



Proof of Evidence – Biodiversity

Appeal against the refusal of Outline Planning Permission for a residential development with associated infrastructure for up to 30no. dwellings, including detail of associated point of access. All other matters (landscaping, scale, layout and appearance) reserved.

Land off Leconfield Road, Nanpantan, Loughborough.

On Behalf of Bowbridge Homes (Nanpantan) Ltd.

PINS ref: APP/X2410/W/22/3304644 LPA ref: P/20/2199/2

Oliver Ramm BSc MCIEEM

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1 QUALIFICATIONS & EXPERIENCE

- 1.1 My name is Oliver Ramm, I am a Director of RammSanderson Ecology Ltd, a CIEEM Registered Practice. I am a Full member of the Chartered Institute of Ecology & Environmental Management and have 18 years of professional ecological consultancy experience and hold a Batchelor of Science degree from the University of Nottingham in Environmental Biology.
- 1.2 I have significant experience in advising on ecological matters, on a range of project scales, spanning a wide range of sectors. This has included advising on many residential planning applications, ranging in size and type from minor to major. I am experienced in the assessment of sites for their ecological value as habitats and for protected species and can ably advise on mitigation and enhancement measures.
- 1.3 Habitat surveys of the appeal site were completed by Senior Ecologist Lauri Leivers ACIEEM, a competent botanist (FISC 3) and experienced user of UK HAB and JNCC habitat assessment methods. We are both experienced and trained in the use of DEFRA's Biodiversity Metrics 2.0, 3.0 and 3.1 and have applied each of these to this site, as this assessment system has evolved during the planning history of this site.
- 1.4 The evidence which I have prepared and provided for this statement is true to the best of my knowledge. It has been prepared and is given in accordance with the Code of Practice of the Chartered Institute of Ecology and Environmental Management and I confirm that the opinions expressed are my true and professional opinions.

2 OUTLINE

- 2.1 The Appeal is against the refusal to grant outline planning permission P/20/2199/2.
- 2.2 The relevant (2) Reason for Refusal (RfR) states that:

"The proposed development would result in significant adverse biodiversity impacts that would be contrary to the provisions of Core Strategy Policy CS13 and National Planning Policy Framework paragraphs 174 and 180."

3 SCOPE OF THIS REPORT

- 3.1 This Proof of Evidence addresses the points raised in the reason for refusal relating to biodiversity (2).
- 3.2 The relevant RfR states that the proposals will have a significant impact on biodiversity in conflict with policy CS13 of the CBC Core Strategy, and paragraphs 174 and 180 of the NPPF.
- 3.3 As discussed below, my view is that the appeal scheme fully complies with the requirements of these National and Local Policies. The Appeal provides a significant biodiversity net gain of over 46% in habitats and over 117% in hedgerow terms, and this is a benefit that should be afforded significant weight in determining the appeal. The biodiversity gains are achieved using a combined on and off-site offsetting strategy, as detailed in the updated ecological assessment at Appendix 1, and in accordance with the DEFRA metric 3.1 Biodiversity Impact Assessment Calculator at Appendix 2.
- 3.4 An off-site offsetting receptor has been secured on land in close proximity to the Appeal site and in the ownership of the same landowner. Legal agreement has been reached to secure this land for Biodiversity Net Gain purposes, and a fully funded management plan and monitoring schedule will be submitted for the Council's approval with a Reserved Matters application.

4 CHARNWOOD LOCAL PLAN 2011 TO 2028

- 4.1 The Charnwood Local Plan was adopted in November 2015. Policy CS 13 addresses biodiversity and geodiversity. The explanatory text to policy CS 13 explains at paragraph 7.33 that Charnwood has a significant number of places and features which are important for wildlife, including 18 Sites of Special Scientific Interest; 221 Local Wildlife Sites and 5 Local Nature Reserves. The appeal site does not fall into any of those categories.
- 4.2 Paragraph 7.34 of the text explains that those sites are important in their own right and as part of an ecological network. It sets out the Council's aim to manage its ecological resources to prevent damage and habitat fragmentation and refers to a Habitat Survey which has mapped the Council's local ecological network. The appeal site does not form part of the Council's local ecological network, and is mapped as 'urban' as part of this survey [as at pg30 of CD.5.3.15]. It also explains that the Council has identified its priorities for habitat restoration and creation through the Leicester, Leicestershire and Rutland Biodiversity Action Plan.
- 4.3 Paragraph 7.36 explains that the Council's overall aim is to achieve a net gain in biodiversity for the community. The Appeal Scheme would comply with that objective by delivering significant biodiversity net gain of over 46% in habitats and over 117% in hedgerow terms.

- 4.4 Policy CS13 explains that the Council will conserve and enhance the natural environment for its own value and the contribution it makes to the community and economy. The Council proposes to achieve this by supporting developments that protect biodiversity and geodiversity and those that enhance, restore or re-create biodiversity. As discussed further below, my view is that the Appeal Scheme will comply with this policy in that it will enhance, restore and re-create biodiversity through a combination of on and off-site measures that result in significant biodiversity net gain.
- 4.5 The policy goes on to explain that the Council will only support development that results in the loss of ecological features in exceptional circumstances where the benefit of development clearly outweighs the impact on ecology and that where there are impacts on biodiversity, the Council will require adequate mitigation; or as a last resort, compensation which results in replacement provision that is of equal or greater value and potential to that which will be lost and is likely to result in a net gain in biodiversity. Again, my view is that the appeal scheme complies with the policy in that it provides appropriate on-site mitigation coupled with off-site compensation that delivers significant biodiversity net gain.

5 NATIONAL PLANNING POLICY FRAMEWORK

5.1 The RfR cites conflict with two paragraphs of the NPPF, namely paragraphs 174 and 180.

5.2 Paragraph 174 provides as follows:

Planning policies and decisions should contribute to and enhance the natural and local environment by:

- a) Protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);*
- b) Recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland;*
- c) ...*
- d) Minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures*
- e) ...*

5.3 I consider the appeal scheme to comply with this policy. The Appeal Site is not a site of biodiversity value and so paragraph 174(a) is not engaged. The Appeal Scheme minimises impact on biodiversity and provides significant net gains.

5.4 Paragraph 175 of the NPPF explains that plans should distinguish between the hierarchy of international, national and locally designated sites. The Council has identified a number of sites of national and local importance, which do not include the Appeal Site.

5.5 Paragraph 179 of the NPPF explains that to protect and enhance biodiversity and geodiversity, development plans should:

- a) Identify, map and safeguard components of local wildlife-rich habitats and wider ecological networks, including the hierarchy of international, national and locally designated sites of importance for biodiversity; wildlife corridors and stepping stones that connect them;*

and areas identified by national and local partnerships for habitat management, enhancement, restoration and creation; and

- b) Promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable net gains for biodiversity*

5.6 As noted above, the Appeal Site is not identified by the Council as being designated at international, national or local level. Nor is it identified by the Council as a wildlife corridor, stepping stone or an area identified by national or local partnerships for habitat management, enhancement, restoration or creation. The Appeal Site does not host any priority habitats; formally identified ecological networks or species. Furthermore, as discussed above, the Appeal Scheme would deliver significant biodiversity net gain, as encouraged by paragraph 179 of the NPPF.

5.7 Paragraph 180 of the NPPF provides that when determining planning applications, local planning authorities should apply the following principles:

- a) If significant harm to biodiversity resulting 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, then planning permission should be refused;*
- b) Development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments) should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Scientific Interest;*
- c) Development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists*

- 5.8 In my view, the Appeal Scheme accords with this policy, including para 180 (a); It will not result in any significant harm to biodiversity, as, whilst an on site net loss has been established, and there will be some ecological impacts as a result of the development, the mitigation hierarchy has been followed, impacts to ecological receptors avoided, mitigated, and compensated for, with the result being a significant net gain for biodiversity for through the proposed combined scheme of on site mitigation and off-site biodiversity off-setting. It is also noted, that the Officers Report on the application [CD 3.1] accords with this view, stating on page A18: “*The proposals are therefore considered to comply with CS13, EV/1 and NPPF paragraph 180*”.
- 5.9 The Appeal Site is not within or adjacent to a SSSI and is not likely to have any adverse effects on any SSSI and the appeal site will not result in the loss of any irreplaceable habitat. “Irreplaceable habitats” are defined in the glossary to the NPPF as follows:

Irreplaceable habitats: *Habitats which would be technically very difficult (or take a very significant time) to restore, recreate or replace once destroyed, taking into account their age, uniqueness, species diversity or rarity. They include ancient woodland, ancient or veteran trees, blanket bog, limestone pavement, sand dunes, salt marsh and lowland fen.*

- 5.10 I note that CBC's Statement of Case suggests at paragraph 7.48 that the small amount (0.0218 hectares) of acid grassland on the Appeal Site is "*practically irreplaceable*". In describing it as practically irreplaceable, it is not clear to me whether the Council is alleging that the acid grassland falls within the definition of 'irreplaceable habitats' in the NPPF. In my view, the acid grassland does not constitute an irreplaceable habitat.
- 5.11 I note that the Statement of Common Ground agreed between the Council and the Appellant identifies agreement on the following matters:
- (1) the Appeal Site is not subject to any ecological or biodiversity designations;
 - (2) the Proposed Development would not result in any direct loss to the designated habitats of Burleigh Wood; and
 - (3) the Appellant was advised by the planning officer's email of 2 February 2022 [CD8.25] that the Council's ecologist had no objection to the Proposed Development, subject to conditions and a s.106 agreement.
- 5.12 The Officer's Report on the application [CD 3.1] notes on page A17 that "Based on the BIA [Biodiversity Impact Assessment], Charnwood's Ecologist raises no objections to the proposals, subject conditions and a S106 legal agreement to secure potential for off-site contributions, if needed, to ensure a biodiversity net gain is achieved through any future reserved matters." In response to ecological objections submitted by the Nanpantan Ward Residents' Group, the Officer's Report explains on page A17 that "*The current ecological value of the site, as set out in the Ecological Assessment and BIA, is accepted by Charnwood's Ecologist and any detailed proposals which may come forward through reserved matters can be compared to this baseline to ensure that they achieve the NPPF's requirement for no net loss of biodiversity.*" At page A18, the report says "*On that basis, there are no objections to the principle of development on the site in terms of ecology and biodiversity and officers are content that any future reserved matters could achieve the required 'no net loss' of biodiversity, subject to any detailed proposals which could come forward if permission is agreed and any further BIA which would take into account the current baseline value of the site along with the detail of any future proposals to allow a full calculation of biodiversity impact to be considered. The proposals are therefore considered to comply with CS13, EV/1 and NPPF paragraph 180*".

- 5.13 The Planning Officer's Extras Report [CD 3.2] responded to further ecological objections from the Residents' Group as follows (on page 6): *"In response to the issues raised by Julian Jones [the ecologist appointed by the Residents' Group] in their comments of 22/02/22, Charnwood's Senior Ecologist's comments are unchanged. Charnwood's Senior Ecologist is of the view that the BIA does take into account the acid grassland and that as the area of grassland is relatively small, its value is not great. While retention and restoration of the site would be preferable from a singular ecological perspective, the loss of ecological value is not 'significant' or 'demonstrable' in terms of the NPPF to justify refusal and appropriate measures can be put in place to ensure adequate compensation of any habitat that would be lost that is based on the agreed baseline assessment of the site in the BIA (December 2021) and further details which could be secured through reserved matters, conditions and Section 106."*

6 CHARNWOOD'S BIODIVERSITY PLANNING GUIDANCE

- 6.1 In May 2022, the Council published its Biodiversity Planning Guidance which seeks to provide further clarification to Core Strategy Policy CS13. The Guidance explains, on page 2, that Policy CS13 allows for the use of biodiversity impact assessment calculators to measure the ecological impact of development proposals. It explains that there are a variety of recognised calculator tools that developers are encouraged to use. Once the scale of impact has been calculated, it explains that appropriate mitigation can be provided, either on-site or, as a last resort, through compensation (p.2 – 3).
- 6.2 Page 4 of the Guidance explains that:

The adopted Charnwood Local Plan Core Strategy Policy CS13 states that developments that secure the protection of biodiversity and geodiversity, in addition to those that secure the enhancement, restoration and/or re-create biodiversity will be supported. This is an adopted policy approach that the Borough Council uses to avoid biodiversity net loss and secure biodiversity net gain where possible. The policy only allows for new development that results in the loss of ecological or geological features in exceptional circumstances. Namely, where the benefit of development clearly outweighs the impact. In such circumstances, mitigation will be required or, as a last resort, compensation which results in replacement provision that is of equal or greater value and potential than that which is lost..... Adequate mitigation will be required or, as a last resort, compensation which results in replacement provision that is of equal or greater value and potential than that which is lost.

6.3 On page 8, the Guidance sets out certain principles, such as:

- *Apply the mitigation hierarchy (avoid, mitigate & compensate)*
- *Avoid losing biodiversity that cannot be offset by gains elsewhere*
- *Make a measurable (net gain) contribution*
- *Achieve the best outcome for biodiversity*
- *Be additional*

6.4 It sets out CBC's approach to using biodiversity impact calculators; securing appropriate biodiversity mitigation 'on site' as an integral part of new development, in exceptional circumstances, securing biodiversity mitigation offsite in compensation for losses to development, or required gains, where adequate onsite mitigation cannot be achieved; and allocating compensatory payments to deliver strategic biodiversity improvements. Page 10 explains that

"It is acknowledged that the avoidance and mitigation on-site of adverse ecological impact may not always be practicable, particularly on smaller sites with lower value habitats. In such cases, off-site compensation is likely to be more effective than piecemeal on-site mitigation. On-site mitigation proposals should avoid creating small and isolated pockets of habitat and where this is all that can be achieved, off-site mitigation or compensation would be preferable."

6.5 Page 16 of the Guidance addresses off-site compensation. It explains that:

"We will consider biodiversity off-setting where it is evident that avoiding biodiversity loss and on-site mitigation are not possible, may result in piecemeal mitigation or where better opportunities exist to secure net gain elsewhere. There are currently three main routes to providing successful biodiversity offsets:

- *The developer identifies a suitable scheme within their own landholding;*
- *The developer engages a third party to provide the offset on their behalf; or*
- *The Borough Council receives an offsetting payment on behalf of the developer and allocates this to a project on their behalf"*

7 EMERGING LOCAL PLAN 2020-38

7.1 CBC's Statement of Case says, at paragraph 7.40, that the Council's position with regard to development of the Appeal Site has been established through the emerging Local Plan. I understand it to be agreed in the Statement of Common Ground that the emerging Local Plan attracts only limited weight at the present time. However, the Council refers to the fact that the Appeal Site was not allocated for housing largely because of concerns about the ecological impacts of developing the Site. I address this matter below. In summary, my view is that the site was excluded as a result of a high level assessment which has since been superseded by the more detailed appraisal carried out in support of the application. I note that both the Council's planning and ecological officers appear to agree with my view.

8 ECOLOGICAL ASSESSMENT REPORT, JUNE 2019

- 8.1 Charnwood Borough Council's senior ecologist completed a high level assessment of the Appeal Site as part of the Borough Wide evidence gathering for the SHELAA, when the Site was considered for allocation in the emerging Local Plan. This report comprised an Ecological Assessment Report 2019 [CD 5.3.5]; Ecology Assessment Addendum [CD5.3.6] including Appendix 2: Site Assessments. The Report adopted a grading system; "*broadly the level of ecological constraint increases with each grade, A indicating the lowest level of constraint and E, the highest*".
- 8.2 Appendix 2 identified the Appeal Site by reference PSH447, and described it as "*rank poor semi-improved or SNG with areas of bramble and raspberry scrub*". There was no mention of acid grassland, or indicator species in the assessment. This report classified the site as grade C/D. The report states that this classification indicates "*that development could be acceptable from an ecological perspective if the developable area within the site boundary was reduced, based on the assumption used in the SHLAA methodology, and summarized in table 2*". Table 2 of the SHELAA Ecological Assessment report gives a series of site sizes and gross to net development ratios. For the size of this site, at 1.69Ha, a ratio of 82.5% applies. The Gross to Net development ratio of the proposed layout of the site is c.61%, which is in accordance with and well within the SHLAA methodology requirements.
- 8.3 Incidentally, this report also references the use of the DEFRA Metric, quoting the DEFRA 2018 Net Gain Consultation Proposals [CD.5.3.16], which proposed the DEFRA Metric as a "*Suitable base metric upon which to set possible mandatory requirements*".

9 ECOLOGICAL ASSESSMENT REPORT ADDENDUM, JUNE 2021

- 9.1 An addendum to the SHELAA Ecological Assessment was published in June 2021, after the original planning application for the Appeal Site was submitted. At paragraph 2.15, the Addendum Report explained that the Appeal Site had been reassessed following representations on the Draft Local Plan, as follows: “For PSH447 Leconfield Rd there was a reassessment of the original grade, from C/D to D. A follow up field survey identified an area within the site with acid grassland indicator species. This led to a revised understanding of the distinctiveness of the on-site habitats and their potential for ecological restoration. Other factors, notably the adjacent ancient woodland, had not changed since the original assessment”. No mention of any specific acid grassland indicator species is made to justify the habitat being assessed as acid grassland in the addendum document, nor how this affects the potential for ecological restoration.
- 9.2 An assessment grade of ‘D’ infers that: “Site contains either a high proportion of priority habitat or botanically diverse habitat; or, contains potential for/evidence of protected species. Unlikely to achieve sufficient on site mitigation to make development acceptable but it may be possible if the developable area is significantly restricted. There may be risks of ecological harm associated with position in landscape.” (see paragraph 4.15 of the Ecological Assessment Report 2019)
- 9.3 I do not consider that the classification of grade ‘D’ is appropriate for the Appeal Site. It does not contain a “*high proportion of priority habitat, or botanically diverse habitat*”. Originally, we did not assess the site as containing acid grassland and considered the site to be relatively species poor and of low diversity; however following comments from CBC the site was reassessed, and a small area of acid grassland (0.0218Ha) within the site was included in the DEFRA Metric calculation, using the UK HAB habitat classification of ‘Other Lowland Acid Grassland’ (of Medium distinctiveness) as it does not qualify as the NERC Act (2006) Priority Habitat of Lowland Dry Acid Grassland nor does it qualify under the Guidelines for the selection of Local Wildlife Sites in Leicester, Leicestershire & Rutland [CD.5.3.17] as Acid Grassland, having just 2 of the required 8 indicator species and also being well below the 1000m² (0,1Ha) threshold requirement in that document as shown in the extract below:

: H should be Frequent, Abundant or Dominant or at least 5 species should be present.

H - Acid grassland species	
<i>Festuca capillaris</i> , Common bent	<i>Juncus squarrosus</i> , Heath rush
<i>Vicia vulgaris</i> , Ling	<i>Lathyrus linifolius</i> var. <i>montanus</i> , Bitter vetch
<i>Trifolium rotundifolia</i> , Harebell	<i>Luzula multiflora</i> , Heath woodrush
<i>Deschampsia decumbens</i> , Heath grass	<i>Nardus stricta</i> , Mat grass
<i>Chamaepitys flexuosa</i> , Wavy hair-grass	<i>Potentilla erecta</i> , Tormentil
<i>Phytolacca tetralix</i> , Cross-leaved Heath	<i>Rumex acetosella</i> , Sheep's sorrel
<i>Festuca ovina</i> , Sheep's fescue	<i>Vaccinium myrtillus</i> , Bilberry

- 9.4 JNCC [CD.5.3.18] define lowland dry acid grassland (the Priority Habitat type, defined as Habitats of Principal Importance under Section 40 of the NERC Act) as the following: “*as both enclosed and unenclosed acid grassland throughout the UK lowlands (normally below c300m). It covers all acid grassland managed in functional enclosures; swards in old and non-functional enclosures in the upland fringes, which are managed as free-range rough grazing in association with unenclosed tracts of upland, are excluded. It often occurs as an integral part of lowland heath landscapes, in parklands and locally on coastal cliffs and shingle. It is normally managed as pasture.*” It is clear from this, and the species list given in the definition, that the site does not contain habitats of this type.
- 9.5 This type of habitat (Other Lowland Acid Grassland) is not considered irreplaceable, with in my professional opinion or by the DEFRA Metric; if it were, the metric would not allow the compensation type proposed (off site offsetting) to be selected and used, and would return an error stating “*bespoke compensation likely to be required*” and that any loss of this habitat type would be unacceptable. The baseline assessment submitted as part of the application process showed the area of acid grassland on the site to fall into the category “*other lowland acid grassland*” and not a Priority Habitat acid grassland type. This baseline assessment was accepted by CBC’s senior ecologist as accurate.
- 9.6 Leicestershire & Rutland Local Biodiversity Action Plan [CD.5.3.4] defines acid grassland as Heath Grassland, and as per the extract below, defines it as “*virtually non-existent in Leicestershire & Rutland*”. The Biodiversity Action Plan says there should be no further loss of heath grassland and its concern is to avoid the loss of acid grassland on siliceous soils with areas of bare soil and rock exposures. The appeal site does not include any acid grassland with bare soil and rock exposures.

	LLRBAP Habitat	Equivalent UK Broad habitat	UK BAP habitat	Notes
14	Heath-grassland	Acid Grassland	Lowland Dry Acid Grassland	Partial equivalence. The local heath-grassland is a mix of dry acid grassland, wet acid grassland and acid grassland (wet or dry) with scattered ericaceous shrubs. True heathland with vegetation dominated by ericaceous shrubs is virtually non-existent in Leicestershire and Rutland - this probably reflects the historic situation.

- 9.7 With a detailed management plan in place which, would be agreed with CBC as a reserved matter, there is a high degree of confidence that the offsetting plan outlined in the submitted Ecological Impact Assessment can be successfully delivered and implemented. The offsetting site would be monitored on a regular basis and any issues rectified to ensure consistency with the management plan. At the point of consultation on the management plan, the finer detail of specific species mixes to be used, will also be agreed with the Council. The management plan would include seed harvesting, and a green hay crop taken from the Appeal Site and transferred to the offsetting site, so that the seed bank from the Appeal site is transferred. If required, topsoil could be transferred from the Appeal site, should there be a surplus, once any required cut & fill calculations have been concluded, although the close proximity of the offsetting site, plus online resources showing identical soil types show there is no need to do this to achieve a successful management outcome.
- 9.8 The appeal site was not allocated for housing in the emerging local plan as a result of the high-level ecological assessments referenced above, which suggested it was inappropriate for development, after the adjustment made as part of the addendum assessment. This assessment was made in the absence of consideration of any of the mitigation and compensation that is now proposed.
- 9.9 The case officer's report discusses this and makes it clear that in light of the additional more detailed information submitted with the application, both the Council's senior ecological officer (who prepared the Ecological Appraisal Report and its Addendum) and planning officer considered that there were no ecological constraints to the proposed development. The Officer's Extra Report [CD3.2] explains on pages 6 – 7 that *"Page 14 of the [original officer's] report recognises that the site was previously proposed to be allocated through the emerging Local Plan and was not excluded following assessment through the Strategic Housing and Employment Land Availability Assessment (SHELAA), but it was not taken forward as an allocation in the submission version of the Local Plan following a high-level assessment for the purposes of a Local Plan allocation which do not take into account the detailed assessment and potential mitigation which forms part of the consideration of a planning application [...]"*. Page 9 of the Extras Report recognises that Burleigh Wood, adjacent to the Appeal Site, is a priority habitat *"but that designation does not extend to include any part of this site"* and *"Charnwood's Senior Ecologist recognises that there is a relatively small area of acid grassland, as detailed under the Ecological Assessment section of this Extras report above. The Senior Ecologist has no objections to the proposals subject to conditions and A106."*

10 NATURAL ENGLAND STANDING ADVICE ON ANCIENT WOODLAND

- 10.1 One of the principal matters relating to ecology is the presence of Burleigh Wood, an ancient woodland, which forms the site boundary to the north west. Since the application was submitted and refused, Natural England has released new standing advice in relation to ancient woodlands and veteran trees. In relation to the size of a buffer from the woodland edge, the standing advice states: “*For ancient woodlands, the proposal should have a buffer zone of at least **15 metres** from the boundary of the woodland to avoid root damage*”.
- 10.2 The advice goes on to discuss planting types in the buffer zone, stating that planting should consist of semi-natural habitats such as woodland; a mix of scrub, grassland, heathland and wetland and that local and appropriate native species should be specified. It further states that public access can be allowed within a buffer zone if habitats are not harmed by trampling.
- 10.3 It is my view that the Appeal Proposals and landscaping details provide for the buffer zone satisfy these conditions. The buffer zone is roughly wedge shaped, with a narrowest width of **20.35m** at the northern end, broadening to a maximum of **45.19m** at the southern end. Ms Sara Boland’s proof of evidence relative to landscape, gives details on the buffer and planting proposals within it [emphasis added]:

“The proposals in fact extend the buffer zone to 20-25m at its narrowest point and 45.19m at its widest. The Landscape Masterplan sets out planting proposals for the whole site, including the buffer to Burleigh Wood. The scheme for this buffer comprises species rich meadow closest to the residential edge, transitioning to native tree and hedgerow planting closest to the wood. The meadow will be mown around the natural play space to allow ease of access. This gradation in the planting allows for the provision of spaces which can be accessed by the public and also areas which are ‘protected’ by virtue of the nature of the planting, to avoid damage”

11 PLANNING HISTORY

11.1 The following table outlines the ecological assessments of the site and subsequent communications relating to this Reason for Refusal in chronological order:

Item	Date	Notes	Core Document Reference
Charnwood Borough Council SHELAA evidence, Ecological Report	June 2019	<i>“Rank PSI or SNG with areas of bramble and raspberry scrub. Tall herbs scattered throughout. Some newly planted trees on the slope. Adjacent to Ancient broadleaved woodland and SINC (W5018/2/7 -Nicholson Road, Loughborough) potential impacts on PNS (Protected Notable Species) C/D Grade applied.”</i>	CD 5.3.5
CBE Consulting Ecology Report	23 November 2020	Surveyed September 2018 and updated on 23 rd October 2020. Note of neutral grassland. Note of previous agricultural use within report. This Report was subsequently superseded by the submission of further information.	CD.2.16
Charnwood Borough Council SHELAA	2020	PSH447 – Land off Leconfield Road <i>‘There are no known irresolvable physical /environmental constraints preventing development and the site is in a suitable location for development and a suitable access can be achieved.’</i>	CD.5.2.9
Charnwood Borough Council SHELAA Ecology Addendum	June 2021	Areas graded and designated as particular habitats by Charnwood Borough Council <i>‘D rating. The site consists of Rank species poor semi improved grassland or semi improved neutral grassland with areas of bramble and raspberry scrub. There are also tall herbs scattered throughout and some</i>	CD.5.3.5

		<i>newly planted trees on the slope. Potential for effects on protected and notable species.</i>	
RammSanderson EcIA RSE_4942_01_V2	August 2021	Now superseded	CD.2.19
RammSanderson 4942_L1_V1 Letter	17 August 2021	Response to comments received from CBC.	CD.2.17
RammSanderson 4942_L2_V1 Letter Response	22 October 2021	Response to Julian Jones and Charnwood Borough Council	CD.2.20
BIA completed in WCC metric at CBC Ecologist request	21 December 2021	Established on site loss, and estimated commuted sum	CD.2.21
CBC Ecologist confirmation email	December 2021	Confirmed no further objections, subject to S106 &c.	CD.8.25
Plans Committee Extras Reports	23/02/2022	<p><i>Charnwood's Senior Ecologist has accepted and agreed that the biodiversity value of the existing site has been adequately assessed as part of the BIA (December 2021) and that the ecological surveys have been undertaken adequately to inform assessment of the proposals.</i></p> <p><i>There is no significant or demonstrable harm on ecological interests of the site to justify refusal, as set out on pages 23 to 25 of the agenda</i></p> <p><i>Charnwood's Senior Ecologist is of the view that the BIA does take into account the acid grassland and that as the area of acid grassland is relatively small its value is not great</i></p>	CD.3.2
RammSanderson EcIA update RSE_4942_01_V3	August 2022	Appendix A of this Proof.	

RammSanderson September Now superseded by this proof CD.4.2.3
Statement of Case 2022
- Biodiversity

- 11.2 As a result of direct communication with Charnwood Borough Council’s senior ecologist, Mr. Simms during the determination process, he accepted the Ecological Impact Assessment (August 2022) as providing a satisfactory assessment of the Appeal Site and accepted an updated Biodiversity Impact Assessment [“BIA”] (December 2021) as providing a suitable assessment of the site’s baseline biodiversity value. He raised no objections to the Proposed Development, subject to conditions, and an s.106 Agreement to secure commuted sum contributions, if necessary, to ensure a biodiversity net gain is achieved through any future application for reserved matters consent. Core Document [CD.8.25] confirms that Mr Simms had no further objections. The officer’s report to the planning committee [CD3.1] records the response from the Council’s biodiversity officer on page A7 as *“No objections subject to conditions and S106 to secure biodiversity net gain”*.
- 11.3 The officer’s Extras Report [CD3.2] acknowledges the submissions from Julian Jones on behalf of the Nanpantan Ward Residents’ Group in relation to ecology (on page 5). In response, it explains on page 6 that *“In response to the issues raised by Julian Jones in their comments of 22/02/22, Charnwood’s Senior Ecologist’s comments are unchanged. Charnwood’s Senior Ecologist is of the view that the BIA does take into account the acid grassland and that as the area of acid grassland is relatively small its value is not great.”*

12 THE APPEAL PROPOSALS

- 12.1 The Appeal Proposals comprise development of up to 30 dwellings on the site and include an illustrative scheme of landscaping proposals which buffer and protect the sensitive adjacent ancient woodland habitat. This is supported by an updated Ecological Impact Assessment (EclA update RSE_4942_01_V3, Appendix A of this Proof) and a combined on and off-site Biodiversity Net Gain strategy, included in the above-referenced document, which delivers a significant net gain for biodiversity.
- 12.2 The Appeal Site is a grassland compartment, managed under an agricultural tenancy. It has previously been grazed, but is now annually mown. It is adjacent to Burleigh Woods (an LWS and ancient woodland).
- 12.3 The scheme has been designed in a landscape led fashion, in reflection of its setting and context. There has been ecological and landscape input throughout the masterplanning process. This has resulted in a scheme which incorporates tree planting throughout the scheme, a permanently wet detention basin designed to provide benefits to wildlife, and species rich grassland planting.
- 12.4 With the enactment of the Environment Act and advent of Biodiversity Metric 3.1 since the submission of the planning application, I was commissioned to update the ecological assessments and have provided an updated Ecological Appraisal, Biodiversity Impact Assessment Metric and a Biodiversity Net Gain strategy (included within the updated Ecological Impact Assessment appended to this Proof), which involves an off-site biodiversity offsetting scheme. The Appellant has negotiated and secured the required land which will provide a significantly net gain of much greater than the 10% included in the Environment Act, which although enacted, is currently undergoing a transition period, during which and reflecting on the wording of local policy the only enforceable position is the NPPF definition of a 'measurable net gain' (i.e. +0.1%).
- 12.5 One of the aims of Leicestershire & Rutland Biodiversity Action Plan (pg10) is to "*create new habitat on intensively managed land to increase habitat diversity*". By locating the off-site offsetting land on intensively managed farmland, cropped on rotations of arable and grassland for hay, the appeal scheme actively assists in the achievement of this objective. The off-site Biodiversity Net Gain proposal is discussed in the accompanying updated EclA, and BIA, both of which are appended to this document. The off-setting site is on land in the same ownership as the Appeal Site and has been secured for the purpose of ecological off-setting. Should this Appeal be allowed, the off-site land will be subject to a detailed Biodiversity Management Plan for a minimum 30 year duration. The site baseline value and condition has previously been agreed in consultation with CBC. This remains unaltered and has been transposed into the most up to date metric (3.1). The offsite offsetting site contains modified grassland in poor condition (a low distinctiveness habitat with a baseline value of 2.59 Habitat Units), and was mapped as part of the CBC Borough Wide Habitat Survey as Arable Land.

13 PUBLIC RIGHTS OF WAY

13.1 Currently, there is no public right of way through Burleigh Wood. The appeal scheme does not propose to create any access from the appeal site into Burleigh Wood. Loughborough University owns Burleigh Wood, and have confirmed [as at CD.5.1.26]:

- *Burleigh Wood constitutes private land controlled by the University;*
- *There is currently no pedestrian access to the Wood or the Campus/LUSEP from Leconfield Road;*
- *The Wood includes no public rights of way within it - any routes instead being permissive, with the public having no legal right to use them.*

13.2 Ordnance Survey mapping confirms no Public Rights of Way on the Appeal site nor in Burleigh Wood. As shown below:



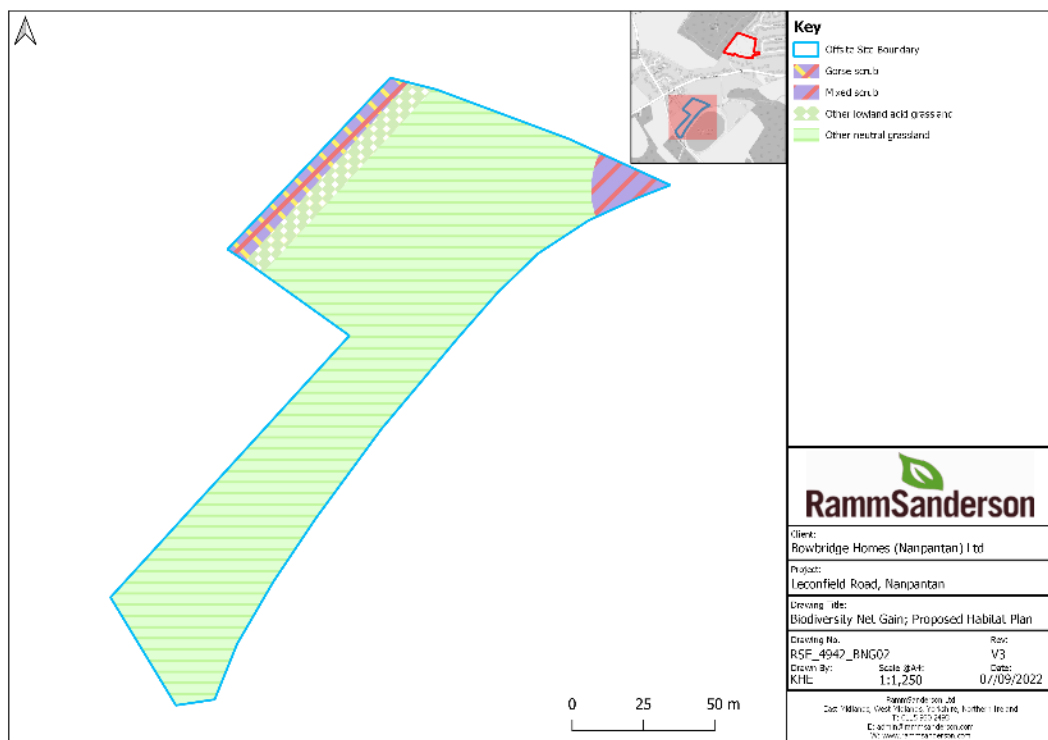
- 13.3 The appeal proposals, including the buffer zone, will help control public access into Burleigh Wood, as part of the requirements to mitigate trampling effects on the Ancient Woodland trees' root protection zones.

14 ON SITE MEASURES

- 14.1 A landscape buffer is proposed along the western boundary of the Appeal Site adjacent to Burleigh Wood. This ranges from a minimum width of 20m to a maximum width of 45m. An informal play space is proposed within the buffer, and this provision is not incompatible, as per the NE Standing Advice on buffers to ancient woodland, provided the effects of trampling can be avoided. A natural play area is provided within the landscaping area along the western boundary, but outside of the buffer to the Ancient Woodland, starting at 20m from the woodland edge. As per Ms Sara Boland's Proof of Evidence, relative to landscape proof of evidence, the woodland buffer will be 'protected' (from trampling effects), through the planting specification.
- 14.2 Further landscape planting is proposed around the other boundaries of the Appeal Site and around the surface water attenuation basin, which itself will be designed to be permanently wet, with an attenuation volume above the mean water level, and below the bank top. The addition of habitat that holds water is ecologically valuable due to the semi-aquatic and terrestrial habitat it will provide to amphibians and invertebrates. Additionally, the inclusion of another habitat type will diversify the botanical species that will be able to persist on site, increasing the overall biodiversity of the site. A line of street trees is also proposed along the access drive. In order to avoid over-emphasising the effects of street/urban trees on net gain calculations in DEFRA metric 3.1, all newly planted trees have cautiously been specified as 'small' trees in the metric.
- 14.3 The on-site habitats will be managed by a management company for the design life of the development (i.e. far in excess of 30 years).
- 14.4 In addition, a number of ecological protection and mitigation measures are recommended in the EclA, such as implementation of light spill control measures at reserved matters stage, to work in a precautionary way when site preparation works commence, to avoid impacts to birds, badgers and small mammals.

15 OFF-SITE OFFSETTING

- 15.1 On-site measures have minimised the ecological impacts of the development as far as reasonably practicable. To address the residual impacts, the Appellant also proposes off-site measures. To that end, nearby land (300m from the Appeal Site) has been secured to facilitate a net gain through habitat creation and management practices. This offsetting land will be managed for biodiversity benefit, with a management plan entered into between the Appellant and the landowner, to be secured by Unilateral Undertaking/S106 Agreement, and managed as grassland (including a proportionate amount of acid grassland, which can be recreated on the offsetting site with a management plan in place) and scrub for a minimum period of 30 years. This has been factored in the supporting BIA calculated using the most up to date DEFRA metric (v3.1) and in combination with the on-site measures above, results in a significant net gain for biodiversity of +46.90% in habitat units and +117.62% in hedgerow units.
- 15.2 Off-site habitat creation is proposed to be established and managed as per the extract below, showing the offsetting site and in the inset, showing its close proximity to the appeal site (red outline in inset):



- 15.3 Management of the on, and off site land will be carried out by a management company appointed by the Appellant, and monitoring surveys will be completed during the management plan period by ourselves. A monitoring report will be provided to CBC and all interested stakeholders every 5 years, and if required, the management plan will be reviewed and updated on this rotation also.

16 DISPUTED MATTERS

- 16.1 The Statement of Common Ground identifies two areas of dispute relevant to my evidence.
- 16.2 The first is Issue 2: Whether the Proposed Development would result in significant adverse biodiversity impacts that would be contrary to Policy CS13 (Biodiversity and Geodiversity) of the Core Strategy and Paragraphs 174 and 180 of the NPPF, such that, when all other local and national policy and other material considerations are taken into account, the Application should be refused planning permission as a consequence.
- 16.3 The second is Issue 6, which relates to the Heads of Terms for the s.106 obligation. The parties have set out their respective wording for the Heads of Terms for the off-site biodiversity enhancements.
- 16.4 I address each of those disputed issues in turn:

Issue 2

- 16.5 In the Plans Committee Report [CD.3.1] it is clearly set out by the Council, that the proposals are in accordance with policy, stating on page A18: "*The proposals are therefore considered to comply with CS13, EV/1 and NPPF paragraph 180*". The parties were therefore in agreement that the scheme was policy compliant, with an agreed baseline, and with no mitigation proposed (other than a commuted sum) and since proposing a detailed scheme of mitigation, including offsetting, the Council has moved that we are no longer compliant with these policies. In my view, the proposals are policy compliant, follow the mitigation hierarchy and a significant net gain for biodiversity.

Issue 6

- 16.6 As set out in Appendix 2 of the SoCG, the Heads of Terms of a legal agreement are largely agreed between the parties. A matter of disagreement remains regarding Off-site Biodiversity Enhancements. The Appellant has suggested the following wording for inclusion in the Heads of Terms: "*Mitigation via a managed off-site biodiversity offsetting scheme involving land in the locality of the Appeal Site*". The Council has suggested the following wording: "*Off-site contribution using cost model WCCv19.1 for a project within the vicinity of the development (to be agreed by all parties if required in the unlikely event that on-site mitigation cannot be provided)*".
- 16.7 In the Heads of Terms (p42 of SoCG, in Appendix 2) the mechanism for securing Biodiversity Mitigation is stated proposed by the Council as the following:
- "The submission of a Biodiversity Mitigation Strategy, which includes a new BIA assessment based on the baseline which has agreed through the BIA submitted on 17th December 2021 in support of the Application, at reserved*

matters stage. Mitigation will be provided in order of the following preference to achieve biodiversity net gain:

(i) Mitigation on site;”

16.8 From this it is clear that the Council’s only acceptable means of delivering mitigation is on site. This is clearly against the principles of Biodiversity Net Gain, The Environment Act (2020) and their own supplementary Advice on Biodiversity, which all set out multiple available options, as previously cited.

16.9 It is possibly inferred from this, that the Council are seeking a financial contribution, which, in their view, should be calculated using the Warwickshire County Council metric (WCCv19.1). This metric was developed by Warwickshire CC as part of the pilot study into BIA and has been requested by CBC and nominated as their biodiversity unit valuation tool because it calculates commuted sums within it.

16.10 The Appellant considers that it is appropriate to provide both on and off-site mitigation rather than a financial contribution. The Appellant’s position is supported by the principles of Biodiversity Net Gain, The Environment Act (2020), the mitigation hierarchy and the Council’s own Biodiversity Planning Advice [CD.5.3.2], which clearly states that offsetting is acceptable (p16 of said Advice):

“We will consider biodiversity off-setting where it is evident that avoiding biodiversity loss and on-site mitigation are not possible, may result in piecemeal mitigation or where better opportunities exist to secure net gain elsewhere.

There are currently three main routes to providing successful biodiversity offsets:

- the developer identifies a suitable scheme within their own land holding;*
- the developer engages a third party to provide the offset on their behalf; or*
- the Borough Council receives an offsetting payment on behalf of the developer and allocates this to a project on their behalf.”*

16.11 Following the mitigation hierarchy, after taking steps to avoid impacts to ecological receptors where possible; and mitigating any impact as far as reasonably practicable; the next step is to look to restoration (via landscaping and design) and offsetting where there are still residual impacts (as here, with the accepted on site net loss when the baseline is assessed in isolation). When considering off-setting, the Council's Biodiversity Planning Advice contemplates successful offsetting involving the developer identifying a suitable site within their own land-holding on which to deliver the biodiversity offsetting. That is what the Appellant proposes. As such, it is not necessary to fall back on the 3rd option identified in the Council's Advice, namely the payment of a commuted sums to be controlled and allocated by CBC. The Appellant has a legal agreement in place securing land c.300m south west of the appeal site and has set out clear proposals for habitat creation and management of the off site offsetting land within the BIA strategy included within the submitted Ecological Impact Assessment [RSE_4942_01_V3 included as Appendix A of this Proof of Evidence]. The offsetting receptor location could not practicably be any nearer to the appeal site and is closely matched in elevation & sloping topography and is similarly adjacent to woodland at Nanpantan Hall, along Woodhouse Lane, to Jubilee Woods and Outwoods & Hangingstone SSSI. In my professional view, the land proposed for ecological off-setting is entirely appropriate for that function and this approach is wholly in accordance with the provisos of the Environment Act 2021, the principles of Biodiversity Net Gain and CBC's own Biodiversity Advice, as referred to above.



17 CBC APPEAL STATEMENT COMMENTARY

17.1 CBC provided comments on the proposed off-setting at paragraph 7.53 of their Appeal Statement, asserting that:

“The appellant proposes that these on-site losses could be compensated by an offsite habitat creation and enhancement scheme that would result in a net gain of over 36%. However the submitted details do not give confidence that the proposal would either be adequate or achievable for a number of reasons:

- (i) It does not form supporting habitat for an ancient woodland;*
- (ii) It is far from clear that site, has the characteristics required for the creation of acid grassland;*
- (iii) the ecological appraisal recommends generic seed mixes which do not include characteristic species of acid grassland;*
- (iv) there is no clarity about how or whether the duration of the offset would match that of the impact or about whether the habitat (if created in the first place) would be retained beyond the 30 year management period.*

17.2 Responding to each of these points in turn:

- (i) The offsetting land is adjacent, beyond Woodhouse Lane to woodland to the west, and to the southeast beyond connected farmland, to Jubilee Wood and Outwoods and Hangingstone SSSI, a large area of ancient woodland. Although this point is not a requirement of offsetting proposals (i.e. it is not a measurable aspect of the BIA metric), it is likely to act in a similar manner to the appeal site grassland, in supporting some of the fauna present in the woodland. The Appellant is compensating for the impacts to the loss of grassland via this offsetting solution. There is no direct habitat loss to the woodland, and the grassland adjacent is not cited in the LWS criteria for being a supporting habitat.
- (ii) The receptor site is 300m away from the appeal site: they share similar traits in elevation, sloping topography, and soil conditions are identical, according to the UK Soils Observatory [CD.5.3.19].

Therefore, there are suitable conditions to establish acid grassland on the offsetting land.

The vast majority of the appeal site is poor semi-improved grassland /semi improved neutral grassland and that the amount of acid grassland on the appeal site is small and not significant, as accepted by CBC's own ecologist (see CBC Biodiversity Report to the SHELAA, Case Officers report & Extras Report). Therefore, the vast majority of the offsetting requirement is for a neutral grassland to be created, in order for the BIA trading rules (as set out in the Biodiversity Metric 3.1 – User Guide [CD.5.3.20) to be satisfied. Should CBC consider it appropriate to specify an acid grassland seed mix, and even collect seed from the appeal site to sow (or green hay), to aid generation of local provenance seed stock, the Appellant is willing to do so and this can be delivered through an appropriate management plan which can be secured by condition.

(iii) The requirement for a 30 year management plan is a cornerstone of the Environment Act (2021) as set out in Schedule 7a of the Act:

(3) The condition is that any habitat enhancement resulting from the works referred to in sub-paragraph (1)(a) will, by virtue of—

(a) a condition subject to which the planning permission is granted,

(b) a planning obligation, or

(c) a conservation covenant,

be maintained for at least 30 years after the development is completed.

17.3 For the Council to ask for management *ad infinitum* is contrary to best practice, and the nationally adopted approach. The premise that any habitats created on or off site, as a result of a Biodiversity Net Gain scheme, should be funded by the developer for an unlimited period of time is contrary to the requirements of the Environment Act 2020 and unjustified.

18 SUMMARY & CONCLUSIONS

- 18.1 A reason for refusal of the application was given at planning committee for impacts on biodiversity, which was contrary to the Case Officers Report, in which it was made clear that the CBC Senior Ecologist had no objections to the proposals (subject to conditions and an S106 agreement). Since then Appeal was lodged, the Appellant has opted to provide a scheme of on and off site offsetting in lieu of a commuted sum. The Council's statement of case raised certain concerns with the proposed offsetting scheme, which have been addressed in this Proof of Evidence, and can be appropriately controlled by condition.
- 18.2 The offsetting scheme delivers a net gain in excess of the required minimum current (NPPF) position of no net loss, and the Environment Act position of 10% net gain, which should be afforded significant weight.
- 18.3 The impacts on Burleigh Wood LWS are minimised via a buffer strip of retained and enhanced vegetation, which exceeds the minimum width of 15m required by Natural England. Public access into the Wood will also be controlled via the delivery of the scheme.
- 18.4 Whilst an ecological impact is inevitable with any development on land which is not hardstanding etc., the impacts have been assessed; minimised and appropriately off-set in accordance with the mitigation hierarchy. The appeal scheme will not result in any significant biodiversity impacts and will deliver significant net gain for biodiversity in accordance with policy, and Local BAP objectives.