

JOANNE ALDERTON ECOLOGY

Technical Note for Protected Species

Client Name: M Scott Properties Ltd

Site Name: Land West of Watling Street, Park Street

Ref: JA 24-019 (v1)

Date: August 2024

Rev	Description of change	Date	Initials
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VALIDITY OF REPORT

It should be noted that the information provided within this report provides details of the Site's current ecological situation. It is recommended that further advice should be sought from a suitably qualified ecologist as to whether the information provided requires updating in light of changing ecological conditions, should a planning application not be submitted within 12 months.

Introduction

- 1.1 This technical note for ecology relates to the appeal (ref: APP/B1930/W/24/3343986 (“the Appeal”)) against the refusal of planning application ref. 22/0267 (“the Planning Application”) in respect of an outline application for land between Caravan Site and Watling Street, Park Street, St Albans (“the Application Site”).
- 1.2 Specifically, this technical note addresses the comments made by the Rule 6 Party within its Statement of Case (CD11.1) in relation to the effects of the Planning Application on protected species.
- 1.3 It has been prepared by Jo Alderton ACIEEM BSc (Hons) BA (Hons), a suitably qualified and experienced ecologist. Jo has over 10 years of experience with ecological survey work and holds mitigation licences for protected species including badgers. Jo visited the Application Site in September 2022 to undertake the updated survey work discussed at 1.5 below and provide further professional advice in relation to protected species within the Application Site and the surrounding area.

Ecology Background

- 1.4 A Preliminary Ecological Appraisal (PEA) was undertaken in July 2021. This survey and its subsequent report (Preliminary Ecological Appraisal Report 21-0662 Lockhart Garratt (“the PEAR”)) (CD1.25) confirmed that the Application Site was of ‘site only’ ecological value, being actively farmed arable land. The PEAR, however, did acknowledge that the boundaries of the Application Site were of higher value and more ecologically important. As such recommendations within the PEAR required mitigation to minimise the risk of indirect impacts of development on these retained, boundary habitats. This mitigation included use of root protection zones for trees, an ecologically sensitive lighting strategy and landscape buffers.
- 1.5 Following concerns from the Rule 6 Party around badger activity on the land to the south of the Application Site, further survey work was undertaken in September 2022 by Nicholsons Lockhart Garratt to investigate badger activity in and around the Application Site. The purpose of this survey work was specifically to assess badger activity within the land to the south of the Application Site. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- 1.6 Additional mitigation measures were recommended by Nicholsons Lockhart Garratt to provide a precautionary approach in respect of badgers within the Application Site, acknowledging the conclusions of the further survey work in September 2022. These measures were duly incorporated into the revised Illustrative Layout (CD2.1) and Illustrative Landscape Design Strategy (CD2.7), which included a further 10m buffer located within the Application Site in the area immediately adjacent to the land to the south. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- 1.7 Following submission of the additional ecological information, Martin Hicks, Senior Ecology Officer of Hertfordshire Ecology concluded in a consultee response (CD2.27) that a precautionary approach in respect of badgers was in line with best practice including a walkover of the Application Site 4 weeks before the commencement of construction work. He further confirmed that the mitigation proposals were reasonable and that he was satisfied

that all due consideration of badgers as a protected species had been undertaken in respect of the Planning Application. Appropriate planning conditions have subsequently been agreed with the Case Officer.

Rule 6 Party Statement of Case

1.8 The Rule 6 Party has raised concerns as part of its Statement of Case (CD11.1) in respect of protected species, particularly with reference to wildlife that use the land to the south of the Application Site. This land is referred to as the 'Wildlife Reserve' within the Statement of Case (CD11.1), however, it has no formally recognised designation.

1.9 Paragraphs 6.2-6.2.2 set out details of wildlife that have been recorded within this area of land [REDACTED]

Legislation

1.10 The concerns raised by the Rule 6 Party relate, primarily, to the presence of badgers within the land to the south of the Application Site. There is a difference within legislation and planning policy between land upon which badger setts are created and land upon which badger foraging and/or territory marking takes place.

1.11 The Protection of Badgers Act, 1992 ("the PBA") states as follows:

' Section 1.(1) A person is guilty of an offence if, except as permitted by or under this Act, he interferes with a badger sett by doing any of the following things—

(a) damaging a badger sett or any part of it;

(b) destroying a badger sett;

(c) obstructing access to, or any entrance of, a badger sett;

(d) causing a dog to enter a badger sett; or

(e) disturbing a badger when it is occupying a badger sett,

intending to do any of those things or being reckless as to whether his actions would have any of those consequences.' and

' Section 2. ...(1) A person is guilty of an offence if,

(a) he cruelly ill-treats a badger;

(b) he uses any badger tongs in the course of killing or taking, or attempting to kill or take, a badger;

(c) except as permitted by or under this Act, he digs for a badger; or

(d) he uses for the purpose of killing or taking a badger any firearm other than a smooth bore weapon of not less than 20 bore or a rifle using ammunition having

a muzzle energy not less than 160 footpounds and a bullet weighing not less than 38 grains.

(2) If in any proceedings for an offence under subsection (1)(c) above there is evidence from which it could reasonably be concluded that at the material time the accused was digging for a badger he shall be presumed to have been digging for a badger unless the contrary is shown his actions would have any of those consequences.'

- 1.12 Best practice guidance for developers, ecologists and planners in England was recently updated by the Badger Trust¹ to provide further detail on the interpretation of the PBA. Based on this guidance, construction work, particularly where large machinery is used (as in residential developments) has the potential to interfere with a badger sett and contravene Section 1 (1) of the PBA. This is due to the risk of large machinery collapsing tunnels or digging through tunnels and setts when excavating footings, infrastructure routes etc. As such, it is recommended that where any large machinery is used a buffer of 30m from the nearest active sett entrance must be implemented to reduce the risk of interference with the badger sett. Where this buffer cannot be maintained, then it may be possible to undertake these works closer to known setts by virtue of a licence granted from Natural England, which will require specific mitigation measures to be put in place. It is also possible to close a badger sett if it will be too close to development, but this must pass the reasonable test with Natural England and will also require a full licence from them with associated mitigation measures.
- 1.13 At the time of the survey work in 2021 and 2023 there was no definitive evidence of a sett being present either within the Application Site or within the land to the south. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] As such, a precautionary approach, requiring a further 10m buffer from the land to the south was recommended to minimise the risk of contravention of the PBA and [REDACTED]
- 1.14 It is also generally accepted that loss or fragmentation of foraging land can amount to cruelty under s.2 of the PBA. As detailed in the PEAR, all direct loss of land will be arable habitat, which is of 'site only' ecological value. This type of habitat is also of limited foraging value to badgers as most modern agricultural practices result in reduced earthworm availability within the soils, which is the preferred food source for badgers. This was acknowledged and supported by Hertfordshire Ecology's comments on 22nd March 2023 (see para 1). The creation of the buffer on the land in the south of the Application Site would seek to increase the amount of foraging habitat for badgers that are using the area and provide more food resource through grassland and a species rich hedgerow. It should be noted that this habitat would also provide suitable foraging, nesting and commuting resources for other species including small mammals, invertebrates and birds.

Conclusion

- 1.15 The precautionary approach proposed by Nicholsons Lockhart Garratt (now Nicholsons) and approved by Hertfordshire Ecology [REDACTED] [REDACTED] This approach includes the need for an updated survey 4 weeks before the commencement of development to re-assess badger activity and any active setts.
- 1.16 Based on this, I consider that the requirements of the PBA have been met and that best practice, as advocated by the Badger Trust, has been adhered to, with badgers considered

¹ PLANNING DEVELOPMENT AND BADGERS | Badger Trust

as part of the design of the Planning Application to minimise any risks or adverse impacts on their population.