 2006. Despite this, its clearance will still need to be subject to great crested newt mitigation measures. However, any medium term history of great crested newt presence will be due to presence of other suitable habitat in the area and is unlikely to be dependent upon the habitat that is proposed to be lost for development. I don't believe (based on my previous involvement and experience of this site and planning history) that there's been any significant changes to other great crested newt habitat in the area.

The proposals include standard mitigation measures (exclusion fencing and pitfall trapping) prior to the construction phase, and a replacement hibernacula to compensate for loss of the rubble piles. **With this proposed mitigation and compensation, and also due to the other reasons stated above (recent origin of habitat to be lost and lack of other habitat change in the area) I conclude the development is unlikely to be detrimental to the maintenance of favourable conservation status.**

I recommend a condition is required to secure great crested newt mitigation:

The development hereby permitted shall not commence (including any tree, scrub or vegetation clearance, site clearance nor ground works) until there has been submitted to and approved in writing by the Local Planning Authority, full details of a Great crested newt Mitigation Plan detailing timing restrictions and protective measures to avoid, mitigate and compensate for harm to great crested newts. The works shall be implemented in accordance with the approved details and timing, as modified to meet the requirements of the 'European Protected Species Mitigation Licence' issued by Natural England, unless otherwise approved in writing by the local planning authority.

Reason: For the conservation and protection of species of biodiversity importance in accordance with NPPF and Policy EQ4 of the South Somerset Local Plan, and to ensure compliance with the Wildlife and Countryside Act 1981 and The Habitats Regulations 2010.

3. Species protected by UK legislation

Badger sett

I'm satisfied with the statements in the ecological impact assessment:

'The outlier badger sett on site is currently considered to be outside of the works impacted area and hence no impacts on the sett structure are currently predicted during the construction period.'

The Ecological Clerk of Works for the site would advise on any specific mitigation for badgers. When full details of the working area around the engineered bank on the western site boundary are known, an assessment of whether the existing outlier badger sett will be disturbed can be made and the requirement for licensing can be determined.'

Reptiles

A grass snake was observed on the site and slow worms may be present in drier parts of the site.

Slow worms are a declining species and have consequently been included as a 'priority species' for the conservation of biodiversity (section 41 of the NERC Act 2006). They therefore need to be taken into account in the planning process.

Both grass snakes and slow worms are legally protected (Wildlife and Countryside Act 1981, as amended) against deliberate and reckless harm or killing (such as could occur from construction activity). However, the legislation protects only the animals themselves and not specifically their habitat. Consequently, provided they can be accommodated within areas free from harm within or adjacent to the site, or moved to a suitable receptor site elsewhere, their presence isn't a significant constraint to the proposed development.

However, further details on mitigation measures to avoid or minimise harm will be required. **I recommend a condition in this respect:**

The development hereby permitted shall not be commenced (including any ground works or site clearance) until a mitigation plan detailing measures to avoid harm to reptiles, has been submitted to and approved in writing by the local planning authority. The works shall be implemented in accordance with the approved details and timing of the mitigation plan.

Reason: For the protection and conservation of priority species in accordance with policy EQ4 of the South Somerset Local Plan, NPPF and to ensure compliance with the Wildlife and Countryside Act 1981 (as amended).

Nesting birds

A significant area of scrub and trees have naturally colonised the site and provide conditions likely to be used for nesting. **It would therefore be appropriate to include a condition restricting the timing of vegetation clearance:**

No removal of vegetation that may be used by nesting birds (trees, shrubs, hedges, bramble, scrub) shall be carried out between 1st March and 31st August inclusive in any year, unless recently checked by a consultant ecologist for the presence of nesting birds. If nests are encountered, the nests and eggs or birds, must not be disturbed until all young have fledged.

Reason: To avoid disturbance to nesting birds thereby ensuring compliance with the Wildlife and Countryside Act 1981, as amended by the CROW Act 2000, and in accordance with Policy EQ4 of the South Somerset Local Plan.

Water voles

Water voles have been recorded nearby (Gould's Brook) and whilst they weren't recorded during surveys, there's a small chance of them moving into the site and consequently further checks are advisable (e.g. by an Ecological Clerk of Works).

4. Other associated issues and recommendations

Plants

The site includes habitats that are contiguous with the adjacent Site of Special Scientific Interest and consequently rare species could spread onto the application site. There are also invasive species on site that shouldn't be allowed to spread. I agree with the proposed mitigation in the Ecological Impact Assessment:

'If notable or rare species of plant are found during construction (Galingale, Wood-club rush), these are to be removed carefully and retained on site in a suitable condition to incorporate into suitable new habitat provision, although this is not considered to be likely.

Where the locations of the legislated invasive species have been found on site, the ground-workers will put in place such method statements of working so as to prevent the spread of these species across the site and beyond the current site boundaries, thus constituting a legal offence. These would likely include spot treating the variegated yellow archangel and hand pulling of the Indian balsam present, with proper disposal of arisings.'

Landscape and Ecological Management Plan

A landscape and ecological management plan is proposed for the retained habitats ('nature reserve'), new planting (part of dormouse mitigation) and SSSI buffer zone. **I recommend this is made the requirement of a condition:**

A landscape and ecological management plan (LEMP) shall be submitted to, and be approved in writing by, the local planning authority prior [*to the commencement or occupation*] of the development. The content of the LEMP shall include the following.

- a) Description and evaluation of features to be managed.
- b) Aims and objectives of management.
- c) Management prescriptions and work schedule.
- d) Details of the body or organization responsible for implementation of the plan.
- e) Ongoing monitoring and remedial measures.

The approved plan will be implemented in accordance with the approved details.

Ecological Clerk of Works

Due to the sensitive nature of the site and the complex ecological obligations, which will be subject to strict seasonal constraints and compliance with wildlife legislation, I recommended that an ecological clerk of works is commissioned during the construction period. **I recommend this is made the requirement of a condition:**

No development shall commence until the roles and responsibilities and operations to be overseen by an Ecological Clerk of Works have been submitted to and approved in writing by the local planning authority. The appointed person shall undertake all activities, and works shall be carried out, in accordance with the approved details.

Alternatively this could be incorporated into a condition for a Construction Environmental Management Plan (CEMP).

Items for inclusion (based on example in British Standard 42020) in either of the above should include (to be included in the condition or informative?):

- Risk assessment of potentially damaging construction activities.
- Identification of 'protection areas' (e.g. retained features/areas for protected species, county wildlife site, SSSI buffer or features) and areas where invasive plant species have been identified.
- Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction and site clearance (may be provided as a set of method statements).
- The location and timing of sensitive works to avoid harm to biodiversity features and protected species.
- The times during works when specialist ecologists need to be present on site to oversee works.
- Responsible persons and lines of communication.
- The roles and responsibilities on site of an Ecological Clerk of Works.
- Use of protective fences, exclusion barriers and warning signs.

Appendix 1: Natural England Guidance (WML-G24, 2010) on Habitats Regulations tests:

22. When considering 'imperative reasons of overriding public interest, including those of a social and economic nature' Natural England will take into account whether the activities/developments are required to meet or provide a contribution to meeting a specific need such as:
- the requirement to maintain the nation's health, safety, education, environment (sustainable development, green energy, green transport);
 - complying with planning policies and guidance at a national, regional and local level;
 - requirements for economic or social development (Nationally Significant Infrastructure Projects, employment, regeneration, mineral extraction, housing, pipelines, .etc.).
26. It should be recognised that there are always going to be alternatives to a proposal and, in terms of licensing decisions, it is for Natural England to determine that a reasonable level of effort has been expended in the search for alternative means of achieving the development whilst minimising the impact on the EPS. In other words, Natural England expects the applicant to demonstrate that alternatives have been considered, explain what those alternatives were, and provide a justification for their decisions to select their preferred option and discount the others as satisfactory. As part of the process we always require the applicant to have considered the 'do nothing' scenario.
29. Natural England also expects the applicant to demonstrate that they have taken reasonable steps to minimise the impacts of a development on EPS. These steps or measures might include (for example) alternative timing of actions, development designs and layouts, and sites.
27. A proportionate approach is adopted in considering the feasibility of alternative solutions relative to the degree of likely impact. The greater the impact of the proposal on the species, the more evidence Natural England would expect to see from the applicant in order to be able to satisfy itself that there is no satisfactory alternative to the one being proposed.