
Application Ref: 23/00832/FULM
Proposal: 126 dwellings with open space, landscaping, highways and drainage infrastructure and associated works
Location: Land off Mansfield Road, Clipstone, NG21 9EH
Date: 27/07/2024

1.0 Introduction

1.1. I have previously commented on this application in responses dated 22/05/2024 and 28/06/2024, which should be read in conjunction with these comments. Since my last comments the applicant has submitted a drawing which is shown in italic font in the list below. These additional comments are based on a review of this plan.

Documents Reviewed

1.2. I have reviewed the following documents to inform my comments to date on this application:

- Ecological Appraisal (No Doc. Ref. – March 2023 – Rachel Hacking Ecology);
- Shadow Habitat Regulations Assessment (No Doc. Ref. – 04/03/2024 – Rachel Hacking Ecology);
- Landscape Softworks Plans (Dwg. Refs. 1280-LS 200A to 1280-LS214A – March 2023 – DSA Environment and Design);
- Habitat Stack (Dwg. No. 12802-LS-301-A – 29 March 2023 – DSA Environment and Design);
- Bat Box – Kent Style (Dwg. No. 1280-LS-303-A – 29 March 2023 – DSA Environment and Design);
- Bird Box – 28mm Blue Tit (Dwg. No. 1280-LS-302-A - 29 March 2023 – DSA Environment and Design);
- Natural England Correspondence (Letter Ref. 436005 – 12 June 2023 – Natural England);
- Natural England Correspondence (Email Ref. 475819 – 16 May 2024 – Natural England);
- Drainage Strategy Sheet 2 of 2 (Drwg. No. 22123-18A – 22/02/2024 – Travis Baker);
- Landscape Strategy for Planning Appn, Ref. 23/01846/FULM (Drwg. No. 1297-002B – 02/10/2023 – DSA Environment & Design).
- Technical Note (Lifespan of supporting ecological surveys and reports & Mitigation and Compensation Measures (No Doc. Ref. – 07/06/2024 – Rachel Hacking Ecology); and
- Shadow Habitat Regulations Assessment (Doc. Ref. RHE.3326 – 03/06/2024 – Rachel Hacking Ecology).
- *Ecological Mitigation Plan (Drwg. No. EC-001-01 – 22/07/2024 – White Ridge)*

2.0 Comments

Mitigation and Compensation Measures

- 2.1. As noted in my previous comments, I have raised concerns regarding the proposed mitigation and compensation measures centred around the following points:
- Proposals offsite but within the red line boundary of a separate application (ref. 23/01846/FULM);
 - Proposals offsite; and
 - Proposals not deliverable when considered against the Landscape Strategy.
- 2.2. This was set out in a table which I subsequently updated in my comments of 28/06/2024. The format for the table was:
- Where the proposed measures were considered deliverable, cells are white.
 - Where measures are confirmed as undeliverable, cells are red.
 - Where there is continuing uncertainty regarding deliverability, cells are grey.
- 2.3. To keep continuity with my previous comments I have further updated the table below, following review of the Ecological Mitigation Plan (EMP), with my new comments in bold italic font.
- 2.4. For these comments, any mitigation/compensation measures where there is now agreement that these relate solely to the associated (but separate) planning application reference 23/01846/FULM (the recreational development) I have used strikethrough on the text as these are now confirmed as being irrelevant to the application currently under consideration. Similarly, I have used strikethrough on the text for any measures now confirmed as undeliverable for either application.

NSDC Biodiversity and Ecology Lead Officer Comments

2.5.

Proposed Measure	Location	Comments NL	Comments MW	Comments NL 28/06/2024 italic font
Management of woodlands TN4, TN5 and TN6	TN4 and TN5 offsite and within 23/01846/FULM. TN6 partially off site and within 23/01846/FULM	All potentially deliverable in accordance with proposed Landscape Strategy.	Specific to housing development.	Noted <i>EMP confirms locations and measures allocated to the residential development.</i>
Management of woodland TN13	Offsite and not within 23/01846/FULM	Possibly part of Vicar Water Country Park	Owned by Welbeck Estates – not part of Vicar Water. Management will be part of mitigation for the recreation ground.	Noted <i>Extent of area shown on EMP and within same ownership so now deliverable and confirmed for the recreation development.</i>
Management of retained scrub; TN3 – bramble TN7 – gorse TN12 – plantation woodland	All offsite and within 23/01846/FULM	Landscape Strategy shows TN3 and TN12 as removed so not deliverable. TN7 potentially deliverable.	Agreed regarding TN3 and TN12 – originally TN12 and part of TN3 was to be retained. TN7 to be managed to enhance its value –mitigation for housing development.	Noted <i>Location previously known and agreed that TN7 is deliverable</i>
Manage scrub TN8 (selective clear to 30%)	Offsite and within 23/01846/FULM	Landscape Strategy showing TN8 as removed, so not deliverable.	Agreed, but <i>Rosa agrestis</i> will be translocated to edge of TN7. TN8 has lost much of its botanical diversity because of Bramble encroachment.	Noted <i>Rosa agrestis Sweet Briar, dealt with below.</i>

NSDC Biodiversity and Ecology Lead Officer Comments

Proposed Measure	Location	Comments NL	Comments MW	Comments NL 28/06/2024 italic font
Plant 5m wide strip of dense scrub between lagoons TN6 and woodland TN13	Some onsite, some offsite and within 23/01846/FULM and some outside of both boundaries.	Some potentially deliverable.	Access control to stop vehicular activity, mitigation for both developments delivered after 3 Rivers Project –de-culverting has been completed.	No clarity has been provided in respect of exactly what areas form mitigation for each development. They are two separate applications, so the measures need to be clearly allocated. <i>EMP confirms that this will be mitigation/compensation for the residential development.</i>
Gap up and manage hedgerow TN14.	All offsite and within 23/01846/FULM	Showing as retained within the Landscape Strategy so potentially deliverable.	Intended as mitigation for Leisure & recreation development.	Noted. <i>EMP confirms location and that this is mitigation/compensation for the recreational development.</i>
Clear scrub and reinstate hedgerow along boundary of TN5 and TN6	TN5 offsite and within 23/01846/FULM. TN6 partially on site and partially offsite and within 23/01846/FULM	Potentially deliverable as part of Landscape Strategy.	See explanation regarding 3 Rivers Project	No indication as to which development these measures should be allocated to. See my additional comments re the 3 Rivers Project below. <i>EMP confirms location and that this is mitigation/compensation for the residential development so is deliverable.</i>

NSDC Biodiversity and Ecology Lead Officer Comments

Proposed Measure	Location	Comments NL	Comments MW	Comments NL 28/06/2024 italic font
Manage grassland TN1 by late summer mow	Would be offsite and within 23/01846/FULM.	Potentially deliverable as part of Landscape Strategy.	It is more appropriate to include this mitigation with the Leisure & recreation application.	Noted <i>EMP now showing an area of TN1 to the west and south of the headstocks and indicates that this area would form mitigation for the residential development and is within the same ownership. Therefore, would potentially be deliverable but see TN 1 area additional comments below table.</i>
Manage grasslands TN2 and TN9 by scrub and tall ruderal herb removal and late summer mow	All offsite and within 23/01846/FULM	Landscape Strategy proposes removal of TN9 small scrub area so would deliver this element. TN2 showing as grassland on LS, so potentially deliverable.	TN2 and TN9 will be lost to the Leisure & recreation application, so not deliverable.	Noted <i>No additional comment needed.</i>
Former settling lagoons to become permanent ponds	Onsite.	Drainage strategy (Drw. No. 22123-18-A) shows narrow band over deepened by 0.5m to create permanent standing water area. So deliverable.	Agreed and will be essential for effective SUDS. Additional water will feed Vicar Water. Leisure & recreation application will also benefit.	Noted <i>No additional comment needed as location known before issue of EMP.</i>

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Proposed Measure	Location	Comments NL	Comments MW	Comments NL 28/06/2024 italic font
Scrub and tree removal around ponds	Onsite.	Deliverable.	Reduced shade will be of benefit to aquatic habitats.	Noted <i>No additional comment needed as location known before issue of EMP.</i>
Culverted sections of Vicar Water (between TN13 and TN6 and within TN6 and TN13) to be opened and modified.	Offsite.	Nothing in application submission to confirm this.	Works started and ongoing – see paragraph above.	The paragraph referred to is reproduced below this table. No clarity as to which development these measures relate to. <i>EMP indicates that this is proposed as mitigation/compensation for the residential development. But the position regarding use of the Three Rivers Project work as mitigation/compensation for this application is unchanged and it is considered that this cannot be used so is not deliverable. (See additional comments below).</i>
Thin of woodland along Vicar Water through TN5 and TN6.	TN5 offsite and within 23/01846/FULM. TN6 partially on site and partially offsite and within 23/01846/FULM	Potentially deliverable as part of Landscape Strategy.	Works started and ongoing – see paragraph above.	
Sensitive lighting scheme for bats	All onsite, but no lighting scheme submitted	Can be secured via a planning condition.	Planning condition anticipated.	Noted <i>EMP clarifies that this is mitigation for the residential development.</i>

NSDC Biodiversity and Ecology Lead Officer Comments

Proposed Measure	Location	Comments NL	Comments MW	Comments NL 28/06/2024 italic font
10 bat boxes integrated into houses	All onsite	Can potentially be secured through a LEMP/BES	Agreed.	Noted <i>EMP clarifies that this is mitigation for the residential development.</i>
10 bat boxes on trees in woodlands TN5 and TN12	All offsite and within 23/01846/FULM.	TN5 Potentially deliverable as woodland retain as part of Landscape Strategy. TN12 not deliverable as Landscape Strategy shows this removed.	All boxes attached to trees in woodland TN5.	Noted <i>EMP clarifies that this is mitigation for the residential development.</i>
20 bird nest boxes	Not stated but assume that these would be integrated into the walls of the new homes.	Potentially deliverable and could be secured via a planning condition.	Swift and Sparrow bricks to be installed into house walls.	Noted <i>EMP clarifies that this is mitigation for the residential development.</i>
Avoid impacts on breeding birds	All onsite.	Can be secured through a CEMP.	Agreed.	Noted <i>EMP clarifies that this is mitigation for the residential development.</i>

NSDC Biodiversity and Ecology Lead Officer Comments

Proposed Measure	Location	Comments NL	Comments MW	Comments NL 28/06/2024 italic font
Avoid impacts on reptiles	All onsite.	Can be secured through a CEMP.	Will need a translocation strategy because of habitat loss – suggest that this is conditioned.	There needs to be more clarity regarding where this would be. Until then, this is not considered deliverable. <i>Mitigation measures not included on the EMP. See comments on row below.</i>
Targeted habitat creation for reptiles	No clear indication as to where this would be located.	Can potentially be secured through a LEMP/BES	Most likely area is to the west of headstocks. Needed for both development applications.	There needs to be more clarity regarding where this would be. Until then, this is not considered deliverable. <i>Not included on the EMP, but based on previous comments from MW, from the EMP assume that this is within the area TN1 to the west and south of the headstocks. Therefore, would potentially be deliverable but see TN 1 area additional comments below table.</i>
Avoid impacts on hedgehogs	All onsite.	Can be secured through a CEMP.	Agreed.	Noted <i>EMP clarifies that this is mitigation for the residential development and recreational development.</i>

NSDC Biodiversity and Ecology Lead Officer Comments

Proposed Measure	Location	Comments NL	Comments MW	Comments NL 28/06/2024 italic font
Enhancements for hedgehog (permeable garden boundaries)	All onsite	Can potential be secured through a LEMP/BES	Agreed.	Noted <i>EMP clarifies that this is mitigation for the residential development and recreational development.</i>
Propagate sweet briar and plant into margins of TN7	All offsite and within 23/01846/FULM.	Potentially deliverable given the proposals showing on the Landscape Strategy for this area.	Will be delivered as part of housing mitigation because of loss of TN8.	Noted <i>The EMP is now suggesting that sweet briar would be translocated from TN8 and planted in TN6 this contradicts what has been said previously so needs further clarification.</i>
Spread heather brash in grassland adjacent to TN4, then specific management	All offsite and within 23/01846/FULM.	Potentially un-deliverable given the proposals showing on the Landscape Strategy for this area.	Agreed, proposed before Leisure & recreation proposals were finalised. Seek to create heathland to the west of the site next to Clipstone Colliery tip which supports heathland.	Would need more certainty before considering this as deliverable. <i>EMP confirms that this is mitigation/compensation for the residential development. The assumption is that this is within the TN1 area to the west and south of the headstocks. Therefore, would potentially be deliverable but see TN 1 area additional comments below table.</i>

- 2.6. The EMP has improved clarity regarding the locations and allocations for the proposed mitigation/compensation areas, but unfortunately does not resolve all the concerns.

TN 1 area west and south of the headstocks

- 2.7. From the EMP the assumption is that the reptile mitigation measures, the grassland management proposals and the proposal to spread heather brash to create heathland habitat will all be located on the area of grassland to the west and south of the headstocks. However, the site allocation (Cl/Mu/1) within the Newark and Sherwood Allocations & Development Management Development Plan Document (ADMDDP) is for mixed use development and would accommodate 120 dwellings and 12ha of employment provision, retail and Public Open Space. Therefore, with the current application under consideration and the associated recreational development application also being considered, it is not clear how this area could provide this mitigation/compensation and still enable delivery of the employment and retail elements of the allocation. Therefore, in that respect, there is a low level of confidence that long-term sustainable mitigation/compensation can be provided on this area.
- 2.8. Also, this grassland has been described as ‘district level value’ within the supporting ecological appraisal. Therefore, the baseline value of this habitat is high, so it is not clear how this could be enhanced to a higher value and therefore represent enhancement.

Three Rivers Project

- 2.9. The issue regarding use of the Three Rivers Project work as mitigation/compensation for this development remains unresolved. We know that the ongoing work is being undertaken as permitted development under rights available to Severn Trent, with the work being undertaken by third parties on their behalf, which then enables those rights to be used by those doing the work. Therefore, the work is being done on behalf of Severn Trent and not on behalf of the development under consideration.
- 2.10. Also, it is my understanding that the work forms part of a series of environmental projects under the Water Industry National Environment Programme (WINEP). And in the Government’s own words:

“The primary role of the WINEP is to provide information to water companies on the actions they need to take to meet the environmental legislative requirements that apply to water companies in England”¹.

- 2.11. It is my understanding that Severn Trent were required to undertake environmental improvements to Vicar Water under WINEP, therefore they are not specifically related to the application under consideration. I cannot therefore see how these can be used as compensation for this development.

Quantum of proposed mitigation/compensation

- 2.12. I would advise that whilst the EMP provides some of the clarity that was being sought regarding mitigation and compensation measures, it does not adequately address the issue of insufficient compensation for impacts on habitats given that most of the

¹ DEFRA, Environment Agency & Natural England. (2022). *Guidance – Water industry national environment programme (WINEP) methodology*. <https://www.gov.uk/government/publications/developing-the-environmental-resilience-and-flood-risk-actions-for-the-price-review-2024/water-industry-national-environment-programme-winep-methodology>

application site is formed by grassland which the supporting ecological appraisal has identified as being of 'district level value'.

Policy Compliance.

National Planning Policy Framework

2.13. Relevant sections of the National Planning Policy Framework (NPPF)² are:

"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); [Para. 180 a)]

...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" [Para. 180 d)]

"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;" [Para. 186 a)].

2.14. Para 186a is based on the 'mitigation hierarchy' which is a sequential process to avoid, mitigate and compensate for negative ecological impacts³. Government guidance is that *"Where a development cannot satisfy the requirements of the 'mitigation hierarchy' planning permission should be refused as indicated in paragraph 186 of the National Planning Policy Framework"*⁴.

2.15. As the site is allocated for mixed use development in the relevant Local Plan, consideration as to whether the development could be located elsewhere with less of an ecological impact has essentially been undertaken at the local plan making stage. Therefore, the avoidance element of the mitigation hierarchy is only applicable in terms of avoiding impacts within the development site, and with most of the site formed by grassland considered to be of 'district level value' there is little scope to avoid impacts on this habitat whilst still delivering the quantum of development proposed through the allocation. So, mitigation and compensation are the next important considerations.

² Department for Levelling Up, Housing & Communities. (2023). *National Planning Policy Framework – December 2023*. [National Planning Policy Framework \(publishing.service.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/115122/nppf-2023.pdf)

³ CIEEM. (2018). *Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater, Coastal and Marine version 1.2*. Chartered Institute of Ecology and Environmental Management, Winchester. <https://cieem.net/wp-content/uploads/2018/08/ECIA-Guidelines-2018-Terrestrial-Freshwater-Coastal-and-Marine-V1.2-April-22-Compressed.pdf>

⁴ Department for Levelling Up, Housing and Communities. (2024). *Guidance – Natural Environment – Implementing policy to protect and enhance the natural environment, including local requirements*. (Paragraph: 019 Reference ID: 8-019-20240214). <https://www.gov.uk/guidance/natural-environment>

- 2.16. In my comments of 22/05/2024 in para.2.11 I advised that the series of recommendations for mitigation and compensation measures within Section 5 of the supporting Ecological Appraisal would likely meet the requirements of the NPPF if secured and implemented properly, but I raised concerns with the proposals. Having now commented twice more to responses provided by the applicant, my concluding advice is that except for the mitigation and compensation measures for reptiles, the proposed mitigation and compensation measures for protected and notable species can be secured via relevant conditions should planning approval be granted.
- 2.17. The outstanding issue regarding reptiles relates to the population of common lizard that has been recorded within the wider site and the fact that the Ecological Appraisal has indicated that in addition to precautionary working methods (which I would advise could be secured through an appropriate condition of a planning approval) targeted habitat creation for common lizard would form part of the proposed mitigation and compensation measures. The suggested area for this habitat creation is the TN1 area to the west and south of the headstocks, but for the reasons discussed above, there is a low level of confidence that any long-term sustainable ecological mitigation and compensation measures could be provided within this area. However, this population is very localised and for this development precautionary working methods might be sufficient acceptable mitigation as any loss of suitable supporting habitat might be temporary and localised (i.e., around the TN6 area). Therefore, I would advise that whilst still an outstanding issue, I consider that this should be resolvable through further discussion.
- 2.18. In contrast, in respect of mitigation and compensation for impacts on habitats my conclusion that insufficient compensation is being provided for the impacts on the grassland of 'district level value', means that my advice is that the 'mitigation hierarchy' has not been satisfied as required by the NPPF.

*NSDC Amended Core Strategy Core Policy 12 Biodiversity and Green Infrastructure*⁵

- 2.19. Relevant sections of Policy 12 are:

"...The District Council will therefore:

"Expect proposals to take into account the need for continued protection of the District's ecological, biological and geological assets. With particular regard to sites of international, national and local significance, Ancient Woodlands and species and habitats of principal importance identified in Section 41 of the Natural Environment and Rural Communities Act 2006 and in the Nottinghamshire Local Biodiversity Action Plan; Seek to secure development that maximises the opportunities to conserve, enhance and restore biodiversity and geological diversity and to increase provision of, and access to, green infrastructure within the District;..."

- 2.20. Whilst the grassland forming most of the site has not been identified as a Habitat of Principal Importance, because there is insufficient compensation proposed for the loss of this habitat of 'district level value', I would advise that the proposed development

⁵ Newark and Sherwood District Council. (2019). *Amended Core Strategy – Adopted March 2019*. [amended-core-strategy-DPD.pdf \(newark-sherwooddc.gov.uk\)](https://www.newark-sherwooddc.gov.uk/amended-core-strategy-DPD.pdf)

has not maximised opportunities to conserve, enhance and restore biodiversity as required by Policy 12.

ADMDPD Policy DM7 Biodiversity and Green Infrastructure⁶

2.21. Policy DM7 mostly relates to the need for development to avoid adverse impacts on sites afforded a statutory or non-statutory nature conservation designation. In that respect the supporting ecological appraisal has concluded there would be no adverse impacts on such sites; a conclusion that I would concur with. However, DM7 also states that:

*“On sites of regional or local importance, **including previously developed land of biodiversity value**, sites supporting priority habitats or contributing to ecological networks, or sites supporting priority species, planning permission will only be granted where it can be demonstrated that the need for the development outweighs the need to safeguard the nature conservation value of the site” [my emphasis].*

2.22. The site formed part of the Clipstone Colliery so is previously developed land and supports grassland of ‘district level value’ so represents the situation that DM7 aims to capture. Therefore, as my advice is that insufficient compensation is proposed to offset impacts on the grassland, this lack of compensation would need to be weighed against the fact that the principle of development within the site has been set by that allocation. However, I would advise that to date, there has been no demonstration of any effort to address this via an off-site solution, which is one of the reasons why the ‘mitigation hierarchy’ has not been satisfied.

2.23. Finally, DM7 requires all development proposals affecting sites covered by the policy to be supported by an up-to date ecological assessment. Whether the supporting ecology surveys were sufficiently up to date has been discussed through my earlier comments and my advice was that although these were not up to date, they could be relied upon given the statement provided by the applicant’s ecologist. So, this aspect of DM7 has been complied with.

3.0 Conclusions

3.1. The proposed development would be unlikely to have any adverse impact on any sites afforded either a statutory or non-statutory nature conservation designation.

3.2. Except for mitigation and compensation measures for reptiles, suitable mitigation and compensation measures to address potential adverse effects on protected and priority species could be secured via appropriate conditions of a planning approval. Outstanding matters regarding compensation measures for reptiles should be resolvable through further discussion.

3.3. Whilst through the consultation process a clearer picture has evolved regarding what proposed mitigation and compensation measures would be deliverable, and which would be assigned to the application under consideration rather than to the associated

⁶ Newark & Sherwood District Council. (2013). *Newark & Sherwood Local Development Framework Allocations & Development Management Development Plan Document – Adopted July 2013*. <https://www.newark-sherwooddc.gov.uk/media/nsdc-redesign/documents-and-images/your-council/planning-policy/supplementary-planning-information/allocations-and-development-management-dpd/Allocations-and-Development-Management-Development-Plan-Document.pdf>

application ref. 23/01846/FULM, the conclusion is that insufficient compensation has been proposed to offset the loss of species-diverse grassland considered to be of 'district level value'. Consequently the 'mitigation hierarchy' has not been satisfied as is required by paragraph 186 of the NPPF.

- 3.4. As insufficient compensation has been provided, the proposal conflicts with the requirements of the Amended Core Strategy Core Policy 12 as the proposals have not maximised opportunities to conserve, enhance and restore biodiversity.
- 3.5. In respect of Policy DM7 of the ADMDPD, the lack of compensation would need to be weighed against the fact that the principle of development within the site has been set via its allocation within the Local Plan for mixed use development under Policy CI/Mu/1. In all other aspects, the proposals appear to meet the requirements of DM7.

Nick Law

Biodiversity and Ecology Lead Officer - Planning Development

Newark and Sherwood District Council

(L) 01636 655333 Nick.Law@newark-sherwooddc.gov.uk

www.newark-sherwooddc.gov.uk

