

# JOANNE ALDERTON ECOLOGY

## Rebuttal to Protected Species Proof of Evidence

Ref: JA 24-019 (v1)

Date: August 2024

Client Name: M Scott Properties Ltd

Site Name: Land West of Watling Street, Park Street

Rev	Description of change	Date	Initials
1	Original document	23.08.2024	JA

## 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. This rebuttal has been prepared in response to the Rule 6 Party's *Proof of Evidence: Protected Species* (CD11.11) and *Appendices* (CD11.12), prepared by Mr King. This rebuttal does not provide a comprehensive response to Mr King's submission, but addresses the specific points raised where the Inspector may find a written response to be helpful. Where other points in the documents have not been referred to or responded to, it should not be inferred that these points are accepted.

## Rebuttal

2. 

The provision of a 10m buffer within the Application Site will serve to increase the foraging resource for badgers by providing a higher quality habitat than the existing arable land. The new habitat being created will comprise permanent undisturbed grassland, which will provide an increased capacity for earthworm availability, alongside a species rich hedgerow which will include fruit and nut bearing species that will provide further foraging resource favoured by badgers (including blackberries, snails and slugs).
3. Paragraph 4.3 - The first three photos at Appendix F do not appear to be entrance holes, and are more likely to be digging or snuffle holes where mammals (including foxes and rabbits) dig for roots, worms and other invertebrates. The remaining three photos have the potential to be badger holes but could equally be fox holes and would require further assessment by a professional ecologist to ascertain this. In order to be considered a breach of the Protection of Badgers Act (1992), the mammal holes must be active and being used by badgers. Any breach of this Act would then trigger further mitigation considerations, as detailed below.
4. Paragraph 5.4 - The precautionary approach as approved by Hertfordshire Ecology requires that a further Walkover Survey of the Application Site and a 30m buffer (subject to the consent of the adjoining landowners) will be required four weeks ahead of any construction works commencing. Badgers are highly mobile and can create new setts quickly, hence the need for this approach. In the event that a mammal hole is found within 30m of the Application Site (or indeed within the Application Site, itself, then a trail camera will need to be set up to monitor the area for three weeks, to determine if the hole is active and being used by badgers. If the trail camera footage confirms the presence of an active badger sett, the Protection of Badgers Act (1992) takes effect (overreaching any planning regulations) and further mitigation will be required. This may require the adjustment of the reserved matters (detailed) site layout to include further mitigation within the Application Site and avoidance of the sett, or an application to Natural England for the sett closure (temporary or permanent) accompanied by relevant mitigation measures.
5. Paragraph 5.5 - The agreed planning conditions (CD13.2) include a pre-commencement condition requiring a Construction and Environment Management Plan (condition 12), as well as a Landscape and Ecological Management Plan (condition 13). Condition 12 includes the requirement for a Walkover Survey as detailed above, and will safeguard any relevant active badger setts. Mr King has suggested that this obligation should be in the Unilateral Undertaking, but the planning conditions are the appropriate mechanism and are used as standard in these situations.

## Inquiry procedure

6. It is noted that there is a question as to whether a round table discussion is required at the inquiry on the subject of Protected Species. The evidence to be considered was provided by the Appellant and Hertfordshire Ecology through the application process, and there is no new primary evidence. It is therefore my view that the matter can be adequately dealt with through the submission of written evidence only, and a round table discussion is not required.